



Accessing the UK market for EEA funds: the Overseas Funds Regime

Update following the FCA's July 2024
Policy Statement PS24/7



The Overseas Funds Regime ("OFR")

The UK Financial Conduct Authority's ("FCA") new Overseas Funds Regime ("OFR") will have implications for all European Economic Area ("EEA")¹ funds that want to market (or continue to market) into the UK. A number of UCITS (undertakings for collective investment in transferable securities) funds that are authorised and supervised in the EEA currently take advantage of the FCA's temporary marketing permissions regime ("TMPR"), that permitted funds which had been passported into the UK when the UK was a Member State of the EU to continue to market in the UK, if they applied to do so before the cut-off date on 31 December 2020.

- The FCA released Policy Statement PS24/7 "[Implementing the Overseas Funds Regime](#)" on 17 July 2024 (the "PS").
- The PS includes the FCA's summary of the responses to its Consultation Paper CP23/26 "[Implementing the Overseas Funds Regime](#)" (the "CP").

This briefing highlights key points managers of overseas funds should consider...



... on the changes from the Consultation Paper to the Policy Statement

The PS updates the proposals in the CP as follows:

- The new rules specify the information firms must submit to the FCA when applying for recognition. These requirements, shaped by the FCA's experience with UK fund authorisations and feedback from the CP23/26 consultation, are intended to simplify the recognition process while identifying outliers and funds with unusual characteristics.
- OFR fund operators must notify the FCA of specific changes to their funds, allowing the FCA to evaluate potential risks to UK consumers. As the FCA won't act as the primary supervisor for these funds, it anticipates minimal ongoing interaction with most OFR funds and their operators.
- Based on feedback, the FCA has revised some of the proposals in the CP. The final rules:
 - remove the proposal for a 30-day notification period for OFR fund changes before they could take effect in the UK. Instead, changes must be communicated 'as soon as reasonably practicable' following home state regulator ("HSR") approval or, if no HSR approval is required, communicated after the decision to implement a change
 - include more detail about the categories of changes that must be notified
 - incorporate guidelines on the additional details required in fund prospectuses and point-of-sale information
 - amend the applicable UK fund prospectus requirements for OFR funds from the previous broader proposal. The updated rule requires the inclusion of COLL 4.2.5R information only if it is compatible with the HSR approved prospectus, to ensure that there are no conflicts with HSR approved statements
 - provide that a fund will not be excluded from the OFR solely for having the same (or similar) name as a UK authorised fund, which will allow fund operators with both UK and OFR funds to have consistent naming across their product ranges.



...on the new gateway

¹ The EEA comprises the 27 EU Member States plus Iceland, Liechtenstein and Norway.

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- The OFR will be a new gateway for overseas funds wishing to market to UK retail investors.
- The PS sets out final rules on the recognition of overseas funds and schemes under the OFR.
- The streamlined application process will permit operators of non-MMF UCITS funds authorised in EEA states to apply to the FCA for OFR recognition under section 271A FSMA 2000.
- The FCA consulted on information it will need to obtain from fund operators to inform its recognition decisions, as well as details of changes that funds recognised under the OFR will need to notify to the FCA on an ongoing basis.
- The FCA is making changes to its Handbook so overseas funds can be recognised and firms are aware of the requirements for this new route to the UK market.



...on equivalence determinations

- The UK Government made a formal equivalence determination in relation to most EEA UCITS on 16 July 2024. That finding means that the UK Government considers UCITS authorised and supervised in the EEA are regulated in a manner equivalent to UK fund regulation and thus eligible for recognition under the OFR. The equivalence finding does not extend to money market fund (“**MMF**”) EEA UCITS. The UK Government plans to consider the equivalence of other jurisdictions and other EEA funds in due course.
- See our previous client briefing, [“UK Government publishes text of secondary legislation approving equivalence of all EEA states for purposes of Overseas Funds Regime \(“OFR”\)”](#).
- The UK Government may impose certain additional requirements on recognised funds as part of any equivalence determination under the OFR. Following the usual FCA consultation, new rules for OFR funds are being added to the FCA Handbook.



