



HM Treasury

Overseas funds regime

A consultation

March 2020

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A consultation



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ISBN 978-1-913635-17-6

PU2957

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Chapter 1

Introduction

Background

The UK asset management sector

- 1.1 Asset management firms manage the savings and pensions of millions of UK citizens. They raise capital from investors and allocate it across the wider economy. 75% of UK households use an asset manager's services either directly or indirectly (for example through workplace pensions).¹
- 1.2 The UK asset management sector is the largest in Europe and the second largest globally, with around £9.1 trillion assets under management. The industry makes an invaluable contribution to the UK economy, generating significant employment and tax revenue. There are 39,500 people working directly for asset management firms in the UK, with a further 76,000 jobs in areas that support or result from asset management activity. The sector was estimated to have contributed at least £4.5 billion in taxes in 2016-2017.²

Market structure of the asset management sector

- 1.3 UK asset managers often domicile³ their investment funds (also known as 'collective investment schemes') internationally, selling their funds both to investors in the UK and around the world. According to the Investment Association, the trade body representing investment managers and asset management firms in the UK, around a quarter of their members do not operate UK domiciled funds, and instead market EU-domiciled funds into the UK through 'passporting'.
- 1.4 Many of the retail funds marketed in the UK are currently domiciled in the EEA member states: there are around 2,600 UK funds that are authorised as Undertakings for Collective Investment in Transferable Securities (UCITS), whereas there are over 8,000⁴ UCITS that passport⁵ into the UK from the EEA.

¹ 'Key industry statistics', Investment Association, 2020 (<https://www.theia.org/industry-data/key-industry-statistics>)

² Investment Association

³ The country where a fund is legally established.

⁴ Figure includes sub-funds. 'Authorised and recognised funds', FCA, December 2019 (<https://www.fca.org.uk/firms/authorised-recognised-funds>)

⁵ Funds that are authorised as 'UCITS' in the EU can be marketed to retail investors in any other EU state through a process known as 'passporting'.

Legislative context and inward marketing

- 1.5 The Undertakings for Collective Investment in Transferable Securities Directive 2009/65/EC (UCITS Directive) sets out the common standards for investor protection for funds that are permitted to be marketed to retail investors in the EU. UCITS are also permitted to be marketed to organisations that are not categorised as professional clients, such as local authorities. The UCITS Directive was transposed into UK law through domestic legislation and the Financial Conduct Authority's (FCA) rules.
- 1.6 Within the EU, UCITS can be marketed to retail investors in any other member state through a process called passporting. The UCITS passporting regime for marketing was implemented in the UK by section 264 of, and schedule 5 to, the Financial Services and Markets Act 2000 (FSMA).
- 1.7 EU UCITS automatically become 'recognised' funds in the UK when the fund's national competent authority (NCA)⁶ notifies the FCA under section 264. This means the fund is not subject to the restriction on promotion in section 238 of FSMA and can be readily marketed to all investors in the UK, including retail investors.
- 1.8 Funds which are domiciled in non-EEA countries⁷ can also become individually recognised in the UK under the process set out in section 272 of FSMA. This requires an in-depth assessment of the individual fund (and maybe an assessment of the operator and depository as well) by the FCA, who must be satisfied each fund meets several tests in legislation and affords adequate protection to investors.

Onshoring and the temporary marketing permissions regime

- 1.9 The passporting system will cease at the end of the transition period.⁸ The domestic legislation which implemented the passporting regime will be repealed by The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 (referred to as the 'CIS EU Exit Regulations').
- 1.10 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. This legislative approach, which was taken across government, is known in financial services as 'onshoring'.
- 1.11 The CIS EU Exit Regulations introduced a 'temporary marketing permissions regime' (TMPR) for EU UCITS that have exercised their rights to market in the UK via a passport before the end of the transition period.⁹ The TMPR will enable such UCITS to continue to access the UK market in a very similar way

⁶ The national competent authority (NCA) is the regulator that is responsible for regulating and supervising investment funds in the country or territory.

⁷ Or funds in the EU which are not authorised as UCITS.

⁸ The period until the end of 2020 during which current rules on trade, travel, and business for the UK and EU continue to apply.

⁹ New sub-funds will also be permitted to enter the TMPR provided at least one other sub-fund of the umbrella fund has notified to enter the TMPR.

as under the passport for a limited period after the end of the transition period.

- 1.12 This temporary measure was put in place primarily to provide consumer protection for a limited period of time as firms, regulators and investors adjust to this significant change in the provision of financial services. The CIS EU Exit Regulations specified that for funds to continue to be recognised in the UK after the end of the TMPR, the fund must obtain such status by applying under section 272 of FSMA.

Proposal for an overseas funds regime

- 1.13 As described above, section 272 requires an in-depth assessment of individual funds. During the onshoring process, stakeholders raised concerns that using section 272 to recognise the large number of funds exiting the TMPR would be an operational challenge for both funds and the FCA. As of January 2020, around 8,000 funds including money market funds (MMFs), representing the majority of funds passporting into the UK, have notified the FCA of their intention to enter the TMPR. This is a good indication of the number of funds that could be expected to make applications for recognition under section 272.
- 1.14 There were also questions over whether section 272, which was designed for individual funds, is a proportionate and viable regime for recognising funds in the long-term, given the importance of EU funds in the UK market.
- 1.15 In response to these concerns, the government committed in 2018 to review the regime and bring forward legislation as necessary.¹⁰ The government then announced in the Queen's Speech in 2019 that it would legislate to streamline the process of recognising overseas funds.
- 1.16 This consultation sets out the government's proposal for a more streamlined regime for overseas funds, to be known as the overseas funds regime (OFR). The proposed regime intends to establish a more appropriate basis for recognising overseas retail funds, including EU UCITS. It has the potential to promote the interconnectedness of financial markets and consumer choice, advance trading opportunities around the world, and support bilateral agreements with other countries.

Money market funds

- 1.17 In addition to retail funds, the OFR will also include a regime to provide market access for MMFs, which are a type of fund invested in liquid assets (e.g. cash, government and corporate debt).
- 1.18 MMFs provide an important cash management function for financial institutions, corporations and governments. The EU Money Market Funds

¹⁰ 'The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations: explanatory information, HM Treasury, first published in 2018 (<https://www.gov.uk/government/publications/draft-eu-exit-sis-for-investment-funds-and-their-managers/the-collective-investment-schemes-amendment-etc-eu-exit-regulations-2018-explanatory-information>)

Regulation 2017 set out common standards for MMFs and was onshored via the Money Market Funds (Amendment) (EU Exit) Regulations 2019.

- 1.19 There are currently very few MMFs domiciled in the UK. The vast majority of MMFs which are active in the UK are domiciled in the EU and access via the passporting regime. At the end of the transition period, passporting will cease and there will be no mechanism for new overseas MMFs to market in the UK. The OFR will provide a long-term and sustainable solution to ensure there remains a competitive market of MMFs available to UK investors.

Equivalence regimes for retail investment funds and MMFs

- 1.20 The proposed OFR will introduce two new regimes based on the principle of equivalence: one for retail investment funds and the other for MMFs. It will enable HM Treasury to grant equivalence to a country or territory (hereafter 'country') and to allow streamlined access to marketing in the UK.
- 1.21 The regime for retail funds will be similar in many respects to its precursor under section 270 of FSMA but with some important differences, including the possibility to apply additional requirements to funds from equivalent countries.

Section 272

- 1.22 Section 272 will not be repealed, but will continue to be available for individual funds that are not eligible to be recognised through the OFR because they are not covered by an equivalence determination for retail investment funds. The government proposes to make some minor amendments to section 272 to make it more efficient for the industry and the FCA.

Consultation structure

- 1.23 This introductory chapter outlines the economic and legislative context for the OFR and the reasons why the government is introducing the new regime. The details of the government's proposal are subsequently set out in following chapters:
- **Chapter 2: Overview of the overseas funds regime** – This chapter provides an overview of how the OFR will operate. It outlines the steps that HM Treasury will take to grant equivalence to a country, the role of the FCA, and the process for funds accessing the regime
 - **Chapter 3: Outcomes-based equivalence** – This chapter explains how an equivalence determination will be made under the OFR, and the concepts of 'outcomes-based equivalence' and 'additional requirements'
 - **Chapter 4: FCA powers, registration, and notification** – The process by which a fund will be registered and become recognised under the OFR is set out in this chapter. It also explains the powers that the FCA will have to ensure compliance with the OFR, including the ability to suspend or revoke the recognition of a fund

- **Chapter 5: Obligations for retail funds marketing in the UK and financial promotions** – This chapter describes how various aspects of the UK regulatory framework relating to marketing and financial promotions will apply to overseas funds in the OFR. These are described throughout the consultation as ‘obligations’ to distinguish them from the concept of ‘additional requirements’ which is set out in Chapter 3
 - **Chapter 6: Modifying or withdrawing an equivalence determination** – This chapter outlines how an equivalence determination could be modified or withdrawn
 - **Chapter 7: Amendments to section 272** – This chapter focuses on the proposed changes to section 272 to make it more efficient
 - **Chapter 8: Information gathering** – This chapter seeks input from asset management firms on the structure of the market and their business operations
 - **Chapter 9: Next steps** – This chapter explains how stakeholders can respond to the consultation and includes the privacy notice
- 1.24 A list of all the consultation questions and the definitions of the key terms used in this document are included at the end of the consultation.

