

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

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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*.

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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

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(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*.

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.

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Recognition of parts of a scheme

- (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*.

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

- (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*.

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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 *depository*;
- (2) (a) explains whether the activities of the *operator* and *depository* 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 *depository* 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 *depository* in order to resolve a complaint; or
 - (b) a compensation scheme in the *Home State(s)* of the *operator* or the *depository* 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.

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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

		<p>(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 <i>operator</i> or <i>depository</i> (as applicable) if accepted by the investor.</p> <p>(3) Where the <i>prospectus</i> of the <i>scheme</i> is provided electronically, such further information could be provided via a hyperlink to a website or another <i>document</i>.</p>
9.5.8	G	<p>Guidance on the UK retail disclosure regime</p> <p>[to follow]</p>
9.5.9	G	<p>Obligations on an operator of an OFR recognised scheme to notify the FCA</p> <p>(1) Section 271I(1) of the <i>Act</i> (Obligations of an operator of a section 271A scheme) requires an <i>operator</i> of an <i>OFR recognised scheme</i> to notify the <i>FCA</i> if it has contravened, or expects to contravene, a requirement imposed on it by or under the <i>Act</i>.</p> <p>(2) Section 271I(2) of the <i>Act</i> requires an <i>operator</i> of an <i>OFR recognised scheme</i> to notify the <i>FCA</i> of certain changes relating to the <i>scheme</i>, such as changes to the <i>operator</i> or <i>depository</i>. This should be kept in mind when considering any proposed change.</p> <p>(3) Section 271I(3) of the <i>Act</i> requires a notification under (1) or (2) to be made in writing as soon as reasonably practicable.</p>
9.5.10	G	<p>(1) Section 271J of the <i>Act</i> provides that the <i>operator</i> of an <i>OFR recognised scheme</i> must provide to the <i>FCA</i> such information as the <i>FCA</i> may direct, and in such form and at such times as it may direct. The <i>FCA</i> will publish such directions on the <i>FCA</i> website.</p> <p>(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 <i>FCA</i>’s direction requires the <i>operator</i> to notify the <i>FCA</i> by email at the address specified for that purpose. In all other cases, the information should be provided by submitting a standard form.</p>
9.5.11	D	<p>The <i>operator</i> of an <i>OFR recognised scheme</i> must notify the <i>FCA</i> as soon as reasonably practicable when the <i>operator</i> of an <i>OFR recognised scheme</i>:</p> <p>(1) decides to terminate or wind up the <i>scheme</i>, or becomes aware that the <i>scheme</i> is or will be terminated or wound up; or</p> <p>(2) decides to cease marketing the <i>scheme</i> in the <i>United Kingdom</i>.</p>
9.5.12	G	<p>Where ■ COLL 9.5.11D(2) applies, the <i>operator</i> should request the <i>FCA</i> to withdraw recognition as an <i>OFR recognised scheme</i>. The <i>operator</i> should ensure that <i>UK</i> investors are given adequate written notice of the decision before the date on which the request takes effect.</p>

Facilities for investors in the United Kingdom for OFR recognised schemes

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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.

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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

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- 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.
- (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.