HM Treasury

Overseas funds regime:

Summary of responses

November 2020

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ISBN 978-1-913635-96-1 PU 3037

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Chapter 1
Introduction

Background to the consultation

1.1 In March 2020, the government published a consultation paper inviting views on the overseas funds regime (OFR). The OFR delivers on the government's commitment to introduce a more streamlined regime for overseas investment funds to market to UK retail investors. Specifically, the OFR encompasses two new equivalence regimes based on the principle of 'outcomes-based equivalence': one for retail investment funds and one for money market funds (MMFs). Equivalence determinations under these regimes will allow for streamlined access to the UK market for overseas funds. The OFR has the potential to:

- promote the interconnectedness of financial markets and consumer choice
- provide a more appropriate and stable basis for recognising the large number of overseas funds currently marketing in the UK
- support bilateral agreements with other countries

1.2 The government has already introduced a 'temporary marketing permissions regime' (TMPR) to allow EEA Undertakings for Collective Investment in Transferable Securities (UCITS) that were passporting into the UK to continue to access the UK market for a limited period after the end of the transition period. These changes were made as part of the government's approach to amending retained EU legislation under the EU (Withdrawal) Act 2018, to ensure that there will be a standalone legislative and regulatory regime at the end of the transition period. The OFR would be a more straightforward mechanism for EEA UCITS currently in the TMPR to gain recognition by the UK regulator, so that they could continue to be marketed in the UK following the end of the TMPR.

1.3 The consultation was open from 11 March 2020 to 11 May 2020 and the government received 20 responses primarily from the asset management industry. HM Treasury also held multiple roundtables with industry and conducted meetings with individual stakeholders. The respondents are listed in Annex A. The government subsequently brought forward legislation as part of the Financial Services Bill 2020[1] introduced in Parliament on 21st October 2020.

[1] 'Financial Services Bill', HM Treasury, October 2020 (https://services.parliament.uk/Bills/2019-21/financialservices.html)

1.4 This document summarises the responses to the consultation and explains the government's approach to legislating for the OFR after considering those views. It is designed to be read in conjunction with the consultation document,[2] which provides a detailed overview of the government's proposals. Responses to questions from Chapter 8 of the consultation were used to develop the impact assessment[3] and are not considered further in this document since they contained firm-specific information.

1.5 The government is grateful to all the organisations who took the time to respond to the consultation.

Overview of respondents' views

1.6 Overall, the vast majority of consultation respondents were highly supportive of the proposed regime. They welcomed a streamlined and simplified process for marketing overseas funds to retail investors in the UK, compared to the current system under section 272 of the Financial Services and Markets Act 2000 (FSMA).

1.7 In most areas, the government proposed a clear way forward and found support for its proposed approach. In relation to the Financial Services Compensation Scheme (FSCS) and Financial Ombudsman Service (FOS) coverage, the consultation was seeking input from stakeholders to help inform the most appropriate way forward. In response to the consultation, the government has decided to leave the scope of FOS and FSCS jurisdiction unchanged[4], so that it will not apply to overseas funds under the OFR. This is consistent with the majority of views expressed, although a small number of respondents, including the Financial Services Consumer Panel, had some concerns about the absence of FOS and FSCS coverage for overseas funds under the OFR.

1.8 The following chapters summarise the responses received to questions in the consultation and set out the government's responses to the views presented, including any subsequent changes made to proposals.

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2 'Overseas funds regime: a consultation', HM Treasury, March 2020

(https://www.gov.uk/government/consultations/overseas-funds-regime-a-consultation)

3 'Financial Services Bill: Impact Assessment', HM Treasury, October 2020

(https://publications.parliament.uk/pa/bills/cbill/58-01/0200/FS%20Bill%20Impact%20Assessment%20-%20October%202020%20-%20201020.pdf)

4 The current scope of FSCS of FOS is that they do not apply to overseas funds in most circumstances. The FOS does apply to non-UK EEA UCITS and non-UK EEA AIFs when managed by a UK management company or UK AIFM from an establishment in the UK.