Ways to respond to the consultation

- 1.25 The government welcomes views from all interested parties, in particular investment managers and asset management firms, investment platforms, financial advisers, individual investors, and consumer groups.
- 1.26 The government also requests that asset management firms respond to the questions set out in Chapter 8 relating to the structure of the market and their own business operations, as this data will help inform the government’s response and further policy development.
- 1.27 The consultation will run from 11 March to 11 May. You can either respond by emailing overseasfundsregime@hmtreasury.gov.uk or by post to:
- Personal Finances & Funds, 1 Blue, HM Treasury, 1 Horse Guards Road,
London, SW1A 2HQ

Next steps

- 1.28 The government will analyse responses to this consultation and respond in due course. As announced in the Queen’s Speech, the government will bring forward a Financial Services Bill which will include the OFR.

Chapter 2

Overview of the overseas funds regime

2.1 This chapter provides an overview of how the new regime will operate. It sets out brief descriptions of the different aspects of the OFR, which broadly correspond to the chapters in the consultation (Chart 2.A). Further detail can be found in subsequent chapters.

Equivalence regimes for retail funds and MMFs

- 2.2 The government proposes to create two separate equivalence regimes for overseas retail funds and MMFs. These regimes will establish processes by which the government will be able to make an equivalence determination in respect of another country's regime for retail funds or MMFs, respectively.
- 2.3 Making an equivalence determination under the regime for retail funds will allow eligible funds to gain 'recognition' for the purpose of Part 17 of FSMA. This means the funds can be marketed to all investors in the UK, including retail investors.
- 2.4 Making an equivalence determination under the MMFs regime will allow eligible funds to gain access to the UK (hereafter 'MMFs with market access'). The process for gaining market access will depend on whether the MMF intends to market to retail or professional clients.
- 2.5 The following sub-sections set out the steps by which an equivalence determination will be made, and the role of HM Treasury and the FCA in making the determination.

Equivalence determination and FCA advice

2.6 Before making an equivalence determination, HM Treasury will, in the normal course of business, request advice from the FCA on the regulatory regime of the overseas country. The advice from the FCA will inform HM Treasury on whether to grant equivalence and whether, in the FCA's view, additional requirements are necessary. HM Treasury may consider any other relevant factors when making an equivalence determination.

Conditions to be satisfied when granting equivalence

- 2.7 Two conditions must be met before HM Treasury can grant equivalence to a country. First, HM Treasury must be satisfied that the regulatory regime of the other country meets the required standard on an outcomes basis:
- with respect to retail funds, the regulatory regime must achieve at least equivalent investor protection to comparable UK authorised funds

- with respect to MMFs, the regulatory regime must be at least equivalent to the regulations that apply to UK MMFs¹
- 2.8 Second, HM Treasury must be satisfied that there are, or there will be, adequate supervisory cooperation arrangements between the FCA and the NCA in the other country, in order to grant equivalence.

Additional requirements

- 2.9 Following an equivalence determination in respect of retail funds, HM Treasury may require that the specified category of funds included in the equivalence determination must comply with additional requirements as a condition of being recognised in the UK.
- 2.10 Additional requirements may not be necessary in all cases and would be based on aspects of the UK framework which were judged to be important to ensure consistency or comparability between overseas funds and those on offer in the UK.

Legislative basis for equivalence determinations

- 2.11 Equivalence determinations will be given effect through a statutory instrument. Any additional requirements, with which overseas funds must comply in order to be eligible for recognition in the UK, will also be set out in this instrument.

Registration and notification

- 2.12 Once equivalence is granted, individual funds wishing to market in the UK will need to register with or notify the FCA.
- 2.13 Retail funds from a country with an equivalence determination, and which fall within the specified category of funds, will need to register with the FCA to gain recognition.
- 2.14 The process for MMFs gaining market access will depend on whether they intend to market to retail or professional clients. MMFs that are structured as retail funds (such as UCITS) and wish to market to both retail and professional clients must either:
- be located in a country with equivalence determinations for both MMFs and retail funds, and register for recognition under the OFR
 - be located in a country with an equivalence determination for MMFs, and be recognised under section 272 of FSMA
- 2.15 Overseas MMFs from a country with an equivalence determination that wish to market to professional clients² only will be required to submit a notification under the National Private Placement Regime (NPPR) to market

¹ The Money Market Funds (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/394)

² As defined by the FCA Handbook. A fund which enters the UK market under the NPPR may also market to any investor which the Financial Promotions Order or the Promotion of Collective Investment Schemes Order allows for.

in the UK.

FCA powers

- 2.16 In order to ensure compliance with the OFR, the FCA will have the power to require information from funds and their operators, as well as the power to suspend or revoke recognition or market access for individual retail funds or MMFs.

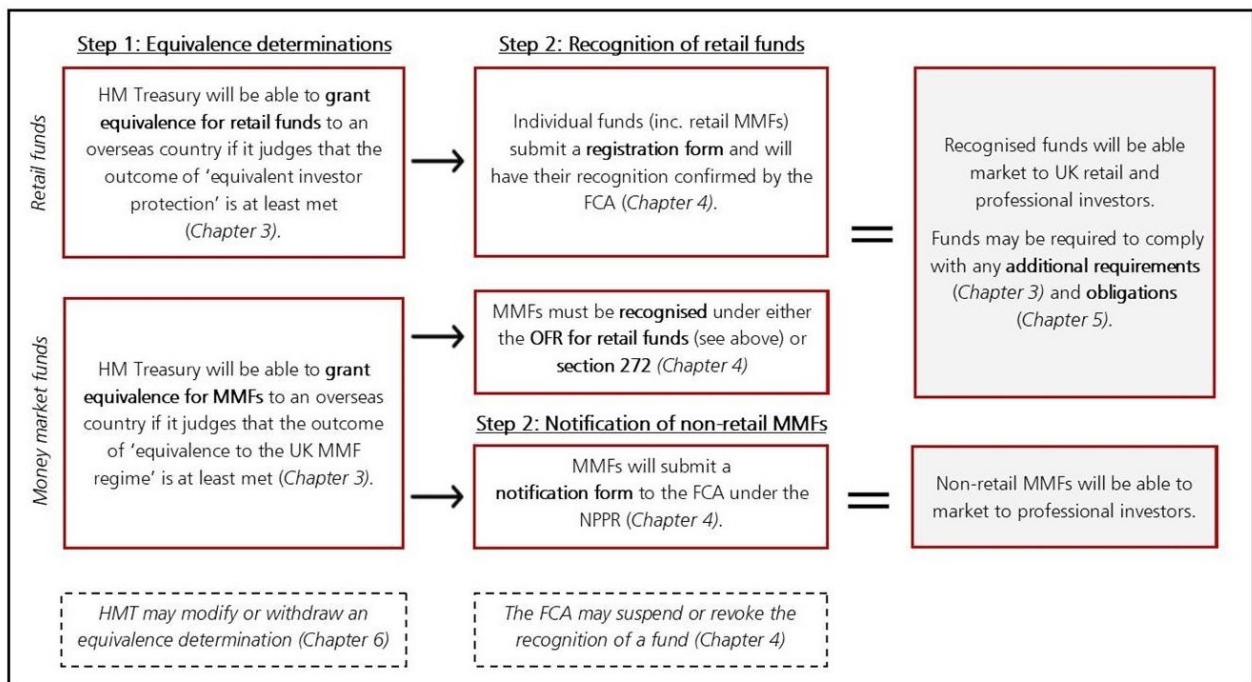
Obligations applying to funds when marketing in the UK

- 2.17 Certain obligations will apply to all overseas funds marketing in the UK. The nature of these obligations will depend on whether funds are marketing to retail or professional clients.
- 2.18 Funds recognised under the OFR will be subject to obligations such as those on disclosure, the provision of investor facilities in the UK, regular reporting to the FCA, and payment of regulatory fees.

