Chapter 9

Recognised schemes

9.1 Application and general information

Application

9.1.1 R This chapter applies to *operators* of *recognised schemes* and to *operators* of schemes making a notification in respect of them under Chapter V of Part XVII of the *Act* (Recognised overseas schemes).

Purpose

9.1.2 G This chapter enables potential *operators* of *recognised schemes* to know what information and *documents* the *FCA* wish to receive to enable it to consider whether to recognise the *scheme* under the *Act* for *marketing* in the *United Kingdom*.

General information

9.1.3 G Further information about notifications for recognition is contained in *COLLG*.

9.3 Section 272 recognised schemes

Information and documents to be supplied for a section 272 application

9.3.1 D

(1) If the *operator* of a *scheme* makes an application under section 272 of the *Act* (Individually recognised overseas schemes), the application must include the information in paragraph (4).

(2) The *documents* must be in English or accompanied by a translation in English.

(3) The *documents* must be certified by the *operator* to be true copies of the originals.

(4) The *operator* of the *scheme* must provide the following information and *documents* with the application:

(a) the name of the *scheme*;

(b) the legal form of the *scheme*;

(c) the name and address of the *operator*;

(d) the address of the place in the *United Kingdom* for service on the *operator* of notices or other *documents*;

(e) whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;

(f) the name and address of any *person* to whom the property subject to the *scheme* is entrusted for safekeeping;

(g) the address of the place in the *United Kingdom* where *scheme* facilities (see ■ COLL 9.4) will be maintained;

(h) details of the arrangements for the *marketing* of *units* in the *United Kingdom*, namely:

(i) the proposed commencement date;

(ii) whether the *units* will be sold by or through any employed sales force, *authorised persons*, or unsolicited calls;

(i) a copy of the *instrument constituting the fund*;

(j) a copy of the *prospectus* or any similar document giving details of the *scheme*;

(k) a copy of the latest annual report and any subsequent half-yearly report;

(l) a copy of any other *document* affecting the rights of *participants* in the *scheme*; and

(m) (where applicable) a copy of the *key information document* (see ■ COLL 9.3.4G).

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

9.3.2 R An *operator* of a *recognised scheme* must ensure the prospectus:

(1) contains a statement that "Complaints about the operation of the *scheme* may be made to the *FCA*."; and

(2) states whether or not investors in the *scheme* would be covered by the compensation scheme, and if so, it must state how they are covered and who they would need to contact for further information.

Preparation and maintenance of prospectus

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

(2) Where a *recognised scheme* is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of ■ COLL 4.2.5 R(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 (1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP* to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*).

(2) The requirements of the *PRIIPs Regulation* are directly applicable.

(3) As a result, when a *recognised scheme* 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.

Annual certificate of compliance

9.3.5 D (1) An *operator* of a *scheme* recognised under section 272 of the *Act* must provide a certificate to the *FCA* in writing that:

(a) sets out what steps it has taken to inform itself of any changes to the regulatory requirements for the relevant type of comparable authorised *scheme* taking effect during the most recent financial year of the *scheme*; and

(b) explains whether, and if so how, any such changes, together with any changes to the *scheme* that have occurred during this period, may affect the *scheme's* ability to satisfy the requirements referred to in section 272(1)(d) of the *Act*.

(2) The certificate must be provided to the *FCA* no later than:

(a) one *month* following the publication of the *annual report and accounts* of the *scheme*; or

(b) if the publication of the *annual report and accounts* of the *scheme* is delayed, one *month* after the last day on which the publication of the *annual report and accounts* of the *scheme* was due.

(3) The certificate must be signed by an authorised signatory of the *operator*.

(4) The certificate may apply to multiple *sub-funds* in an *umbrella* that are recognised under section 272 of the *Act*, if the names of each relevant *sub-fund* and of the *umbrella* are clearly stated.

(5) The certificate must be delivered to the *FCA* by:

(a) sending a copy by email addressed to recognisedcis@fca.org.uk, including the subject line: "S.277A Certificate – [insert full name(s) of scheme]"; or

(b) by *post* to: Financial Conduct Authority, attn. S.277A Certificates, Fund Authorisations Team, Asset Management Department, Wholesale Supervision, 12 Endeavour Square, London E20 1JN, United Kingdom.

9.3.6 G An operator of a *scheme* recognised under section 272 of the *Act* need not provide a certificate under ■ COLL 9.3.5D if it has already sent the required information to the *FCA* within the last 12 *months* as the result of:

(1) a requirement relating to an application for recognition of the *scheme* under section 274(2)(c) of the *Act*;

(2) a direction relating to a proposed alteration of the *scheme* or to a change to the *operator*, *trustee* or *depositary* under section 277(5)(b) of the *Act*; or

(3) a previous certificate being provided under section 277A of the *Act*.

9.3.7 G The *operator* of a *scheme* recognised under section 272 of the *Act* should seek advice from professionals with appropriate qualifications or professional knowledge, such as a qualified solicitor, chartered accountant or compliance consultant, before submitting the certificate to the *FCA* under ■ COLL 9.3.5D.

