FINANCIAL CONDUCT AUTHORITY

Consultation Paper

CP23/26**

Implementing the Overseas Funds Regime

December 2023

How to respond

We are asking for comments on this Consultation Paper (CP) by **12 February 2024**.

You can send them to us using the form on our website.

Or in writing to:

Asset Management and Funds Policy Team
Wholesale Buy-Side Directorate
Financial Conduct Authority
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Email:
cp23-26@fca.org.uk

When we make rules, we are required to publish an account of the representations we receive and how we have responded to them. We are also required to publish a list of the names of the respondents who made the representations, where those respondents have consent to the publication of their names. In your response, please indicate whether or not you consent to the publication of your name. For further information on confidentiality of responses, see the Disclaimer at the end of this CP.

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Chapter 1

Summary

Why we are consulting

1.1 Asset management in the UK is a cross-border industry. The UK is recognised worldwide as a leader in the sector, consisting of approximately 2,600 firms managing about £10.9 trillion of assets. The global nature of the industry, supported by effective regulation based on strong international standards, can benefit firms, consumers, markets and global economies. The Financial Conduct Authority (FCA) is committed to strengthening the UK's position in global wholesale markets through our strategy and business plan. We want the UK to continue to be seen as one of the leading global markets of choice when compared to other high-quality markets.

1.2 Many of the funds offered to investors in the UK are from outside the country. This consultation paper (CP) sets out how overseas funds (schemes) will be able to be recognised in future, if the UK Government decides to make any equivalence determinations under the Overseas Funds Regime (OFR) in respect of any jurisdiction. The consultation also covers details of changes to schemes that any scheme recognised under the OFR will need to notify to the FCA.

1.3 We are consulting now to make changes to our Handbook so that, if any equivalence determinations are made, overseas schemes can be recognised and so firms are aware of this new route to the UK market. The Government is currently considering the equivalence of UCITS (Undertakings for Collective Investment in Transferable Securities) that are authorised and supervised in the European Economic Area (EEA). This assessment is still ongoing and is a matter for the UK Government. The proposals we are consulting on are not a reflection on the equivalence or otherwise of EEA schemes, but are aimed at operationalising the wider OFR, if and when any equivalence determinations are made.

1.4 By consulting now, we give stakeholders the opportunity to comment on our proposals well in advance of any regime coming into effect and give clarity on the proposed approach to help firms plan should any equivalence decisions be made in the future. These proposals, which are subject to consultation and on which we welcome views, have been informed by early discussions with our statutory panels.

1.5 A recognition process for overseas schemes already exists under the Financial Services and Markets Act 2000 (FSMA), but in 2021 the Government legislated to create the new streamlined process to recognise overseas schemes, the OFR[1]. The regime is based on principles of equivalence: jurisdictions can be approved by the Government if they are assessed as offering adequate arrangements for co-operation between the FCA and the relevant national competent authorities (NCAs), and if they provide equivalent consumer protection outcomes for particular categories of scheme. If a jurisdiction has

1 In this CP, references to the OFR generally refer to the regime for schemes recognised under section 271A of FSMA.

been approved, the FCA can then recognise schemes in the specified scheme category authorised in those jurisdictions.

1.6 We are consulting on information we will need to obtain from scheme operators to inform our recognition decision. The FCA has an obligation to refuse an application for recognition if it is desirable in order to protect the interests of investors and potential investors in the UK. In proposing the requirements, we have weighed up the potential impact on firms submitting applications for schemes to be recognised, and our need to assess those schemes during the process of recognition. The full list of information requirements can be found in the table in Annex 5.

1.7 As part of an equivalence determination under the OFR, the Government may decide to set conditions by imposing certain additional requirements for recognised schemes to comply with. These requirements could be applied through FCA Handbook rules which we would consult on. Further Handbook rules and guidance specific to any equivalence decision might also be needed, when appropriate to address any consumer protection issues that fall within our powers as an independent regulator. We would similarly consult on any such changes.

Interaction of the OFR with the Temporary Marketing Permissions Regime (TMPR) for EEA funds

Most overseas schemes marketed to the public in the UK are EEA domiciled and are established under the UCITS Directive, which sets out the common standards for investor protection for collective investment schemes that are permitted to be marketed to retail investors in the EEA. The UCITS Directive was given effect in UK law through domestic legislation, the FCA's rules and some directly applicable European Union (EU) law.

Before the UK left the EU, the UCITS marketing passport regime meant that an EEA UCITS automatically became a 'recognised' scheme in the UK when its NCA notified the FCA under section 264 of FSMA. This meant that EEA UCITS were readily marketed to UK retail investors.

The ability for UCITS to passport into and out of the UK was revoked when the UK withdrew from the EU. The TMPR was created in the UK to allow EEA UCITS that were using their marketing passport in relation to the UK to continue to market to UK retail investors for a limited period.

Schemes domiciled overseas that are not in the TMPR, including those in non-EEA countries, can be recognised in the UK under the process set out in section 272 of FSMA. This recognition route requires the FCA to undertake an in-depth assessment of the individual scheme and its country's legislative regime. The FCA must be satisfied a scheme meets several tests in legislation and affords adequate protection to investors (including an assessment of the suitability of both the operator and depositary). This is a lengthy and time-consuming process.

While the section 272 recognition process has been in place for some time, given the number of schemes previously passported and already available in the

UK, the Government determined a faster recognition route was required than under section 272. This is contingent on the Government making an equivalence determination to support recognition.

If the Government grants equivalence to the EEA, we would subsequently begin to process the first OFR applications. We would expect to receive applications from schemes currently in the TMPR, as well as new applications from UCITS domiciled in the EEA jurisdictions. Pending an equivalence decision from the UK Government, operators of schemes will be given landing slots in which to apply for recognition under OFR. More information about landing slots will be published on the FCA website.

We would separately publish information about the application process, and our plans for managing an orderly transition of schemes from the TMPR to the OFR, following any Government decision on equivalence.

1.8 In addition, we are setting out proposals for notification requirements for OFR recognised schemes, so we can understand if and how they change over time. This will enable us to oversee all OFR recognised schemes effectively throughout their lifecycle, to maintain an up-to-date register of OFR schemes and to assess whether or not they continue to meet the recognition conditions. By requiring such notifications, we can ensure that any material change with the potential to pose serious harm can be identified promptly.

1.9 Finally, we are also proposing to introduce new measures so that consumers are given a clear explanation about whether the schemes they are invested in are covered by the UK Financial Ombudsman Service (FOS) or Financial Services Compensation Scheme (FSCS). Ensuring that consumers have the right information so that they can make informed decisions is an important consideration in our overall consumer investments work. We want to ensure that consumers know whether they can have recourse to the FOS or FSCS in respect of an investment in an OFR recognised scheme and what the limitations on access may be, so that they can make decisions based on sufficient information provided to them in advance.

1.10 We are not at this stage consulting on any information that we may need to obtain in future should the Government make an equivalence determination in relation to the recognition of Money Market Funds (MMFs).

Exchange-traded funds (ETFs)

1.11 Currently, there are over 600 ETFs listed or admitted to trading on a regulated market in the UK. Most of them are EEA UCITS in the TMPR regime which rely on their status as recognised schemes to be admitted to trading. ETFs are marketed and distributed to investors differently to other recognised schemes, and as they also need to meet certain requirements to be admitted to trading, some of the information that we propose to collect for retail schemes as part of the OFR recognition process might be less relevant for ETFs. We therefore seek feedback on whether our proposals for data collection and notification of changes are appropriate for ETFs.

Who this applies to

1.12 The consultation will be primarily of interest to:

- Operators (management companies) of EEA UCITS that currently market the funds to UK investors or plan to do so
- Distributors of EEA UCITS marketed to UK investors
- Investment advisers
- Firms providing facilities to UK investors in EEA UCITS
- Firms approving financial promotions on behalf of EEA UCITS
- Fund managers and distributors of EEA UCITS schemes that are currently in the TMPR
- UK and EEA trade associations
- EEA and EU NCAs
- Professional services firms providing legal and support services to operators of EEA UCITS

What we want to change

1.13 We are proposing to make new rules and guidance to operationalise the OFR so that overseas funds can apply to the FCA for recognition and know which FCA rules they will need to comply with.

1.14 We also clarify how we intend to use the powers given to us under the OFR legislation, including proposals for:

- Data we propose to collect as part of the OFR application process, as well as information we intend to collect on an ongoing basis if recognition is granted.
- Requirements for pre-sale disclosure, including about the lack of, or limitations on, FOS and FSCS coverage for UK investors.
- How we plan to refuse applications for recognition or suspend or revoke a scheme's recognised status, where necessary.
- The process for public censure of the operator of an OFR recognised scheme.
- Application and periodic fees applicable to OFR recognised schemes.

Outcome we are seeking

1.15 UK asset managers often domicile their investment funds internationally, selling them both to investors in the UK and around the world. According to the Investment Association, the trade body representing mainstream asset management firms in the UK, around a quarter of their members do not operate UK domiciled schemes and instead market EU-domiciled schemes.

1.16 The OFR will allow streamlined access for overseas schemes to market to UK retail investors. We believe this will promote effective competition that serves the best interests of consumers, by offering UK investors a broad choice of investment funds, thereby

increasing competition. This outcome requires overseas schemes to operate under regulatory regimes offering equivalent investor protection to that of the United Kingdom.

1.17 Our proposals for data collection as part of the recognition process will enable us to identify and refuse schemes with features that would be harmful to UK investors. The data will also support effective ongoing oversight of recognised schemes' activities and help us identify potential harm to UK investors.

1.18 Once potential harm is identified, we must refuse an application for recognition or will look to revoke or suspend a recognition order where it is desirable to do so to protect the interests of participants or potential UK participants in the scheme.

Outcomes and measuring success

1.19 A key success measure of the OFR will be ensuring that schemes currently marketing under the TMPR, that wish to continue to market to UK investors, have been transitioned out of this regime and over to the OFR in advance of the statutory deadline for the end of the TMPR. We also expect to have an enhanced and comprehensive view of recognised schemes operating in the UK that are actively marketing to UK investors. We expect our Register to list only those schemes that are actively marketing to UK investors, or that have been admitted to trading on public markets. We expect to see a wide variety of schemes amongst these.

1.20 Conversely, the recognition process should help us to identify schemes that pose potential harm to UK investors so that we meet our legal duty to refuse to recognise those funds. We must also be able to publicly censure, and revoke recognition of, schemes that pose harm to consumers. Refusing to recognise these schemes should improve the quality of funds offered in the UK.

Next steps

1.21 We welcome feedback on these proposals by **Monday 12 February 2024**.

1.22 We will consider all feedback. Subject to the responses received, we will look to publish a final policy statement and final Handbook rules in the first half of 2024.

1.23 The FCA has recently published information on its website asking operators of UCITS in the TMPR to ensure that any contact information they have previously provided to the FCA is up-to-date and amend it if it is not (available at: https://www.fca.org.uk/firms/temporary-permissions-regime/landing-slots-funds-temporary-marketing-permissions-regime). Those operators should also check their fund population on the FCA Register and contact recognisedcis@fca.org.uk if any changes need to be made.

1.24 We are asking for these checks to be carried out so that, in the event of a favourable equivalence determination by HMT, we can prepare to issue information about allocating 'landing slots' to scheme operators that plan to submit applications for recognition. We will continue to update our website with information regarding landing slots.

Chapter 2

The wider context

2.1 The OFR will be a new gateway through which collective investment schemes domiciled in jurisdictions deemed to be equivalent by the Government, will be able to market to retail investors in the UK.

2.2 In considering what requirements to propose, we have weighed up two key potential harms. If we are not effective in operationalising the regime, consumer choice could be reduced in the long term as the UK market will be too difficult for quality overseas schemes to access, which risks undermining the objectives of the regime. If we design a regime that is too permissive, schemes with harmful features could enter the UK retail market and undermine confidence in the OFR and our investment funds sector as a whole.

2.3 Balancing our approach to these harms is particularly relevant for the TMPR. If the Government makes equivalence regulations under section 271A in relation to collective investment schemes in any overseas jurisdiction, schemes currently in the TMPR will need to apply for recognition under the OFR regime by the end of the statutory period for TMPR in order to continue marketing in the UK. These schemes are important to UK consumers' ability to access a wide range of investments and their presence in the UK market also minimises disruption to the global operating model of many asset managers operating in the UK. Although we already hold information about these schemes, we will need to ensure the information is accurate and up to date.

2.4 This consultation also seeks to provide regulatory certainty. Without the process detail provided in this paper, operators would have to make their own assumptions about what information to submit, and this would likely lead to a much more drawn-out process for recognition. We have proposed requirements based on our experience of authorising UK schemes and have sought to streamline the recognition process by requesting information that will allow us to spot outliers and schemes with unusual features.

2.5 In the event that an equivalence determination is made, we propose to require scheme operators to provide the information set out in chapter 3 when they apply for recognition of a scheme, to assist us in identifying potential harm to UK investors whilst seeking to be efficient for the benefit of the operators.

2.6 Similarly, the FCA will look to prevent harm that could occur to investors later in a scheme's lifecycle, whilst recognising that we would not be its primary supervisor and would therefore expect to have limited interaction on an ongoing basis with most schemes. We propose that scheme operators should notify us of certain changes so we can assess any potential consumer harm arising from those changes. Further information on these proposed notifiable changes can be found in chapter 4.

2.7 The FCA can make a public statement of any breaches of regulatory requirements under the OFR and can suspend or revoke a scheme's recognition as a result of any breaches, or if it is desirable to protect the interests of participants. We set out our proposals in this area in chapter 6.

2.8 The Sustainability Disclosure Requirements (SDR) set rules that seek to stop firms from making exaggerated or misleading sustainability-related claims about their investment products. This regime aims to ensure consumers trust and understand the sustainability credentials of funds marketed in the UK. These rules apply to UK investment products. Schemes that are domiciled overseas are not in scope.

2.9 We aim for all schemes that are marketed to UK investors to be subject to the same requirements. Consequently, the FCA will work with HM Treasury to understand the options for extending the SDR to overseas recognised schemes, including those marketing under the OFR.

Competition

2.10 The proposals set out in this CP advance the FCA's operational objective of promoting effective competition in the interests of consumers. The proposed rules will allow retail investors in the UK to continue to access and choose from a wider range of schemes, subject to the Government determining that the overseas regulatory regimes offer equivalent investor protection outcomes.

Secondary international competitiveness and growth objective

2.11 The proposals also advance the FCA's secondary objective of facilitating international competitiveness and growth. Our proposals aim to create a streamlined regime for overseas schemes, supported by a clear and proportionate regulatory framework, that attracts EEA UCITS to market in the UK and enhances effective competition in the interests of UK investors. For example, the regulatory framework includes disclosure requirements relating to redress and complaints arrangements (see chapter 5) that help safeguard trust and reputation in the UK markets. Firms will be able to submit a recognition application and notification of changes and relevant documents through our gateway system (see chapter 3) designed to enhance operational efficiency.

2.12 Our proposals are consistent with and support the global asset management model, in which operators of overseas schemes delegate the scheme's portfolio management to UK-domiciled asset management firms.

Unintended consequences of our intervention

2.13 We would like to hear any other potential consequences that could emerge following these proposed changes.

Q1: **What, if anything, do you consider to be unintended consequences of our proposed intervention?**

Environmental, social & governance considerations

2.14 In developing this Consultation Paper, we have considered the environmental, social and governance (ESG) implications of our proposals and our duty under sections 1B(5) and 3B(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under section 5 of the Environment Act 2021. We will keep this issue under review during the course of the consultation period and when considering whether to make the final rules, but do not at this stage consider that the proposals are relevant to contributing to those targets.

Q2: **Do you consider that proposals made in this consultation raise any particular environmental, social and governance considerations? Please provide further details below if so, including details of any suggested actions that we could take to address them.**

Equality and diversity considerations

2.15 We do not think these proposals in isolation will have a particular impact on groups with protected characteristics under the Equality Act 2010. However, we will revisit this and consider any feedback we receive before we make the final rules following our consultation.

Q3: **Do you consider that proposals made in this consultation raise any particular diversity and equality issues? Please provide further details if so, including details of any suggested actions that we could take to address them.**

Chapter 3

Applying for recognition

3.1 If the Government makes a positive equivalence determination, operators of schemes authorised in countries that are approved through that determination will be able to apply to us for OFR recognition under s271A.

3.2 This chapter describes the data set we propose to request from operators when they apply for recognition of their scheme(s). In deciding what information to collect, we are seeking to take a proportionate approach given any future equivalence assessment and acknowledging the scheme will have been approved by the NCA in its home jurisdiction. We have identified what information we currently seek for UK schemes that we would also require for overseas schemes in order to help us make our assessment as required under FSMA.

3.3 In this chapter we also provide some detail about how we would use this information. This will provide operators with some clarity about how the data will inform decisions about when we may need to refuse recognition of a scheme. We propose to apply a risk-based approach in our assessment of applications for recognition, focusing on areas of highest risk of consumer harm.

