

FCA Issues Final Rules and Guidance on the Overseas Funds Regime

Following our recent client updates¹, the FCA issued their Policy Statement [PS24/07](#) on Implementing the Overseas Funds Regime ("OFR") on 17 July 2024. While the FCA have yet to publish the "OFR how-to guide" and relevant application forms, the Policy Statement sets out the final rules and guidance necessary to implement the OFR.

Background

The OFR is a new regime which allows streamlined access for overseas funds to market to UK retail investors. The OFR will be open to both EEA UCITS ("UCITS") which are currently marketing in the UK under the Temporary Permissions Regime ("TMPR") and to new UCITS not currently marketing to retail investors in the UK. In this update, we will focus on the OFR as it relates to the marketing of Irish and Luxembourg domiciled UCITS in the UK.

Timing

The following are the key dates in the implementation of the OFR:

| | |
|-----------------------|--|
| July 2024 | The new FCA rules and guidance will come into force on 31 July 2024. |
| September 2024 | The OFR will open to new UCITS, i.e. those not already in the TMPR, from September 2024. |
| October 2024 | The OFR will open to standalone UCITS currently in the TMPR from October 2024. |
| November 2024 | The OFR will open to umbrella UCITS currently in the TMPR from November 2024. |

UCITS funds 'recognised' under the OFR ("OFR Funds") can be promoted in the UK in the same way as funds established in the UK.

The new rules set out the information required to be submitted to the FCA as part of an application for recognition. This information will help the FCA to spot outliers and funds with unusual features and where necessary refuse applications for such funds, although it is not anticipated that this would be common.

As noted in our previous updates, the OFR will not be available to UCITS that have been authorised as money-market funds ("MMFs"). However, as long as the TMPR remains in place, MMFs that are recognised under it can continue to be promoted. The UK Government is developing a dedicated regime for overseas MMFs and consulted on this in December 2023.

¹ <https://maples.com/en/knowledge-centre/2023/12/uk-update-fund-operators-need-to-prepare-for-new-uk-overseas-funds-regime>

<https://maples.com/en/knowledge-centre/2024/6/update-on-the-uks-implementation-of-the-overseas-funds-regime-for-ucits>

Applying for Recognition

The OFR is different to the TMPR and previous passporting arrangements as UCITS must now apply to the FCA and be assessed for recognition. In order to assess applications for recognition under the OFR, the FCA must collect certain data to evaluate potential risks they consider could cause harm to UK investors.

Applications under the OFR are to be made via the FCA's [Connect](#) system. Each fund operator will need to register a user on the system to complete an enrolment form on behalf of the fund operation.

Disclosure Requirements

Outlined below is the key data to be provided as part of the application.

| Category of Information | Specific Information |
|-------------------------|---|
| Identifying Information | Fund and sub-fund names |
| | PRN (for UCITS in the TMPR) |
| | LEI codes |
| | Fund domicile |
| | Legal structure and fund type |
| | Name and contact details for fund operator |
| Profile Information | Investment objective, policy and strategy |
| | Value of total AUM and the proportion specifically attributable to UK investors |
| | Details of any suspension of dealing in the past 5 years |
| | Fund category and main categories of asset class (lists will be provided in the application form) |
| | Information on use of derivatives |
| | Geographic location of portfolio assets |
| | Use of benchmarks |
| | Whether actively or passively managed |
| | Whether the fund is an ETF or not |
| | Dealing frequency |
| | Target investors (retail, institutional or both) |
| | Any particular ESG focus |
| Fee Details | Initial and exit charges |
| | Ongoing charges |
| | Performance fees |
| | Any other relevant fees |

| | |
|--|--|
| | Amount of annual management charge retained by the management company / operator |
| Share Class Characteristics | Name |
| | Security identifiers |
| | Minimum initial investment |
| | Whether tokenised or not |
| | Distribution policy (accumulation or income) |
| Information on Key Parties | Management Company |
| | Depositary |
| | Portfolio Manager and any sub-delegates |
| | UK representatives |
| | UK-authorized person approving financial promotions on behalf of the fund |
| | Any sponsor |
| Marketing and Distribution Information | Details of UK financial promotion approver and details of any promotional payments |

Enhanced Disclosures Regarding Lack of Access to FSCS and FOS

The OFR will operate outside the scope of the Financial Ombudsman Service ("FOS") and the Financial Services Compensation Scheme ("FSCS"). As such, UK investors may not have access to these redress schemes.

The enhanced disclosures required under the OFR will require fund operators to inform UK investors of the lack of access to the UK redress schemes (FSCS and FOS) and the availability of any alternative dispute resolution or compensation schemes in the UCITS home jurisdiction. Fund operators may make these disclosures in the prospectus or by way of a separate UK supplement to the prospectuses. Disclosures must be clear and accurate.

Application Requirements

Equivalence: The fund and its jurisdiction must be deemed equivalent by HMS Treasury. UCITS, with the exception of MMFs, have been deemed equivalent.

Fund Names: OFR Fund names must be appropriate, clear, fair and not misleading and

names should not be inconsistent with the fund's investment objectives and policies. Provided that a fund meets all other application requirements, its application will not be rejected on the basis of having an identical name as a UK-authorized fund. However, reasonable steps must be taken to ensure that the UK distribution channels will make the funds domicile clear.

ETFs: ETFs must use the same application form as other UCITS and provide the same categories of information.