Modifying or withdrawing equivalence determinations

- 2.19 HM Treasury will also have the ability to modify or withdraw an equivalence determination. This may be necessary, for example, in response to material changes in the regulatory regime in either the UK or the overseas country, and where the supervisory cooperation arrangements and dialogue between the two countries have not been able to find a way to reconcile those changes in the context of outcomes-based equivalence. HM Treasury may also modify additional requirements from time to time.

Chart 2.A: Overview of the OFR



Chapter 3

Outcomes-based equivalence

- 3.1 This chapter explains how an equivalence determination for retail funds and MMFs will be made. It sets out how outcomes-based equivalence would operate in practice, and the factors that HM Treasury would take into account in making the determination.
- 3.2 It also explains how additional requirements for retail funds would be applied. Additional requirements will not be a feature of the regime for MMFs (although MMFs marketing to retail investors would have to comply with additional requirements if they are also recognised under the regime for retail funds).
- 3.3 The questions in this chapter seek views on any relevant factors or special provisions to consider in the design of the equivalence regimes, and any additional requirements which would be suitable or unsuitable to apply to overseas funds.

Evidence to inform an equivalence determination

- 3.4 In line with other aspects of the UK's future equivalence framework, the OFR will be based on the concept of 'outcomes-based equivalence'. This means overseas regulatory and supervisory regimes will be assessed against the regulations that apply to comparable UK authorised funds. As previously explained, parallel regimes will be introduced for recognising retail funds and granting market access for MMFs.
- 3.5 Before making an equivalence determination, HM Treasury will, in the usual course of business, ask the FCA to provide advice on the regulatory regime in the other country. Advice will be developed and presented in accordance with the existing memorandum of understanding between HM Treasury, the FCA and the Bank of England on equivalence determination.¹ In its advice, the FCA will consider the factors that HM Treasury must be satisfied of when granting equivalence.
- 3.6 The FCA may advise on additional requirements if the FCA judges these to be relevant or important to address specific matters and to ensure consistency between UK funds and overseas funds. The FCA will also be required to

¹ 'Memorandum of understanding between HM Treasury, the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority', (<https://www.gov.uk/government/publications/memorandum-of-understanding-equivalence-and-exemptions>)

inform HM Treasury of any existing or proposed supervisory cooperation arrangements between itself and the relevant NCA in the other country.

- 3.7 In making an equivalence determination, HM Treasury will also be able to take other factors into consideration, such as potential impacts on UK financial stability, market integrity, competition, preventing financial crime including adherence to international standards on anti-money laundering, and international or domestic sanctions.

Equivalence for retail funds

- 3.8 Retail funds offer UK investors the opportunity to gain exposure to a range of assets. They can take different legal forms such as open-ended investment companies and adopt a wide range of possible investment strategies.

Equivalent investor protection

- 3.9 The OFR will allow HM Treasury to grant equivalence for retail funds to an overseas country if it judges that the outcome of 'equivalent investor protection' is at least met. As described in later chapters, this will permit funds from the relevant country to gain a recognised status which allows them to market to retail investors in the UK.

Outcomes-based equivalence

- 3.10 Other countries have different regulatory regimes to the UK. It is therefore important that the OFR allows for a degree of flexibility, such that it is possible to grant equivalence to a country where funds are governed by a regulatory regime that is different to the UK's, but still provides at least equivalent investor protection. When making the comparison between the overseas funds and comparable UK funds, HM Treasury will consider the UK legislation and FCA rules that apply to the kind of UK authorised fund that is most similar to the category of overseas fund being considered.
- 3.11 This does not require that the overseas funds must be subject to exactly the same regulation as funds in the UK. Instead, there will be an outcomes-based comparison based on HM Treasury's overall view of the other country's regulatory regime. For example, regulatory regimes which do not require a fund's operator or management company and its depositary to be in separate legal groups may still be judged to offer equivalent investor protection, provided they are functionally independent and the other requirements that apply to depositaries, such as prudential requirements, are at least equivalent.

UCITS management passport

3.12 The government is also aware that it is possible for retail funds to be managed in a different country to that in which it is domiciled, for example via the UCITS management passport. The government proposes that such arrangements may be acceptable provided that, amongst other things, the overall structure satisfies the requirement to ensure equivalent investment protection.

- 1 Are there any other relevant factors HM Treasury should consider in the design of the equivalence regime for retail funds?
- 2 Should the OFR allow for funds which make use of the management company passport under the EU UCITS Directive? Do similar arrangements, which allow the management company to be located in a separate country from the fund, exist outside of the EU?

Additional requirements for retail funds

3.13 As the concept of outcomes-based equivalence means that the UK and overseas regulatory frameworks do not need to be identical, there may be circumstances where a certain country meets the standard of equivalent investor protection, but it is desirable to specify additional requirements as a condition of marketing in the UK. These additional requirements may relate to aspects of UK legislation or regulatory rules with which overseas funds must comply, or characteristics that they must exhibit in order to be eligible for recognition under the OFR.

Nature of additional requirements

3.14 It will not be possible to use these additional requirements to address fundamental shortcomings in the overseas regime, because a country's regime must offer equivalent investor protection overall as a precondition of granting equivalence.

3.15 Additional requirements are intended to be used as a way to refine the equivalence determination, addressing potential inconsistencies that have been identified when compared to the UK regime. For example, additional requirements might specify certain aspects of the FCA's rules on investment powers and limits, or specify a certain redemption frequency. This would seek to ensure the products are broadly comparable with UK authorised funds in terms of acceptable investment strategies and that overseas funds offer investors access to their money in a similar way to UK funds.

3.16 The ability to include additional requirements under the regime for retail funds reflects the nature of the market for retail investors and the specific challenges that arise. Additional requirements will therefore only feature as part of the regime for retail funds and not for MMFs.

Application of additional requirements

- 3.17 If additional requirements are necessary, they will be set out in the statutory instrument used to give effect to the determination. The FCA will have the power to make rules in relation to the additional requirements set by HM Treasury, to the extent that these may be necessary to provide further clarity to funds on how they may be expected to comply. This power will be strictly limited and will not permit the FCA to establish new additional requirements which go beyond what is specified by HM Treasury. As the FCA's power to make these rules is limited for the purpose of clarifying HM Treasury's additional requirements, the government does not expect to require the FCA to carry out a cost-benefit analysis, nor expect to apply the FSMA requirement to carry out a consultation.
- 3.18 It may be necessary to revise additional requirements from time to time via secondary legislation to account for regulatory changes. For example, HM Treasury will consider adding further additional requirements in response to new FCA rules that apply to UK authorised funds.

3 In your view, what additional requirements should be applied to funds accessing the UK via the OFR from the EU? Are there any aspects of the UK regime that would not be suitable to apply? Please explain your answer.

Equivalence for MMFs

- 3.19 MMFs are a specific type of fund that allow participants to invest in secure, highly liquid investments, such as treasury bills, commercial paper, and certificates of deposit. MMFs are an important source of short-term financing and are generally used as a cash management tool by financial institutions, corporates, and governments, helping to diversify credit risk as well as potentially providing higher yields than cash deposits.

Legislative context

- 3.20 Given their role in cash management, MMFs pose potential risks to financial stability. During the 2008-9 financial crisis, the MMF sector experienced turmoil as the value of underlying investments dropped and investors redeemed their holdings. The EU Money Market Funds Regulation introduced a new regulatory regime aimed at ensuring the integrity of the funds for prudential and investor protection purposes, which the government has onshored.² The use of the designation 'MMF' for funds is regulated to ensure that no fund may use that designation without authorisation and funds that exhibit the characteristics of MMFs must be authorised as an MMF.

² The Money Market Funds (Amendment) (EU Exit) Regulations 2019 (SI 2019/394), <http://www.legislation.gov.uk/uksi/2019/394/contents/made>

- 3.21 MMFs must be structured as either a UCITS or an Alternative Investment Fund (AIF). MMFs that are UCITS and their managers are also subject to further regulation derived from the UCITS Directive, whilst the managers of MMFs that are AIFs are subject to regulation derived from the Alternative Investment Fund Managers Directive (AIFMD).

Market structure

- 3.22 The Institutional Money Market Fund Association (IMMFA) represents the MMF industry. Their members manage around €710bn of assets, equating to 55.9% of the total European MMF market. The government understands that, although their member firms are mainly based in the UK, all but one have their MMFs domiciled in the EU, principally in Luxembourg and Ireland. By weight of assets, EU domiciled-MMFs amount to 98.63% of their members' assets under management, with the balance of 1.4% being in UK domiciled MMFs.
- 3.23 At the end of the transition period, only MMFs that are domiciled or managed in the UK will be able to market to UK investors, with the temporary exception of EU MMFs that have sought access via the TMPR. This will prevent any new overseas MMFs (including EU MMFs) from marketing into the UK. This change was introduced as part of the 'onshoring' process and was legislated via the Money Market Funds (Amendment) (EU Exit) Regulations 2019.
- 3.24 Although a market in UK domiciled MMFs may develop in the long term, there are no viable alternatives in the UK market that fulfil the cash management function offered by EU MMFs in the short or medium term. Given the important economic function these funds provide, it is necessary to establish a mechanism for allowing overseas MMFs to be marketed in the UK.