3.4 We are legally required to refuse applications if we consider it desirable to do so to protect the interests of UK participants or potential participants in the scheme. Whilst we expect refusals to be rare, we will assess each individual application in the light of the data we receive to identify potential risks of consumer harm.

How we intend to collect information – Enhancements to FCA systems

To date, firms submitting information about collective investment schemes to the FCA have had to either send hard-copy documents to us by post or attach electronic copies to an email. We are improving our capabilities so that firms can interact with us in a more streamlined way.

We plan to:

- Create a user registration process on our technology systems, which will enable us to verify the principal user for overseas firms
- Create a new online application form for the overseas firm to apply for the OFR scheme recognition. This will require a certain amount of data entry from the applicant at the point of initial registration, but allow for efficient updates thereafter and enable firms to move away from making paper-based applications
- Create a new online application form for the overseas firm to notify us of any material changes once the scheme has been recognised
- Publish details of the recognised schemes on the FCA register

We expect to give more information in due course on when our systems will be operational.

What information are we requiring?

3.5 To give scheme operators transparency, we are proposing new directions and guidance in the Collective Investment Schemes sourcebook (COLL) 9.5 that will set out the categories of information we intend to collect as part of the recognition process. This is set out in a table in Annex 4.

3.6 We are required to publish details of OFR recognised schemes on our public register, so that stakeholders are able to check whether we have recognised a scheme. Some basic information collected during the application process will be used for that. We will require a certain amount of information from all schemes, to maintain the register.

3.7 We will also need information to inform our recognition decision. This approach will allow lower-risk schemes to be reviewed more quickly, while we will give additional consideration where an application contains elements that might cause harm to UK investors.

3.8 Given the equivalence process underpinning the OFR, we expect that the majority of applicants from an assessed country will pose limited risk.

3.9 In assessing applications for recognition, we propose to focus on matters most relevant to protecting UK investors' interests. These include areas linked to the scheme's identification and eligibility (e.g. name, legal structure); investment proposition (e.g. investment objective, policy and strategy); fees and charges; parties connected to the scheme; marketing and distribution strategy; as well as characteristics of the units or shares that will be made available to UK investors. The information that we intend to request as part of the registration process will be information that is readily available to funds and is information that would normally be disclosed. We also propose to ask for that information in as streamlined a way as possible, e.g. through yes/no questions, and drop down menus where appropriate. Further details of what information we are seeking are outlined in detail below, and are listed in Annex 5.

3.10 The information we are seeking to collect, and the structured format in which we are seeking to collect it, should enable us to act quickly to identify and prevent practices that could harm UK investors and potential investors, to allow us to focus our efforts on any identified outliers. In our view, obtaining information on areas where we usually see harm, or potential for harm to occur, will enable us to make informed decisions about whether we are required to refuse an application on the basis that it is desirable to do so to protect the interests of investors and potential investors in the fund.

3.11 Where an overseas scheme is constituted as an umbrella, we will need information about both the umbrella as a whole, and the specific sub-funds under it that the operator seeks to market in the UK. Some of the information described below will be applicable to the umbrella, some to a sub-fund, and some to both. We will also need to know, for each stand-alone scheme or sub-fund, which classes of unit or share are to be promoted and how they are differentiated from one another.

Information identifying the scheme

3.12 Section 347 of FSMA requires the FCA to maintain a record of every recognised scheme. We are also required to include such information as the FCA considers appropriate on our public register and, in the case of recognised schemes, this must include at least the name and address of the operator of the scheme and any representative of the operator in the UK.

3.13 It is our view that the register should also contain certain other information to help investors to know which overseas schemes are recognised by the FCA. We also need to ensure that a scheme (including a sub-fund of an umbrella) can be differentiated, amongst a universe of schemes, by knowing its key identifiers.

3.14 Similarly, we need to know the scheme's structure so that we can efficiently process the OFR recognition application.

3.15 Section 271G of FSMA provides that we may only recognise an overseas scheme under the OFR if certain conditions are satisfied, including that the scheme is authorised in a country or territory approved by the Government's regulations, and that it meets the description specified by those regulations. So we will need information about the scheme's regulatory status in its country of authorisation to determine an application for OFR recognition.

3.16 We will therefore ask for details of the scheme's:

- name (including sub-fund names)
- FCA product reference number "PRN" (where one has been allocated already, which would be the case for TMPR funds)
- legal entity identifier "LEI" (including sub-fund LEIs)
- domicile
- structure and fund type (e.g. stand-alone scheme, umbrella, feeder fund, ETF) including its legal form
- confirmation statement from the operator that the scheme has been authorised in its home state

3.17 We do not think it is appropriate to have an OFR recognised scheme or sub-fund with a name that is identical to that of a UK authorised scheme or sub-fund, as we believe that could give rise to unnecessary confusion. If an application were to be received for a scheme whose name was identical to the name of an already authorised UK scheme, we would be unlikely to consider it in the interests of UK investors for us to recognise the scheme. Consideration should be given to this matter before making an OFR recognition application. We also do not consider it appropriate to recognise a scheme with an inappropriate or misleading name, and we will consider this aspect as part of our assessment.

Information about the scheme's profile

3.18 When assessing an application for OFR recognition, we will want to know about the key features of the scheme or sub-fund, including its investment objective, policy and strategy, its target UK investors and its past performance. This will help us understand the nature of the fund we are recognising.

3.19 Data to help us identify the profile of the stand-alone scheme or sub-fund will include:

- investment objective, policy and strategy
- value of assets under management (AUM) in £ Sterling, including the proportion of AUM attributable to UK investors
- fund category and main categories of asset class (e.g. UK equities)
- use of derivatives and whether this is for efficient portfolio management only
- use of benchmarks (if any) and whether actively / passively managed
- available liquidity management tools, including whether there has been any suspension of dealing in the past 5 years
- dealing frequency
- target investors
- minimum investment amount
- focus, if any, on environmental, social and governance (ESG) factors

Information about fees and charges at scheme and share class level

3.20 Understanding the costs associated with the product description at the share class level will enable us to assess whether the fees are clear, transparent and do not expose investors to harm from undue costs.

3.21 We have seen several instances in the past where UK investors were charged levels of fees that might not be justifiable in the context of value delivered, including for example where investors may bear undue costs in relation to promotional payments to third parties. To understand relevant fees and charges and to inform our decision whether it would be desirable to refuse to recognise a scheme or sub-fund, we will ask for details of:

- initial and exit/redemption charges payable to the scheme operator or its associate
- ongoing charges figure (single figure representing all annual charges and other payments taken from the assets of the scheme on a periodic basis)
- performance fees
- and any other relevant fee / charge related to the scheme (e.g. a payment to a sponsor, if not captured above).

3.22 For the annual management fee, we will ask how much of the annual management charge the management company retains. This will enable us to understand if parties other than the operator / manager are being remunerated for services that may not add value for investors.

3.23 This aligns with one of our Business Plan's key strategic outcomes: putting consumers' needs first by ensuring that they receive fair value.

Characteristics of the unit / share classes

3.24 As noted above, a scheme can be composed of different classes of units or shares..

3.25 We propose to request the following details of each unit or share class:

- name or designation
- international securities identification number (ISIN) (or any other unique identifier at class level)

Information about parties connected to the scheme

3.26 The typical asset management model involves a range of parties in running and managing the scheme. For instance, in the UK an Authorised Fund Manager (AFM) has overall responsibility for managing the scheme, but must ensure that a depositary is appointed to safeguard the scheme assets and oversee the AFM's performance of specified duties. It is also usual for AFMs to delegate the day-to-day investment management of the fund to an investment manager and to appoint service providers to cover operational aspects of running the fund (e.g. transfer agent, fund administrator).

3.27 We propose to ask the applicant to identify the key parties linked to the overseas scheme, including those who have an ongoing relationship with or influence on its management, or have played a critical role in establishing it. We want to ensure we secure high standards of market integrity and consumer protection by knowing the firms and individuals associated with an OFR recognised scheme marketed in the UK. Where a scheme is set up as an open-ended investment company with a board of directors, we will ask for details of the individual directors.

3.28 Transparency about the scheme's associated parties will help us determine whether to refuse the application in order to protect the interests of investors or potential investors. We particularly wish to know details of any firm acting as a sponsor, and of any entity or individual that has played a critical role in designing or establishing the scheme or that will have an ongoing influence on its management.

3.29 To identify those key responsible parties, we would require basic information such as the name, unique identifier(s), domicile and relevant contact details of:

- the management company
- the depositary
- the delegated portfolio manager and any sub-delegates it appoints
- UK representatives (see also paragraph 7.6)
- the authorised person who will approve financial promotions on behalf of the scheme
- any sponsor or other person influencing the design or management of the scheme

3.30 We propose to be informed of any supervisory sanctions imposed by the home regulator on the operator or the scheme itself, as well as any voluntary restrictions agreed by them in relation to their activities. This information will allow us to consider if any historical misconduct should be taken into account during the recognition process. This will enable us to determine whether there is a risk of potential harm to UK investors and whether we are required to refuse the application.

Information about marketing and distribution

3.31 Financial promotions relating to units in an OFR recognised scheme will need to be communicated or approved by a UK authorised firm, unless a financial promotion exemption applies. This differs from the current position for EEA UCITS in TMPR which are able to communicate financial promotions themselves, because they are deemed under FSMA to be authorised persons.

3.32 An exemption to the section 21 gateway applies to firms that approve financial promotions for unauthorised firms within their own corporate group, in which case they need not apply to us to become an approver. Therefore, within groups where the operator of the overseas scheme delegates investment management to a MiFID investment firm which is a UK authorised firm, the scheme will generally be able to benefit from this exemption.

3.33 Knowing the identity of the UK financial promotion approver will allow us to verify whether that firm has permission to approve financial promotions, where such approval is needed. With this, we aim to minimise the risk of investors receiving a financial promotion that is unfair, unclear or misleading; and to determine whether to refuse an application.

3.34 Given that UK rules prohibit promotional payments being made out of the scheme property to third parties for the promotion or distribution of units / shares, we would look closely at any promotional payments during the application process for OFR recognition. We will ask for details of any promotional payments to entities associated with marketing or distributing the scheme to be disclosed to us, e.g. payments to a sponsor.

ETFs

3.35 We consider that ETFs are marketed and distributed to investors differently to other OFR recognised schemes and are subject to certain requirements in order to be admitted to trading on a UK regulated market. Thus, we seek to assess whether our proposals are appropriate for ETFs.

Q4: **Do you agree with the proposed set of data to be required from overseas schemes at the OFR recognition stage? If not, please explain why not and indicate what alternative approach you would suggest.**

Q5: **Is there any data that you do not think would be appropriate for ETFs to submit as part of the OFR recognition process? If so, please provide examples and explain your answer.**

Application and ongoing (periodic) fees

3.36 While recognition is a streamlined process, each application will need some review. To support the cost of this work, we propose to charge a fee from scheme operators applying to us, and an ongoing periodic fee for each scheme as a result of being recognised by us.

3.37 In line with our objective of promoting effective competition in the interests of consumers and our secondary objective of advancing international competitiveness and growth, we propose aligning application charges and periodic fees of OFR recognised schemes with those of UK authorised schemes.

3.38 The FCA has a standard list of pricing categories for application fees (FEES 3 Annex 1A). Applications for OFR recognised schemes will be charged at Category 4 in FEES 3 Annex 2: £2,500 for a stand-alone scheme and double for an umbrella scheme, currently £5,000. Periodic fees will be charged in line with those charged to UK UCITS, set out in FEES 4 Annex 4.

3.39 In November 2023, we proposed to uprate the pricing categories for applications in line with the increase in our overall costs. The rate will be consulted on in our April 2024 fee rates CP and will take effect from 1 July 2024. If the Government makes an equivalence decision before July 2024, that would mean that TMPR schemes who were allocated earlier landing slots to apply for recognition under OFR would pay lower application fees than those in the later slots. To avoid this, we propose exempting schemes that are in the TMPR from the increase, so all TMPR schemes pay the same application fee.

Q6: **Do you have any comments on our approach to setting fee rates?**

Chapter 4

Proposed notification of changes

4.1 This chapter sets out the proposed changes that we would want to be notified of in relation to OFR recognised schemes.

Why we are proposing this

4.2 During the lifecycle of a scheme, changes to its arrangements may occur. Some of these will be material and may directly impact the characteristics of the scheme and the conditions under which its OFR recognition is granted.

4.3 At this point, we propose to require notifications of changes to be submitted by operators in regard to each OFR recognised scheme's most important characteristics, as and when such changes occur.

4.4 To supervise effectively, the FCA like other regulators needs to have good ongoing data about the firms and products in its remit. In the context of open-ended funds in particular, international standards on what data should be made available to regulators and to the public are changing. It is likely that the FCA will revisit UK fund reporting requirements in the future and, as part of such measures, we will also consider what data to collect from overseas recognised schemes to support good understanding of our market.

4.5 OFR recognised schemes can expect the information they report to us to evolve over time. This is in line with our strategy to reduce and prevent serious harm and our commitment to become a data-led regulator. As we explain in chapter 3, we will seek to take a proportionate approach to OFR recognised schemes, having regard to the information we receive (or may receive in future) on an ongoing basis for an authorised UK scheme.

4.6 Enhancing reporting requirements is also aligned with the current initiatives by the Financial Stability Board (FSB) and International Organization of Securities Commissions (IOSCO) to manage risks in the non-bank financial sector. While we work towards this global effort to improve data collection, we are conscious of the burden on firms of increases in reporting requirements and will consider the costs of providing such information, as well as global inter-operability. Any future requirements would be subject to consultation.

Proposed notification of changes under section 271J

4.7 Section 271J allows us to direct the operator of an OFR recognised scheme to provide us with specified information at such times as we may direct for the purposes of:

- verifying whether it continues to meet the conditions for recognition in section 271G(2)(a) to (c), and

- determining whether any requirements relating to the OFR recognised scheme or its operator, imposed by or under FSMA, are satisfied.

4.8 We have a power to suspend or revoke an OFR recognition order where, amongst other things, the scheme no longer meets the conditions for recognition; or it appears to the FCA that a requirement relating to the scheme or its operator, imposed by us or under FSMA, is no longer satisfied. We are also able to suspend or revoke a scheme's OFR recognition where we consider it desirable to do so to protect the interests of investors or potential investors in the UK.

4.9 We propose to direct scheme operators to notify us of changes made to an OFR recognised scheme's most important characteristics that may impact our assessment of it, or alter the information widely accessible to investors via our public register.

4.10 We propose to require notification of some of those alterations prior to their occurrence, so we can assess the impact of those changes before they take effect, including:[2]

- changes to a scheme's name
- changes to a scheme's legal structure
- termination of a scheme or a sub-fund in its home jurisdiction, or a request to de-recognise the scheme or sub-fund when it remains in existence but the operator no longer wishes for it to be marketed in the UK
- supervisory sanctions imposed by the scheme's home regulator on the operator, or the scheme itself, as well as any voluntary restrictions on their activities agreed by them
- a suspension of dealing in the units / shares of the scheme
- a fundamental change to a scheme's investment objective, policy or strategy, for example, a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity investments
- matters that would likely cause significant negative effect on UK investors (such as a material increase in fees or change in redemption terms)
- a scheme's target investors in the UK
- a material change in the scheme's minimum investment amount applicable to UK investors

4.11 We also propose to require operators of OFR recognised schemes to notify us of various matters so we can supervise the scheme and its operator in the UK. To do so we will need to have a sufficiently detailed picture of the scheme's activities in the UK, including any changes relating to its:

- unique identifiers (including LEI)
- benchmark
- connected parties (e.g. sponsor, delegated investment managers)

4.12 Where we set out above that we want to be notified of a change, we will require the operator to submit a notification to our system 30 days before it could take effect in the UK.

2 The FCA is able to direct the way that we receive information from operators at such times as we may direct.

4.13 For other changes, we propose to require operators to notify us within 30 days of those changes, and to confirm on an annual basis on our system that all the data we hold is up to date. This would help us to be aware of key changes and respond within a suitable time. More information about the notification process will be available on our website.

Q7: **Do you agree with our proposal to be notified of ad-hoc changes to OFR recognised schemes, including ETFs? If not, please explain your reason.**

Q8: **Do you agree with our proposal for the timing of notifications? If not, please explain your reason.**

Notification of changes and events under section 271I

4.14 There are also certain changes and events that operators of OFR recognised schemes must notify us about when they occur following recognition (some of which overlap with information we may want to receive under 271J). They are prescribed in section 271I of FSMA. We propose to signpost these requirements in our Handbook through guidance in COLL 9.5.7G:

- Change of a scheme's operator, trustee / depositary, or representative of the operator in the UK
- Change of name or address details for any of the above entities
- Change of address of the place in the UK for service of notices, or other documents, required or authorised to be served on the operator
- If the operator becomes aware that it has contravened, or expects to contravene, a requirement imposed on it by or under FSMA (e.g. a breach of the UK financial promotion rules, or non-compliance with imposed additional requirements).