Chapter 2

Consultation proposals, summary of responses and government's response

Equivalence regimes

Outcomes-based equivalence

2.1 The OFR will encompass two new outcomes-based equivalence regimes: one for retail investment funds and one for MMFs. The general principle of outcomes-based equivalence acknowledges that different approaches to regulation can achieve the same regulatory objectives and therefore the overseas funds may not have to be subject to exactly the same regulation as funds in the UK. Instead, there will be a comparison based on HM Treasury's overall view of the other country's regulatory regime.

2.2 This principle will enable the government to designate a variety of jurisdictions as equivalent, thus helping to create a competitive market for overseas funds in the UK and providing investors with a high level of consumer choice. In particular, certain types of funds, such as exchange traded funds (ETFs), are domiciled almost exclusively outside the UK.

2.3 In general, respondents were highly supportive of the outcomes-based approach to equivalence and highlighted the importance of allowing a flexible approach to making equivalence determinations. In contrast, a "line-by-line" approach to equivalence, which would require that the overseas funds must be subject to exactly the same regulation as funds in the UK, was discouraged by a number of respondents, as it would act as a barrier to overseas funds wishing to market in the UK.

2.4 Government has therefore retained its proposed approach to outcomes-based equivalence. This approach reflects the dynamic nature of financial services regulation and will help to meet HM Treasury's objectives for the regime, as described in Chapter 1.

Conditions to be satisfied when granting equivalence for retail funds

2.5 The consultation proposed that the funds applying under the OFR's retail equivalence regime must be from a country where the regulatory regime provides at least equivalent investor protection on an outcomes basis, when compared to UK authorised funds. It also proposed that HM Treasury must be satisfied that there are, or will be at the point of recognition, adequate supervisory cooperation arrangements between the Financial Conduct Authority (FCA) and the national competent authority in the other country, in order to grant equivalence.

2.6 Respondents to the consultation were widely supportive of this approach and understood the importance of overseas funds offering equivalent investor protection to comparable UK authorised funds. They also agreed that requiring at least equivalent investor protections on an outcomes basis would allow sufficient flexibility for HM Treasury to make equivalence determinations, by not requiring overseas countries to have exactly the same regulations as the UK.

2.7 As the majority of respondents agreed with the conditions that HM Treasury must be satisfied of when granting equivalence for retail funds, it will remain as proposed in the consultation. The Bill will introduce the retail fund equivalence regime through a new section 271A of FSMA.

The MMF equivalence regime

2.8 Many organisations, such as local authorities, use overseas, specifically EEA, MMFs to invest their cash, as an alternative to bank deposits. Respondents emphasised that these investors need continued access to a varied choice of MMFs to use for cash management purposes.

2.9 Many respondents were supportive of introducing a separate equivalence regime for MMFs. However, the Institutional Money Market Funds Association, the trade body representing the MMF sector argued that separate approaches for retail and non-retail MMFs was overly complex, highlighting that many MMFs market to institutional investors that are treated as retail clients for regulatory purposes (e.g. local authorities), or market to a mixture of professional and retail clients. The government's response on this point is set out in the section titled 'Recognition or notification process for MMFs' below. Some respondents also requested that the equivalence regime for MMFs should take account of international regulatory standards.

2.10 The government did not find any reason to depart from its proposed approach, which remains similar to that outlined in the consultation. The government approach on the separate recognition routes for MMFs is set out below. In particular, the government continues to believe that it is necessary to consider the factors and regulation relating to MMFs separately to other types of retail funds. The Bill specifies that, under the MMF equivalence regime, HMT must be satisfied that the regulatory and supervisory regime of the overseas country or territory has equivalent effect

to the MMF Regulation[1] (MMFR) in the UK. The Bill will be introducing the MMF equivalence regime through a new Article 4A of the MMFR. The process for individual MMFs gaining market access is explained further below.

TMPR and equivalence for existing EEA UCITS

2.11 Many respondents from the asset management industry emphasised the need to ensure continuity for EEA UCITS that have notified under the TMPR. Some respondents also suggested a grandfathering regime to minimise any cliff-edge risks for EEA UCITS in the TMPR, or that HM Treasury should prioritise equivalence for major fund domiciles in the EEA. The government does not consider grandfathering to be a long-term solution for existing UCITS because it would not provide a way to monitor the ongoing appropriateness of market access or respond if access was no longer deemed appropriate or necessary. The government has however introduced several provisions to mitigate respondents' concerns.