Outcomes-based equivalence for MMFs

- 3.25 The government proposes to create a new equivalence regime for MMFs as part of the OFR. This reflects the fact that the regulatory regime that applies to MMFs is different in its objectives and substance than that which applies to other types of funds.
- 3.26 HM Treasury will be able to grant equivalence where it decides that the overseas regime produces at least equivalent outcomes to the UK MMF regime. The overseas regulatory regime will be assessed against the regime that applies to UK MMFs, noting that they can be structured as either UCITS or AIFs.
- 3.27 This will create a long-term solution for overseas MMFs to market into the UK, ensuring that there is a competitive market of MMFs for UK investors. It will allow overseas MMFs which are not authorised by the FCA to have market access into the UK.

4 Do you consider that any other special provision should be made for the equivalence regime for MMFs?

Chapter 4

FCA powers, registration, and notification

- 4.1 This chapter sets out how deference and supervisory cooperation between the FCA and the overseas funds' NCA will operate. It also explains the FCA's role to register overseas retail funds marketing in the UK, its powers to require information to be provided, and to revoke or suspend recognition where necessary, and the recognition or notification process for MMFs.

Deference and supervisory cooperation

- 4.2 The OFR relies on supervisory deference and cooperation. Under a deference arrangement it is not necessary, in the normal course of business, for the FCA to undertake supervision or enforcement actions, as these responsibilities will fall to a recognised fund's NCA. Arrangements for cooperation will enable the FCA and NCAs to share supervisory intelligence.

Role of the FCA

- 4.3 Given the role of the NCA, it is not necessary or appropriate to apply the full suite of FCA supervisory and enforcement powers to funds recognised under the OFR. The FCA will not therefore supervise or authorise overseas funds. Instead a discrete set of powers will apply for the FCA to:
- register funds that request access under the OFR
 - require information to be provided
 - revoke or suspend recognition, where necessary
- 4.4 These powers are more limited than the supervisory tools that the FCA have in relation to UK authorised funds. However, they are sufficient for the OFR because the NCA will retain overarching responsibility for the supervision and enforcement of the overseas regime, which itself must provide equivalent investor protection. These tools, alongside the cooperation arrangements between the FCA and NCAs, will therefore ensure that there is a robust and coherent regime for protecting investors.
- 4.5 The rest of this chapter gives further detail on the set of powers listed above and how they may be used under the OFR.

Registration process under the retail scheme

- 4.6 Following an equivalence determination, retail funds (including MMFs choosing to market to retail clients) will be required to register with the FCA to become recognised. The retail fund registration process is intended to be simple and straightforward. The FCA will not be responsible for verifying

funds' compliance with the overseas regulatory framework, reflecting the fact that the equivalence determination has already confirmed that funds in the specified category offer equivalent investor protection.

- 4.7 Funds or their operators registering under the retail scheme will not be required to notify under the NPPR.

Self-certifications

- 4.8 Under the registration process the FCA will be permitted to accept and is expected to rely on self-certifications from funds that they are eligible for recognition. FCA may require supplementary evidence it considers necessary. By way of example, the FCA may as part of the registration process seek evidence of funds' authorisation in their country.

Additional requirements

- 4.9 The FCA will have a greater role with regard to additional requirements. The NCA will not have any supervisory responsibility in respect of such additional requirements since, by definition, they would not form part of that country's regulatory regime. The FCA will therefore need to be satisfied that funds comply with any additional requirements.
- 4.10 The FCA will gather relevant information from the fund at the point at which funds register to seek access under the OFR and subsequently where necessary. For example, the FCA might require fund operators to provide evidence on the fund's investment restrictions, its dealing frequency, or details of the independence of their board, at the point of registration or subsequently.
- 4.11 This represents a greater role for the FCA than was the case under the passporting regime, which relied on a simple notification to the FCA in order to market. The approach in the OFR bears resemblance to that under section 272 of FSMA, but only applies in respect of additional requirements, thereby representing a considerable streamlining when compared to that regime.

Time limits

- 4.12 For new funds requesting recognition, the FCA will ordinarily have 2 months, following receipt of a completed registration form, to either confirm a fund's recognition or provide reasons why the fund is not eligible.
- 4.13 New equivalence determinations are likely to result in a short-term spike in registrations. A longer period may be necessary for the FCA to consider registrations, along with other methods such as the 'landing slots' envisaged under TMPR to create tranches of applicants to manage the FCA's workload.

Refusing recognition

- 4.14 There are various reasons why recognition may not be granted by the FCA, which include:
- the fund fails one or more of the eligibility criteria: it is not within the category of funds included in the equivalence determination; it does not

comply with the additional requirements; or it does not have a UK address for the services of notices

- a requirement under FSMA or other relevant legislation will be or is likely to be contravened
- the operator, trustee or depository has knowingly or recklessly given the FCA information which is false or misleading in a material respect
- it is desirable in order to protect the interests of the participants or potential participants in the UK

- 5 Do you agree with the proposed approach of relying on self-certification from funds that they are eligible for recognition?
- 6 Do you agree that, where necessary, the FCA should require information from funds to ensure that they are satisfied that the funds comply with any additional requirements?
- 7 Are there any other circumstances, apart from those already listed in paragraph 4.14, in which funds should be refused recognition?

Recognition and notification process under the MMF regime

4.15 Following an equivalence determination, eligible MMFs which choose to market solely to professional clients may notify under the existing NPPR. The NPPR allows for the marketing of non-UK funds into the UK, if they comply with certain requirements under the Alternative Investment Fund Managers Regulations 2013.

4.16 If MMFs wish to be marketed to retail clients, they must also gain recognition for the purpose of Part 17 of FSMA. MMFs that are eligible to be recognised under an equivalence determination for retail funds, and that wish to be marketed to retail clients, must seek recognition by registering under that regime (set out in paragraphs 4.6-4.14 above). MMFs that are in scope of an equivalence determination for MMFs, but not in scope of an equivalence determination for retail funds, would be able to apply for recognition under section 272 of FSMA.

- 8 Do you agree that MMFs targeting solely professional clients should only notify under the NPPR?
- 9 Do you agree that MMFs eligible to be recognised under an equivalence determination for retail funds should follow the

registration procedure for retail investment funds set out in paragraphs 4.6-4.14?

Information gathering powers

4.17 As set out above, the FCA will have the power to require information from overseas funds. This power currently forms an important part of the FCA's approach for supervising UK authorised funds. Asset management firms are highly regulated businesses, with sophisticated organisational and governance arrangements. This, combined with effective authorisation processes means that asset managers are, in general, reputable businesses which faithfully comply when information is required, making this a powerful tool in the context of the OFR. The FCA's power to suspend or revoke access from non-compliant funds (as detailed in paragraphs 4.22-4.25) also provides a strong incentive for funds to comply with information requirements.

Reporting to the FCA

- 4.18 The government is considering how funds should engage with the FCA and keep the regulator up to date with any changes. The FCA may require further information from the fund operator as and when necessary.
- 4.19 Operators will not need to apply for the FCA's prior approval for any changes to the fund itself but would be required to inform the FCA of any changes that might impact on their eligibility for recognition.
- 4.20 In particular, operators will be required to notify the FCA as soon as it may reasonably be practicable if they are aware that their fund has breached, or is about to breach, an OFR-related requirement or another requirement under FSMA. This will ensure the FCA is alerted to such breaches and can respond as necessary.
- 4.21 The government is also considering whether to provide the FCA with the power to require regular and ongoing confirmation from the fund operator that the fund continues to meet the conditions for recognition, including any additional requirements.

Suspension or revocation of individual funds

- 4.22 Where the FCA becomes aware or has reasonable suspicions that a fund has breached a requirement under the regime of the overseas country or the OFR, it will in the first instance be required to notify the NCA under the terms of the supervisory cooperation arrangements.
- 4.23 In instances where a recognised fund contravenes a requirement under the OFR, but in the FCA's view it remains appropriate for them to continue being marketed to investors in the UK, the FCA may engage with the fund operator and outline the specific actions a fund must take to rectify any contraventions and the time by which these actions must be undertaken.

- 4.24 However, there may be instances where there is the potential for harm to investors and it is necessary to temporarily suspend or stop a fund's right to market in the UK. The OFR will therefore provide the FCA with a power to suspend or revoke recognition of an individual retail fund or market access for an MMF.
- 4.25 The reasons for suspending or revoking recognition of a retail fund or the UK market access of an MMF are the same as those outlined in paragraph 4.14 above. They include instances where individual funds contravene the additional requirements under the OFR or another requirement of FSMA. Fund operators will have the opportunity to appeal under the existing tribunal process if the FCA decides to suspend or revoke the recognition of a fund.