4.15 The information that will need to be provided for notifications will depend on the change event. FSMA requires the information that needs to be notified under section 271I to be provided to the FCA in writing, as soon as reasonably practicable. We will provide forms for this purpose.

Chapter 5

Enhanced disclosures regarding lack of access to FSCS and FOS

5.1 In this chapter we explain how investors in an OFR recognised scheme might be able to seek redress if they have a complaint or the scheme operator is unable to meet its liabilities to investors. We set out proposals for what information should be made available to investors about their rights before they make an investment.

5.2 Generally speaking, the UK regulatory system protects retail investors when they have a complaint about the activities of an authorised firm carried on from establishments in the UK. Firms are required by our rules to have in place a process for resolving complaints. Eligible complainants, including most retail fund investors, can refer complaints to the Financial Ombudsman Service (FOS) free of charge for an independent review if the authorised firm has not resolved the complaint to their satisfaction.

5.3 Similarly, some investors may also be protected if a firm authorised by the FCA or Prudential Regulation Authority (or a successor of the firm) is unable, or is likely to be unable, to pay claims against it. The Financial Services Compensation Scheme (FSCS) exists as a backstop in case regulated UK firms fail and cannot meet their liabilities to customers, although there has to be a "protected claim" against the authorised firm – which does not cover inherent product risks, such as investments losing value due to market movements.

5.4 The Government, following public consultation, has decided that the OFR will operate outside the scope of the FOS and FSCS. FOS and FSCS will generally not be able to consider complaints or claims against non-FCA authorised operators or depositaries concerning the management of OFR recognised schemes, or the services they provide. These services could include the valuation of the scheme's assets, the custody arrangements for holding those assets, and the keeping of customer records when the customer deals directly with the scheme operator.

5.5 Regulated activities provided by other FCA-authorised firms to an investor, in relation to an OFR recognised scheme, will be in scope of the FOS and FSCS. So, for example, if in future a financial adviser in the UK recommends a client to invest in an OFR recognised scheme, or if a platform service provider offers an execution-only dealing service to buy or sell units in that scheme, an investor could complain to those firms about the performance of those services. The investor, if not satisfied with the response, could potentially then refer the complaint to the FOS if it meets eligibility criteria.

5.6 Similarly, where in future a UK-authorised firm provides investment management services to an OFR recognised scheme when acting as the delegate of that scheme's operator, both UK and overseas investors in the scheme could potentially benefit from compensation paid by the FSCS if the UK firm becomes unable to meet its liabilities to its customers.

5.7 An investor in an overseas scheme may have similar rights in the country where the scheme, its manager or its depositary are established. For example, other jurisdictions will typically require processes to be in place to ensure that consumer complaints are handled fairly. Local legislation may provide for alternative dispute resolution (ADR) schemes to be available to consumers to enable out-of-court settlement of consumer disputes. The exact scope and terms of such ADR schemes, including whether they are available to UK investors, will depend on the national law and regulation of the country concerned. So, if regulation does not require this information to be disclosed to UK investors, it would be up to the investor to find out what protection, if any, might be available to them.

5.8 UK schemes authorised by the FCA and recognised overseas schemes can currently be promoted side by side, without it necessarily being obvious to investors which is which. We think this creates a risk of confusion about redress arrangements. Investors might reasonably assume that if they buy an overseas recognised scheme, especially through a regulated UK intermediary such as a platform or wealth manager, they will receive the same protection as if buying a UK-authorised scheme, managed by an FCA-authorised firm, when this is unlikely to be the case.

Proposal

5.9 We intend to make it clearer to consumers whether or not they can access the FOS and FSCS in relation to an investment in an OFR recognised scheme. Where the FOS and FSCS are not available to investors, we want consumers to be informed about whether or not they can access redress arrangements outside the UK.

Clarifications in financial promotions

5.10 The first point of contact between the overseas operator of an overseas scheme and a UK investor is likely to be a financial promotion issued in the UK. Any such financial promotion must comply with our rules, unless it falls within an exemption set out in the Financial Promotions Order.

5.11 We propose that where a UK financial promotion for an OFR recognised scheme falls under our rules, it must include information about the availability of redress arrangements. This rule would be in a new section 4.15 of the Conduct of Business sourcebook (COBS), which sets out rules for financial promotions relating to OFR recognised schemes and specifies the financial promotions to which the rules do not apply.

5.12 The information to be disclosed in the promotion would need to be reasonably succinct and expressed as plainly as possible. It should indicate as a minimum that:

- the fund is authorised overseas, but not in the UK
- the FOS will not be able to consider complaints about the operator or depositary of the fund (as they are not FCA authorised firms carrying on regulated activities from establishments in the UK) unless the firm has joined the Voluntary Jurisdiction and the relevant conditions in our rules are met

- any claims against the non-UK authorised operator of the scheme are unlikely to be covered by the FSCS
- investors may wish to get financial advice before investing and/or ask for more information or see the scheme prospectus.

5.13 We have also considered whether the statement should say that complaints and claims for compensation can be considered in another jurisdiction, if it is the case. However, we are mindful of not overloading financial promotions with regulatory warnings which can be off-putting for consumers. We believe that if investors are concerned by the information about the limited scope of the FOS and FSCS, it will prompt them to make further enquiries before making an investment decision.

5.14 If the operator of an OFR recognised scheme is not an authorised person in the UK, any financial promotion that it issues must be approved by an authorised person (unless an exemption under the Financial Promotions Order applies). This differs from the previous European single market rules, which allowed operators of EEA UCITS recognised under section 264 of FSMA and the TMPR to issue their own financial promotions in the UK. In future, an FCA-authorised firm which approves a promotion for an OFR recognised scheme will be responsible for ensuring compliance with this rule.

Q9: **Do you agree that our rules for financial promotions for OFR recognised schemes should require a statement about the scope of the FOS and FSCS in relation to the scheme? If so, does the proposed disclosure contain the right information for investors? Please explain any alternative disclosure proposal.**

Clarifications in the fund prospectus

5.15 All operators of recognised schemes must make an English-language prospectus available to UK investors, setting out the terms on which units or shares in the scheme are offered. We have the power to make rules about the contents of the prospectus and we propose a rule (COLL 9.5.5R (2)) which will require the operator to disclose information about redress arrangements. The operator must state explicitly in the prospectus that a UK investor may not be able to seek redress under the UK regulatory system if the activities of the operator and depositary of the scheme are not covered by the FOS or the FSCS.

5.16 We also propose that the prospectus must explain whether or not a UK investor:

- would have the right to access an ADR scheme in the jurisdiction of the OFR recognised scheme (or of the operator or depositary, if different); and
- would be able to claim compensation in the jurisdiction of the scheme, its operator or its depositary, if any of those entities were unable to meet its obligations to return money to the investor.

5.17 If the investor potentially has access to an overseas ADR scheme or compensation scheme, the prospectus must indicate where further information in English about that scheme can be obtained. We will ask for the scheme prospectus as part of the application for OFR recognition.

Clarifications in the point of sale disclosure

5.18 Point of sale disclosure is key for retail investors. Currently in the UK, the key investor information document (KIID) is the prescribed form of pre-sale disclosure for investments in UK UCITS, TMPR funds and EEA UCITS schemes recognised under section 272. The Government intends to extend a similar UK disclosure requirement to OFR recognised schemes, through secondary legislation to be laid before the end of the year.

5.19 However, the contents of the current KIID (which are fixed under retained EU law) do not include statements about redress arrangements, so we currently require firms to provide this information to investors in a supplementary document, as set out in COBS 13.3.1R (2).

5.20 We propose that for OFR recognised funds, supplementary information to be disclosed under this COBS rule should include similar statements to those that will appear in the prospectus (COBS 14.2.1-BR). This will ensure that investors receive information so they can compare UK (FCA-authorised) schemes to OFR recognised schemes and weigh the importance of the availability or absence of redress mechanisms against other factors, before deciding whether to invest.

5.21 The Government intends to replace existing point of sale disclosure requirements with a new consumer disclosure regime. This new regime will give the FCA powers to make rules applying to all regulated schemes marketed to retail customers, including those recognised under the OFR and under section 272. The FCA intends to consult on proposals for the new regime in 2024. As part of these further proposals, it might be necessary or appropriate to consult on delivering the proposed disclosure about non-UK redress arrangements in a different document or format.

Q10: **Do you agree that the prospectus of an OFR recognised scheme should include statements about the scope of the FOS and FSCS in relation to the scheme, and the possible availability of alternative redress options? If so, does the proposed disclosure contain the right information for investors? Please explain any alternative disclosure proposal.**

Q11: **Do you agree that the supplementary UCITS information provided to retail investors at point of sale should provide the same information as the prospectus, concerning complaints and compensation rights? Please explain any alternative disclosure proposal.**

Further clarifications contingent on the Future Disclosure Framework

5.22 In making the proposals set out above, we have had regard to the timescale for launching the OFR and the amount of work that operators and distributors would need to do to prepare for a scheme to be recognised. We believe that our proposals could be put in place with relatively little burden to firms, as the documents in which they would appear are likely to be regularly reviewed and refreshed in any event.

5.23 As noted above, the application of future point-of-sale disclosure requirements to any OFR recognised schemes is a decision for the Government. However, the FCA sets the standards for advisers and distributors.

5.24 In principle, we think there is a case for mandating further disclosure about the scope of UK redress arrangements as part of the sales process, especially when customers carry out execution-only transactions through an intermediary such as a platform provider. We could, for example, require UK platforms to provide an enhanced digital disclosure (e.g. a pop-up risk warning) about the lack of UK coverage, in similar terms to the warnings that are required for high risk investments.

5.25 As set out in our Future Disclosure Framework Discussion Paper (DP22/6), we recognise that the distribution of retail investments has changed in recent years, and disclosure regulations have not always reflected this. We have seen a trend towards online investment, and subsequently an increase in digital distribution of disclosure. However, most disclosure regulations were designed with advised sales and paper-based disclosure in mind. We are therefore reviewing retail disclosure requirements, including point of sale disclosures, to help financial services to be fit for the future. We will consider whether we think any further disclosure of the scope of redress arrangements is necessary as part of this wider work.

5.26 Any proposals involving mandatory systems changes need to be considered carefully in terms of the cost to firms and the time allowed for the development work, so we would need to do more analysis before presenting consultation proposals. At this stage we would like to gauge the views of stakeholders about the possible benefits and costs of these enhanced disclosures where there are digital interactions between firms and consumers.

Q12: **Do you agree that we should carry out further work to develop proposals for enhanced digital disclosure of redress arrangements for OFR recognised schemes? If so, do you have any views on the content and format of information to be communicated to investors and how the disclosure could be effectively integrated into digital interactions with consumers?**

Q13: **For firms that sell overseas schemes to retail investors, what would be the likely costs of developing these digital disclosures, and how long would you need to put them in place?**

Chapter 6

Refusal of recognition, suspension or revocation of recognition and public censure

6.1 The legal framework for the OFR allows the FCA to refuse to make a recognition order or suspend or revoke recognition orders on various grounds, including to protect the interests of UK participants (or potential UK participants). The FCA may also make a public statement if it considers there has been a breach of the regulatory requirements under the OFR (this is referred to in the legislation as public censure). This chapter explains how we intend to make decisions on the exercise of these powers if the need arises.

6.2 In line with other parts of FSMA that relate to collective investment schemes (and in particular the regime for individually recognised schemes under section 272), we are required to issue notices to operators of schemes recognised under section 271A when using such powers. We propose that FCA staff, acting under executive procedures, will take decisions under sections 271H, 271M, 271N, 271O or 271R of FSMA to give supervisory, warning or decision notices as part of the process for:

- the refusal of applications for recognition under section 271A;
- the suspension or revocation of recognition under section 271A; and
- the use of the FCA's power of censure in relation to schemes recognised under section 271A.

6.3 These changes will ensure that schemes recognised under sections 271A and 272 are treated consistently.

6.4 We also propose making changes to guidance in the Decision Procedure and Penalties Manual (DEPP) to ensure both types of schemes are treated consistently. These changes would apply the existing guidance in DEPP 2.5.13G, on modified procedures for decisions relating to collective investment schemes (including those recognised under section 272), to schemes recognised under section 271A.

6.5 We propose making similar changes to the guidance in the Enforcement Guide (EG). The list of sanctions in EG 7.1.2 would be updated to refer to public censure under section 271R (EG 7.1 gives an overview of the FCA's use of sanctions and the statutory powers to impose sanctions are listed in EG 7.1.2). The heading of EG 14.4 would also be amended so that the guidance on the exercise of powers under sections 279, 281 and 282B, in respect of schemes recognised under section 272, also covers the exercise of the equivalent powers under sections 271N, 271L and 271R in respect of schemes recognised under section 271A.

6.6 We also propose to make a consequential change to the list of powers of censure in the definitions of "breach" and "public censure" in the Glossary, so these definitions include the power of censure under section 271R in respect of schemes recognised under section 271A.

6.7 The changes to the Glossary, DEPP and EG to give effect to these proposals are set out in Appendix 1.

Q14: Do you have any comments on our proposed changes to the Glossary, DEPP and EG?

Chapter 7

Other matters

7.1 In this chapter, we consider some other matters relevant to how the OFR should operate. We intend to make rule changes and new guidance, mainly in COLL, to help put the OFR in context and explain how it works.

7.2 We propose rules and guidance concerning the facilities to be provided to UK consumers to help them make an initial investment in a recognised fund and maintain ongoing contact with the fund operator afterwards. We also clarify how the existing rule concerning mergers between UK UCITS and overseas schemes through a scheme of arrangement would work in relation to OFR recognised schemes.

Handbook references to OFR

7.3 The Glossary term 'recognised scheme' previously stood for overseas schemes recognised under different sections of FSMA (most recently, section 264 and section 272). We will continue this approach by applying the term both to OFR recognised schemes and schemes that are individually recognised under section 272. We propose to simplify the Glossary definition of 'recognised scheme' to ensure it is clear and works consistently throughout the Handbook.

7.4 To distinguish between the two types of recognised scheme, we will refer to those recognised under section 271A as 'OFR recognised schemes'. We propose to add text in chapter 9 of COLL to explain that different kinds of recognised scheme exist and to clarify which sections of the chapter apply to which kinds of scheme.

7.5 We also propose to reinsert guidance in section 9.1 of the Perimeter Guidance Manual (PERG) to direct operators of overseas open-ended investment companies to the explanatory guidance in COLL 9 mentioned above. This statement in PERG replaces the former guidance for such companies, relating to the UCITS passport, which was revoked when the UK withdrew from the EU.

Q15: Do you have any comments on the rules and guidance explaining the operation of the OFR? Are there any similar matters we should address within the Handbook?

Facilities in the United Kingdom

7.6 When an overseas scheme is promoted to investors, it is important that they are able to contact the scheme operator without facing undue barriers, in order to get information, give instructions or ask questions. Previously, where an EEA UCITS was sold cross-

border in the UK under UCITS Directive passporting arrangements, UK investors could access a UK representative of the operator, who could provide information and transmit their requests back to the operator in the home state of the scheme.

7.7 We intend to require the operators of OFR recognised schemes to continue providing facilities of this kind to UK investors. Copies of the essential documents relating to the scheme – its constituting instrument, its prospectus, the most recent manager's reports and accounts, and its key investor information document – should be available on demand by any existing or prospective investor, together with information about how to check the latest prices of units.

7.8 For existing unitholders, it should be possible to use the UK facilities to give instructions to buy and sell units, update essential information such as a change of address, and submit complaints about the management of the scheme.

7.9 Although most of the services described above are not in themselves regulated activities, it is likely that accepting instructions to buy and sell units falls within the scope of one or more regulated activities (for example, arranging deals in investments). It is for firms to satisfy themselves whether they are carrying on regulated activities by way of business, and to ensure that they hold the appropriate FCA authorisation for those activities.

7.10 In the past, it was always necessary for the UK representative to maintain an office address in the UK which investors could visit or apply to. We have taken note of recent changes to the UCITS Directive, which among other things allow facilities to be provided within the EEA without a physical presence in the host state (Article 92 (2) as amended). We think it is reasonable to allow OFR recognised schemes to adopt a similar policy in the UK, at least in cases where the terms and conditions of investment foresee all interactions taking place via electronic media, or where the customer has individually consented to such arrangements.

7.11 However, we propose to retain the requirement for a physical address where direct investors have not previously used electronic means of communication and do not consent to do so. In practice, given that most investors will hold units via an intermediary whose nominee is the registered unitholder, it is likely that few if any OFR recognised schemes will have unitholders in this situation who may require physical UK facilities to be available to them. So in the long term, the need for physical office facilities is likely to disappear.

7.12 As noted previously in this CP, financial promotions in the UK for recognised schemes will need to be approved by an authorised person who has permission to do so, unless the promotion is exempt. It will be up to scheme operators to decide whether they want the functions of facilities provider and approver of non-exempt financial promotions to be carried out by the same authorised person.

7.13 We will review the rules on UK facilities for schemes recognised under section 272 (COLL 9.4) in due course, to consider whether to bring them in line with the proposals in this paper.

