



# The Overseas Funds Regime – The New Route to Market EEA UCITS Funds in the UK

On 31 December 2020, the United Kingdom of Great Britain and Northern Ireland (UK) ceased to be part of the European Economic Area (EEA) UCITS cross-border passporting regime.

In this article we look at the impact that decision had on EEA funds intending to market to UK investors, and the moves UK authorities have made to transition to a new regime for overseas funds operating in the UK.

## Immediate impact

The immediate impact of leaving the passporting regime was that EEA UCITS were no longer free to market to UK investors unless they were admitted to the UK Financial Conduct Authority's (FCA) temporary marketing permissions regime (TMPR).

The TMPR allows those EEA funds that were being marketed in the UK as of 31 December 2020 to continue to be marketed in the same manner as they were before that date (subject to having notified the FCA).

As the name suggests, this is only a temporary measure and the UK's intention has always been to replace the passporting arrangements with a permanent regime for recognising overseas funds, allowing them to continue to market to UK investors.

## Progress to the Overseas Funds Regime

Prior to December 2020, EEA UCITS automatically became 'recognised' funds in the UK when the fund's national competent authority (NCA) notified the FCA under [section 264](#) of the Financial Services and Markets Act (FSMA). Once recognised, the funds could be marketed to all investors in the UK.

Once this ability was removed, the only route to recognition was via FSMA [section 272](#), however this regime was designed for the recognition of individual funds originating outside the EEA and requires an in-depth assessment by the FCA of the individual fund (and maybe an assessment of the operator and depositary as well). As part of this process the FCA must satisfy itself that each fund satisfies its tests relating to relevant legislation and affords adequate protection to investors.

Given that there were, as of January 2020, around 8,000 funds benefitting from the TMRP into the UK, the UK government recognised the need for a proportionate regime for the recognition of EEA funds and in 2018 it announced that it would review the regime and bring forward legislation as necessary.<sup>1</sup>

In March 2020, the UK Government published a consultation on the Overseas Funds Regime (OFR), designed to establish a more appropriate basis for recognising overseas funds, including EEA UCITS.

As a result of the consultation, the [Financial Services Act 2021](#) introduced FSMA sections 271A – 271S covering rules relating to recognised overseas schemes. The regime includes new provisions that grant the UK government the ability to recognise jurisdictions' regulatory regimes as equivalent to the UK's and gives the FCA powers to recognise individual schemes and grant permission to market to UK investors.

The amendments came into force on 23 February 2022.

### Implementing the OFR

On 4 December 2023, the FCA published Consultation Paper CP23/26: Implementing the Overseas Funds Regime.<sup>2</sup> The FCA also announced that the UK government expected to extend the TMRP to 31 December 2026, to allow time for operators to apply for recognition of their funds, and for the FCA to approve those applications.

On 30 January 2024, the UK government announced that it had concluded that EEA UCITS regimes were equivalent to the UK UCITS regime and that a statutory instrument writing that decision into law would be published “when parliamentary time [would] allow.” However, this recognition would not include EEA UCITS that operate as Money Market Funds (MMFs) under the EEA Money Market Funds Regulation.

On 1 May 2024, HM Treasury and the FCA published “A roadmap to implementing the Overseas Funds Regime”<sup>3</sup> (the Roadmap) detailing the predicted process leading up to the closure of the TMRP (extended from December 2025 to December 2026).

In addition to the Roadmap, the FCA published a [webpage](#) on the OFR process which includes a table of dates for the FCA's landing slots for EEA UCITS operators to submit application forms for the recognition of their funds.

On 13 May 2024, the aforementioned legislation recognising EEA UCITS rules as equivalent to UK rules was approved by the UK parliament, with the new law coming into effect on 16 June 2024.

On 17 July 2024, the FCA published Policy Statement PS24/7: Implementing the Overseas Funds Regime – Feedback to CP23/26 and final rules.<sup>4</sup>