Impact on investors

- 4.26 Suspending or revoking recognition will not, as a matter of law in the UK, force individual investors to divest from funds. Fund operators would also not be prevented from providing services to existing investors. Nevertheless, there may be knock-on consequences, for example where investments are held through a platform or in a tax wrapper which only permits recognised funds.
- 4.27 If recognition is revoked, fund operators will be expected to inform investors in the fund and the fund's distributors of the decision, in a timely way. The FCA will also ensure that any decisions are clearly communicated to investors, for example by announcing on their website.

10 Do you agree with the circumstances in which the FCA would be able to suspend or revoke the recognition (or access to the market as an MMF) of a fund? Are there any other valid reasons for suspending or revoking a fund's recognition?

11 Do you agree with the actions proposed to inform investors that a fund's recognition (or access to the market as an MMF) has been suspended or revoked? Are there any other factors that the government should consider?

Chapter 5

Obligations for retail funds marketing in the UK and financial promotions

- 5.1 This chapter considers aspects of the UK framework that relate to the marketing of investment funds to UK retail investors, and their relevance within the OFR. These requirements on marketing are referred to as 'obligations' in the consultation. In particular, the chapter seeks views on the arrangements for alternative dispute resolution, financial compensation, disclosure, and financial promotions.
- 5.2 Obligations are distinct from the 'additional requirements' (explained in Chapter 3) which are applied only to certain overseas funds to ensure comparability with UK authorised funds. All retail funds recognised under the OFR will be required to comply with the obligations set out in this chapter when marketing in the UK.

Alternative dispute resolution

The scope of the Financial Ombudsman Service

- 5.3 The Financial Ombudsman Service (FOS) is an independent service for settling disputes between financial services firms and their customers. It is free to consumers but paid for by an FCA levy on firms alongside fees per case charged directly to firms by the FOS.
- 5.4 The FOS settles most complaints informally by agreement between the firm and the customer. If the complaint is not informally settled and proceeds to a final decision, then this decision is legally binding on both the customer and firm if the customer accepts it (but the firms do not have a similar right of veto). The FOS can award up to £350,000 in compensation.¹
- 5.5 The compulsory jurisdiction of the FOS currently includes complaints relating to regulated activities carried on by UK authorised firms, as well as EEA managers that manage funds from an establishment in the UK. It also includes complaints about certain regulated activities when carried on by EEA managers of particular types of UK fund when those activities are carried on from outside the UK.

¹ Different compensation limits apply depending on when the act or omission happened (see <https://www.financial-ombudsman.org.uk/consumers/expect/compensation> for more information)

- 5.6 Investors in UK authorised funds who qualify as eligible complainants (under the Dispute Resolution sourcebook rules in the FCA’s Handbook of Rules and Guidance) may bring unresolved complaints to the FOS for the resolution of disputes about acts or omissions by the operator of the fund.
- 5.7 The voluntary jurisdiction of the FOS is an opt-in regime that covers activities carried on from an establishment in the UK or elsewhere in the EEA if certain conditions are met. Although the operator of an EU UCITS can opt into the voluntary jurisdiction of the FOS, the government is not aware that any operators have done so.

FOS and passporting funds

- 5.8 The government has not yet been presented with examples of investors lacking access to adequate alternative dispute resolution (ADR) in relation to the large number of funds currently passporting into the UK.
- 5.9 Stakeholders have suggested this may be because complaints often relate to the distribution of a fund (e.g. complaints about advice and mis-selling), rather than the operation and management of the fund operator itself. Even where a fund is domiciled overseas, these distribution activities are typically undertaken by a UK authorised firm performing regulated activities which fall within the scope of the FOS, and investors are able to escalate complaints via this route.
- 5.10 The government is seeking information from stakeholders about typical business models and the nature and prevalence of complaints, including whether UK investors in overseas funds have been disadvantaged in any way by lack of access to the FOS.
- 5.11 The government is considering two policy options, on which it is seeking input from stakeholders.

Policy option 1: expand FOS to cover funds recognised under OFR

- 5.12 First, the government could extend the compulsory jurisdiction of the FOS, so that it applies to operators and depositaries of funds recognised under the OFR. This would make it possible for the FOS dispute resolution services to be available to all UK-based investors investing in overseas funds recognised under the OFR (where they are eligible complainants).
- 5.13 However, while decisions by the FOS would be binding under UK law, these may be difficult to enforce in relation to overseas funds, as the overseas regulator and the courts would need to be involved in the event that a firm refuses to pay an award.
- 5.14 In discussions with stakeholders, some have suggested that the availability of the FOS is a positive factor for investors which provides a competitive advantage for UK-domiciled funds over those which have passported into the UK. Extending the FOS in this way could erode this competitive edge for UK funds.

Policy option 2: rely on ADR in the overseas country

- 5.15 Alternatively, the government could ensure that a requirement for granting equivalence is that UK investors have access to an appropriate ADR facility in the overseas country. Any such ADR facility would need to be of suitably high quality, although an ADR service with lower compensation limits and which issued non-binding decisions may be considered acceptable within the context of equivalent investor protection, provided that they are effective overall for UK investors.
- 5.16 For funds passporting into the UK, this may continue the current position, where complaints about activities undertaken in the UK (e.g. distribution activities) may be referred to the FOS, and complaints relating to the activities of the overseas fund operator may be brought to the relevant ADR service in the overseas country.

12 In your view, should the compulsory jurisdiction of the FOS be extended to cover funds recognised under the OFR, or should the OFR rely on investors having access to an ADR service in the fund's country? What are the advantages and disadvantages of each approach?

13 How common is it, under the passporting framework, for complaints from UK investors to be escalated to ADR services in the country where the fund is domiciled? What is the nature of these complaints?

14 Where UK investors access ADR services in an EU country as a result of complaining against a passporting fund, are the complaints dealt with within a reasonable timeframe, fairly, and in English?

15 Have any UK investors been disadvantaged by a lack of access to the FOS for complaints concerning passported EU funds? In what way?

Financial compensation

- 5.17 The Financial Services Compensation Scheme (FSCS) provides protection for investors, where they are owed compensation by a UK authorised firm, for example arising from bad investment advice, negligent investment management or misrepresentation and when the firm goes out of business and cannot return investments or money.
- 5.18 The right to compensation may be available where a firm authorised to manage a UK authorised fund is considered by the FSCS to be unable, or likely to be unable, to pay claims made against it. This will generally be because the firm has stopped operating and has insufficient assets to meet claims, or is insolvent. If the FSCS confirms that the firm is in default, then

eligible customers of the firm will be able to make a claim for compensation. Further details around FSCS eligibility are available on the FSCS website.²

- 5.19 Under current rules, for investment business to be protected by the FSCS, in most cases, it must have been carried out from an establishment in the UK. Overseas funds, including EU UCITS passporting into the UK and funds recognised under section 272, or their operators or depositaries, are not currently covered by the FSCS, although firms which distribute their funds from a UK authorised subsidiary may be covered by the FSCS for losses arising in respect of acts or omissions by that UK subsidiary.

The FSCS and passporting funds

- 5.20 The government has not seen evidence of any losses suffered by UK investors that would have been compensated if funds passporting into the UK had been required to be members of the FSCS. This may be attributed to the strict rules that apply to UCITS, including the arrangements for independent depositaries and the safeguarding of assets. It may also be because (as noted above) funds, whether domiciled in the UK or in the EU, are typically distributed by UK authorised intermediaries. Any complaints or claims against such intermediaries in relation to the regulated activities they undertake (e.g. for bad investment advice related to an overseas fund) would be covered by the FOS and the FSCS.

FSCS and the OFR

- 5.21 The government is considering whether the FSCS should be expanded to include funds recognised under the OFR. While increasing protection for investors, the government notes that there would also be some complications and drawbacks, including a degree of pooling risk between UK and overseas firms. It could also present difficulties for the FCA in collecting the FSCS levy.
- 5.22 The government is therefore currently of the view that it may not be necessary to extend the FSCS to apply to funds recognised under the OFR, their operators or depositaries, and is seeking views from stakeholders in this area. In particular the government is interested in whether there are any examples of UK investors in recognised funds (section 264 or 272) which have suffered loss as a result of there being no FSCS coverage or relevant compensation scheme in an EU country.

16 Are financial compensation schemes typically available to UK investors in overseas funds?

17 Are you aware of any examples of loss or harm to UK investors in passporting funds as a result of lack of access to financial compensation schemes?