Q16: **Do you have any comments on our proposals for maintaining UK facilities for investors in OFR recognised schemes under the OFR? Do you agree that we should review the rules on providing UK facilities for schemes recognised under s.272?**

Schemes of arrangement involving recognised schemes

7.14 Before the UK's withdrawal from the EU, COLL 7.6.2R (2) allowed a UK UCITS scheme to be merged with an EEA UCITS scheme recognised in the UK under s.264 FSMA. For recognised schemes that can be marketed under the Temporary Marketing Permissions Regime, this continues to be the case.

7.15 The aim of the rules in COLL 7.6 is to allow an AFM to invite the unitholders of one or more of its UK authorised schemes to vote on a proposal to merge with another scheme, where the AFM believes that such a merger would be in the best interests of unitholders. We have previously considered EEA UCITS to offer a sufficiently high level of consumer protection that it would, in principle, be possible for a merger with a recognised EEA UCITS to be compatible with the best interests of investors in a UK UCITS scheme. So COLL 7.6.2R (2) gave AFMs additional flexibility and choice when considering which other schemes might offer suitable opportunities for a proposed merger.

7.16 We do not think it would be appropriate to continue treating all EEA UCITS as meeting the required standard of comparable investor protection unless there has been a determination based on an equivalence assessment. So if the Government decides to designate some or all EEA UCITS under the OFR process, we would maintain the ability of UK AFMs to propose a scheme of arrangement between a UK UCITS scheme and a recognised EEA UCITS. We propose amendments to COLL 7.6.2R (2) on the basis that such a determination may be made, but we would reconsult on an alternative approach if EEA UCITS are not able to be recognised schemes under the OFR.

7.17 At this point, we do not think it would be appropriate to extend the rule to cover any other categories of overseas funds that might in future be recognised under the OFR. We would consider the matter again if and when a non-EEA jurisdiction is designated by the Government under s.271A FSMA.

7.18 Currently, the rule does not cover individually recognised schemes under s.272 FSMA. This has the effect of excluding the small number of EEA UCITS that have been granted individual recognition since withdrawal from the EU. We propose to modify the rule to include any EEA UCITS recognised under s.272.

7.19 As set out in chapter 5 of this paper, we intend to make it clearer to UK investors that buying or holding units in a recognised overseas scheme may mean that they are outside the scope of the FOS or the FSCS. So we propose in COLL 7.6.2R (7) that when an AFM invites unitholders in an authorised scheme to approve a merger with a recognised overseas scheme, the documents setting out the terms of the proposed

scheme of arrangement should state this consequence prominently. The AFM should provide the same information that we propose should be provided in the prospectus of an OFR recognised scheme.

Q17: **Do you agree that it should continue to be possible for a UK UCITS scheme to be merged with an EEA UCITS recognised under the OFR (if this is permitted) and under section 272?**

Q18: **Do you agree that a proposal for a scheme of arrangement with an OFR recognised scheme should set out the consequences for UK investors in relation to their rights to make complaints and receive redress?**

Annex 1

Questions in this paper

Q1: What, if anything, do you consider to be unintended consequences of our proposed intervention?

Q2: Do you consider that proposals made in this consultation raise any particular environmental, social and governance considerations? Please provide further details below if so, including details of any suggested actions that we could take to address them.

Q3: Do you consider that proposals made in this consultation raise any particular diversity and equality issues? Please provide further details if so, including details of any suggested actions that we could take to address them.

Q4: Do you agree with the proposed set of data to be required from overseas schemes at the OFR recognition stage? If not, please explain why not and indicate what alternative approach you would suggest.

Q5: Is there any data that you do not think would be appropriate for ETFs to submit as part of the OFR recognition process? If so, please provide examples and explain your answer.

Q6: Do you have any comments on our approach to setting fee rates?

Q7: Do you agree with our proposal to be notified of ad-hoc changes to OFR recognised schemes, including ETFs? If not, please explain your reason.

Q8: Do you agree with our proposal for the timing of notifications? If not, please explain your reason.

Q9: Do you agree that our rules for financial promotions for OFR recognised schemes should require a statement about the scope of the FOS and FSCS in relation to the scheme? If so, does the proposed disclosure contain the right information for investors? Please explain any alternative disclosure proposal.

Q10: Do you agree that the prospectus of an OFR recognised scheme should include statements about the scope of the FOS and FSCS in relation to the scheme, and the possible

availability of alternative redress options? If so, does the proposed disclosure contain the right information for investors? Please explain any alternative disclosure proposal.

Q11: Do you agree that the supplementary UCITS information provided to retail investors at point of sale should provide the same information as the prospectus, concerning complaints and compensation rights? Please explain any alternative disclosure proposal.

Q12: Do you agree that we should carry out further work to develop proposals for enhanced digital disclosure of redress arrangements for OFR recognised schemes? If so, do you have any views on the content and format of information to be communicated to investors and how the disclosure could be effectively integrated into digital interactions with consumers?

Q13: For firms that sell overseas schemes to retail investors, what would be the likely costs of developing these digital disclosures, and how long would you need to put them in place?

Q14: Do you have any comments on our proposed changes to the Glossary, DEPP and EG?

Q15: Do you have any comments on the rules and guidance explaining the operation of the OFR? Are there any similar matters we should address within the Handbook?

Q16: Do you have any comments on our proposals for maintaining UK facilities for investors in OFR recognised schemes under the OFR? Do you agree that we should review the rules on providing UK facilities for schemes recognised under s.272?

Q17: Do you agree that it should continue to be possible for a UK UCITS scheme to be merged with an EEA UCITS recognised under the OFR (if this is permitted) and under section 272?

Q18: Do you agree that a proposal for a scheme of arrangement with an OFR recognised scheme should set out the consequences for UK investors in relation to their rights to make complaints and receive redress?

Annex 2

Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.

2. This analysis presents estimates of the significant impacts of our proposal to create new rules and guidance to operationalise the Overseas Funds Regime. We provide monetary values for the impacts where we believe it is reasonably practicable to do so.

3. In order to estimate the impacts of our proposals, we consider a potential scenario in which overseas funds established in the EU and EEA are assessed by the Government as offering equivalent investor protection outcomes and are designated to allow them to apply for recognition under the OFR. No such assessment has been made, so the use of data for EU and EEA funds should be considered purely illustrative at this time.

Market overview

4. Collective investment schemes are a long-established and successful vehicle for pooled investment in both the UK and overseas jurisdictions. They aim to offer a professionally-managed, diversified portfolio of investments in financial securities and other assets (such as real estate) at a reasonable fee. Open-ended schemes aimed at the retail market are regulated to ensure they are properly managed, and that investors have frequent opportunities to buy and sell units or shares, at prices reflecting the current net asset value of the underlying portfolio.

5. The structure of the UK market for regulated retail schemes reflects the legacy of the UK being part of the EU Single Market. There are approximately 3,900 schemes (counting individual sub-funds in umbrella structures) established and authorised in the UK which can be sold to the general public. Alongside these, 8366 overseas schemes, mostly established and authorised in the Republic of Ireland or Luxembourg, have 'UK recognised' status which allows them to be sold here on the same basis. Many overseas schemes are managed by entities within the same group as UK asset managers. We provide more information on overseas schemes and their operators in the 'Number of firms affected' sub-section below.

6. Authorised and recognised schemes typically overlap in terms of their target market, which can include a wide range of institutional, professional and retail clients. There is no inherent distinction between the types of investments they can make, the objectives and strategies they pursue, or the categories of investors to whom they are promoted.

Financial advisers, wealth managers, and firms that design and manage model portfolios will typically consider these schemes as representing a single market and will select according to a scheme's aims, risks and past performance rather than its domicile. Retail market intermediaries, such as platform service providers, offer UK and overseas schemes side by side to customers on both an advised and execution-only basis.

7. Exchange-traded funds (ETFs) constitute a subset of this market. They are open-ended schemes whose shares are admitted to trading on the London Stock Exchange main market and other regulated markets, and which are widely bought and sold by market participants to gain access to an index or basket of securities. The UK market for ETFs is largely comprised of overseas funds authorised under the UCITS Directive.

8. Following the UK's withdrawal from the EU, the Temporary Marketing Permissions Regime (TMPR) allows EEA UCITS with 'UK recognised' status to market their units to investors in the UK. The TMPR will cease to operate at the end of 2025 which will result in the participating schemes losing their recognised status, and thus their right of access, to the UK retail market.

9. The Government has legislated to create a new gateway, the Overseas Funds Regime (OFR), which will allow designated categories of recognised overseas schemes to be marketed freely to the public in the UK. Designation will be performed by the Government based on an equivalence assessment of the regulation of each category of scheme in its home jurisdiction. Scheme operators must apply individually to the FCA for recognition of their schemes, which we will grant if the scheme meets the necessary conditions set out by the Government.

10. The Government will decide whether to designate EEA UCITS (including those currently in the TMPR) so they can access the OFR. The proposals in this paper should enable the OFR to be ready to become operational in 2024 so that if the Government decides to designate EEA jurisdictions, operators of schemes currently in the TMPR (except for money-market funds which are out of scope) could apply for recognition if they wish.

Problem and rationale for the intervention

11. Since the OFR is established by legislation, we do not estimate the costs and benefits of the regime itself. We are concerned only with the incremental costs and benefits of making new FCA rules and guidance, or changes to rules, in connection with the OFR. We consider that if we did not make any changes to our Handbook, then the OFR would not work as intended by the legislation. Below, we summarise the issues that would arise if we did not make any changes, before discussing each one in turn:

- Firms would not know how to take part in the OFR and would not have a proper set of rules applicable to them. This could ultimately lead to a distortion of the regime.
- UK investors would potentially be unaware that overseas schemes do not offer them the same level of regulatory protection as UK schemes – specifically, that they are not covered by the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS). As a result, these investors may invest in schemes that do not match their preferences.

- Overseas schemes could benefit unfairly from the informational asymmetry that exists as they do not need to disclose the lack of FOS and FSCS coverage.

12. Absent any changes to our Handbook, operators wishing to market their schemes through the OFR would be operating in a regime without having a properly designed and clear set of rules and guidance applicable to them, potentially increasing the risk of poor outcomes for investors. For instance, the operators would not know which sorts of data the FCA would expect to receive as part of an application for recognition and how it would be considered. This could lead to firms having a lack of confidence in the regime. In extreme cases, this lack of confidence and lack of applicable rules could lead to a malfunctioning of the OFR.

13. If we do not operationalise the regime effectively, consumer choice will be reduced in the long term as, even if good-quality overseas schemes are designated for recognition, the UK market will be too difficult for them to access. However, if we design a regime that is too permissive, schemes with harmful features could enter the UK retail market and undermine confidence in the OFR and our investment fund sector as a whole. Our rule changes would support the legislative intention to have in place an adequate and proportionate regime where overseas schemes would be able to operate and market to UK retail investors, if an equivalence determination is made.

14. In addition to this, overseas schemes and their operators are not subject to some UK regulatory requirements. Retail investors may be unaware that investing in a recognised overseas scheme (currently through the TMPR, or in the future via the OFR) does not provide them with the same level of regulatory protection as investing in a UK authorised fund. In particular:

- the compulsory jurisdiction of the FOS does not cover complaints against non-UK authorised operators and depositaries of non-UK authorised funds; and
- claims relating to operators and depositaries of overseas funds are not possible under the FSCS.

15. Whilst some overseas schemes may be authorised in jurisdictions that have similar national ADR schemes in place, the terms the ADR scheme offers (e.g. the cap on the amount of redress available) might not provide an equivalent level of protection for UK investors. Dealing with overseas redress systems may be costly and time-consuming for UK residents. Overseas schemes marketed in the UK do not currently have to actively disclose their lack of FOS and FSCS coverage. This lack of information could lead to harm for UK investors who are unaware of it, and who purchase unsuitable products which do not meet their longer-term needs (i.e. investors may prefer to invest in products which are covered by FOS and FSCS).

16. This informational asymmetry may result in investors choosing to invest in an overseas scheme when a UK-authorised scheme would have met their needs better, resulting in lower revenues and profits for UK-authorised schemes. The costs of the FOS and FSCS are met through a levy on UK authorised firms, which may be passed through to their customers as part of the fees charged. Relatedly, overseas schemes which do not have an equivalent national ADR scheme in place may be able to charge lower fees, compared to a scenario where they also had to pay a similar levy. This can negatively impact competition to the extent that investors are more likely to choose an overseas scheme

with lower fees, if they do not realise that the reason for the lower fees may be because the scheme has a lower level of regulatory protection. Investors may therefore be investing in overseas schemes which are less efficient (and with a higher overall cost base than UK schemes) because of their ability to avoid passing on the costs of these levies.

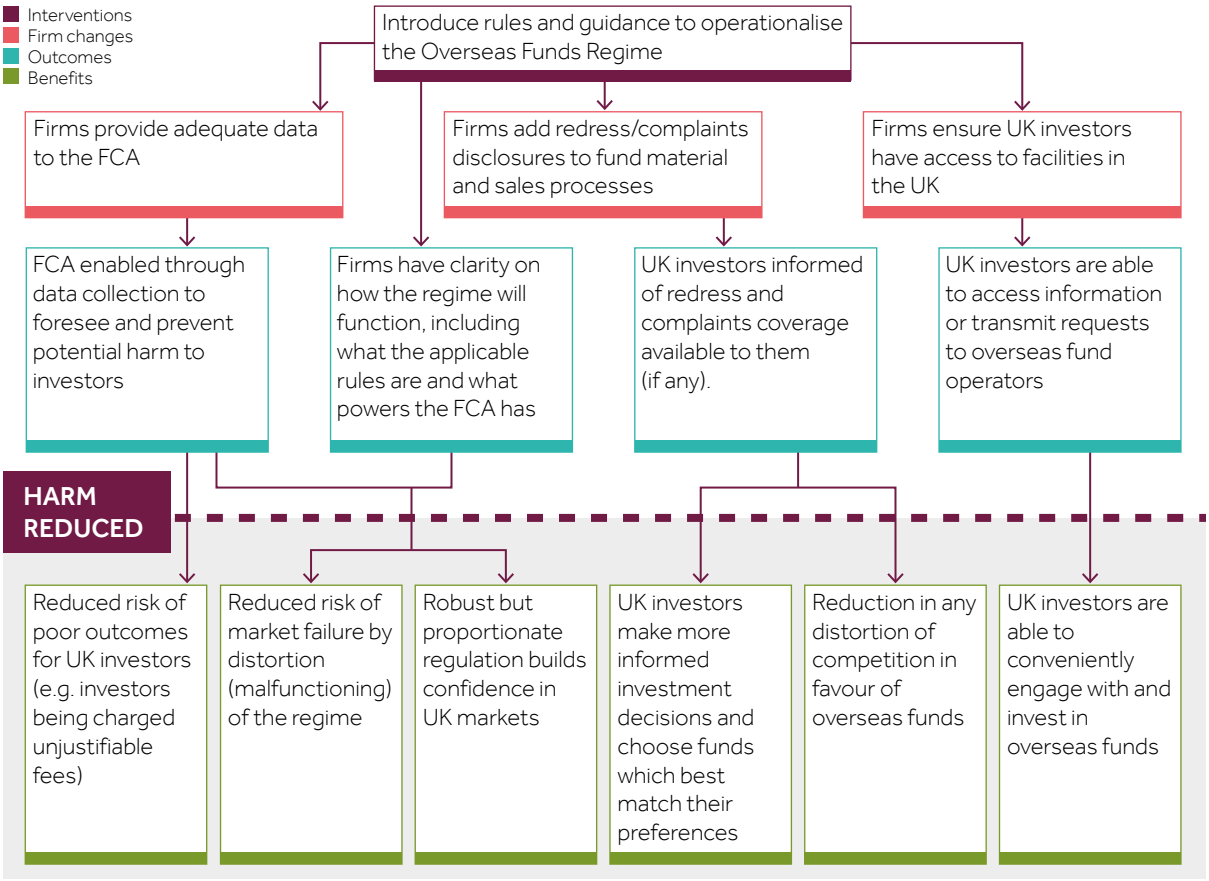
Our proposed intervention

17. We propose making rules and guidance to operationalise the Overseas Funds Regime. In summary, our proposals make rules and guidance to:

- enable us to collect a proportionate set of information about overseas schemes, which will inform our decision of whether these schemes can be recognised and whether they will continue to meet their conditions for recognition
- make clearer to investors whether they can access the FOS and FSCS in relation to an investment in an OFR recognised scheme or whether they can access redress arrangements outside the UK
- ensure scheme operators give UK investors access to physical facilities in the UK (or an online service if all of its UK investors consent to this) to help them make an initial investment in an OFR recognised scheme and maintain ongoing contact with the operator afterwards

18. As we outline in the causal chain below, the proposed changes will provide scheme operators with clarity on how the regime will function. This includes clarity on both the rules they will need to comply with and the powers available to the FCA under the OFR legislation. Our proposed changes will also ensure that the FCA is enabled, through collecting selected data, to foresee and prevent potential harm to UK investors. Providing investors with adequate information about redress and complaints coverage will ensure that investors are able to make more informed investment decisions which best suit their preferences and that overseas schemes do not benefit from any potential distortion of competition. Finally, ensuring that UK investors have access to facilities in the UK will enable UK investors to access appropriate information and transmit requests to overseas scheme operators. This will allow them to engage with and invest in overseas schemes, supporting the legislative intention of the OFR.