Fees: The FCA will charge an annual fee and a periodic ongoing fee. Fees payable will be in line with those charged for UK-authorized funds.

The application fee will be £5,440 for umbrella structures and £2,720 for standalone UCITS, both slightly higher than those anticipated in the consultation paper.

Periodic fees for an umbrella are calculated based on the number of its sub-funds, however there are no separate application or periodic fees at sub-fund level. Fees are only

paid for standalone schemes and at the umbrella level.

Fees are calculated as follows:

| Total number of funds / sub-funds | Fee (£) |
|-----------------------------------|---------|
| 1-2 | 80 |
| 3-6 | 200 |
| 7-15 | 400 |
| 16-50 | 880 |
| >50 | 1760 |

UK Facilities: Operators of OFR Funds must continue to provide UK facilities for investors to easily receive information and provide instructions concerning their investment.

These facilities may be provided electronically where the prospectus states that the operator will normally communicate with all investors and their representatives through such a medium; and where investors have consented to fund operators communicating with them in this way.

Where these conditions are not met, operators must also provide such facilities at a physical address in the UK open to members of the public during business hours. Details of the facilities services are to be provided in the prospectus or separate UK country supplement.

Financial Promotions: Financial promotions under the OFR will require fund operators to have their marketing materials approved by a UK-authorized person unless they fall within an exemption under the Financial Promotions Order.

Fund operators will need to identify and appoint a suitable UK-authorized person to approve their financial promotions and ensure they comply with the UK rules and standards.

Language: Any documents accompanying an application for recognition must be in English or accompanied by an English translation.

Ongoing Obligations

The FCA will monitor OFR Funds on an ongoing basis and may suspend or revoke recognition where:

- the fund no longer meets the conditions for recognition;
- requirements relating to the fund or its operator are no longer satisfied; or
- it is desirable to do so to protect the interests of investors or potential investors in the UK.

The OFR will require fund operators to notify the FCA of certain changes to the fund that may affect its recognition status or the interests of UK investors.

Fund operators will need to monitor and report any changes to the fund and its key parties and be prepared for the possibility of suspension or revocation of recognition by the FCA. However, suspensions and revocations are expected to be rare.

Depending on the nature of the change, notifications may be made either through the FCA's Connect system or via email, as follows:

Changes to Be Made via the Connect System

- Fund's name
- Fund's legal structure
- LEIs and unique indicators at fund level
- Fundamental change to a fund's investment objective, policy or strategy (For example, a change of the predominant investment from equities to bonds)
- Any change to a benchmark against which fund performance is tracked or compared
- Matters that would be likely to cause a significant negative effect on UK investors at fund or class level

UPDATE

- Fund's target UK investors – whether retail, institutional or both – at fund or class level
- Material change to fund's minimum investment applicable to UK investors at class level. Specifically, if the minimum investment will equal or exceed £50,000
- Replacement of the fund operator
- Appointment or replacement of connected parties: depositary, delegated investment manager, fund sponsor, UK representative of the operator or the UK financial promotions approver
- Change of name of the fund operator or any connected party
- Change of address of the fund operator, depositary, the UK representative of the operator or the place in the UK for services of notices
- A request to de-recognise the stand-alone scheme / umbrella / sub-fund when it will remain in existence, but the operator no longer wishes it to be marketed in the UK
- Termination of a stand-alone scheme / umbrella / sub-fund in its home jurisdiction

Changes to Be Made via Email

- The fund operator becomes aware that it has contravened or expects to contravene any requirement imposed on it by FSMA
- Supervisory sanctions imposed on the operator / fund itself by the home state regulator(s), once in the public domain, any restrictions on their activities that have been voluntarily agreed by them
- Suspension of dealing in fund's units / shares

Timing of Notifications

Notably the FCA has decided to remove the 30-day notification period for changes as proposed in the consultation paper. Where a change needs to be approved by the home NCA, the fund operator should notify the FCA as soon as reasonably practicable after that approval has been obtained.

For any other changes the fund 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. Any notification made should include the date at which any change takes effect.

What's next?

In anticipation of the implementation of the OFR, fund operators should check that the details held by the FCA are correct and up to date.

The new FCA rules and guidance will come into force on 31 July 2024. The FCA will publish an "OFR how-to guide" providing further guidance on information expected as part of the application process and clarifying some terms and definitions in the dataset.

The UK government is expected to consult on whether the UK Sustainability Disclosure Requirements ("SDR") should be extended to apply to OFR Funds in Q3 of 2024. If a decision is made to extend the SDR to OFR Funds, it is expected that any legislation would come into force in the second half of 2025.

The UK Government and the FCA are creating a new framework for disclosure requirements for retail-facing financial services products. Under this framework, the FCA will prepare and consult on a new retail disclosure regime for Consumer Composite Investments ("CCIs") which will replace all existing requirements.

OFR Funds will be required to follow FCA rules under the new UK retail disclosure framework from 1 January 2027 at the latest.

How the Maples Group Can Help

The Maples Group GRS supports UCITS² and AIFMs² in their multi-market distribution strategies by providing an integrated global network of experts coordinated by a dedicated central team supporting all legal and regulatory

² Domiciled in Ireland and Luxembourg

aspects governing the cross-border marketing of investment funds on both a private placement and public offer basis.

Further Information

If you would like further information, please liaise with the below or your usual Maples Group GRS contact.

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