2.12 In order to address respondent's concerns around the need for a smooth transition for EEA UCITS from the TMPR to the OFR, the government has made changes to the TMPR. The Bill will extend the TMPR from three to five years, to allow enough time for government to complete any equivalence assessments and for funds in the TMPR to apply for recognition, either through the OFR or section 272 as appropriate.

2.13 Furthermore, a power has been given to the FCA to create "landing slots" for funds that are leaving the TMPR and applying for permanent recognition under the OFR. The two-month time limit for the FCA to consider applications under the OFR has also been disapplied for funds leaving the TMPR. This seeks to ensure the FCA will be able to effectively manage the flow of funds leaving the TMPR and applying for permanent recognition under the OFR.

Additional requirements

2.14 The government also consulted on a power for HM Treasury to specify additional requirements for a category of funds, as part of making an equivalence decision. There may be circumstances where the regulation of a category of funds in a country meets the standard of equivalent investor protection, but it is still desirable to specify additional requirements as a condition of marketing those funds in the UK. This may be to give consistency for retail investors investing in these funds and to ensure a level playing field with UK funds. Additional requirements can only be applied to funds which already meet the standards for equivalence. Therefore, it will not be possible to use these additional requirements to address fundamental shortcomings in an overseas regime.

[1] The MMF Regulation refers to Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds, as it forms part of EU retained law

2.15 Additional requirements will only be applied to funds going through the retail equivalence regime (including MMFs wishing to market to retail investors and recognised under the new retail equivalence regime). MMFs which wish to market only to professional investors will not be subject to additional requirements, as set out in the consultation.

2.16 Respondents had mixed views on the use of additional requirements. A minority disagreed with the use of additional requirements for UCITS, arguing that there is already close regulatory alignment and market conventions across UCITS funds. While most did not fundamentally disagree with the use of additional requirements, some had concerns about how they may be used in practice and whether they would be proportionate. In further discussion with respondents, they asked that additional requirements should not go above what is required of UK funds. They argued that this may act as a barrier to overseas funds wishing to market to UK investors. A few respondents also suggested a proportionality test should be used when considering additional requirements. Some respondents also had a preference for EEA MMFs to not be subject to additional requirements at all, regardless of whether they were marketing to retail or professional investors, as they are already subject to both the UCITS Directive and EU MMFR.[2]

2.17 Overall the government did not find any reason to depart from its proposed approach and the Bill includes an ability for HM Treasury to impose additional requirements on overseas funds. The government considers this is a necessary step in the context of dynamic financial services regulation, and a means to future-proof the regime. Additional requirements may be necessary in relation to aspects of the UK framework which are judged to be important to ensure consistency between overseas funds and those on offer in the UK. It is worth noting that the OFR itself does not specify additional requirements, and any such requirements would be made in separate statutory instruments, alongside the equivalence determinations. The FCA will also have the power to make or amend their rules to give effect to any additional requirements.

2.18 In light of consultation responses received on proportionality and additional requirements going above what is required of UK funds, a provision has been included in the Bill which requires HM Treasury to have regard to what is required of comparable UK authorised funds when specifying additional requirements for overseas funds.

Modifying or withdrawing equivalence

2.19 The consultation also outlined powers for HM Treasury to modify or withdraw an equivalence determination. It may be necessary, for example, to modify the additional requirements included as part of an equivalence determination in response to material changes in the regulatory regime in either the UK or the overseas country. Withdrawal of equivalence may occur if the UK judges that the overseas jurisdiction no longer delivers equivalent

[2] The MMF Regulation refers to Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds, as it will continue to apply in the EU.

outcomes (or an equivalence decision is no longer compatible with the UK's policy priorities including the rule of law, international sanctions, human rights and efforts to combat money laundering), and both sides have been unable to agree a solution to satisfactorily address whatever concerns have been raised and maintain equivalence. In the event that equivalence is withdrawn, the government's policy is that investors should not be forced to divest their investments in the fund, and the fund should continue to service them.