...on landing slots

- The gateway will open first for non-TMPR funds and then for TMPR funds. Fund operators with TMPR funds will be given landing slots in which to apply for recognition under the OFR alphabetically by fund manager name. The order of the opening of the gateway will be as follows:
 - non-TMPR EEA UCITS funds, September 2024
 - TMPR stand-alone EEA UCITS funds, October 2024
 - TMPR umbrella EEA UCITS funds, from November 2024, in alphabetical order by operator name
- OFR applications will be submitted using the FCA's Connect system and the FCA will have 2 months to approve or reject applications. Landing slots are open for 3 months and complete applications must be made during the allocated landing slot, otherwise the fund will be removed from the TMPR.
- The FCA updated its webpage [“Overseas Funds Regime: Update for firms” on 5 July 2024](#) to provide further information on the allocation of landing slots. The FCA will issue a direction to each fund operator in the TMPR, 8 weeks before the fund operator's landing slot will open, telling the fund operator how to apply. The direction will be binding.
- For funds currently in the TMPR, the FCA has issued a [direction](#) that fund operators must not apply for the fund to be a recognised scheme under section 271A of the Financial Service and Markets Act 2000 until the landing slot the FCA will allot to it by a further direction.
- The FCA updated its website [“Overseas Funds Regime: Update for firms” on 19 July 2024](#) to notify fund operators in the TMPR that it will use the information on the FCA Register to pre-populate OFR applications. Fund operators will not be able to edit the pre-populated information. The FCA emphasises the importance of fund data being stable and accurate prior to the start of the landing slot window.



...on change of operator during a landing slot window

- Once a landing slot direction has been issued to a fund, the FCA cannot consider any change of operator until the scheme's application for recognition has been processed. Once the scheme is recognised in the UK under the OFR, the operator can be changed.



...on addition of new sub-funds before and after a landing slot window

- The current ability of operators of EEA UCITS fund umbrellas that are in the TMPR to add additional sub-funds (provided those sub-funds were authorised before the UK withdrew from EU regulatory oversight on 31 December 2020) ends 2 weeks prior to the start of the fund umbrella's landing slot.
- During the landing slot, the fund umbrella operator must obtain authorisation of the fund umbrella and those of its sub-funds that are in the TMPR.
- Once a fund umbrella has been recognised under the OFR, new sub-funds, including sub-funds that were not in the TMPR can be added once more.



...on the application of sustainability disclosures requirements ("SDR") to OFR funds

- Initially the sustainability disclosures requirements ("SDR") regime will not apply to funds recognised under the OFR. The Government will consult on whether the SDR regime should be extended to OFR funds. If the Government does extend the regime, the FCA expects that it will need to consult on new sustainability rules to apply to OFR funds.



...on the application process, information and data requirements

- The FCA's webpage "[Overseas Funds Regime: Update for firms](#)" sets out the detail of the application process. The FCA intends to publish an "OFR how-to" guide, which will include further information on how to register to FCA's online Connect system and subsequent enrolment form, complete application forms and additional documentation or information to be submitted.
- Firms will be able to submit a recognition application, notification of changes (see below) and relevant documents through Connect, rather than by hard-copy or email. The FCA has announced that the online systems and forms will be operational for new schemes (those not in TMPR) from September 2024 and from October 2024 for schemes in the TMPR.
- The FCA final rules include notification requirements that are intended to enable the FCA to oversee OFR funds throughout their lifecycle, to maintain an up-to-date register and to assess whether OFR funds continue to meet the recognition conditions.
- The amount of information required in relation to overseas funds under the OFR is an increase on that currently required. It includes details of the fund, the fund's profile, information about fees and charges, characteristics of the unit/share classes, information about parties connected to the fund, and information about marketing and distribution.
- Fund names must be appropriate, clear, fair and not misleading. A fund's qualities or merits deriving from its name should be justifiable. A fund's name should not be inconsistent with its investment objective and policy and it should not mislead investors into thinking persons other than the fund operator are responsible for the fund.
- Provided a fund meets all other application requirements, the FCA will not reject an application on the basis of the fund having an identical name to a UK authorised fund. The FCA expects fund operators to take reasonable steps to ensure UK distribution channels for the fund will distinguish

between each fund's domicile to minimise the risk that UK investors might mistakenly select an OFR fund rather than a UK authorised fund with the same or a similar name.