### The OFR for EEA UCITS (but not MMFs)

#### Getting recognised

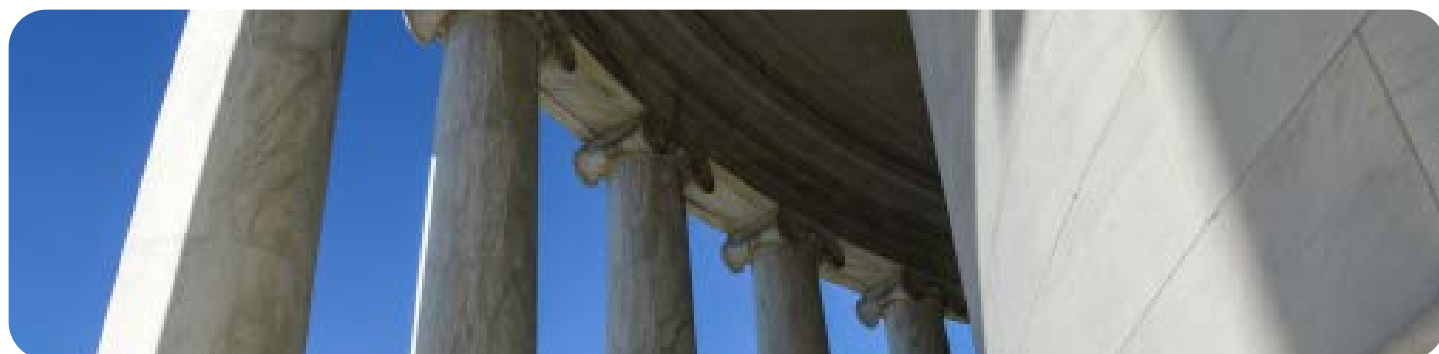
PS24/7 details the new elements of the FCA Handbook relevant to recognised EEA UCITS. The bulk of the rules appear in the Collective Investment Schemes sourcebook (COLL) Chapter 9, with other amendments to the Glossary of Definitions, the Fees manual, the Conduct of Business sourcebook, the Decisions Procedure and Penalties manual, the Enforcement Guide, and the Perimeter Guidance manual.

Application forms will be available on, and submitted via, the FCA's Connect online system.

When applying for recognition, operators will be required to provide the FCA with documents (defined as the instrument constituting the fund, any instrument amending the instrument constituting the fund, the latest prospectus, the EEA key investor information document (KIID), and the latest annual and half-yearly reports<sup>5</sup> – all documents need to be in English, or accompanied by an English translation, and certified as true copies by the operator<sup>6</sup>) and also include information covering<sup>7</sup>:

- (a) The identity of the scheme;
- (b) The scheme's profile;
- (c) The scheme's fees and charges;
- (d) Characteristics of the scheme's units;
- (e) Parties connected to the scheme; and
- (f) The proposed marketing and distribution arrangements for the scheme.

With respect to the prospectus, this must comply with various parts of COLL 4.2 (Pre-sale notifications) including the provision and filing of the prospectus (COLL 4.2.3 R), the provision and filing of the prospectus of a master UCITS (COLL 4.2.3 AR), and false or misleading prospectus (COLL 4.2.4 R).





The prospectus itself must contain the information required by COLL 4.2.5 R (Table: contents of the prospectus), in so far that they are compatible with the prospectus requirements of the fund's Home State.

With respect to fund names, in CP23/26 the FCA suggested that no fund will be recognised if its name is the same as an existing UK fund. However, in PS24/7, the FCA states that this will not be the case, so long as the operator has "taken reasonable steps to satisfy itself that the UK distribution channels for the fund will make each fund's domicile sufficiently clear."

From the information provided, the FCA will be looking at the key features of the fund, including its investment objective, policy and strategy, its target UK investors, and its past performance.

Annex 3 of PS24/7 contains further detail of the information requirements for recognition, broken down into the following categories:

- Information identifying the fund;
- Information on the fund's profile;
- Fees and charges at fund and unit/share class level;
- Characteristics of unit/share classes to be promoted in the UK;
- Name and legal entity identifier (LEI) of parties connected to the fund; and
- Information about marketing and distribution.

Operators should expect the FCA to thoroughly review the information provided. Incomplete applications will be rejected although the FCA is obliged by FSMA 271G (7) to inform the operator what information is needed to complete the application if resubmitted.

Although recognised funds will not be subject to UK value assessment requirements, the FCA said in CP23/26 that it will be looking to see if any of a fund's annual management fee is being used to pay for services that may not add value to investors, with any fees that are not justifiable potentially leading to the FCA refusing recognition.

The FCA has stated that it will also want to know if any parties associated with the operation of the fund have been subject to any regulatory sanctions. Again, this could potentially lead to a refusal to recognise if the FCA considers it desirable to do so in order to protect the interests of participants or potential participants in the fund, in the UK, as required by FSMA 271G (4).

Operators will have to maintain facilities in the UK where the instrument of incorporation, prospectus, latest annual and half-year reports, and KIID can be inspected. Facilities must also be in the UK for unitholders to deal in units of the fund, including provision of information for the register, and for the lodging of complaints. The facilities can be either the operator's offices in the UK (if it has any) or can be outsourced to a business located in the UK.

However, operators will be able to provide all the above facilities electronically if i) the prospectus says it will do so, and ii) unitholders have consented to the operator communicating with them in this way.

The FCA says financial promotions relating to units in an OFR recognised scheme will need to be approved by a permitted approver (as defined in the FCA Handbook Glossary) unless a financial promotion exemption applies. As a result, the FCA will want to know the identity of the UK financial promotion approver. The FCA will also want to know how the UK financial promotion approver is paid.

