

Implementing the Overseas Funds Regime – FCA Publishes Final Rules

AUGUST 07, 2024

Key Takeaways

- The FCA has published its final rules and guidance necessary to implement the Overseas Funds Regime (**OFR**).
- The gateway for eligible funds to apply for recognition under the OFR is scheduled to open in September for new schemes and in October for funds currently in the temporary marketing permissions regime (**TMPR**).
- The new FCA Handbook rules and guidance to support the implementation of the OFR are in force from **31 July 2024**.

Background

As noted in our earlier OnPoint¹, following the end of fund “passporting” rights as a result of Brexit, the temporary marketing permissions regime (**TMPR**) was created to allow EEA undertakings for collective investment in transferable securities (**UCITS**) that used the EEA marketing passport to market to UK retail investors to continue to do so for a limited period post-Brexit. The pre-Brexit arrangements and **TMPR** are now being replaced by the Overseas Funds Regime (**OFR**), a process for recognising overseas schemes implemented under new s271A FSMA of the Financial Services and Markets Act 2000 (**FSMA**).

On 30 January 2024, the UK government announced its first equivalence decision under s271A of FSMA, finding EEA states to be equivalent under the OFR. The decision applies to EEA UCITS, except those that are also money market funds.

In December 2023 the FCA issued Consultation Paper CP23/26 (**CP 23/26**)² setting out proposed changes to the FCA Handbook so that overseas funds can be ‘recognised’ and then marketed in the UK. The FCA consulted on:

- information that OFR fund operators will need to submit to inform the FCA’s recognition decision;
- ongoing change notification requirements for OFR funds;
- disclosure requirements for OFR funds to inform investors about the possible lack of access to the UK Financial Ombudsman Service (**FOS**) or Financial Services Compensation Scheme (**FSCS**), and whether any overseas compensation or alternative dispute resolution schemes are available;
- procedures for suspending and revoking recognition of an OFR fund or censuring its operator or depositary; and
- providing UK facilities for investors to easily receive information and provide instructions concerning their investment.

Final Rules – changes from proposals in CP 23/26

On 17 July 2024, the FCA published Policy Statement PS24/7: Implementing the Overseas Funds Regime³, setting out the final rules and guidance necessary to implement the OFR.

The final rules are being implemented largely as consulted on but with some important changes. The FCA has:

- removed the proposed 30-day period between notifying the FCA of changes to OFR funds and the time when those changes could take effect in the UK;
- provided further explanation and clarification as to which categories of changes should be notified;
- included guidance relating to additional information in disclosures for fund prospectus' and point of sale information; and
- clarified which UK fund prospectus requirements apply to OFR funds.

Information and documents to be provided as part of the application

The application form, which is to be completed via the FCA's Connect system, requires the operator that is applying for recognition of the scheme to provide documents and information as follows:

- **Information identifying the fund** – for example: the fund name, including sub-fund names, LEI, including sub-fund LEIs; country / jurisdiction of fund domicile; legal structure and fund type; name and contact details of fund operator.
- **Information on the scheme's profile** – for example: investment objective, policy and strategy as stated in the prospectus; value of total assets under management at a recent date and the proportion specifically attributable to UK investors; fund category and main categories of asset class; information on the use of derivatives; geographic location of portfolio assets; target investors (retail, institutional or both); and any particular ESG focus.
- **Information on fees and charges at scheme and share class level** – namely the initial and exit/redemption charges payable to fund operator/its associate; ongoing charges figure; performance fees; any other relevant fee or charge; and the amount of annual management charge retained by the management company/operator.
- **Information regarding the characteristics of the scheme's units/share classes** – namely the name / designation; identifiers, including LEI or ISIN; minimum initial investment amount; whether tokenised or not; and whether accumulation or income .
- **Information regarding parties connected to the scheme** – for example: management company/operator; depositary; delegated portfolio manager, and any sub-delegates appointed; UK representatives; UK authorised person approving financial promotions on behalf of the fund.
- **Information about the marketing and distribution of the scheme** – namely details of any promotional payments to entities associated with marketing or distributing the fund.

Information also needs to be provided on arrangements for handling complaints about the product and that compensation might be available from the FSCS if the firm cannot meet its liabilities in respect of the product.

The FCA adds that certain information may be difficult to obtain and plans to allow operators to provide estimates for some items.

Where a recognised fund has an identical name to a UK authorised fund, the FCA has confirmed that this will not in itself cause the FCA to reject the application, provided the fund meets all other application requirements.

Notification of changes

In CP 23/26, the FCA proposed that OFR fund operators should notify it of changes to a fund that are fundamental or material to assess whether such changes would impact UK investors.

The FCA has provided further explanation on which categories of changes should be notified. Annex 3 to the Policy Statement includes an indicative list of changes and events that it expects to be notified of, including whether notification should be made via the Connect system or via email.

Examples of notifiable changes include: changes relating to the scheme, such as changes to the operator or depositary; any decisions to terminate or wind up the scheme or if the OFR fund operator decides to cease marketing the scheme in the UK; changes to the fund's name; changes to the fund's legal structure; and a fundamental change to a fund's investment objective, policy or strategy.

The FCA Handbook includes a further provision that OFR fund operators must "*provide to the FCA such information as the FCA may direct, and in such form and at such times as it may direct. The FCA will publish such directions on the FCA website*". It is not clear what information this might include.

The FCA has also revisited the timing of notification, confirming that OFR fund operators will not require approval from the FCA for such changes, and need not give advance notification where that is impractical to provide. For changes that the operator has identified as notifiable:

- where that change needs to be approved by the fund's home regulator, the operator should notify the FCA as soon as reasonably practicable after that approval has been obtained; and
- in other cases, the operator should notify the FCA as soon as reasonably practicable after the decision to make the change has been reached or the event has occurred. In each case the notification to the FCA should, if possible, happen before the change takes effect in the UK, although the FCA recognises this may not be possible.

FOS/FSCS Disclosure

The FCA has confirmed that prescribed disclosures relating to FOS and FSCS coverage should be included in a UK supplement to the OFR fund's prospectus. The prescribed redress disclosures in the prospectus and the supplementary point-of-sale information can include additional information on home state compensation frameworks.

UK Facilities

COLL 9.5 (OFR recognised schemes) of the FCA Handbook provides that OFR fund operators must maintain facilities for any person in the UK to inspect (free of charge) up-to-date copies in English of various documents including the instrument constituting the fund (as amended from time to time), the prospectus, the annual report and the key investor information document or equivalent disclosure document. Further documents must be made available for unitholders of any scheme in the UK.

OFR fund operators are able to provide these facilities electronically provided certain conditions are fulfilled. The FCA said that it will not require OFR fund operators to ask for explicit individual consent from new investors before providing online facilities, where the operator is already communicating electronically with existing investors. Similarly, where an existing investor has already consented to receiving communications from the operator through electronic media, that consent is sufficient for the purpose of the new rule.

Next steps

Fund operators wishing to make use of the OFR should start to familiarise themselves with the information that will need to be provided and the relevant timings. In May 2024, the FCA together with HM Treasury, published a roadmap setting out the key dates and processes for operators of overseas funds to apply for OFR recognition.

Fund operators should also check the FCA's OFR webpage for any updates.

Footnotes

¹ Our OnPoint is available [here](#).

² CP 23/26 is available [here](#).

³ PS 24/7 is available [here](#).

COLL 9.5.10G

The OFR Roadmap is available [here](#).

The FCA's OFR webpage is available [here](#).

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