Notification of alterations to schemes

9.3.8 G Section 277(1) of the *Act* (Alteration of schemes and changes of operator, trustee or depositary) requires notification by the *operator* to the *FCA* of certain proposed alterations to a *scheme* recognised under section 272 of the *Act* which, if made, would be a material alteration. The types of alterations that constitute, or are likely to constitute, a material alteration are set out at ■ COLL 9.3.10R and ■ COLL 9.3.11G.

9.3.9 G In accordance with section 277(2) of the *Act*, effect is not to be given to any such proposed material alteration to the *scheme* unless:

(1) the *FCA*, by written notice, has given its approval to the proposal; or

(2) one *month*, beginning with the date the notice was given under section 277(1) of the *Act*, has expired without the *FCA* having given written notice to the *operator* that it has decided to refuse approval.

Material alteration of a scheme

9.3.10 R For the purposes of section 277(1), a material alteration is an alteration which:

(1) changes the purpose or nature of the *scheme*;

(2) alters the risk profile of the *scheme*;

(3) may materially prejudice a *participant* in the *scheme*;

(4) affects the ability of *participants* in the *scheme* to exercise their rights in relation to their investments;

(5) introduces any new type of payment or materially increases other types of payment that a *participant* in the *scheme* would have to pay out of *scheme property*;

(6) changes the legal form of the *scheme*;

(7) changes the name of the *scheme* or the name of the *umbrella* of which a *sub-fund* is a part;

(8) will result in the restructuring of the *scheme* or a merger with another *scheme*;

(9) changes the regulatory status of the *scheme*;

(10) changes the regulatory status of the *operator* or, if the *scheme* has a *depositary*, of the *depositary*;

(11) changes the composition of the board of *directors*, committee of management or other governing body of the *scheme*, if it has one; or

(12) otherwise has a material effect on the *scheme* and its *participants*.

Guidance on material alterations

9.3.11 G (1) For the purpose of ■ COLL 9.3.10R, a material alteration is likely to include:

(a) any material changes to the investment objective or policy;

(b) any change to the investment strategy that involves taking exposure to a new class of assets with a different risk profile;

(c) any change affecting arrangements for the redemption of *units* on behalf of *participants*, including any arrangements to sell *units* on an investment exchange;

(d) any change to the facilities maintained in the *United Kingdom*, including marketing arrangements, in accordance with ■ COLL 9.4; and

(e) any expansion or limitation of the powers and duties of the *operator* or, if the *scheme* has a *depositary*, of the *depositary*.

(2) In addition to the particular matters specified in ■ COLL 9.3.10R(1) to (11), ■ COLL 9.3.10R(12) requires the *operator* of a *scheme* recognised under section 272 to notify the *FCA* of any other change which has a material effect on the *scheme* and its *participants*. Any change may be a material alteration depending on its degree of materiality and its effect on the *scheme* and its *participants*. Consequently, an *operator* will need to determine whether in each case a particular change is a material alteration or not.

Other notifications

9.3.12 G Section 277 of the *Act* also requires notification to the *FCA* of certain other changes in relation to a *scheme* recognised under section 272 of the *Act*, such as changes to the *operator* or *depositary*. This should be kept in mind when considering any proposed change.

Recognition of parts of a scheme

9.3.13 G

(1) Section 282C of the *Act* (Recognition of parts of schemes under section 272) sets out that section 272(1) of the *Act* may apply 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 but not necessarily all *sub-funds* in an *umbrella*.

(2) As a result, references to a *scheme* in ■ COLL 9.3.8G to ■ COLL 9.3.12G include references to a *sub-fund* in an *umbrella*.

9.4 Facilities in the United Kingdom

General

9.4.1 R

(1) The *operator* of a *recognised scheme* 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.

(2) In this section, a facility is a place of business that complies with ■ COLL 9.4.6 R (Place of facilities).

Documents

9.4.2 R

(1) The *operator* of a *recognised scheme* 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:

(a) the *instrument constituting the fund*;

(b) any instrument amending the *instrument constituting the fund*;

(c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities);

(d) for a *recognised scheme* which is an *EEA UCITS scheme*, the *EEA key investor information document*; and

(e) the latest annual and half-yearly reports.

(1A) [deleted]

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

Price and redemption

9.4.3 R

(1) The *operator* must maintain facilities in the *United Kingdom* for any *person* where:

(a) information in English can be obtained about prices of *units* in the *scheme*; and

(b) a *participant* may redeem or arrange for *redemption* of *units* in the *scheme* and obtain payment.

(2) An *operator* is treated as complying with paragraph (1) if it ensures *participants* may sell their *units* on an investment exchange at a price not significantly different from net asset value; and if so, must inform *participants* of the investment exchange.

9.4.4 R [deleted]

Complaints

9.4.5 R The *operator* must maintain facilities in the *United Kingdom*, at which any *person* who has a complaint to make about the operation of the *scheme* can submit his complaint for transmission to the *operator*.

Place of facilities

9.4.6 R

(1) The address of the facilities maintained by the *operator* in accordance with this section and the details of the facilities so maintained must be stated in the *prospectus* of the *scheme*.

(2) The address of the facilities referred to in (1) must be the address of the *operator's* principal place of business in the *United Kingdom*, or, if there is no such address,such other address in the *United Kingdom* where the *operator* can be contacted.

(3) [deleted]