

**REPORT OF THE CHAIRMAN OF FINANCE AND MAJOR CONTRACTS
MANAGEMENT COMMITTEE****IMPLEMENTATION OF THE MARKETS IN FINANCIAL INSTRUMENTS
DIRECTIVE (MIFID II)****Purpose of the report**

1. The purpose of this report is to outline the impact of the implementation of the Markets in Financial Instrument Directive 2014/65 (“MiFID II”) and in particular the risk to the authority of becoming a retail client on 3rd January 2018 and recommend that the Council agrees that elections for professional client status should be made on behalf of the authority.

Information and advice

2. Under the current UK regime, local authorities are automatically categorised as ‘professional’ clients in respect of transactions in financial instruments within the scope of these regulations. From 3 January 2018 the introduction of this new legislation “MiFID II” will change this. Instead, all local authorities must be classified as “retail clients” unless they are opted up by firms to an ‘elective professional client’ status.

Potential impact

3. A move to retail client status would mean that all financial services firms like banks, brokers, advisers and fund managers will have to treat local authorities the same way they do non-professional individuals and small businesses. That includes a raft of protections ensuring that investment products are suitable for the customer’s needs, and that all the risks and features have been fully explained. This provides a higher standard of protection for the client but it also involves more work and potential cost for both the firm and the client, for the purpose of proving to the regulator that all such requirements have been met.
4. Appendix 1 lists these protections for retail clients. These are not currently available to the Council as it is classified as ‘professional’ under the current regulations. Opting up to ‘elective professional client’ status would consequently not result in a change in this respect.
5. The new protections available to retail clients would come at the cost of local authorities not being able to access the range of assets needed to implement an effective treasury management strategy as retail status would significantly restrict the range of financial institutions and instruments available to authorities.

Election for professional client status

6. MiFID II allows for retail clients which meet certain conditions to elect to be treated as professional clients (to 'opt up'). There are two tests which must be met by the client when being assessed by the financial institution: the quantitative and the qualitative test.
7. The election to professional status must be completed with all financial institutions prior to the change of status on 3rd January 2018. Failure to do so by local authorities would result in the financial institution having to take 'appropriate action' which could include a termination of the relationship at a significant financial risk to the authority.
8. Authorities are not required to renew elections on a regular basis but will be required to review the information provided in the opt-up process and notify all institutions of any changes in circumstances which could affect their status.

Next steps

9. In order to continue to effectively implement the authority's treasury management strategy after 3rd January 2018, applications for election to be treated as a professional client should be submitted to all financial institutions with whom the authority has an existing or potential relationship.
10. This process should commence as soon as possible in order to ensure completion in good time and avoids the need for appropriate action to be taken by institutions.
11. The officer named in the recommendations should be granted the necessary delegation to make applications on the authority's behalf and to determine the nature of the application on either full or single service basis.

Other Options Considered

12. The authority could accept the status change to a retail client which will occur by default when the provisions of MiFID II come into effect on 3rd January 2018. However this would undermine the treasury management strategy of the authority. For these reasons this option is not felt to be appropriate.

Reason/s for Recommendation/s

13. The recommended opt-up process is the only way to enable the authority to continue its current treasury management Strategy after 3rd January 2018.

Statutory and Policy Implications

14. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATIONS

- 1) Approves the Section 151 Officer completes the applications for elected professional client status with all relevant institutions in order to ensure it can continue to implement an effective treasury management strategy.
- 2) Acknowledges and agrees to forgo the protections available to retail clients as a result of electing for professional client status.

Councillor Richard Jackson
Chairman of Finance and Major Contracts Management Committee

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Constitutional Comments (SLB 03/11/2017)

15. Full Council has authority to consider the content of this report.

Financial Comments (TMR 31/10/17)

16. The financial implications are set out in the report.

Appendix 1 Summary of Protections

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Implications of requesting to be treated as a Professional Client

Electoral Division(s) and Member(s) Affected

All.

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