- The FCA will charge an application and an ongoing periodic fee for each fund. Applications for OFR funds will be charged at £2,720 for a stand-alone fund and £5,440 for an umbrella fund. Periodic fees will be charged in line with those charged to UK UCITS, as set out in its FEES Sourcebook (FEES 4 Annex 4).



...on notification of changes

- Fund operators must notify the FCA of changes to an OFR fund.
 - If the change needs to first be approved by the fund's HSR, notification should be submitted as soon as reasonably practicable, following obtaining approval.
 - For all other changes, a notification should be submitted as soon as reasonably practicable after the decision to make the change has been reached or the event has occurred.
- The following changes must be notified:

To be notified via Connect:

- changes to a scheme's name
- changes to a scheme's legal structure
- changes to the scheme's LEI and unique indicators at fund level
- a fundamental change to a scheme's investment objective, policy or strategy
- a change to a benchmark which tracks or compares fund performance
- matters that would likely cause significant negative effect on UK investors
- a scheme's target investors in the UK
- a material change in the scheme's minimum investment amount for UK investors (if the minimum investment will equal or exceed £50,000)
- replacement of the fund operator
- appointment or replacement of connected third parties
- change of name of the fund operator or any connected third party
- changes of address of the fund operator, depositary, the UK representative of the operator or UK place for service of notices
- UK de-recognition of a scheme or sub-fund which remains in existence in its home jurisdiction but the operator no longer wants to market in the UK
- termination of a scheme or a sub-fund in its home jurisdiction (there will be a separate Connect form)

To be notified via email:

- expected or actual contravention by the fund operator of any FSMA requirement
- supervisory sanctions imposed by the scheme's HSR on the operator, or the scheme itself, as well as any voluntary restrictions on activities the operator may agree
- a suspension of dealing in the units/shares of the scheme

This list of changes is non-exhaustive and indicative. The FCA expects fund operators to make a judgment on whether a change is 'fundamental' or 'significant'.



...on enhanced disclosure requirements

Redress schemes

- The rules require investors to be informed whether an OFR fund is covered by the UK Financial Ombudsman Service (“**FOS**”) or Financial Services Compensation Scheme (“**FSCS**”).

Financial Promotions

- The rules require UK financial promotions for OFR funds to include information noting that the FOS is unlikely to be able to consider complaints about the operator or depositary of the fund and claims against the operator are unlikely to be covered by the FSCS.

Prospectuses

- OFR funds must have an English-language prospectus, setting out the terms on which units or shares in the fund are offered and what redress arrangements apply if the fund is not covered by the FOS or the FSCS.
- The FCA's rule on the inclusion of information stemming from requirements for UK authorised retail funds in an OFR fund's prospectus provides that the information should only be included in the prospectus to the extent it is compatible with the scheme's HSR approval requirements.
- In the CP the FCA proposed that OFR fund operators must provide a prospectus complying with COLL 4.2 requirements, including the specified contents list. Presumably the usual practice of a UK specific supplement to the prospectus will be acceptable, being more practical for the OFR fund operator and clearer for investors. Some respondents to the consultation raised concerns, noting that COLL 4.2.5R requires information not required in certain jurisdictions and potentially conflicting with home-state regulatory disclosures. To address these concerns, the FCA revised COLL 9.5.5R to specify which UK requirements apply to OFR fund prospectuses. The revised rule requires including information from COLL 4.2.5R only if it does not conflict with the HSR approved prospectus, ensuring no conflicts with statements already approved by the HSR, such as the fund's investment objectives, policies, or strategies.
- OFR funds prospectuses must explain any rights of a UK investor:
 - to an alternative dispute resolution (“**ADR**”) process in the fund's jurisdiction (or the home jurisdiction of the operator or depositary, if different)
 - to claim compensation in the fund's home jurisdiction (or the home jurisdiction of the operator or depositary, if different), if any of those entities are unable to meet their obligations to return money to the investor