Figure 1: Causal chain for Overseas Funds Regime



Baseline and key assumptions

Baseline

19. We analyse the impacts of the policy against a baseline, or 'counterfactual' scenario which describes what would happen in the absence of the proposed interventions. That is, we compare a 'future' under the policy, with an alternative 'future' without the policy.

20. As noted above, no decision has yet been made whether any overseas schemes will be designated as equivalent. Although in principle schemes from any jurisdiction could be designated under the OFR, our assumptions are based on giving access to EU and EEA retail schemes since these are currently operating in the UK market. The baseline considers what will happen if the Government decides that EU / EEA jurisdictions and categories of schemes should be designated, so that schemes currently in the TMPR are able to apply for recognition under the OFR. We assume that any such process could be completed by the time the TMPR ceases to operate.

21. We expect that firms would be able to take part in the OFR absent any FCA rule changes to operationalise the regime. Schemes that benefit from a designation order will have the right to apply for recognition and the FCA must either accept the application or reject it

on one of the grounds provided for in FSMA. We assume that the majority of the 8366 EEA UCITS that are currently registered in the TMPR would wish to participate in the OFR.

22. However, we note that some scheme operators may be deterred by the application process that is imposed by the legislation (as this states that the FCA has the power to reject applicants) and may decide not to proceed. This is more likely to happen if the scheme is no longer marketed in the UK, so it may have no further utility for a registration. We note that without our rule changes there would be a lack of clarity on how the regime would operate. Ultimately this could lead to firms having a lack of confidence in UK markets. In more extreme circumstances it could also increase the risk of market failure by distortion of the regime.

23. In addition to this, absent our specific data requirement rule proposals, we would lack basic standing and ad-hoc information that is required to monitor appropriately whether overseas schemes meet the conditions for recognition when they first apply, and on a continuing basis. Absent our disclosure rule changes, UK investors would continue to invest in overseas schemes without necessarily understanding that they are not protected by the FOS or the FSCS. This could lead to them choosing products which do not best match their preferences.

24. Without rules on UK facilities, TMPR schemes which are currently required to offer a physical presence in the UK would no longer be required to do so. Non TMPR schemes which wish to join the OFR would also not have to provide a physical or online service for UK investors. In both cases, this could result in UK investors having difficulty in accessing information or transmitting instructions and requests to these overseas scheme operators. This would make it more difficult for them to be able to invest in overseas schemes and so could reduce their choice of schemes overall. Choosing from a smaller range of schemes might result in investors choosing a scheme which is not suitable for their preferences.

Number of firms affected

25. Using the current UK marketing model as a proxy for potential future use of the OFR, we base our estimates on the number of EEA UCITS that are currently recognised in the UK under the TMPR. We estimate that there are a total of 254 operators of such schemes that will be directly affected by our proposals. These firms operate 8366 EEA investment schemes (128 stand-alone schemes, and 8238 sub-funds grouped under 758 umbrella structures).

26. However, whilst all of these schemes are recognised, we believe that not all of them are currently being actively marketed, as some operators may have been part of the TMPR due to ease of access (i.e. passporting rights between EEA countries) even if they weren't actively marketing in the UK.

27. As we will be placing new disclosure and data reporting provision requirements on overseas scheme operators and as there will be a fixed cost of registration, some of these operators may decide not to join the OFR because of the incremental costs that will be imposed on them. However, we consider that, in the absence of any better

information, it is reasonable to assume for the purpose of estimating costs and benefits that all operators with schemes in the TMPR will wish to take part in the OFR due to the importance of the UK market to these products.

28. In relation to this, we note that data we obtained from a voluntary survey of a subset of scheme operators (covering approximately 5500 schemes) in 2021 indicated that the size of UK investment in these overseas schemes was approximately £900bn at that point in time. Given this, we estimate that the quantum of UK investment in the 8366 schemes that are part of the TMPR is at least £1 trillion. The same survey found that the 5500 schemes that participated in the survey hold a total £4.31 trillion of assets (representing UK and overseas investors).

29. Given the assumption that all overseas scheme operators involved in the TMPR will take part in the regime, the associated estimated industry-wide costs should be considered as an upper bound. We also discuss below the indirect costs that may arise should any operators decide not to take part in the OFR, or if their applications should be refused. If the Government decides to designate categories of UCITS established in EEA states, it will mean that UCITS not previously eligible for the TMPR will be able to access the OFR. We are not able to estimate the numbers of UCITS that might take advantage of this opportunity if it exists, but it would be likely to at least partially offset any reduction in the total caused by current TMPR schemes not entering the OFR.

30. The OFR could also allow non-EEA schemes, which are not part of the TMPR, to be marketed in the UK, provided they belong to a jurisdiction and category of funds that the Government has assessed as offering equivalent investor protection outcomes. At this time, the Government has not indicated any plans to make the OFR available to jurisdictions outside the EEA. As such, we do not explicitly include non-EEA operators in our cost and benefit calculations. However, we note that to the extent that these firms will eventually be enabled to take part in the OFR, the types of costs and benefits that we discuss below would be similar in nature.

31. In addition to this, there are approximately 5400 UK firms engaged in advising on and distributing units or shares of overseas schemes in the retail market, including financial advisers, direct-to-consumer platforms, advised platforms and direct distribution platforms. These firms will be impacted by our proposals in relation to FOS / FSCS disclosure.

Key assumptions

32. Our CBA is subject to several assumptions:

- Calculating costs: The incremental cost impacts of our proposals have been calculated using our standardised cost model (SCM) and its cost assumptions. The underlying assumptions remain the same as in Annex 1 of our How we analyse the costs and benefits of our policies document.
- Our estimates assume full compliance with our rules for firms that wish to take part in the OFR. We believe this is reasonable as it allows us to establish all potential costs and benefits.

- All cost estimates are in nominal terms.
- We use 2022 prices.
- We assume that a fee-charging structure is in place.

Summary of costs and benefits

Table 1: Summary of one-off and ongoing costs and benefits

Stakeholder	One-off / ongoing	Benefits	Costs
Scheme operators	Ongoing	Increased clarity about functioning of the regime and compliance obligations - unquantified	
	One-off		Familiarisation and legal costs - £1.2m
	One-off / Ongoing		Costs of making a recognition application and providing relevant updates – minimal significance
		Flexibility to provide UK facilities online rather than through a physical presence (where UK investors consent to this) may result in cost savings - unquantified	Costs of providing UK facilities (for non-TMPR schemes only) - unquantified
	One-off		Disclosure costs of adjusting documentation to reflect lack of FOS / FSCS coverage – £1.5m
Advisers and distributors	One-off		Familiarisation and legal costs – £2.6m
	Ongoing		Disclosure costs of informing investors about lack of FSCS/FOS coverage – £56k – £74k
Retail investors	Ongoing	Greater awareness of lack of FOS / FSCS coverage leading to more informed investment decisions - unquantified	If fewer operators seek recognition of their funds because of higher operating and distribution costs, the reduction in choice of products may make it more difficult for investors to find a suitable product that matches their preferences - unquantified
		Increased levels of consumer protection stemming from improvement in data used to supervise overseas schemes – unquantified	Increased switching costs if UK investors decide to sell holdings in overseas schemes – unquantified

Stakeholder	One-off / ongoing	Benefits	Costs
		Convenience of access to UK facilities - unquantified	
FCA	Ongoing		Increased costs arising from FCA systems changes – £700k+ However, this could be offset by cost savings stemming from clearer data requirements porting expectations.
Wider impacts	Ongoing	Reduction in any potential distortion of the functioning of the regime or distortion of competition in favour of overseas schemes.	

33. We note that whilst we are unable to quantify the benefits of our proposals, the one-off and ongoing costs suggest that the benefits to firms and investors would not have to be particularly large for the policy to break even. As such, we consider that on balance the policy is likely to be net beneficial. Additionally, we note that as there is no obligation on scheme operators to take part in the OFR, they will be likely to take part only if they consider that the individual benefits of doing so outweigh the individual costs.

Benefits

Benefits to scheme operators, advisers and distributors

34. The rule changes that we propose to make to operationalise the OFR will enable the registration process to function properly and will provide clarity to firms. Additionally, specifying the information that overseas scheme operators must provide to us will give firms greater certainty about their compliance obligations.

35. We expect that this approach will result in an efficient and streamlined registration process, as opposed to a lengthier process where firms would have to work out what is required of them by trial and error. Once overseas schemes begin to be designated by the Government, this enhanced certainty about our requirements may encourage some operators not currently participating in the UK retail market to apply for recognition of their schemes.

36. We do not consider it reasonably practicable to quantify these benefits as it is difficult to estimate how much time and effort would be required by firms to understand the regime or evaluate the commercial benefits of using it, if we did not make any rule changes.

37. Our proposals for requiring a UK facilities agent allow scheme operators flexibility to provide the services online (where all of the scheme's UK investors consent to this) rather than having to establish a physical location in the UK. This may be beneficial in

allowing some operators at least to provide facilities in a more cost-efficient way. For example, schemes that are part of the TMPR and that are currently required to have a physical presence in the UK, may be able to move to a more cost-efficient online service given our proposed rules. We do not consider it reasonably practicable to quantify this benefit as we do not know how many UK investors in OFR recognised schemes would wish or expect to use online facilities, though it is likely to be a substantial proportion of the total number of investors.

Benefits to retail investors

38. If scheme operators that do not currently access the UK retail market or have not launched new funds to UK retail markets, begin to do so as a result of their schemes being designated under the OFR, this will be a benefit to consumers in terms of product choice. Although we are not required to estimate the overall benefits of the OFR as provided for in legislation, we believe that the additional clarity and certainty we can give through our rules will bring an incremental benefit in terms of consumer choice if new scheme operators decide it is worth their while to take part in the new regime.

39. Requiring operators of OFR recognised schemes, platforms and advisors to disclose the lack of FOS / FSCS coverage will help investors to make more informed investment decisions. Investors will be able to choose the products which best match their preferences. The suitability of the scheme they choose will be inclusive of the FOS / FSCS coverage (or the lack of it).

40. Additionally, investors who choose to invest in OFR recognised schemes will be more likely to be aware of the risks of doing so if something goes wrong and so less likely to be unduly stressed in the event that they find themselves in a situation where recourse to FOS / FSCS is needed. Other investors (existing or new) may choose to act on the disclosures by investing in UK authorised schemes which are covered by FOS / FSCS and so which better meet their needs.

41. We do not consider it reasonably practicable to quantify these benefits as we do not have any information on the proportion of investors that are unaware of the present lack of FOS / FSCS coverage for the operators of overseas schemes, nor any information which could be used to quantify the value of knowing this information.

42. Retail investors will also benefit from the proposal to require OFR recognised schemes to offer UK facilities (either online if all the UK investors consent to this, or through a UK physical presence). This would apply to both TMPR funds and funds outside of the TMPR, that wish to take part in the OFR. This would benefit the UK investors by allowing them to have their basic customer service needs met in the UK rather than the inconvenience of having to contact an overseas office.

Benefits to the market as a whole due to the identification of outliers

43. The data that we collect, both at the gateway and via notifications of ad-hoc changes to the scheme's arrangements, will provide us with the necessary information to identify the risks associated with the overseas scheme. This will enable us to quickly identify and take steps to prevent practices that could harm UK investors, ultimately leading to an

increased level of consumer protection and confidence in the market. We consider that the data points we have selected are proportionate to the extent of including data that is essential to create a record of the scheme (e.g. its name, domicile and structure) as well as data points which will help us to understand and focus on areas where we see the most risk of harm.

44. For instance, under this risk-based approach we will collect and assess information provided to us on unusually high costs and charges. We will also look at supervisory sanctions that may have been imposed on the scheme, operator or depositary. This will help us to identify historical misconduct that could pose a risk to investors.

Wider benefits

45. The disclosure of lack of FSCS and FOS coverage for overseas schemes will ensure that they do not unfairly benefit from being able to hide the absence of comparable redress and compensation arrangements for UK investors, where that is the case. This increased transparency will allow UK investors to make informed decisions based on the key attributes of the scheme, including performance, fees charged and levels of regulatory protection (inclusive of FSCS and FOS coverage), promoting fair competition.

46. The overall effect of our proposals should result in greater visibility of the market, both for investors and for the FCA. Our public register of schemes recognised for marketing will include fewer that are not in fact participating in the UK market, and so will give a truer picture of which schemes are in practice actively marketed to retail investors.

Costs

Costs to scheme operators, advisers and distributors

Familiarisation costs

47. We have tried to strike an appropriate balance by collecting enough data to avoid making repeated requests to firms, while ensuring we do not ask for superfluous data or make demands which would be overly burdensome for firms. We discuss the data we are proposing to collect in more detail in Chapter 3.

48. There will be one-off familiarisation costs for firms subject to our proposed changes. We assume that all of the 254 overseas scheme operators will wish to familiarise themselves with these proposals to determine whether it is in their commercial interests to take part in the OFR. In addition to this, 5400 adviser and distributor firms will also need to familiarise themselves to ensure they understand our proposed changes to disclosure, so that they can comply with our rules.

49. We do not have exact data on the size of overseas scheme operators, but we assume that the majority of firms marketing overseas schemes in the UK would be medium or large firms due to the resources that this activity typically requires. As such, we assume that there are 24 small overseas scheme operators, 80 medium overseas operators

and 150 large overseas operators. For advisers and distributors, we use internal data we collect on the number of intermediaries.

50. We use the Standardised Cost Model (SCM), explained in the 'Key assumptions' section above, to estimate the familiarisation costs for market participants based on assumptions on the time required to read the approximately 60 relevant consultation pages excluding the legal instruments. We assume 300 words per page and a reading speed of 100 words per minute and estimate that it would take around 3 hours to read the document. It is further assumed that compliance staff (20 staff at each large firm, 5 staff at each medium firm and 2 staff at each small firm) will read the text. Board and Executive Committee time can be added to our cost model estimate when a regulatory intervention requires firms to change, in some way, their internal processes or governance arrangements. Board and Executive Committee time were not added to our cost estimate as we consider that our proposals do not require any costs beyond basic familiarisation.

51. We convert this to a monetary value by applying an estimate of the cost of time to market participants, based on Willis Towers Watson 2022 salary data, including 30% overheads. The salary used is an average of the compliance function.

52. Following familiarisation, we expect firms to conduct a legal review of the proposals and a gap analysis to check their current practices against expectations. We assume that firms use in-house counsel to understand these changes, rather than employing external legal advice. We estimate the legal costs for market participants based on assumptions on the time required to read the approximately 20 pages-long legal instruments. Following a similar approach as above, we convert this into a monetary value by applying an estimate of the cost of time to firms.

53. Using the above assumptions we estimate total industry-wide familiarisation and legal review costs for the 254 fund operators to be approximately £1.2m and for the 5,400 distributors to be approximately £2.6m. We break this down by size of firm in the two tables below.

Table 2: Estimates of familiarisation costs for overseas fund operators

Size of firm	Number of firms	Total one-off costs for all firms	Cost per firm
Small firms	24	£11,000	£470
Medium firms	80	£160,000	£2000
Large firms	150	£1.1m	£7100

Table 3: Estimates of familiarisation costs for UK advisers and distributors

Size of firm	Number of firms	Total one-off costs for all firms	Cost per firm
Small firms	5324	£2.5m	£470

Size of firm	Number of firms	Total one-off costs for all firms	Cost per firm
Medium firms	39	£80,000	£2000
Large firms	2	£14,000	£7100

Recognition costs and costs associated with ad-hoc changes

54. Each scheme operator which wishes to participate in the OFR will face one-off costs of making (a) recognition application (s). This will consist of legal and compliance advisory costs when submitting an application. Costs are expected to be incremental to the costs incurred under the TMPR, as we intend to gather more detailed information about the scheme, both at the gateway and on an ad-hoc basis.

55. We note that scheme operators will be required to locate the relevant data and then process it accordingly in order for it be included as part of the recognition application. However, we expect that these costs will be limited to the extent that operators will already possess this information (some of them will be contained in the scheme's prospectus, constitutional documents or periodic reports and accounts). We also do not expect significant systems, processes and IT costs for operators coming from our requests, given that they will apply via our systems. In fact, we expect the recognition application process to become quicker and easier for operators, through the use of the FCA systems. However, firms will have to undertake a certain amount of manual data entry at the point of initial application.

56. The costs related to the provision of data in connection with ad-hoc changes to the scheme's arrangements are also expected to be minimal. In most cases, operators will have to report these changes and provide similar information to their home state regulators. Nonetheless, operators will still have to put in place the necessary processes to ensure this information is also provided to the FCA.

