

Cabinet News and Views

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The UK's FCA Consults on Changes to Allow Recognition of Overseas Funds



By **Alix Prentice**
Partner | Financial Regulation

The UK's Financial Conduct Authority ("FCA") is **consulting** on changes to its rules to allow funds domiciled outside the UK to market to UK retail customers.

The proposal is based around the operation of the Overseas Funds Regime ("OFR"), which enables the UK government to make equivalence decisions on qualifying jurisdictions based on: (a) adequacy of cooperation agreements between the FCA and the relevant overseas regulator; and (b) equivalent consumer protections. The FCA's new rules put in place structures and process details that the FCA will use to register schemes as appropriate for distribution in the UK once an equivalence decision has been reached about a particular jurisdiction under the OFR. FCA decisions may be subject to certain conditions, and recognised funds will be subject to ongoing notification requirements as they change over time. The consultation also notes that the FCA's Sustainability Disclosure Requirements ("SDR") (which set rules to stop exaggerated or misleading sustainability-related claims) do not apply to schemes domiciled abroad, but in order to ensure that all schemes marketed to UK investors are subject to the same requirements, the FCA will be working to understand options for extending the SDR to overseas recognised schemes.

Applying for Recognition

Following an equivalence determination, scheme operators in recognised jurisdictions may make an application for OFR recognition under Section 217A of the Financial Services and Markets Act 2000. The consultation sets out the data the FCA proposes to request from applicants and how it proposes to use that information. Given that the applicants will be established in a jurisdiction that already has been approved as equivalent, a proportionate approach will be taken to data collection, which will include basic details (name, address, legal structure and fund type, etc.), investment objectives, policy and strategy (including focus, if

any, on ESG factors), fees and charges, connected parties, marketing and distribution plans and characteristics of the units available to UK investors. For umbrella funds, this will include information at umbrella and sub-fund level.

Notifying Changes

As they occur within the lifecycle of a fund, the FCA wants to know about changes to OFR recognised schemes' most important features, chiefly in order to make sure that the schemes remain compliant with the conditions for recognition. Changes that will require notification prior to taking effect will include changes to legal structure, termination of a scheme in its home jurisdiction, home supervisory sanctions, suspension of dealing in the scheme's units and matters that would have a significant negative effect on UK investors such as a material increase in fees or change in redemption terms.

Enhanced Disclosures

The Government has decided that investors in schemes accessing the OFR will not be able to complain to the Financial Ombudsman Service ("FOS") or, in the event that the scheme is unable to meet its liabilities, access to the Financial Services Compensation Scheme ("FSCS"). The consultation's proposals include requirements to clarify this scope in financial promotions, the fund prospectus and in point of sale disclosures such as the key investor information document or KIID.

Next Steps

Feedback is due by 12 February 2024 and a final policy statement with final rules expected in the first half of 2024.
