

## Chapter 9

# Recognised schemes

## 9.5 OFR recognised schemes

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

#### 9.5.1

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- (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.  
<https://www.fca.org.uk/firms/overseas-funds-regime-update-firms>
- (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

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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 be:

- (1) in English or be accompanied by a translation in English; and
- (2) certified by the *operator* to be true copies of the originals.

### Recognition of parts of a scheme

9.5.4

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- (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 9.5.9G to ■ COLL 9.5.10G and to an *OFR recognised scheme* in Part 17 of the *Act* include references to a *sub-fund* in an *umbrella*.

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

9.5.5

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- (1) The *operator* of an *OFR recognised scheme* must comply with the following requirements in ■ COLL 4.2 (Pre-sale notifications):
  - (a) ■ COLL 4.2.2R(1);
  - (b) ■ COLL 4.2.2R(2)(b) to ■ (d);
  - (c) ■ COLL 4.2.3R;
  - (d) ■ COLL 4.2.3AR; and
  - (e) ■ COLL 4.2.4R.
- (2) The *operator* of an *OFR recognised scheme* must ensure that the *prospectus* of the *scheme* contains the information required by ■ COLL 4.2.5R (Table: contents of the prospectus) to the extent that this information would be compatible with the basis upon which the *prospectus* is approved in the *scheme's Home State*.
- (3) In relation to (2), information is to be treated as incompatible with the basis upon which the *prospectus* is approved in the *scheme's Home State* if adding it to the *prospectus* conflicts with an existing statement that has already been approved by the *regulatory body* of the *scheme's Home State*.
- (4) For the purposes of (1) and (2), 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, AUT, ACS, ICVC and UCITS scheme* is to be read as a reference to an *OFR recognised scheme*.

## 9.5.6

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

- (1) explains how investors in the *United Kingdom* can make a complaint about the *scheme, its operator or its depositary*;
- (2)
  - (a) explains whether the activities of the *operator and depositary of the scheme* are covered by the *Financial Ombudsman Service* and the *compensation scheme*; and
  - (b) 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*;
- (3) explains whether or not an investor in the *United Kingdom* has the right to access:
  - (a) 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
  - (b) 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
- (4) explains, if the investor has the rights described in (3), how they may be exercised, including how further information may be obtained.

## 9.5.7

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- (1) If the investor has any rights described in ■ COLL 9.5.6R(3), *operators of OFR recognised schemes* should consider including further information likely to be useful to investors.
- (2) Further information likely to be useful to investors would at least include details as to:
  - (a) whether investors are able to make a complaint or request for compensation in English to the respective bodies referred to in ■ COLL 9.5.6R(3);
  - (b) whether there is a cost to make a complaint or request for compensation to the respective bodies referred to in ■ COLL 9.5.6R(3);
  - (c) whether investors would be exposed to any requirement to pay costs by either of the respective bodies referred to in ■ COLL 9.5.6R(3) – for example, if their complaint or request for compensation should be unsuccessful;
  - (d) what the maximum financial limits are for awards of redress or compensation by the respective bodies referred to in ■ COLL 9.5.6R(3); and

- (e) whether the decision by the body referred to in ■ COLL 9.5.6R(3)(a), such as the amount of redress that should be paid in relation to the complaint, is binding on the *operator* or *depository* (as applicable) if accepted by the investor.
- (3) Where the *prospectus* of the *scheme* is provided electronically, such further information could be provided via a hyperlink to a website or another *document*.

**Guidance on the UK retail disclosure regime**

9.5.8 G [to follow]

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

9.5.9 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 *depository*. 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.

9.5.10 G (1) Section 271J of the *Act* provides that the *operator* of an *OFR recognised scheme* must provide to the *FCA* such information as the *FCA* may direct, and in such form and at such times as it may direct. The *FCA* will publish such directions on the *FCA* website.

(2) The information must be provided as soon as reasonably practicable, in the manner directed on the website. In a few cases, listed on the website, the *FCA*'s direction requires the *operator* to notify the *FCA* by email at the address specified for that purpose. In all other cases, the information should be provided by submitting a standard form.

9.5.11 D The *operator* of an *OFR recognised scheme* must notify the *FCA* as soon as reasonably practicable when the *operator* of an *OFR recognised scheme*:

(1) decides to terminate or wind up the *scheme*, or 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*.

9.5.12 G Where ■ COLL 9.5.11D(2) applies, the *operator* should request the *FCA* to withdraw recognition as an *OFR recognised scheme*. The *operator* should ensure that *UK* investors are given adequate written notice of the decision before the date on which the request takes effect.

### Facilities for investors in the United Kingdom for OFR recognised schemes

9.5.13

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- (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.

9.5.14

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- (1) The *operator* may provide the facilities in ■ COLL 9.5.13R 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) *unitholders* have consented to the *operator* communicating with them 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 9.5.13R 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 *depositories* to and from the *United Kingdom*, ■ COLL 4.4.12R (Notice to unitholders) and ■ COLL 4.4.13R (Other notices) apply.

## 9.5.15

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- (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 9.5.14R(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) 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 permission 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.