57. Scheme operators will also be required to pay a fee for applying to take part in the OFR and an ongoing periodic fee as a result of being recognised by us. We are consulting on these fees in this paper. We are not required to carry out a cost benefit analysis for this proposal.

Disclosure costs

58. Our proposed FOS and FSCS disclosure rules will require operators of OFR recognised schemes to adjust their documentation, including each scheme prospectus and the supplementary information accompanying the Key Investor Information Document (KIID), as well as any financial promotions they submit for approval by a UK authorised person. We expect the changes to the prospectus and the supplementary information to be implemented at the umbrella level, meaning that it is only the umbrella documentation which must be altered, rather than each individual sub-fund's documentation. Given this, we expect our proposals to apply to 758 umbrella structures and 128 stand-alone schemes: (https://www.fca.org.uk/firms/authorised-recognised-funds).

59. Assuming that the incidence of umbrella and stand-alone schemes is evenly distributed amongst overseas scheme operators, each operator would need to update the documentation of approximately 3.5 schemes. We expect each prospectus to take approximately 3.75 days to update.

60. Using the SCM, based off of the average daily rate of the Compliance and Legal functions (£445, including overheads), we expect that this would cost £5,900 per firm and £1.5m across all firms. This would be a one-off cost and after this, disclosure would become a 'business as usual' activity as operators create new schemes.

61. The cost of including additional disclosure concerning FOS and FSCS coverage in a financial promotion is likely to be low, insofar as the necessary wording can be easily added to the body of the promotion in most cases. If the promotion is predominantly visual and uses relatively few words, there may be more cost to designing an effective communication. The requirement for additional disclosure may also have a deterrent effect, if some scheme operators decide not to issue a promotion for a scheme because they do not want to have to make the obligatory disclosures about FOS and FSCS coverage.

62. Distributors will also need to disclose, in any financial promotions that they issue or approve and at the point of sale when the KIID is provided, the lack of FOS / FSCS coverage to retail investors that are using their services. This will be an ongoing cost that occurs each time a distributor has to disclose this information. We estimate the ongoing cost by multiplying an estimate of the number of disclosures per year by an estimate of the cost per disclosure.

63. A financial adviser that recommends a client to invest in units / shares of an OFR recognised scheme would need to explain to the client, in more detail than is currently required, what redress arrangements if any are available if something goes wrong. A face-to-face meeting between adviser and client would require some extra time to give the additional information. Advisers would also need to provide written confirmation of the position to their clients.

64. We note that there were an average of approximately 23,000 advised sales of open-ended investment companies (OEICs) / unit trusts by intermediaries each year from 2020-2022. In the absence of any better information we assume that that 30% - 40% of these sales relate to overseas schemes. We use a range, given the uncertainties present in this calculation.

65. In addition, there were an average of approximately 113,000 advised sales of Individual Savings Accounts (ISAs) by intermediaries each year from 2020-2022. We note that whilst this figure covers sales of both cash and stocks and shares ISAs, it is only the latter that is in scope of the OFR. We assume that stocks and shares ISAs account for approximately 33% of all sales, roughly in line with the proportion of UK stocks and shares ISAs (Commentary for Annual savings statistics: June 2023). As above, we also assume that 30% - 40% of these sales relate to overseas schemes.

66. Using this methodology, we estimate that firms will make between 18,000 and 24,000 disclosures per year. We split the total number of disclosures between small, medium and large firms, based on the number of advisers that are employed by small, medium

and large firms. This is to account for the fact that, all other things being equal, larger firms employ more advisers and make more sales than smaller firms.

67. We estimate that each disclosure takes 5 minutes to perform. We convert this to a monetary value by using the SCM to apply an estimate of the cost of time to market participants, based on Willis Towers Watson 2022 salary data, including 30% overheads. The salary used is an average of the investment, pension and life adviser function.

68. Combining the number of disclosures with the cost per disclosure, we estimate an ongoing cost per year for the industry of £56,000 – £74,000. We break this down by size of firm in the table below.

Table 4: Estimates of ongoing disclosure costs for UK advisers and distributors

Size of firm	Number of firms	Total ongoing costs for all firms	Ongoing cost per firm
Small firms	5324	£30,000 – £40,000	£6 – £8
Medium firms	39	£11,000 – £15,000	£290 – £380
Large firms	2	£15,000 – £19,000	£7300 – £9700

69. We note that there is a possibility that more than 40% of OEIC / unit trust and ISA sales relate to overseas schemes. If this is the case, then costs would be higher than we have estimated. However, we note that any difference would be unlikely to be material, given the fact that the estimated cost of each individual disclosure is relatively small.

UK facilities costs

70. For operators of TMPR schemes, there is no new cost in providing UK facilities as these are already in place (they are required by TMPR to offer physical facilities within the UK). Some TMPR scheme operators may actually reduce their costs where they are able to serve UK investors solely through an online service and subsequently close down their physical facilities (provided UK investors agree to this).

71. For non-TMPR scheme operators accessing the OFR for the first time, there would be a cost compared to the baseline scenario. However, by allowing flexibility to provide online facilities where it is appropriate to investors' needs and wishes (i.e. where the terms and conditions of investment foresee all interactions taking place via electronic media, or where the customer has individually consented to such arrangements) the costs should be less than where physical facilities are provided.

72. We expect that the non-TMPR scheme operators would actively try to adopt the online route so that they do not need to incur the costs of providing physical offices. As these schemes are not currently marketing in the UK, it is unlikely that they have UK investors who require a UK physical presence for accessing investor services. In addition to this, as most prospective investors are likely to hold units via an intermediary whose nominee is the registered unitholder, it is likely that few if any overseas schemes will have unitholders in this situation who may require physical UK facilities to be available to them.

73. We do not consider it reasonably practicable to quantify the cost of providing UK facilities (whether this entails an electronic means of communication or a physical presence). However, we note that this cost would only be incurred by non-TMPR scheme operators and that these firms would be likely to try to provide a cheaper online service.

Indirect costs

74. The proposed changes to data provision reporting and disclosure will increase the costs for overseas scheme operators. Given this, some operators may decide not to apply for recognition of their schemes rather than comply with those requirements. This would result in a loss of revenue and profits for those operators if they were already accessing the UK market. However, we note the operators may be able to recoup revenue and profits if they decide to employ their capital elsewhere.

75. We do not consider it reasonably practicable to quantify these costs as it is difficult to predict how many firms may decide not to apply for recognition, rather than comply with UK requirements. However, we note that this number may be small due to the relative importance of a UK investor base for these schemes. It is also not clear what the net effect on these firms would be, if they were to redeploy their capital elsewhere.

76. Additionally, whilst they will not be forced to do so, some firms may incur costs if they decide to enter the FOS voluntary jurisdiction as a result of our proposals. However, it is difficult to predict how many firms may decide to do this.

Costs to retail investors

77. If some overseas scheme operators decide not to apply for recognition or platforms stop giving investors the choice of overseas schemes, because of increased compliance costs, then this could potentially result in a reduction in choice for UK investors and some investors may struggle to find a product which matches their preferences. Additionally, whilst investors would not be forced to sell their holdings in overseas schemes that cease to be marketed, they might prefer to do so.

78. The potential reduction in product choice is likely to have a more direct impact on UK investors as the reduced choice would be a direct consequence of our proposals. On the other hand, the potential decision to switch provider, and the associated switching costs, is likely to have a more indirect impact on UK investors as this relies on the additional step of UK investors changing their behaviour in response to our proposals. However, it is difficult to predict how many firms will decide not to apply for recognition as a result of our proposed changes (the direct impact) or how many UK investors may decide to sell their holdings in schemes which cease to be marketed (the indirect impact).

Costs to the FCA

79. There will be supervisory costs arising from the processing of information provided at the gateway and on an ad-hoc basis by schemes taking part in the OFR. Additionally, there may be IT costs to the FCA related to setting up systems for data collection, data analysis and record-keeping. We note that these costs could be offset by charging an appropriate level of application and ongoing fees to overseas operators.

80. Additionally, rules on data requirements could lead to cost savings for the FCA. Setting clear expectations around the types of information that must be provided is likely to result in high-quality submissions that are easier to analyse and process.

81. Table 4 sets out the estimate costs associated with building IT systems for the data collection set out in this proposal. Whilst these costs are subject to change, in total, we would estimate costs of around £700K.

Table 5: Estimate of IT costs for FCA

Component	Description	Estimate of costs
New Overseas firm user registration form	To enable overseas firms to apply for FCA system access (Connect Principal Users) in a secure way	£100k
New Connect forms	Online forms to capture OFR applications and alterations	£500k
Update of INTACT	New solution to scan data collections for changes that must be applied to the INTACT fund master record	£100k

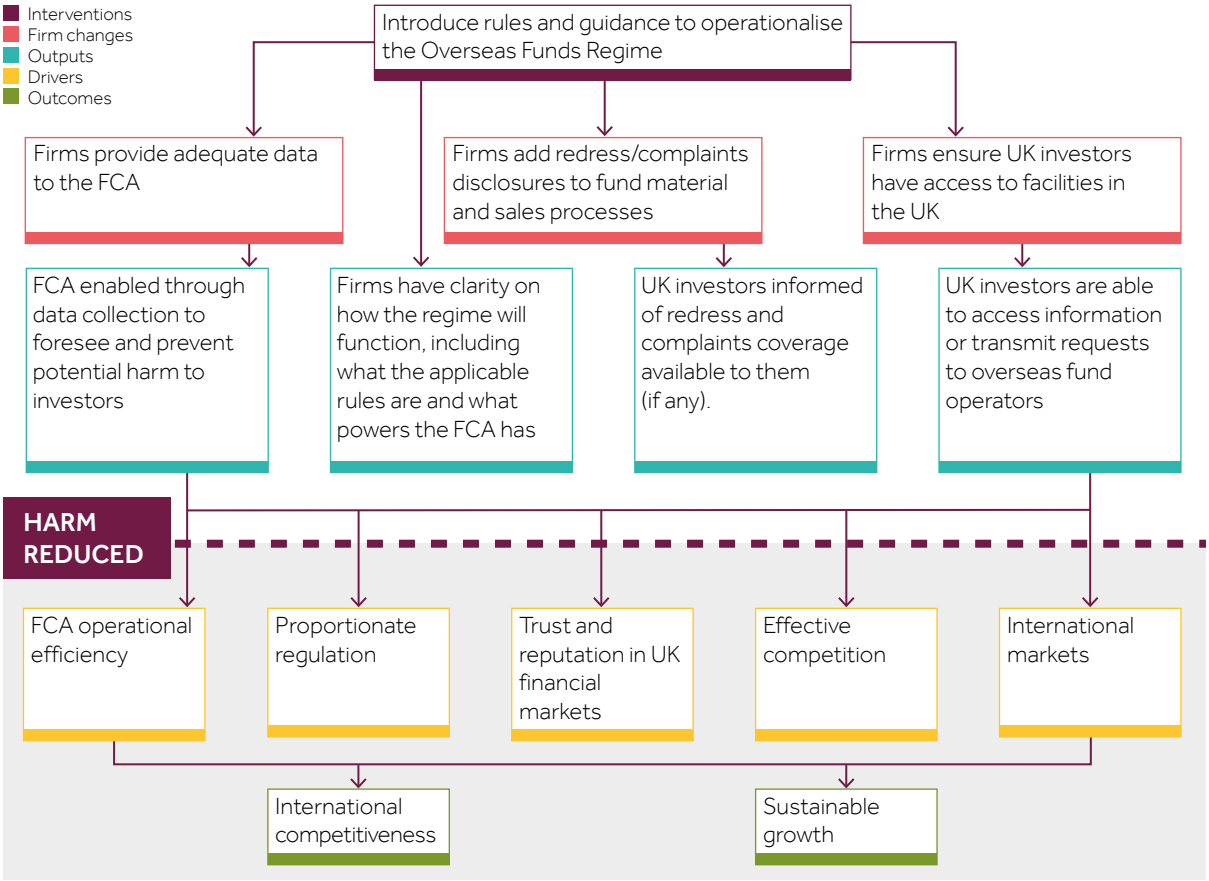
Competitiveness and growth

82. Our proposals advance the FCA's secondary objective of facilitating international competitiveness and growth. The proposals aim to create a streamlined regime for overseas schemes, supported by a clear and proportionate regulatory framework, attracting overseas schemes to market in the UK. This promotes effective competition that helps bring a broad range of schemes to UK investors.

83. For example, the regulatory framework includes disclosure requirements relating to redress and complaints arrangements (as set out in chapter 5) that help safeguard trust and reputation in the UK markets. Also, categories of information that firms need to submit in support of an application and on an ongoing basis are clearly specified and will enable us to spot and address any outliers, which will reinforce trust in the market as a whole. Firms will be able to submit a recognition application and notification of changes and relevant documents through our system (as described in chapter 3). These support our operational efficiency.

84. Our proposals also aim to support the existing global asset management model, in which fund managers domiciled abroad delegate the portfolio management of their schemes to UK-domiciled asset management firms.

Figure 2: Secondary International Competitiveness and Growth Objective Causal chain for Overseas Funds Regime



Options considered

85. We could choose not to create rules and guidance to operationalise the Overseas Funds Regime. However, without our intervention, we would expect the lack of clarity about the regime to impact its proper functioning.

86. If we chose not to make such rules and guidance, or to set only very limited requirements, firms might have to spend unwarranted time and resources trying to understand how to operate under the new regime; which, although marginal, could potentially lead to them incurring additional costs. Firms would also be operating without having a proper set of rules applicable to them, and we would not have the data to quickly identify and take steps to prevent practices that could harm consumers.

87. We could also choose to set fewer requirements. However, on balance we think that requiring fewer data points would ultimately lead to further follow-on requests and inefficiencies in the application process.

88. Additionally, if we did not make any changes to our rules, then investors may make uninformed decisions relating to FOS and FSCS coverage, resulting in them choosing unsuitable products.

89. We also consider that if we did not make any changes to our rules, it would undermine the legislative intention to have an adequate and proportionate regime in place for overseas funds. In extreme circumstances, the effects of a malfunctioning regime on the asset management and funds sector could result in the weakening or loss of confidence in the UK asset management market.

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules:

- **a.** is compatible with its general duty, under section 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives
- **b.** so far as reasonably possible, advances the secondary international competitiveness and growth objective, under section 1B(4A) FSMA, and
- **c.** complies with its general duty under section 1B(5)(a) FSMA to have regard to the regulatory principles in section 3B FSMA.

3. The FCA is also required by s 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

4. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

5. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.

6. This Annex includes our assessment of the equality and diversity implications of these proposals.

7. Under the Legislative and Regulatory Reform Act 2006 (LRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRA.

The FCA's objectives and regulatory principles: Compatibility statement

8. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of protecting consumers from harm. They are also relevant to the FCA's strategic objective of ensuring that markets function well.

9. In relation to the FCA's consumer protection objective, we have given consideration to risks that could arise in situations where UK investors in OFR recognised schemes would not be able to access FOS and FSCS in respect of their investment. As we have explained in the Consultation Paper, there will be many situations where investors in OFR schemes cannot access them.

10. We consider that where UK financial promotions for OFR recognised schemes fall under our rules, requiring them to include information about redress arrangements available to UK consumers should help consumers to understand a common risk that they may come across when investing in OFR schemes. Additionally, we propose requiring operators of OFR recognised schemes to state explicitly in the scheme prospectus whether the operator's and depositary's activities are covered by either the FSCS or FOS, and whether a UK investor has the right to access an alternative dispute resolution mechanism or a compensation scheme in another jurisdiction. This requirement means that consumers should receive clear communication that they can understand, allowing them to make informed choices about their investment decisions.

11. Our proposals for refusal of recognition, suspension or revocation of recognition, and public censure also advance the FCA's operational objective of consumer protection. In a case where there has been a breach of OFR regulatory requirements, the FCA has the power to make a public statement declaring this. By publishing information about breaches, we can help consumers to protect themselves by raising awareness of firms who have demonstrated poor conduct.

12. Our proposals for data collection as part of the OFR recognition process are intended to advance the FCA's strategic objective of ensuring that markets function well. The implementation of these requirements should facilitate markets becoming more transparent and accessible to consumers.

13. In relation to this objective, we intend to identify UK authorised firms who will be responsible for approving, promoting or distributing OFR recognised schemes in the UK. This will allow us to verify whether or not the firm can approve financial promotions, reducing the risk of investors receiving inaccurate and/or unsuitable financial promotions.

14. Our proposals for requiring operators of OFR recognised schemes to provide facilities to investors in the UK will protect investors dealing with an overseas person, by ensuring that they can access information about their chosen fund and transmit instructions to its operator in English, without incurring unnecessary inconvenience and expense.

The need to use our resources in the most efficient and economic way

15. The proposals in this consultation allow for an efficient and economic use of FCA resources. When formulating proposals for data collection, we have taken care to ensure that the resources of our fund authorisation and supervision functions will be used in a proportionate manner.