18 Where overseas compensation schemes have been available to UK investors, are there examples of UK investors requesting

² 'Your claim', FSCS, 2020 (<https://www.fscs.org.uk/how-we-work/eligibility-rules/>)

compensation from the overseas compensation scheme, and have any successfully received compensation? What part does the overseas regulator play under such compensation arrangements?

19 In your view is it necessary to extend the scope of FSCS to apply to funds recognised under the OFR? What are the advantages and disadvantages of this approach?

Investor consent to the availability of ADR and compensation schemes

- 5.23 It is important for the availability of ADR and compensation schemes to be disclosed to investors. The government does not necessarily consider that any further measures are necessary to protect investors beyond disclosing this information, but wishes to seek views from stakeholders on this point.
- 5.24 Assuming that the scope of the FSCS and the FOS remain the same, the government is interested in whether there are any advantages or disadvantages of introducing a requirement that fund operators and distributors must seek an acknowledgement from UK investors that they understand the availability of ADR and compensation arrangements and how this affects their consumer rights.
- 5.25 The purpose of such a requirement would be to help investors make rational and informed investment choices by making their rights as consumers clear. The government wants to avoid poorly designed disclosure requirements which result in a 'tick box' compliance, adding little in terms of consumer understanding. At the other end of the spectrum, being too prescriptive in relation to these requirements can also exaggerate risks or confuse investors. The government is interested in stakeholders' views on the usefulness of such a requirement as part of the OFR, and what form it could take in order to be most effective.

20 Assuming the scope of the FSCS and the FOS remain unchanged, should funds be required to seek acknowledgement from investors about the availability of compensation schemes and ADR? If yes, what form should this take to be most effective?

Disclosures

- 5.26 Point of sale disclosure requirements are an important part of the overall regulatory framework. The OFR does not set the specific disclosure requirements that apply to recognised funds at the point of sale, as these requirements are already set out elsewhere in legislation and in FCA rules.

Existing disclosure framework

- 5.27 UK UCITS and EU UCITS are currently subject to a bespoke disclosure framework that has its origins in the UCITS Directive. All other packaged investment products that are sold to retail customers in the EU are subject to the disclosure framework set out in the EU Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation. The PRIIPs Regulation will therefore be the legislative default for funds marketing into the UK via the OFR.
- 5.28 While the PRIIPs Regulation covers the basic disclosures that are necessary, the government understands that there are shortcomings with the regime. The government understands the PRIIPs regime is unpopular with stakeholders and is not seeking wider input on the regime at this consultation. There will be an opportunity to consider the appropriate disclosure framework in future, including how disclosure requirements can be calibrated most effectively to protect investors and ensure a well-functioning market for investment products.

PRIIPs disclosures on compensation schemes and ADR

- 5.1 The PRIIPs regulation includes a requirement to describe the process for complaints and set out what happens if the investment product cannot pay out. As part of this consultation, the government is seeking views on whether the PRIIPs disclosure requirements are sufficient to put investors in an informed position as regards the availability of ADR and compensation schemes, in the event that the current scope of the FOS and the FSCS remain unchanged. We are not seeking wider inputs on the PRIIPs regime as part of this consultation.

Other disclosure requirements

- 5.29 In addition to the disclosure requirements set out above, there are other documentation for investment products which must be made available to investors at their request before they make an investment decision. The OFR will enable the FCA to require specified information to be disclosed in this documentation known as the 'scheme particulars' (which includes the prospectus), and require such documents to be made available for inspection and obtainable in English. This aligns the scheme particulars and language requirements for funds recognised under the OFR with the requirements applicable to funds recognised under section 272.

21 Would the PRIIPs disclosures on redress and complaints ensure that investors are in an informed position as regards the availability of such schemes, in the event that the scope of FOS and FSCS remain unchanged?

Financial promotions

- 5.30 Currently, under section 264, the operators of EU passporting funds are deemed to be authorised persons, enabling them to issue financial promotions without the approval of a UK authorised person. On the other hand, financial promotions for funds recognised under section 272 must be made or approved by a UK authorised person.
- 5.31 The government proposes that, unlike under passporting, operators of funds recognised under the OFR will not be deemed authorised persons. This means that a UK authorised person must make or approve their financial promotions, unless the financial promotion falls within the scope of an exemption. This will ensure the FCA has greater oversight of the financial promotions of these funds.

22 Do you agree with the government's proposed approach to financial promotions set out in paragraph 5.30-5.31? To what extent are the operators of EU funds already relying on UK authorised entities to make or approve financial promotions?

UK facilities

- 5.32 Under current rules, the FCA requires fund operators marketing recognised funds in the UK to ensure certain services known as 'facilities' are provided by an entity located in the UK. These services include:
- the provision of the fund prospectus
 - the provision of information on unit prices
 - the ability to receive and pass on orders to redeem units
 - enabling investors to make a complaint about the operation of their fund products and for these complaints to be communicated to the fund operators
 - a UK contact point for the FCA
- 5.33 While important for investors and the FCA, not all of these services are regulated activities, and so entities providing these services will not always need to be FCA authorised. The government proposes that the FCA have the ability to require funds recognised under the retail scheme to maintain facilities in the UK.

Fees

- 5.34 The FCA will have the ability to require recognised overseas funds to pay fees to meet the cost of carrying out its duties under the OFR. The FCA will be able to make rules to set registration and periodic fees for this purpose. Rules on fees will be subject to the usual FSMA processes, including consultation by the FCA. Timely payment of fees will be a condition of OFR

recognition and non-compliance could lead to a fund's recognition being suspended or revoked.

Tax incentivisation

- 5.35 A large number of UK retail investors currently access UK authorised funds and recognised EU UCITS through tax-incentivised products such as an Individual Savings Account (ISA), Personal Pension scheme or Self-Invested Personal Pension (SIPP). These tax wrappers were available to recognised funds (i.e. those under section 272 and 264) and will continue to be available under the TMR. Under the OFR, recognised retail funds will also become eligible for inclusion in these tax wrappers. HMRC authorised ISA and pension scheme managers will be expected to comply with all relevant UK tax regulations.

Chapter 6

Modifying or withdrawing an equivalence determination

- 6.1 This chapter outlines the process for modifying or withdrawing an equivalence determination.
- 6.2 Supervisory cooperation and regulatory dialogue between the governments and regulators will underpin each equivalence determination. This will provide a forum for working through relevant issues, including emerging risks or material changes to the relevant regulatory regimes that could otherwise undermine the achievement of equivalent outcomes. The objective is to allow for enduring and predictable equivalence determinations, which will allow businesses to have confidence in the regime for the purposes of their business plans.

Modifying additional requirements or an equivalence determination

- 6.3 As noted in Chapter 3, it may be necessary to revise the additional requirements from time to time, to account for material changes in the relevant regulatory regimes. For example, HM Treasury will consider adding further additional requirements in response to new FCA rules that apply to UK authorised funds.
- 6.4 Similarly, it may also be necessary to modify the category of funds specified in an equivalence determination. Any changes would be made by way of secondary legislation, amending the order that gave effect to the equivalence determination.

Withdrawing an equivalence determination

- 6.5 If it becomes apparent that the required standard of equivalent outcomes is unlikely to be or is no longer met, HM Treasury alongside the FCA will engage with the overseas NCA and finance ministry with a view to rectifying the situation or outlining next steps. If it has not been possible to remedy the situation within an appropriate amount of time, it may be necessary for HM Treasury to withdraw an equivalence determination.
- 6.6 When withdrawing an equivalence determination, it should be undertaken in an orderly and controlled manner to ensure that investors are protected, and businesses have time to adjust. In such circumstances, the government will engage with industry and stakeholders as appropriate to ensure the process is predictable.

Impact on investors

- 6.7 As a consequence of an equivalence determination being withdrawn, all funds within scope of that equivalence determination will automatically lose their recognition or their MMF market access. Fund operators will be required to inform investors of the withdrawal and the consequences for them.
- 6.8 Investors in funds which have lost their recognition should be able to retain their investments and continue to exercise their rights as an investor, although their rights will depend on the terms of their contract. 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.
- 6.9 Individual funds from a country that has had its equivalence determination withdrawn will be eligible to apply for recognition under section 272.

Chapter 7

Amendments to section 272

- 7.1 This chapter focuses on section 272 and sets out three proposed amendments to make it more effective. The changes should ensure that fund operators applying for recognition under section 272 will be able to do so in a more efficient manner. The OFR will operate alongside section 272, so funds that do not fall within the scope of an equivalence determination can continue to be able to apply for recognition to market in the UK.
- 7.2 As the government intends for the OFR to be the primary regime for overseas funds to market into the UK, funds which are within the scope of an equivalence determination (i.e. within the category specified in the determination) will not be eligible to apply for recognition under section 272.