and where further English language information about the operation of any ADR or compensation scheme may be found.

The FCA provided additional guidance relating to the information in disclosures for fund prospectus' and point of sale information.

- The FCA requires supplementary information for OFR funds includes similar disclosure statements to those that will appear in the prospectus.



...on refusal of recognition, suspension or revocation of recognition, and public censure

- The FCA can refuse recognition orders and suspend or revoke recognition orders on various grounds, including protecting the interests of UK participants (or potential UK participants). The FCA may publicly censure fund operators it considers to have breached OFR regulatory requirements.



...on UK facilities agents

- The FCA requires OFR fund operators to continue providing facilities to UK investors. Copies of fund documents – its constituting instrument, its prospectus, the most recent manager's reports and accounts, and its key investor information document – must be available on demand by any existing or prospective investor, together with information about how to check the latest unit prices.
- Existing unitholders must be able to use those UK facilities to give instructions to buy and sell units, update essential information (such as a change of address) and make complaints.
- The FCA accepts these facilities can be provided without a physical presence in the UK, at least in cases in which contractually all interactions take place via electronic media, or if the customer has individually consented to such arrangements (which would typically occur during the onboarding process).
- Fund operators can rely on pre-existing contractual consent for communicating with investors through electronic media.



...on financial promotion of OFR funds

- If an OFR fund operator is not a UK authorised person, any financial promotion they issue must be approved by an authorised person (unless an exemption under the Financial Promotions Order applies).
- The rules require UK financial promotions for OFR funds to include information noting that the FOS is unlikely to be able to consider complaints about the operator or depositary of the fund and claims against the operator are unlikely to be covered by the FSCS.



...on Money Market Funds ("MMFs")

- All EEA MMFs will remain in the TMPR, even if they are in an umbrella fund and all the other sub-funds have been recognised under the OFR. The TMPR comes to an end on 31 December 2026. The UK Government is considering whether to find equivalence for EEA MMFs. If this is not completed in time, the TMPR may be further extended to avoid any cliff edge risk to these products.
- The CP did not extend to consulting on what information the FCA might require from EEA MMFs should the UK Government make a future equivalence determination in relation to those funds.



...on Exchange-traded Funds ("ETFs")

- The FCA recognises that ETFs are marketed and distributed to investors differently to other funds, and they also need to meet certain requirements to be admitted to trading. The FCA sought feedback on whether the proposals for data collection and notification of changes are appropriate for ETFs.
- When applying for recognition of an ETF under the OFR, fund operators are required to use the same application form as other funds, providing the same information as other funds. As questions on interpretation may arise, the FCA will provide additional support through its "OFR how-to" guide.



Next steps

The FCA has issued information about allocating landing slots to fund operators that plan to submit applications for OFR recognition. You can find your landing slot [here](#).

You should review your firm's entry and records on the FCA Register to ensure that the contact details and list of funds recorded are correct. You can submit corrections to the FCA by emailing recognisedcis@fca.org.uk.



How Eversheds Sutherland can help

Since June 2016, our lawyers, consultants and International Funds Net ("**FundsNet**") team have advised various institutions passporting into the UK from EU Member States and passporting from the UK into the EU on Brexit planning and Brexit related issues.

To help overseas asset managers stay up-to-date on the anticipated commencement of the UK OFR, we have created a [timeline](#), including key dates relating to the TMPR and the implementation of the OFR.





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