The principle that a burden or restriction should be proportionate to the benefits

16. As set out in Annex 2 of this Consultation Paper, the CBA outlines the costs and benefits associated with our proposals. We consider that our proposals for collecting a proportionate set of data as part of the OFR recognition process; for clear disclosure to consumers in situations where their investments are not eligible for FOS and FSCS coverage; for the provision of investor facilities in the UK; and proposals for refusal of recognition, suspension or revocation of recognition and public censure, are proportionate to the risks that are posed to consumer protection.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

17. We have had regard to this principle and do not believe that our proposals undermine it.

The general principle that consumers should take responsibility for their decisions

18. As set out in our proposals for enhanced disclosure concerning lack of access to FSCS and FOS, our proposals aim to give consumers complete knowledge of risks that may arise when investing in OFR recognised schemes.

The responsibilities of senior management

19. It will be the responsibility of relevant Senior Managers to ensure that UK authorised firms comply with the rules that we are proposing. Senior Managers must have regard to their responsibilities under the Senior Managers and Certification Regime.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

20. We have had regard to this principle and do not believe that our proposals undermine it.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

21. We have had regard to this principle and do not believe that our proposals undermine it.

Expected effect on mutual societies

22. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

23. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. The outcome of our consideration can be found at paragraph 2.10 of the Consultation Paper.

Equality and diversity

24. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not.

25. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.15 of the Consultation Paper.

Legislative and Regulatory Reform Act 2006 (LRRA)

26. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance. We believe that they are proportionate and promote our statutory objectives of consumer protection and effective competition and our strategic objective to ensure that markets function well, without creating undue burdens on the asset management industry, nor adversely impacting competition.

27. We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider the proposals are proportionate to the potential harm to consumers or risks to our statutory objectives identified.

Annex 4

Data requirements for scheme operators

Table 6: Information that operators of UCITS in TMPR must check immediately and prior to submitting applications for recognition

Information	Action required
Contact information	Check current contact information is up-to-date and amend at this link if it is not
Fund population	Check on FCA Register and email recognisedcis@fca.org.uk if any changes are needed

Table 7: Information required to be submitted by scheme operators when applying for recognition under OFR

Information category	Specific requirements
Information identifying the scheme	Name, including sub-fund names
	PRN
	LEI, including sub-fund LEIs
	Domicile
	Structure and fund type
	Name and address of scheme operator
Information on the scheme's profile	Investment objective, policy & strategy
	Value of AUM in £ sterling
	Fund category and main categories of asset class
	Information on use of derivatives
	Use of benchmarks, and whether actively/ passively managed
	Availability of liquidity management tools (including whether there has been any suspension of dealing in the last 5 years)
	Dealing frequency
	Target investors
	Minimum investment amount
	Any particular ESG focus

Information category	Specific requirements
Fees and charges at scheme and share class level	Initial and exit/redemption charges payable to scheme operator/its associate
	Ongoing charges figure
	Performance fees
	Any other relevant fee or charge
	Amount of annual management charge retained by the management company
Characteristics of unit/share classes	Name/designation
	ISIN
Parties connected to the scheme	Management company
	Depositary
	Delegated portfolio manager, and any sub-delegates appointed
	UK representatives
	Authorised person approving financial promotions on behalf of the scheme
	Any sponsor or other person influencing the scheme's design or management
Information about marketing and distribution	Authorised person approving financial promotions on behalf of the scheme
	Details of any promotional payments to entities associated with marketing or distributing the scheme

Table 8: Changes to schemes that operators of OFR recognised schemes must notify the FCA of

When is the notification required?	Type of change
Notification required **at least 30 days before** the change could take effect in UK	Change to a scheme's name
	Change to a scheme's legal structure
	Termination of scheme/ sub-fund in home jurisdiction, or a request to de-recognise the scheme/ sub-fund when remaining in existence but the operator no longer wishes it to be marketed in the UK
	Supervisory sanctions imposed by the scheme's home regulator on the operator/ scheme itself. Any voluntary restrictions on their activities agreed by them
	Suspension of dealing in scheme's units/shares
	Fundamental change to a scheme's investment objective, policy or strategy
	Matters that would likely cause significant negative effect on UK investors
	Scheme's target UK investors
	Material change in scheme minimum investment applicable to UK investors
	Unique identifiers (including LEI)
	Benchmark
	Connected parties
Notification required **as soon as is reasonably possible**	Change of scheme operator, trustee/ depositary or representative of the UK operator
	Change of name or address of scheme operator, trustee/depositary or representative of UK operator
	Change of address of place in UK for services of notices
	Scheme operator becomes aware that it has contravened or expects to contravene any requirement imposed on it by FSMA

Annex 5

Abbreviations in this document

Acronym listed alphabetically	Description
ADR	alternative dispute resolution
AFM	authorised fund manager
AUM	assets under management
CBA	cost benefit analysis
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
CP	consultation paper
DEPP	Decision Procedure and Penalties manual
DISP	Dispute Resolution: Complaints sourcebook
EEA	European Economic Area
EG	Enforcement Guide
ETF	exchange traded fund
EU	European Union
FCA	Financial Conduct Authority
FOS	Financial Ombudsman Service
FSB	Financial Stability Board
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
IOSCO	International Organization of Securities Commissions
ISA	Individual Savings Account
ISIN	international securities identification number
KIID	key investor information document
LEI	legal entity identifier
LRRA	Legislative and Regulatory Reform Act 2006
NCA	national competent authority
OEIC	open-ended investment company
OFR	Overseas Funds Regime

Acronym listed alphabetically	Description
PERG	Perimeter Guidance manual
PRN	product reference number
SCM	standardised costs model
SDR	Sustainability Disclosure Requirements
TMPR	Temporary Marketing Permissions Regime
UCITS	undertaking for collective investment in transferable securities

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Appendix 1

Draft Handbook text

COLLECTIVE INVESTMENT SCHEMES (SCHEMES AUTHORISED IN APPROVED COUNTRIES) INSTRUMENT 2023

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137R (Financial promotion rules);
(c) section 137T (General supplementary powers);
(d) section 139A (Power of the FCA to give guidance);
(e) section 238(5) (Restrictions on promotion);
(f) section 247 (Trust scheme rules);
(g) section 261I (Contractual scheme rules);
(h) section 271E (Power to impose requirements on schemes);
(i) section 271F (Application for recognition to the FCA);
(j) section 271I (Obligations on operator of a section 271A scheme);
(k) section 271J (Provision of information to the FCA);
(l) section 271K (Rules as to scheme particulars);
(m) section 283 (Facilities and information in the UK);
(n) section 347 (The record of authorised persons etc.); and
(o) section 395 (The FCA's and PRA's procedures);

(2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and

(3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.

B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*date*].

Amendments to the Handbook

D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B

Conduct of Business sourcebook (COBS)	Annex C
Decision Procedure and Penalties manual (DEPP)	Annex D
Collective Investment Schemes sourcebook (COLL)	Annex E

Amendments to the material outside the Handbook

E. The Enforcement Guide (EG) is amended in accordance with Annex F to this instrument.

F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument.

Notes

G. In the Annexes to this instrument, the notes (indicated by "**Note**:" or "*Editor's note*:") are included for the convenience of readers, but do not form part of the legislative text.

Citation

H. This instrument may be cited as the Collective Investment Schemes (Schemes Authorised in Approved Countries) Instrument 2023.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

OFR recognised scheme	a *scheme* recognised under section 271A of the *Act* (Schemes authorised in approved countries) (and see also section 271S of the *Act* (Recognition of parts of schemes under section 271A)).

Amend the following definitions.

breach	in *DEPP*:	
	…	
	(10A)	a contravention in respect of which the *FCA* is empowered to take action pursuant to section 271R (Public censure) or section 282B (Public censure) of the *Act*;
	…	
EEA key investor information document	a *document* that:	
	…	
	(b)	complies with the requirements of Commission Regulation (EU) No 583/2010 as it had effect in the *United Kingdom* immediately before *exit day*; and
	…	
manager	…	
	(1A)	…
	(1B)	(in *COBS* 4.15 (Promotion of OFR recognised schemes)) in accordance with section 237 of the *Act*, the *person* with overall responsibility for the management and performance of the functions of the *recognised scheme*.
	…	
public censure	…	

(5) a statement published under section 271R (Public censure) or section 282B (Public censure) of the *Act*.

recognised scheme

~~(1) (other than in *LR*) a scheme that is:~~

~~(c) recognised under section 272 of the Act (Individually recognised overseas schemes); or~~

~~(d) (in *COBS* 14 and for the purposes of the definitions of *non-mainstream pooled investment* and *packaged product*) an *EEA UCITS scheme* recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019.~~ [deleted]

~~(2) (in *LR*)~~ a *scheme* recognised for the purpose of part XVII of the *Act*.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Application, Notification and Vetting Fees

…

3.2 Obligation to pay fees

…

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1A: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£) by reference to the pricing category in *FEES* 3 Annex 1AR.	Due date
…	…	…
(da) *Persons* making an application or notification in relation to applications set out in *FEES* 3 Annex 2R: (i) ~~*authorisation order*~~ an application for ~~or recognition~~ an order declaring a *scheme* to be recognised under section 271A or section 272 of the *Act* ~~of a *collective investment scheme*~~; …	Category applicable to the application or notification set out in *FEES* 3 Annex 2R	On or before the date the application or notification is made
…	…	…

…

…

3 Annex 2R **Application and notification fees payable in relation to collective investment schemes, recognised schemes, LTIFs, money market funds and AIFs marketed in the UK**

Legislative provision	Nature and purpose of fee	Payable by	Applicable pricing category in FEES 3 Annex 1AR or amount of fee (£)	Umbrella factor (note 1)
…				
Part 2 (Application fees payable for firms to be subject to *COLL*)				
…				
Section 261C of the *Act* This section also applies to funds where an application is also made to be authorised under the *Money Market Funds Regulation*	…	…	…	…
Section 271A of the *Act*	On application for an order declaring a *scheme* to be recognised, where the *scheme*:	An applicant		
	was recognised under regulation 62 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 immediately before the application		£2,500	

	was not recognised under regulation 62 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 immediately before the application		Category 4	
Section 272 of the *Act*	On application for an order declaring a *scheme* to be recognised where the *scheme* is:	An applicant		
	a *non-UK AIF* or *AIF* equivalent to a *UK UCITS, non-UCITS retail scheme,* a *qualified investor scheme* or a *long-term asset fund*		Category 6	2
	…			
…				

4 Periodic fees

…

4 Annex 4R Periodic fees in relation to collective investment schemes, recognised schemes, AIFs marketed in the UK, small registered UK AIFMs and money market funds payable for the period 1 April 2023 to 31 March 2024

Part 1 - Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
ICVC,	150.00	1-2	1	150.00
AUT,		3-6	2.5	375.00
ACS,		7-15	5	750.00
LTIFs,		16-50	11	1,650.00
Money market funds with effect from 21 July 2018,		>50	22	3,300.00
schemes recognised under section 271A of the *Act*				
…	…	…	…	…

…

~~*Schemes* set up under section 264 of the *Act* are charged according to the number of funds or *sub-funds* which a *firm* is operating and *marketing* into the *UK* as at 31 March immediately before the start of the period to which the fee applies. For example, for 2010/11fees a reference to 31 March means 31 March 2010~~.

Umbrellas recognised under sections 271A or 272 of the *Act* are charged according to the number of *sub-funds* which are recognised under section 271A or 272 of the *Act* (subject to the note below) as at 31 March immediately before the start of the period to which the fee applies. For example, for 2024/25 fees, a reference to 31 March means 31 March 2024.

In the event that an *umbrella* were to have both *sub-funds* that are recognised under section 271A of the *Act* and *sub-funds* that remain recognised under regulation 62 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 for the time being, the calculation of the periodic fees charged to the *umbrella* will take into account all of those *sub-funds*. For the avoidance of doubt, in this scenario only one fee will be payable for both *FEES* 4 Annex 4R Part 1 and *FEES* 4A Annex 2R Part 1 purposes.

…

…

4 Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) – periodic fees

…

4A Annex 2R TPR funds periodic fees for the period from 1 April 2023 to 31 March 2024

Part 1

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fee (£)
EEA UCITS scheme recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018	…	…	…

Note:

Schemes are charged according to the number of funds or sub-funds which a TP firm is operating and marketing in the UK as at 31 March immediately before the start of the period to which the fee applies. For example, for 2023/2024 fees a reference to 31 March means 31 March 2023.

In the event that an *umbrella* were to have both *sub-funds* that are recognised under section 271A of the *Act* and *sub-funds* that remain recognised under regulation 62 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 for the time being, the calculation of the periodic fees charged to the *umbrella* will take into account all of those *sub-funds*. For the avoidance of doubt, in this scenario only one fee will be payable for both *FEES* 4 Annex 4R Part 1 and *FEES* 4A Annex 2R Part 1 purposes.

…

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new section, COBS 4.15 (Promotion of OFR recognised schemes), after COBS 4.14 [deleted]. The text is not underlined.

4.15 Promotion of OFR recognised schemes

Application

4.15.1 R (1) Subject to (2), this section applies to a *firm* in relation to the *communication* or *approval* of a *financial promotion* relating to an *OFR recognised scheme*.

(2) This section does not apply to the extent that the *financial promotion* is an *excluded communication*.

Financial promotions of OFR recognised schemes

4.15.2 R A *firm* must not *communicate* or *approve* a *financial promotion* relating to an *OFR recognised scheme* unless the *financial promotion* clearly states that:

(1) the *scheme* is authorised *overseas*, but not in the *United Kingdom*;

(2) (subject to *COBS* 4.15.3R) the *Financial Ombudsman Service* is unlikely to be able to consider *complaints* related to the *scheme*, its *manager* or its *depositary*;

(3) any claims for losses relating to the *manager* and the *depositary* of the *scheme* are unlikely to be covered under the *compensation scheme*; and

(4) a prospective investor should consider getting financial advice before deciding to invest and should see the *prospectus* of the *scheme* for more information.

4.15.3 R To the extent that the *Financial Ombudsman Service* is likely to be able to consider a *complaint* related to the *manager* or the *depositary* of a particular *recognised scheme*, the *financial promotion* must contain a clear statement to that effect, and to that extent only *COBS* 4.15.2R(2) does not apply.

4.15.4 G In relation to *COBS* 4.15.3R, and by way of example, the *manager* of a *recognised scheme* may be a *VJ participant*, and so it may be possible for

a *complaint* against the *manager* to be dealt with under the *Voluntary Jurisdiction*.

Amend the following as shown.

14 Providing product information to clients

…

14.2 Providing product information to clients

…

The provision rules for products other than PRIIPs

14.2.1 R A *firm* that sells, or (where relevant) gives effect to:

…

(7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme* (other than a *scheme* in (7A)), to a *client*, must:

…

(b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by *COBS* 13.3.1R (2) (General requirements) and, if that *client* is present in the *United Kingdom*, the information required by (5A)(b).; and

(7A) a *unit* in an *OFR recognised scheme* to a *client* must provide the *documents* and information specified in *COBS* 14.2.1-BR.

…

14.2.1-A G …

14.2.1-B R For the purpose of *COBS* 14.2.1R(7A), in relation to a *unit* in a *scheme* which is an *OFR recognised scheme*, the specified *documents* and information are as follows:

(1) Where the *scheme* is an *EEA UCITS scheme*, the *firm* must provide a copy of the *scheme's EEA key investor information document* to that *client*.

(2) Where the *client* is a *retail client*, the *firm* must provide separately (unless already provided):

(a) the information required by *COBS* 13.3.1R(2)(a) and (c) (General requirements);

(b) if the *client* is present in the *United Kingdom*, the information required by *COBS* 14.2.1R(5A)(b); and

(c) information that clearly explains:

(i) whether the *Financial Ombudsman Service* is likely to be able to consider *complaints* against the *scheme*, its *operator* or its *depositary*; and

(ii) what arrangements, if any, exist that would enable investors in the *United Kingdom* to have a complaint against the *scheme*, its *operator* or its *depositary* considered by an alternative dispute resolution mechanism in the relevant *Home State*;

(iii) that the activities of the *scheme's operator* and its *depositary* are unlikely to be covered by the *compensation scheme* and investors might not be protected under the *regulatory system* if either *person* should become unable to meet its liabilities to them; and

(iv) what arrangements, if any, exist in the *Home State(s)* of the *scheme's operator* or its *depositary* for the payment of compensation to investors in the *United Kingdom* if either *person* should become unable to meet its liabilities to them.

…

Annex D

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2 Statutory notices and the allocation of decision making

…

2.5 Provision for certain categories of decision

…

Modified procedures in collective investment scheme and certain other cases

…

2.5.13 G The decisions referred to in *DEPP* 2.5.12 G are:

…

(1A) …

(1B) the decision to give a *supervisory notice* pursuant to section 271M(3), (6) or (7) of the *Act*;

…

(4B) …

(4C) the decision to give a *warning notice* or *decision notice* pursuant to section 271N(2) or (3), or 271R(3) or (4)(a) of the *Act*.