Proposed changes to section 272

FCA assessment of application

- 7.3 When assessing an application for individual recognition from an overseas fund, the FCA currently must have regard to any rule of law and any matters which are or could be the subject of rules. The government proposes to amend this requirement so that the FCA only needs to consider matters which are the subject of current rules, rather than rules which do not yet exist, when determining a fund's recognition.

Written notice about proposed changes

- 7.4 Once the fund has been recognised, the operator of the fund must provide written notice when there is any proposed change to the fund's operation or management so that the FCA can approve the change. This is the case even if there are immaterial changes that would be of little or no relevance to the FCA. The government proposes to amend this so that the FCA can give directions about which changes it needs to approve.

Written notice about operator, trustee or depositary

- 7.5 There is also a requirement that the fund operator must provide written notice to the FCA a month prior to any replacement of the operator, trustee or depositary. However, this requirement may be impractical in certain situations, e.g. it may be incompatible with other countries' regulations, or where an operator suddenly enters insolvency proceedings. Instead, changes

to section 272 would require the written notification to be made in a manner decided by the FCA and as soon as may reasonably be practicable.

23 Do you agree with the proposed changes to the individual fund recognition process (i.e. section 272) set out in paragraphs 7.3-7.5?

24 Are there any other aspects of the individual fund recognition process which could be improved? Please give specific suggestions and explain how.

Chapter 8

Information gathering

- 8.1 As part of this consultation, the government is seeking to better understand the cross-border activity of funds that market in the UK, including the relevance of the passport and outsourcing arrangements such as portfolio delegation.
- 8.2 The information gathered will help us analyse the responses to this consultation and assist with the policy development and design of the OFR. This chapter asks questions directed at asset management firms on the structure of the market and their business operations.
- 8.3 When answering the following questions, please include funds which are operated or managed by your firm or by another legal entity within your corporate group.

25 Could you provide a brief overview of your firm, your key markets, and investor groups?

26 How many retail funds (including sub-funds) does your firm operate which market in the UK and what is the total assets under management (AUM)?

27 In relation to your response to question 26, what is the total AUM and number of retail funds that are:

- a) UK-domiciled, and portfolio managed in the UK?
- b) UK-domiciled, but portfolio managed overseas?
- c) domiciled overseas, but portfolio managed in the UK?

28 In relation to your response to question 26, do all the retail funds that your firm operates have UK investors?

29 In relation to your response to question 26, how many of these retail funds have you notified (or intend to notify) under the TMPR?

30 How many MMF funds (including sub-funds) does your firm operate which market in the UK and what is the total AUM?

31 In relation to your response to question 30, what is the total AUM and number of MMFs that are:

- a) structured as UCITS?
- b) structured as AIFs?
- c) marketed to retail investors?
- d) UK-domiciled, and portfolio managed in the UK?
- e) UK-domiciled, but portfolio managed overseas?
- f) domiciled in the EU, but portfolio managed in the UK?

32 In relation to your response to question 30, do all the MMFs that your firm operates have UK investors?

33 In relation to your response to question 30, how many of these MMFs have you notified (or intend to notify) under the TMPR?

34 For funds which you market in the UK, how many have their management company function undertaken in another country via the EU UCITS management passport?

35 How many funds (including sub-funds) do you expect to register or notify under the OFR? What is their approximate AUM?

36 In relation to your response to question 35, of those funds and sub-funds that you expect to register or notify under the OFR, how many are structured as:

- a) MMFs?
- b) ETFs?
- c) UCITS (including MMFs and ETFs structured as UCITS)?

37 In relation to your response to question 36, what is the total AUM of the funds under each of these categories?

38 Could you outline the steps for an individual fund required on your part, and the estimated time taken, and costs incurred, to gain recognition under section 264 for a UCITS?

39 Could you outline the steps for an individual fund required on your part, and the estimated time taken, and costs incurred, to market an EU MMF in the UK under the EU MMF passporting regime?

40 Could you outline the steps for an individual fund required on your part, the estimated time taken, and costs incurred, to carry out a section 272 application process? Please indicate the amount of costs that would be charged to the fund itself.

41 Given the information set out in this consultation document, could you estimate, for an individual fund, the time and costs likely to be incurred under the OFR to gain recognition for a fund? Or to gain market access as a non-retail MMF?

Chapter 9

Next steps

Responding to the consultation

9.1 The government is committed to engaging with stakeholders on the OFR to maintain the UK's position as a global centre for asset management, and to ensure that UK investors continue to access high quality, well-regulated products.

9.2 The government would welcome comments on this consultation by 11 May 2020. Responses can be sent to:

Email: overseasfundsregime@hmtreasury.gov.uk

Post: Personal Finances & Funds, 1 Blue, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

HM Treasury's consultation privacy notice

This notice sets out how we will use your personal data, and your rights under Articles 13 and/or 14 of the General Data Protection Regulation (GDPR).

Your data (Data Subject Categories)

The personal information relates to members of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

Information may include the name, address, email address, job title, and employer of the correspondent, as well as their opinions.

It is possible that respondents will volunteer additional biographical information about themselves or third parties.

Purpose

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Legal basis of processing

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. The task is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Who we share your data with (Recipients)

Information provided in response to a consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where a data subject submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within the department, or officials within other public bodies, in order to help develop policy.

As the personal information is stored on our IT infrastructure, it is also shared with our IT contractor NTT.

How long we will hold your data (Retention)

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Special data categories

Any of the categories of special category data may be processed if such data is volunteered by you (the data subject).

Basis for processing special category data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: The processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

The function is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Your rights

You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Treasury. The contact details for the data controller are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London
020 7270 5000
public.enquiries@hmtreasury.gov.uk

The contact details for the data controller's Data Protection Officer (DPO) are:

Data Protection Officer
HM Treasury

1 Horse Guards Road
London
SW1A 2HQ
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Annex A

List of consultation questions

- 1 Are there any other relevant factors HM Treasury should consider in the design of the equivalence regime for retail funds?
- 2 Should the OFR allow for funds which make use of the management company passport under the EU UCITS Directive? Do similar arrangements, which allow the management company to be located in a separate country from the fund, exist outside of the EU?
- 3 In your view, what additional requirements should be applied to funds accessing the UK via the OFR from the EU? Are there any aspects of the UK regime that would not be suitable to apply? Please explain your answer.
- 4 Do you consider that any other special provision should be made for the equivalence regime for MMFs?
- 5 Do you agree with the proposed approach of relying on self-certification from funds that they are eligible for recognition?
- 6 Do you agree that, where necessary, the FCA should require information from funds to ensure that they are satisfied that the funds comply with any additional requirements?
- 7 Are there any other circumstances, apart from those already listed in paragraph 4.14, in which funds should be refused recognition?
- 8 Do you agree that MMFs targeting solely professional clients should only notify under the NPPR?
- 9 Do you agree that MMFs eligible to be recognised under an equivalence determination for retail funds should follow the registration procedure for retail investment funds set out in paragraphs 4.6-4.14?
- 10 Do you agree with the circumstances in which the FCA would be able to suspend or revoke the recognition (or access to the market as an MMF) of a fund? Are there any other valid reasons for suspending or revoking a fund's recognition?
- 11 Do you agree with the actions proposed to inform investors that a fund's recognition (or access to the market as an MMF) has been suspended or revoked? Are there any other factors that the government should consider?
- 12 In your view, should the compulsory jurisdiction of the FOS be extended to cover funds recognised under the OFR, or should the OFR rely on investors having access to an ADR service in the fund's country? What are the advantages and disadvantages of each approach?

- 13 How common is it, under the passporting framework, for complaints from UK investors to be escalated to ADR services in the country where the fund is domiciled? What is the nature of these complaints?
- 14 Where UK investors access ADR services in an EU country as a result of complaining against a passporting fund, are the complaints dealt with within a reasonable timeframe, fairly, and in English?
- 15 Have any UK investors been disadvantaged by a lack of access to the FOS for complaints concerning passported EU funds? In what way?
- 16 Are financial compensation schemes typically available to UK investors in overseas funds?
- 17 Are you aware of any examples of loss or harm to UK investors in passporting funds as a result of lack of access to financial compensation schemes?
- 18 Where overseas compensation schemes have been available to UK investors, are there examples of UK investors requesting compensation from the overseas compensation scheme, and have any successfully received compensation? What part does the overseas regulator play under such compensation arrangements?
- 19 In your view is it necessary to extend the scope of FSCS to apply to funds recognised under the OFR? What are the advantages and disadvantages of this approach?
- 20 Assuming the scope of the FSCS and the FOS remain unchanged, should funds be required to seek acknowledgement from investors about the availability of compensation schemes and ADR? If yes, what form should this take to be most effective?
- 21 Would the PRIIPs disclosures on redress and complaints ensure that investors are in an informed position as regards the availability of such schemes, in the event that the scope of FOS and FSCS remain unchanged?
- 22 Do you agree with the government's proposed approach to financial promotions set out in paragraph 5.30-5.31? To what extent are the operators of EU funds already relying on UK authorised entities to make or approve financial promotions?
- 23 Do you agree with the proposed changes to the individual fund recognition process (i.e. section 272) set out in paragraphs 7.3-7.5?
- 24 Are there any other aspects of the individual fund recognition process which could be improved? Please give specific suggestions and explain how.
- 25 Could you provide a brief overview of your firm, your key markets, and investor groups?