2.20 While no specific questions were asked of respondents around these proposals, some respondents raised concerns about how the modification or withdrawal of equivalence would work in practice. Respondents mainly raised questions around how quickly such changes would come into force and emphasised the need to allow sufficient time for fund operators to make arrangements to avoid any cliff-edge risks for investors.

2.21 The general process for modifying or withdrawing equivalence decisions will remain broadly as proposed in the consultation and HM Treasury will seek to ensure that withdrawal of equivalence is undertaken in line with the principles of transparency and appropriate engagement with the overseas jurisdiction. In the Bill, the government has included a power to introduce a transitional provision. This provision can be used if HM Treasury has modified or withdrawn an equivalence determination, resulting in a fund no longer falling under that determination.

2.22 Under this transitional provision, HM Treasury can specify a period during which affected schemes must apply for recognition under section 272, or the FCA may do so in directions. HMT regulations can also modify or disapply the time limits for the FCA to determine a section 272 application. This provision is for the purpose of managing applications made to the FCA, in the event that a large number of funds from a country or territory no longer fall under an equivalence determination and instead seek recognition under section 272.

Recognition and notification processes

Recognition process and obligations for retail funds

2.23 The consultation proposed that an overseas fund that falls under an equivalence determination for retail funds will need to make an application with the FCA in order to become a 'recognised scheme'. Being a recognised scheme allows UK authorised firms to promote the scheme to the general public without infringing the restrictions on the promotion of collective investment schemes. It was proposed that the FCA will rely on self-certifications from the fund that they are eligible for recognition and that the FCA may require further information, in order to confirm that a fund meets any additional requirements, if it considers this necessary.

2.24 Respondents broadly agreed with a self-certification approach for retail funds. However, some respondents raised concerns around the two-month time limit for the FCA to recognise funds being longer than similar processes

in other countries, with examples raised of comparable processes in Switzerland and Singapore taking three to four weeks.

2.25 There were also some concerns about how frequently the FCA may require information from funds, as part of the ongoing obligations on a fund after recognition. Some respondents preferred that, if this was on an ongoing basis, that the information only be requested annually.

2.26 Overall, the government considers that the proposals outlined in the consultation struck the appropriate balance between streamlining processes and the right level of oversight for the FCA. The government has therefore introduced legislation based on the application process outlined in the consultation. The operation of the application process and the requirements for ongoing information will be the responsibility of the FCA, and the government believes that sufficient powers have been given to them for the process to be run smoothly and efficiently. In particular, the government believes that a two-month time limit is a reasonable time limit to set, as it is intended to be a statutory maximum to allow the FCA time to consider any particular investor protection issues if necessary.

Recognition or notification process for MMFs

2.27 As proposed in the consultation, MMFs that wish to market to both retail and professional clients must become recognised through either section 271A, the new retail equivalence regime under the OFR, or section 272 of FSMA. Otherwise, they may notify under the 'national private placement regime' (NPPR[3]) in order to market only to professional clients. These three processes were set out in the consultation as follows:

1 For an MMF wishing to market to retail and professional clients under the OFR, it must be from a country and a category of funds that has an equivalence determination under both the retail funds equivalence regime (section 271A FSMA) and the MMF equivalence regime (Article 4A of the MMFR). The individual MMF must then apply under section 271A to become recognised by the FCA. An MMF marketing to retail clients may be subject to additional requirements, as imposed under the retail equivalence regime, due to the higher level of consumer protections needed in this market.

2 If an MMF falls under an MMF equivalence determination (Article 4A of the MMFR) but does not fall under a retail fund equivalence determination (section 271A FSMA), it may still market to retail clients by applying to be individually recognised under section 272 of FSMA. Although funds that are recognised under section 272 of FSMA will not be subject to additional

[3] The National Private Placement Regime (NPPR) allows the marketing to professional clients in the UK of non-UK funds, or UK funds managed by a non-UK fund manager, that in either case are not UK-authorised or recognised funds

requirements, they are required to meet the strict criteria set out under section 272.[4]

3 An MMF which wishes to market only to professional clients must fall under an MMF equivalence determination (Article 4A of the MMFR) and then notify the FCA in accordance with the NPPR requirements.

