

Finance & investment briefing

March 2018

Sackers finance & investment group takes a look at current issues of interest to pension scheme investors



Abbreviations

DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
EMIR: European Market Infrastructure Regulations
ESG: Environmental, social and corporate governance
LDI: Liability-driven Investment
LEI: Legal entity identifier
MiFID: Markets in Financial Instruments Directive
OTC: Over-the-counter
PLSA: Pensions and Lifetime Savings Association
SIP: Statement of investment principles

Finance & investment focus

“Welcome to our first finance and investment briefing of 2018. For this edition we’re keeping our briefing brief. Opposite there’s a round-up of recent and forthcoming developments, including MiFID II, but we also look forward to the publication of our new briefing on ESG and a guide to buy-ins, buy-outs and longevity. Look out for these on our website.

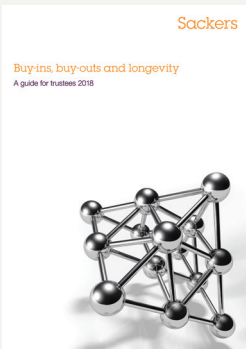
Finally, Sackers’ finance & investment group will once again be attending the PLSA investment conference in Edinburgh this year from 7-9 March. We hope to see as many of you as possible at stand 4 in the exhibition hall (as usual, breakfast rolls will be available!)”

Stuart O’Brien

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Buy-ins, buy-outs and longevity



In our forthcoming guide to buy-ins, buy-outs and longevity, we look back at 2017; a busy year in which bulk annuity volumes exceeded £10bn for the fourth year running. Sackers are proud to have advised on 15 separate bulk annuity transactions, of all sizes and structures and with all the major insurers, at an aggregate deal volume of around £2.4bn.

With 2018 predicted to be another big year for bulk annuities, and with commentators suggesting that pricing is at its most attractive levels in a decade, our guide will focus on the practical steps that trustees should consider to get buy-in or buy-out ready. As always, the schemes best placed to take advantage of pricing opportunities will be those which have a clear idea of what they are trying to achieve, and already have their data and benefit specifications in order well before they go to market.

Environmental, social and governance investment



As well as being a big year for buy-ins and buy-outs, we’re also predicting that in 2018 ESG will continue to gain prominence on DB, and increasingly DC, trustee agendas, with a number of legal developments making it harder for trustees to ignore.

In our last [ESG guide](#) we looked at some practical steps trustees could take to integrate ESG considerations into their investment decision making process. In our new guide, we will look at how the trustee fiduciary duty is evolving and the legal developments on the horizon to which trustees may need to adapt. In particular, we will consider how the [interim response](#) of the DWP and the Department for Digital, Culture, Media & Sport to the Law Commission’s report on pension funds and social investment might flow through to proposals for legislative changes this year, and in the longer term how the [European Commission’s consultation on institutional investors and asset managers’ duties regarding sustainability](#) might also have an impact.

MiFID II in force

MiFID II came into force on 3 January 2018. Broadly, it is intended to improve the functioning of the financial markets and to strengthen investor protection.

Most of the changes do not impact pension schemes directly, however, trustees should take some action. For example, they should already have obtained an LEI number (a global reference number which identifies legal entities that are party to financial transactions across all jurisdictions). Without one, the scheme's managers are unable to execute trades on behalf of the scheme.

In addition, as MiFID II requires the cost of research to be unbundled from the cost of executing trades, investment managers may want to update their charging structures. Trustees should be prepared to have a discussion on fees and should ensure they understand how research will be paid for in the future.



Action

For a detailed to-do list, please refer to our [December 2017 briefing](#).

Pension funds and social investment: the government's interim response

The Law Commission recommended that the Occupational Pension Schemes (Investment) Regulations 2005 be amended to require:

- trustees to state their policies in relation to (1) evaluating risks to an investment in the long-term, including risks relating to sustainability arising from corporate governance or from environmental or social impact and (2) considering and responding to members' ethical and other concerns
- the SIP to state trustees' policy (if any) on stewardship. Stewardship would include the exercise of formal rights, such as voting, and more informal methods of engagement.

The Government "is minded" to make these changes and is aiming to consult on policy and regulations during 2018. Subject to the outcome of that consultation, "legislation will be brought forward for Parliamentary approval at the earliest reasonable opportunity".

Government set to consult on changes to the Investment Regulations

EMIR – pensions exemption

EMIR sets out risk mitigation measures in relation to OTC derivatives within the European Economic Area. At the heart of EMIR is the requirement for central clearing of certain OTCs. This started to come into force for certain interest rate swaps and credit default swaps in 2016 for entities which had more than €8 billion of gross notional exposure to OTCs. It is due to start to come in for schemes with less exposure from 21 June 2019.

Pension schemes currently have a temporary exemption from this obligation for transactions objectively measurable as reducing investment risks directly relating to the financial solvency of the pension scheme. This exemption is currently due to end on 16 August 2018. However, a proposal to amend EMIR recommends extending the exemption for at least a further three years. Some commentators consider that the changes should go further and make the exemption permanent.

Until the position is confirmed, schemes above the €8 billion threshold should prepare to commence clearing transactions that are currently within the exemption this August, and schemes below that threshold should plan for mandatory clearing to start coming into effect from 21 June 2019.

Clearing exemption for pension schemes could continue

Contact

Sackers is the UK's leading commercial law firm for pension scheme trustees and employers. Over fifty lawyers focus on pensions and its related areas, including Sackers' finance and investment group, a team of lawyers who provide cutting edge advice to trustees, employers, corporate investors and providers on all aspects of pension scheme finance and investment.



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