…

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

…

Section of the Act	Description	Handbook reference	Decision maker
…			
269(1)/(2)	…		

271H(2)/(3)	when the *FCA* is proposing or deciding to refuse an application for recognition of a *collective investment scheme* under section 271A	*COLL* 9	*Executive procedures*
271N(2)/(3)(a)	when the *FCA* is proposing or deciding to revoke an order made under section 271A in relation to an *OFR recognised scheme*	*COLL* 9	*Executive procedures*
271O(4)/(5)(a)	when the *FCA* is proposing or deciding to refuse a request for the revocation of an order under section 271A in relation to an *OFR recognised scheme*	*COLL* 9	*Executive procedures*
271R(3)/4(a)	when the *FCA* is proposing or deciding to publish a statement censuring the *operator* of an *OFR recognised scheme*	*COLL* 9	*Executive procedures*
…			

…

2 Annex 2 Supervisory notices

Section of the Act	Description	Handbook reference	Decision maker
…			
~~268(3)/ (7)(a)~~ 268(3)/(7)(a) or (9)(a) (as a result of (8)(b)/(13))	…	…	…
271M	when the *FCA* gives a direction under section 271L	*COLL*	*Executive procedures*
…			

…

…

6A The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition

…

6A.5 Collective investment schemes: the interaction between the power to suspend or revoke recognition and the power to issue public censures

6A.5.1 G Under sections 271L, 271N, 271R, 279, 281 and 282B of the *Act*, the *FCA* can suspend or revoke recognition of an *OFR recognised scheme* or a *scheme* recognised under section 272 and/or issue the *operator* with a *public censure*. Following the approach in *DEPP* 6A.4.1G and in *DEPP* 6A.4.2G(3), where the *FCA* considers it appropriate to impose both sanctions, it will decide whether the combined impact on the *operator* is likely to be disproportionate in respect to the *breach* and the deterrent effect of the sanctions.

Annex E

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

7 Suspension of dealings, termination of authorised funds and side pockets

…

7.6 Schemes of arrangement

…

Schemes of arrangement: requirements

7.6.2 R …

(2) For a *UCITS scheme* or a *sub-fund* of a *UCITS scheme*, (1) applies as if the reference to a *regulated collective investment scheme* ~~also~~ excludes any *recognised scheme* which is not authorised under the *UCITS Directive* in an *EEA State* ~~but was not a 'recognised scheme' under section 264 of the *Act* (Schemes constituted in other EEA States) immediately before *IP completion day*~~.

…

(6) …

(7) If it is proposed that the *scheme property* of an *authorised fund* or a *sub-fund* of an *umbrella* should become the property of a *recognised scheme*, the *authorised fund manager* of the *authorised fund* or *sub-fund* must ensure that the *document* it provides to *unitholders* setting out the proposal contains a prominent statement of the matters required to be disclosed by *COLL* 9.5.5R(2) (Preparation and maintenance of a prospectus relating to an OFR recognised scheme).

…

9 Recognised schemes

9.1 Application and general information

Application

9.1.1 R This chapter applies as follows:

(1) *COLL* 9.3 and 9.4 apply to *operators* of ~~*recognised schemes*~~ *schemes* applying for recognition under section 272 of the *Act* and to *operators* ~~of schemes~~ making a notification in respect of ~~them~~ such *schemes* under ~~Chapter V of Part XVII~~ sections 277 and 277A of the *Act* ~~(Recognised overseas schemes)~~.

(2) *COLL* 9.5 applies to *operators* of *schemes* applying for recognition as *OFR recognised schemes* and to *operators* making a notification in respect of such *schemes* under sections 271I and 271J of the *Act*.

Purpose

9.1.2 G (1) This chapter applies in relation to two types of *recognised scheme*:

(a) a *scheme* which is individually recognised under section 272 of the *Act*; and

(b) an *OFR recognised scheme*, which is a *scheme* recognised under section 271A of the *Act*.

(2) If a *scheme* is eligible to apply for recognition as an *OFR recognised scheme*, it may not apply for recognition under section 272 of the *Act*, within (1)(a).

(3) The *FCA* website sets out further information about which categories of overseas *collective investment scheme* are eligible to apply to the *FCA* to be *recognised schemes* under sections 271A and 272 of the *Act*.

[*Editor's note*: insert link to the FCA website]

(4) This chapter enables current and potential *operators* of *recognised schemes* to know what information and *documents* the *FCA* ~~wish to receive~~ requires to enable it to ~~consider~~ determine whether to recognise the *scheme* under the *Act* for *marketing* in the *United Kingdom*.

(5) This chapter also sets out requirements relating to:

(a) the preparation and maintenance of a *prospectus* for a *recognised scheme*; and

(b) the facilities that an *operator* of a *recognised scheme* must provide to enable current and potential participants in the *scheme* who are present in the *United Kingdom* to obtain information and exercise their rights without undue difficulty or expense.

9.1.2A G The effect of *GEN* 2.2.33R to *GEN* 2.2.36R is that the *rules* in *COLL* 9.4 on facilities continue to apply to a *TP UCITS qualifier* in relation to a *scheme*

that is a *recognised scheme* under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, until such time as that *scheme* ceases to be recognised under those Regulations.

General information

9.1.3 G Further information about ~~notifications~~ applications for recognition and notifications by *operators* of *recognised schemes* is ~~contained in *COLLG*~~ published on the *FCA* website.

[*Editor's note*: a link to the FCA website]

…

9.3 Section 272 recognised schemes

…

Additional information required in the prospectus for an application under section 272

9.3.2 R An *operator* of a ~~*recognised scheme*~~ *scheme* applying for recognition under section 272 of the *Act* must ensure the *prospectus*:

…

Preparation and maintenance of prospectus

9.3.3 R (1) An *operator* of a ~~*recognised scheme*~~ *scheme* recognised under section 272 of the *Act* must comply with the requirements set out in *COLL* 4.2 (Pre-sale notifications).

(2) Where a ~~*recognised scheme*~~ *scheme* recognised under section 272 of the *Act* is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of *COLL* 4.2.5R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

Preparation of a key information document in accordance with the PRIIPs regulation

9.3.4 G …

(3) As a result, when a ~~*recognised scheme*~~ *scheme* recognised under section 272 of the *Act* is made available to *retail clients* in the *United Kingdom* the *operator* must draw up a *key information document* in accordance with the *PRIIPs Regulation*, unless the *operator* of such a *scheme* is otherwise exempt from such a requirement under the *PRIIPs Regulation* for the time being.

…

9.4 Facilities in the United Kingdom <u>for schemes recognised under section 272 of the Act</u>

General

9.4.1 R (1) The *operator* of a ~~*recognised scheme*~~ <u>*scheme* recognised under section 272 of the *Act*</u> must maintain facilities in the *United Kingdom* in order to satisfy the requirements of *COLL* 9.4.2 R to *COLL* 9.4.6 R.

…

Documents

9.4.2 R (1) The *operator* of a ~~*recognised scheme*~~ <u>*scheme* recognised under section 272 of the *Act*</u> must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the obtaining (free of charge, in the case of the documents at (c), (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:

…

…

…

Insert the following new section COLL 9.5 (OFR recognised schemes) after COLL 9.4 (Facilities in the United Kingdom). The text is not underlined.

9.5 OFR recognised schemes

Information and documents to be provided in relation to an application for recognition under section 271A

9.5.1 G (1) Under the *Act*, the *FCA* has the power to direct how an application for recognition of a *scheme* under section 271A of the *Act* must be made. The *FCA* also has the power to specify that the application contains, or is accompanied by, such information as the *FCA* may reasonably require for the purpose of determining it.

(2) The application form for recognition of a *scheme* under section 271A of the *Act*, and guidance regarding *documents* and information which must be contained in (or provided together with) the application form, are available on the *FCA* website.

[*Editor's note*: insert link to the FCA website]

(3) The application form requires the *operator* that is applying for recognition of the *scheme* to provide *documents* and information falling within the following categories:

(a) the identity of the *scheme*;

(b) the *scheme's* profile;

(c) the *scheme's* fees and charges;

(d) characteristics of the *scheme's units*;

(e) parties connected to the *scheme*; and

(f) the proposed marketing and distribution arrangements for the *scheme*.

9.5.2 G The *FCA* considers that the *documents* and information falling within the categories set out in *COLL* 9.5.1G(3) are reasonably required for the purposes of:

(1) determining whether the conditions for recognition under section 271G(2) (Determination of applications) of the *Act* are met;

(2) complying with its duty under section 271G(4) (Determination of applications) of the *Act* to refuse an application for recognition if the *FCA* considers it desirable to do so, in order to protect the interests of *participants* or potential *participants* in the *scheme* in the *United Kingdom*; and

(3) complying with its duty to maintain a record of all *recognised schemes* under section 347 (The record of authorised persons etc.) of the *Act*, which is made public in the *Financial Services Register*.

9.5.3 D Any *documents* accompanying an application for recognition of a *scheme* under section 271A must:

(1) be in English or be accompanied by a translation in English; and

(2) be certified by the *operator* to be true copies of the originals.

Recognition of parts of a scheme

9.5.4 G (1) Section 271S of the *Act* (Recognition of parts of schemes under section 271A) sets out that section 271A of the *Act* applies in relation to part of a *collective investment scheme* as it applies in relation to such a *scheme*. In our view, this means that the *FCA* is able to recognise one or more *sub-funds* in an *umbrella*, without necessarily recognising all of them.

(2) As a result, references to a *scheme* in *COLL* 9.5.7G to *COLL* 9.5.9G include references to a *sub-fund* in an *umbrella*.

Preparation and maintenance of a prospectus relating to an OFR recognised scheme

9.5.5 R (1) The *operator* of an *OFR recognised scheme* must comply with the requirements set out in *COLL* 4.2 (Pre-sale notifications).

(2) The *operator* of an *OFR recognised scheme* must ensure that the *prospectus* of the *scheme*:

(a) contains the information required by *COLL* 4.2.5R (Table: contents of the prospectus);

(b) explains how investors in the *United Kingdom* can make a complaint about the *scheme*, its *manager* or its *depositary*;

(c) (i) explains whether the activities of the *operator* and *depositary* of the *scheme* are covered by the *Financial Ombudsman Service* and the *compensation scheme*; and

(ii) where they are not covered, contains a clear warning explaining that a *UK* investor may not be able to seek redress under the *UK regulatory system* for a complaint, or compensation for a financial loss suffered as a result of the *operator* or *depositary* being unable to meet their liabilities to *unitholders*;

(d) explains whether or not an investor in the *United Kingdom* has the right to access:

(i) an alternative dispute resolution mechanism in the *Home State(s)* of the *scheme*, its *operator* or its *depositary* in order to resolve a complaint; or

(ii) a compensation scheme in the *Home State(s)* of the *operator* or the *depositary* that can pay compensation to *unitholders* for losses incurred where those *persons* are unable to meet their liabilities to *unitholders*; and

(e) explains, if the investor has the rights described in (d), how they may be exercised, including how further information may be obtained.

(3) For the purposes of (1) and (2)(a), as appropriate, a reference in *COLL* 4.2 to:

(a) an *authorised fund manager* is to be read as a reference to an *operator* of an *OFR recognised scheme*; and

(b) an *authorised fund* is to be read as a reference to an *OFR recognised scheme*.

Guidance on the UK retail disclosure regime

9.5.6 G [*Editor's note*: guidance relating to the new disclosure regime will be inserted here once the regime has been implemented]

Obligations on an operator of an OFR recognised scheme to notify the FCA

9.5.7 G (1) Section 271I(1) of the *Act* (Obligations of an operator of a section 271A scheme) requires an *operator* of an *OFR recognised scheme* to notify the *FCA* if it has contravened, or expects to contravene, a requirement imposed on it by or under the *Act*.

(2) Section 271I(2) of the *Act* requires an *operator* of an *OFR recognised scheme* to notify the *FCA* of certain changes relating to the *scheme*, such as changes to the *operator* or *depositary*. This should be kept in mind when considering any proposed change.

(3) Section 271I(3) of the *Act* requires a notification under (1) or (2) to be made in writing as soon as reasonably practicable.

9.5.8 G Section 271J of the *Act* provides that the *operator* of an *OFR recognised scheme* must provide information to the *FCA* as set out on, and in the manner directed on, the *FCA* website.

[*Editor's note*: insert link to the FCA website]

9.5.9 G The *FCA* expects to be notified immediately when the *operator* of an *OFR recognised scheme*:

(1) becomes aware that the *scheme* is or will be terminated or wound up; or

(2) decides to cease marketing the *scheme* in the *United Kingdom* and applies for withdrawal of recognition as an *OFR recognised scheme*.

Facilities for investors in the United Kingdom for OFR recognised schemes

9.5.10 R (1) The *operator* of an *OFR recognised scheme* must maintain facilities for any *person* in the *United Kingdom* to:

(a) inspect (free of charge) up-to-date copies in English of:

(i) the *instrument constituting the fund*, as amended from time to time;

(ii) the *prospectus*;

(iii) the latest annual report and (if more recent) the half-yearly report; and

(iv) the *key investor information document* or equivalent disclosure *document*;

(b) obtain paper copies of any of the *documents* in (a), at no more than a reasonable charge in the case of (i), and free of charge in the other cases; and

(c) obtain the latest *prices* of *units* in the *scheme*, or information about where they can be obtained free of charge.

(2) The *operator* of an *OFR recognised scheme* must maintain facilities for any *unitholder* of the *scheme* in the *United Kingdom* to:

(a) submit orders to subscribe for and *redeem units* in the *scheme* in accordance with the terms of its *prospectus*;

(b) obtain information about how any payment due to the *unitholder* will be made;

(c) provide information to enable the *operator* to maintain a record of each *unitholder's* full name and address and any other required details; and

(d) submit a complaint about the operation of the *scheme* to the *operator* and obtain information about arrangements for the resolution of the complaint.

9.5.11 R (1) The *operator* may provide the facilities in *COLL* 9.5.10R through an electronic medium where:

(a) the *prospectus* states that the *operator* will normally communicate with all *unitholders* and their representatives through such a medium;

(b) all existing *unitholders* have consented to communicating with the *operator* in this way; and

(c) all services to *unitholders* are provided in English, free of charge.

(2) If the conditions in (1)(a) and (b) are not fulfilled, the *operator* may provide the facilities in *COLL* 9.5.10R through an electronic medium at the *unitholder's* choice but must additionally provide those facilities at a place in the *United Kingdom* which is open to members of the public during business hours.

(3) The *operator* may use its own place of business in the *United Kingdom* if it has one, or else it must appoint a *person* with a place of business in the *United Kingdom* to provide the facilities on its behalf.

(4) The *prospectus* of the *scheme* must state the address of the place at which facilities are provided or explain how they can be accessed through an electronic medium.

(5) In relation to notices and *documents* sent by *operators* and *depositaries* to and from the *United Kingdom*, *COLL* 4.4.12R (Notice to unitholders) and *COLL* 4.4.13R (Other notices) apply.

9.5.12 G (1) Under section 271F(1)(b) of the *Act*, the *operator* of an *OFR recognised scheme* must notify the *FCA* of an address in the *United Kingdom* at which notices and other *documents* may be served on the *operator*. This may be the same address specified for the purpose of *COLL* 9.5.11R(2), or another address.

(2) Where the *operator* of an *OFR recognised scheme* intends to *communicate* a *financial promotion* relating to the *scheme*, the *financial promotion* will need to be *approved* unless the *financial promotion* benefits from an exemption in the *Financial Promotion Order*.

(3) [From 7 February 2024] if the *financial promotion* does not benefit from an exemption in the *Financial Promotion Order*, an *authorised person* will only be able to *approve* a *financial promotion* relating to an *OFR recognised scheme* if:

(a) that *person* is a *permitted approver* in relation to the *financial promotion*; or

(b) an *approver exemption* applies.

(4) Where a *financial promotion* relating to an *OFR recognised scheme* needs to be *approved* by an *authorised person*, that *authorised person* does not need to be the *person* who provides *unitholder* facilities, or whose address is notified for the service of notices.

Annex F

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

7 Financial penalties and other disciplinary sanctions

7.1 The FCA's use of sanctions

…

7.1.2 The *FCA* has the following powers to impose sanctions.

(1) It may publish a statement:

…

(eca) against an *operator* of a *scheme* recognised under section 271A or section 272 of the *Act*;

…

…

…

14 Collective Investment Schemes

…

14.4 Exercise of the powers in respect of recognised schemes: sections 271L, 271N, 271R, 279, 281 and 282B of the Act – powers to revoke recognition of schemes recognised under ~~section~~ sections 271A or 272, or issue the operators of such schemes with a public censure: the FCA's policy

Annex G

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

9 Meaning of open-ended investment company

9.1 Application and Purpose

…

Other guidance that may be relevant

9.1.4 …

9.1.5 G *Open-ended investment companies* constituted *overseas* that are seeking to market or promote their *units* to the general public in the *United Kingdom*, should refer to *COLL* 9 (Recognised schemes) for *guidance* on the requirements that apply to *OFR recognised schemes* and *schemes* recognised under section 272 of the *Act* (Individually recognised schemes).

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