2.28 Respondents were mostly supportive of these proposals. However, one respondent pointed out that most MMFs will require permission to market to retail clients, including local authorities, and preferred that MMFs only have to go through one single market access regime in order to market to UK clients. However, the government believes it is important for all overseas investment funds that are marketing to retail clients[5] to be subject to the same regulatory protections and treatment. Due to the importance of providing consistency in regulatory protections for retail clients, the process for overseas MMFs marketing to retail clients in the UK has remained as proposed.

Suspension or revocation of individual funds

2.29 The consultation proposal set out that the FCA will have the power to suspend or revoke recognition of an individual fund.

2.30 Respondents broadly agreed with the proposals and understood that this is necessary. There was a general comment that sufficient advice should be given to funds on what remedial action they may take in the event of this happening. Some respondents were also concerned that, if these processes happened suddenly, there may be negative knock-on effects for investors in the fund. Therefore, they requested that this process is properly structured and involve dialogue between the firms and the FCA, in order to provide sufficient time for both fund operators and investors to prepare.

2.31 The government will be legislating for a suspension and revocation process which is fair and balances the interests of investors and funds. Where a fund's recognition is suspended, it will lose its recognised status for a specified period, until the occurrence of a specified event or until specified conditions have been complied with. This means the fund could not be marketed by UK authorised firms.

2.32 The legislation will allow the FCA to suspend recognition immediately or on a specified day. Funds, their operators and their trustee and depositary (if any) will be appropriately informed of the reasons why action is being taken. When suspending recognition of a fund, the FCA will be required to give written notice setting out various matters including: details of the direction suspending recognition, the reasons for suspending recognition, a statement

[4] Under section 272, the FCA is required to examine whether the fund gives adequate protection to investors in the scheme, and also to ensure that the arrangements for its constitution and management, the powers and duties of its operator, and its trustee and depositary are adequate.

[5] Retail clients are defined for regulatory purposes.

that the recipient may make representations to the FCA, and setting out their right to refer the matter to the Upper Tribunal.

2.33 The government will also be legislating to allow the FCA to revoke a recognition order in certain circumstances, for example, where the scheme no longer satisfies the conditions for being recognised or the scheme or operator have not satisfied a relevant requirement. Where the FCA revokes a fund's recognised status, the revocation is permanent. Before revoking recognition of a scheme, the FCA will be required to first issue a warning notice and then a decision notice to the fund operator and trustee and depositary (if any). These notices will also set out the recipient's right to take the matter to the Upper Tribunal.

2.34 The government will also be legislating to create certain obligations on fund operators under the OFR, in the event of a fund's recognition being suspended or revoked. These obligations include requiring the fund operator to notify the relevant persons, as directed by the FCA, if the fund's recognition is revoked or suspended. The government has also gone further than what it proposed in the consultation, by creating a power of public censure for the FCA under the OFR. This power is set out in section 271R of the Bill and allows the FCA to inform investors of any wrongdoing by operators of overseas funds which are recognised under the OFR. To ensure consistency between the OFR and other regimes, these new powers are also added to section 272 of FSMA. These changes are set out in more detail in the 'Amendments to section 272 of FSMA' section below.

Financial Ombudsman Service (FOS) and Financial Services Compensation Scheme (FSCS)

FOS

2.35 The consultation set out two possible policy options for respondents to provide views on:

- Policy option 1: That the government expand the FOS to cover funds recognised under the OFR.
- Policy option 2: That the government rely on alternative dispute resolution (ADR) facilities in the overseas country.

2.36 Policy option 2 was widely supported by respondents, many of whom provided evidence to support that it is highly unlikely that UK investors would need to make complaints to FOS involving an overseas fund. This evidence included respondents' experiences with complaints to FOS, which are set out below. Instead, respondents suggested that the OFR could rely on investors having access to an ADR service in the overseas country and that the existence of such an ADR facility could be a pre-condition for equivalence determinations.