- 26 How many retail funds (including sub-funds) does your firm operate which market in the UK and what is the total assets under management (AUM)?
- 27 In relation to your response to question 26, what is the total AUM and number of retail funds that are:
- a) UK-domiciled, and portfolio managed in the UK?
 - b) UK-domiciled, but portfolio managed overseas?
 - c) domiciled overseas, but portfolio managed in the UK?
- 28 In relation to your response to question 26, do all the retail funds that your firm operates have UK investors?
- 29 In relation to your response to question 26, how many of these retail funds have you notified (or intend to notify) under the TMRP?
- 30 How many MMF funds (including sub-funds) does your firm operate which market in the UK and what is the total AUM?
- 31 In relation to your response to question 30, what is the total AUM and number of MMFs that are:
- a) structured as UCITS?
 - b) structured as AIFs?
 - c) marketed to retail investors?
 - d) UK-domiciled, and portfolio managed in the UK?
 - e) UK-domiciled, but portfolio managed overseas?
 - f) domiciled in the EU, but portfolio managed in the UK?
- 32 In relation to your response to question 30, do all the MMFs that your firm operates have UK investors?
- 33 In relation to your response to question 30, how many of these MMFs have you notified (or intend to notify) under the TMRP?
- 34 For funds which you market in the UK, how many have their management company function undertaken in another country via the EU UCITS management passport?
- 35 How many funds (including sub-funds) do you expect to register or notify under the OFR? What is their approximate AUM?
- 36 In relation to your response to question 35, of those funds and sub-funds that you expect to register or notify under the OFR, how many are structured as:
- a) MMFs?
 - b) ETFs?
 - c) UCITS (including MMFs and ETFs structured as UCITS)?

- 37 In relation to your response to question 36, what is the total AUM of the funds under each of these categories?
- 38 Could you outline the steps for an individual fund required on your part, and the estimated time taken, and costs incurred, to gain recognition under section 264 for a UCITS?
- 39 Could you outline the steps for an individual fund required on your part, and the estimated time taken, and costs incurred, to market an EU MMF in the UK under the EU MMF passporting regime?
- 40 Could you outline the steps for an individual fund required on your part, the estimated time taken, and costs incurred, to carry out a section 272 application process? Please indicate the amount of costs that would be charged to the fund itself.
- 41 Given the information set out in this consultation document, could you estimate, for an individual fund, the time and costs likely to be incurred under the OFR to gain recognition for a fund? Or to gain market access as a non-retail MMF?

Annex B

Definition of terms

Additional requirements	Following an equivalence determination in respect of retail funds, HM Treasury may require that the specified group of funds in the equivalence determination must comply with additional requirements as a condition of being recognised in the UK.
Alternative dispute resolution (ADR)	Alternative dispute resolution (ADR) refers to ways of resolving disputes between consumers and businesses that do not involve going to court.
Domicile	The country where a fund is set up legally.
Equivalence determination	<p>An equivalence determination under the retail scheme will allow eligible funds to gain 'recognition' for the purpose of Part 17 of the Financial Services and Markets Act, which in turn allows them to market to UK retail investors.</p> <p>An equivalence determination under the Money Market Funds regime will allow eligible Money Market Funds to gain access to the UK.</p> <p>Equivalence determinations will be given effect through statutory instrument.</p>
Financial Ombudsman Service (FOS)	The Financial Ombudsman Service (FOS) is the alternative dispute resolution service for financial services in the UK. It is an independent service for settling disputes between financial services firms and their customers.
Financial Services and Markets Act 2000 (FSMA)	The Act that makes provision about the regulation of financial services and markets.
Financial Services Compensation Scheme (FSCS)	The Financial Services Compensation Scheme (FSCS) provides protection for investors, where they are owed compensation by a financial services firm, for example arising from bad investment advice, negligent investment management or misrepresentation and when the firm goes out of business and cannot return investments or money.

Modifying an equivalence determination	HM Treasury will have the ability to modify an equivalence determination to account for regulatory change or divergence, or to respond to specific risks to investors.
Money market funds (MMFs)	Money market funds (MMFs) are a type of fund often used as a cash management tool by financial institutions, corporates and governments. They typically invest in cash and government or corporate debt.
National competent authority (NCA)	The national competent authority (NCA) is the regulator responsible for regulating and supervising an investment fund in the country or territory where it is domiciled.
National Private Placement Regime (NPPR)	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-authorized or recognised funds.
Obligations	Obligations are requirements that relate to the marketing of investment funds to retail investors, which funds recognised under the OFR must comply with when marketing in the UK. Obligations are distinct from the ‘additional requirements’ (which are applied only to certain overseas funds to ensure comparability with UK authorised funds). Obligations are applicable to all retail funds recognised under the OFR.
Onshoring	<p>The European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) converts the existing body of directly applicable EU law (including Regulations) at the end of the transition period into UK domestic law.</p> <p>The term ‘onshoring’ refers to the process undertaken by HM Treasury to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in the retained law.</p> <p>The statutory instruments made during this process were not intended to make policy changes, other than to reflect the UK’s new position outside the EU, and to smooth the transition to this situation.</p>
Passport	Funds that are authorised as ‘UCITS’ in the EU can be marketed to retail investors in any other EU state through a process known as ‘passporting’.
Recognition	This relates to ‘recognition’ for the purpose of Part 17 of the Financial Services and Markets Act 2000 (FSMA). A fund which has recognition can market to UK retail investors.
Revoking an equivalence determination	HM Treasury will have the ability to revoke an equivalence determination if, for example, it should no longer view the overseas country as at least equivalent.

Revoking an individual fund's recognition	The FCA will have the ability to revoke (i.e. permanently stop) an individual fund's right to market in the UK in certain circumstances.
Section 238	The section in the Financial Services and Markets Act 2000 (FSMA) which sets out restrictions on the promotion of collective investment schemes.
Section 264	The section in the Financial Services and Markets Act 2000 (FSMA) which implemented the 'passporting' regime that allows UCITS funds authorised in the EU to be marketed to retail investors in the UK. Section 264 will be repealed at the end of the transition period.
Section 270	The former section in the Financial Services and Markets Act 2000 (FSMA) which set out a process for funds from non-EU countries or territories, as designated by HM Treasury, to be recognised in the UK. It was repealed in 2013.
Section 272	The section in the Financial Services and Markets Act 2000 (FSMA) which allows funds domiciled in non-EU countries or territories, or funds domiciled in the EU that are not UCITS, to become recognised so they can market to retail investors. It requires the FCA to undertake an in-depth assessment of individual funds to ensure each fund affords adequate protection to investors.
Suspending an individual fund's recognition	The FCA will have the ability to suspend (i.e. temporarily stop) an individual fund's right to market in the UK in certain circumstances.
Temporary marketing permissions regime (TMPR)	The temporary marketing permissions regime (TMPR) allows EU UCITS that have exercised their rights to market in the UK before the end of the transition period to continue to market to retail investors in the UK for a limited period. New sub-funds will also be permitted to enter the temporary marketing permissions regime provided at least one other sub-fund of the umbrella fund has notified to enter the regime.
The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019	Also referred to as the 'CIS EU Exit Regulations'. These regulations formed part of the government's approach to amending retained EU legislation. The regulations addressed deficiencies in retained EU law relating to UCITS. It introduced the 'temporary marketing permissions regime' for EU UCITS that market in the UK before the end of the transition period.
The Money Market Funds (Amendment) (EU Exit) Regulations 2019	These regulations formed part of the government's approach to amending retained EU legislation. The regulations addressed deficiencies in retained EU law relating to money market funds.

Transition period	The period until the end of 2020 during which current rules on trade, travel, and business for the UK and EU continue to apply.
Undertakings for Collective Investment in Transferable Securities (UCITS)	<p>In the UK, 'Undertakings for Collective Investment in Transferable Securities' (UCITS) are funds that have been authorised by the Financial Conduct Authority as such.</p> <p>In the EU, UCITS are funds that are authorised by their national competent authority under the EU's UCITS Directive.</p>

HM Treasury contacts

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