2.37 Although a small number of respondents, including the Financial Services Consumer Panel, requested that overseas funds be brought into the scope of

FOS, the government did not find evidence that would suggest bringing overseas funds into FOS is necessary or justifiable. It has been extremely rare for complaints from UK investors to be escalated to an ADR service in the country where the fund in question was domiciled. Our consultation, which drew responses from most major asset managers operating this structure, revealed only one example of a UK investor complaining directly to the overseas regulator of a passporting EEA fund. Respondents' experience indicated that complaints about overseas funds usually relate to distribution and sale practices which, for all asset manager stakeholders responding to the consultation and any of their funds authorised under the UCITS Directive, are almost always undertaken by a local intermediary which are already within the scope of FOS in relation to the regulated services they provide. Therefore, the government does not consider that UK investors will be materially disadvantaged by a lack of access to FOS for complaints concerning the management or operation of overseas funds.

2.38 In line with most respondents' views, the Bill does not extend FOS jurisdiction to overseas funds under the OFR. While the costs to firms of extending FOS jurisdiction are small, on balance, the government agrees with the majority of respondents to not extend FOS to overseas funds under the OFR, as there is no evidence from the current passporting arrangements that it would disadvantage UK investors. Instead, consumers' rights to complain to an overseas ADR, where available, will be disclosed when they purchase their investment. The government will consider the appropriate framework for disclosing the absence of FOS in the future. The government sees this disclosure, alongside the availability of ADR facilities in the overseas country to UK consumers, as sufficient to protect consumers.

FSCS

2.39 As set out in the consultation, the government does not consider it necessary to extend the jurisdiction of the FSCS to operators or depositaries of overseas funds under the OFR. Although the FSCS currently applies to the managers and depositaries of UK funds, it does not apply to EU funds passporting into the UK. In the EU, UCITS are exempt from the requirement to have a compensation scheme under the EU Investment Compensation Schemes Directive, due to the highly regulated nature of these funds and the requirement for the separation of assets in the UCITS Directive. This separation of assets requires a fund's assets to be held by an independent depositary, meaning that if a fund's management company fails, its assets are segregated and protected.

2.40 This position was supported by the majority of respondents, who provided evidence to support their arguments. This evidence included that respondents had seen no examples of investors in the UK requesting compensation from overseas compensation schemes. Moreover, respondents were not aware of any examples of loss or harm to UK investors in passporting funds as a result of lack of access to a financial compensation scheme. In general, respondents to the consultation considered that if the

scope of FSCS remain unchanged, funds should inform investors through disclosures in the fund prospectus.

2.41 In line with the consultation proposal and many respondents' views, the government intends to leave the scope of FSCS jurisdiction unchanged, so that it will not apply to overseas funds under the OFR.

2.42 Similar to the arguments set out for not extending FOS jurisdiction, almost all UK consumers invest in funds through UK intermediaries, such as a financial adviser or an investment platform. This intermediary would be a UK authorised firm and therefore consumers would still be covered by the FSCS in the event of losses caused by its failure.

2.43 To ensure investors are informed about whether any losses are covered by a compensation scheme overseas, we propose that the availability of compensation schemes is disclosed to consumers when they purchase their investment. The government will consider the appropriate framework for disclosing the absence of FSCS in the future.

Disclosures

2.44 In general, respondents to the consultation considered that if the scope of FOS and FSCS remain unchanged, funds should inform investors through disclosures in the fund prospectus. The government agrees that some form of disclosure is necessary.

2.45 It was announced in the Financial Services Written Ministerial Statement published on 23 June 2020 that changes are to be made to the PRIIPS Regulation, which are included in the Financial Services Bill, alongside the OFR. This will include a power to extend the exemption for UK and EEA UCITS from the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID) disclosure. HM Treasury will consider the most appropriate timing for the transition of UCITS funds into the PRIIPs regime, or any domestic successor that may result from the planned review of the UK framework for investment product disclosure, and will bring forward a Statutory Instrument to amend the exemption date in the PRIIPs Regulation as necessary.

2.46 The government will consider the appropriate framework for disclosing the absence of FSCS and FOS in the future. The FCA will also explore whether it is necessary and appropriate to require enhanced risk warnings or explicit acknowledgement from investors about the lack of availability of FOS and FSCS coverage.

Financial promotions

2.47 The consultation set out that operators of funds recognised under the OFR will not be deemed authorised persons, similar to the approach taken for funds recognised under section 272. This means that financial promotions for funds recognised under the OFR will need to either be approved by a UK authorised person or fall within an exemption in the Financial Promotions

Order. Respondents to the consultation broadly agreed with this approach, which the government intends to take forward.

Sub-funds

2.48 Although not explicitly covered in the consultation document, it is clear that umbrella funds and sub-funds are increasingly used to structure investment funds. Umbrella funds and sub-funds are a way of structuring collective investment schemes: an umbrella fund is effectively a legal entity which groups together different sub-funds, with each sub-fund having its own pool of assets, typically to provide a range of different investment strategies for investors. The Financial Services Bill therefore specifies that the retail equivalence regime in the OFR (section 271A) and section 272 apply to both a collective investment scheme as a whole, and to parts of a scheme (i.e. the sub-funds).

2.49 This will bring the OFR up to date with current market practice and make it clear that recognition, under sections 271A and 272, is to be made at sub-fund level. This is necessary as investment objectives are set at the sub-fund level, with each sub-fund under one umbrella comprising a separate pool of assets. Therefore, sub-funds under the same umbrella may differ in their characteristics, meaning that they may not all fit the criteria of an equivalence determination. In this instance, it is important for HM Treasury to ensure that only those sub-funds meeting the criteria can gain recognition for marketing to UK investors.

2.50 This is also consistent with the legislation creating a TMPR for EEA UCITS after the end of the transition period, as recognition under the TMPR is done at the sub-fund level.

Amendments to section 272 of FSMA

2.51 The regime in section 272 will remain for individual funds that do not fall within the scope of an equivalence determination under the OFR, but still wish to market to retail investors in the UK. The consultation set out three proposed amendments to section 272 of FSMA, in order to make it more effective:

- Amending the FCA requirements for an assessment of an application, so that they only need to consider matters which are the subject of current rules, rather than rules which do not yet exist.
- Amending the rules around written notices of proposed changes, so that the FCA can give directions about which changes it needs to approve. This means that the FCA can require that only material changes are notified to the FCA.
- Amending the rules around written notices about any changes to the operator, trustee or depositary of a scheme, so that notices may be given as soon as may reasonably be practical and in a manner decided by the FCA.

2.52 Respondents to our consultation were highly supportive of simplifying the processes under section 272 of FSMA. Some respondents also suggested making further changes to improve section 272, such as reducing the time limits for the FCA to consider applications. The government does not consider these changes necessary. The government has introduced the OFR as a more streamlined alternative for investment funds and is keen that FCA has enough time to consider those applications under section 272 which require a detailed assessment.

2.53 The government has included the amendments outlined above in the Financial Services Bill. Several other changes relating to FSMA have also been brought forward in the Bill to ensure consistency with the OFR. These include the following changes:

- An amendment to section 272, so that funds which are capable of being recognised under section 271A, the OFR retail equivalence regime, cannot be recognised under section 272 of FSMA.
- Creating a new section 282A of FSMA which sets out the obligations on the fund operator to notify the relevant persons, such as investors in the scheme, as directed by the FCA, if the fund's recognition is revoked or suspended.
- Creating a new section 282B relating to public censure, which gives the FCA the power to publish a statement, if it believes that certain rules and requirements have been contravened by the operator of a fund. This is for the purpose of informing investors of any wrongdoing by operators of overseas funds.

Annex A

List of consultation respondents

Alternative Investment Management Association (AIMA)

Association of British Insurers (ABI)

Association of the Luxembourg Fund Industry (ALFI)

BlackRock

Depositaries and Trustees Association (DATA)

Eversheds Sutherland

Financial Markets Law Committee (FMLC)

Financial Services Consumer Panel (FSCP)

Guernsey Financial Services Commission

Guernsey Investment Fund Association (GIFA)

ICI Global

Institutional Money Market Funds Association (IMMFA)

Invesco

Investment Association

Irish Funds

London Stock Exchange

Maitland

Schroders

State Street

Vanguard

HM Treasury contacts

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