EEA UCITS that underly ETFs will be treated in the same way as other EEA UCITS applying for recognition, however the FCA says that it recognises "there may be questions of interpretation" and it will be providing additional support through a planned "OFR how-to-guide."

The FCA has a maximum of two months, upon receiving all required information, to confirm that a fund has been recognised. This is in line with the authorisation time limit for UK UCITS. It should be noted that, for UK UCITS, the two month period does not start until the FCA confirms that it has all the information it requires.

### **SDR**

The UK Sustainability Disclosure Requirements and labelling regime (SDR) does not currently apply to OFR funds. As a result, funds with names that comply with EEA sustainability-related requirements, that do not apply the SDR requirements and thresholds relevant to fund labelling, will not be refused recognition on that basis.



However, the UK government has announced that it intends to consult on the application of the SDR to OFR funds in the second half of 2024. More information on the UK government's plans are available in the Roadmap.

### Changes and terminations

FSMA sections 271I and 271J give the FCA the powers to set rules for changes.

271J covers changes to the fund itself and the FCA makes it clear that it wants to be notified of changes to pretty much everything in the original application, plus material events like the suspension of the fund, its termination or withdrawal from the UK market.

Section 271I covers changes to the operators of the fund, including the depositary, UK representatives, offices, etc.

Changes under both sections must be advised to the FCA "as soon as reasonably practicable." The FCA plans to provide further information on the notification process on its website. The rules state that notifications will either be via email to a subject specific email address or through submission of a form on Connect.

Where an operator requests the withdrawal of recognition, the rules state that the operator should give UK investors adequate notice before the request takes effect.

### Complaints and compensation

UK investors will need to be told that, even though a fund is recognised by the FCA, and its home jurisdiction is deemed equivalent by HM Treasury, the two key protections afforded to investors in the UK, the Financial Services Compensation Scheme (FSCS) and the Financial Ombudsman Service (FOS), may not be available.

The FCA's intention is for operators to make it clear to consumers whether or not they can access the FOS and FSCS in relation to an investment in an OFR recognised scheme. Where the FOS and FSCS are not available to investors, the FCA wants consumers to be informed about whether or not they can access redress arrangements outside the UK.

The rules require the following information to be made available to UK investors:

- FOS
  - Whether FOS will consider complaints against the fund, its operator or depositary; and
  - If an alternative dispute resolution mechanism is available to UK investors in the fund's Home State.
- FSCS
  - That the failures by the operator and depositary are unlikely to be covered by the FSCS; and
  - If an alternative compensation scheme is available to UK investors in the fund's Home State.

The required information can be included within the fund documents or as a supplement.

### Fees

Operators applying for recognition will be charged an FCA application fee based on the structure of the EEA UCITS, in-line with the fee charged to UK UCITS applications, as follows:

- Stand-alone scheme: GBP 2,720
- Umbrella scheme: GBP 5,440

The FCA has stated that the application fee for schemes currently in the TMPR will be fixed until the end of the TMPR to ensure all applications are charged the same rate, regardless of any potential increase to the UK application fee in 2025 or 2026.

There are no fees for subsequent alterations, the addition of sub-funds, termination, etc.

The FCA's annual fees for recognised EEA UCITS remain in-line with those charged to UK UCITS and are calculated based on the number of recognised funds/sub-funds as of 31 March. Charges for the year to 31 March 2025 are:

- Total funds/sub-funds:
  - 1-2: GBP 80
  - 3-6: GBP 200
  - 7-15: GBP 400
  - 16-50: GBP 880
  - >50: GBP 1,760

### Going forward

The new FCA Handbook rules and guidance to support the implementation of the OFR came into force on 31 July 2024, however the FCA will not accept applications to recognition until 2 September 2024 for funds not currently in the TMPR, with stand-alone schemes in the TMPR being invited to apply for recognition from 1 October 2024 and umbrella schemes, in alphabetical order, from 1 November 2024.

The FCA states that it will contact operators eight weeks prior to their landing slot opening. Contact will be made via email to the operator's Chief Compliance Office. It's therefore essential that operators ensure their details are correct on the FCA register (see Checklist below).

The FCA's OFR webpage contains the table of landing slots.<sup>8</sup> The current plan is to receive all applications prior to the end of September 2026.

Operators that wish to apply for fund recognition are urged to review the OFR webpage on the FCA website. This will be updated as necessary and operators should consider registering for FCA update notifications, ensuring that they are aware of any changes as they happen.

The FCA will not be publishing the forms prior to their release on Connect, however the information operators will be expected to provide is detailed in Annex 3 of PS24/7.

Operators that do not apply for recognition will have their permissions to market their funds in the UK removed at the end of their landing slot. Although that does not prevent UK investors from continuing to hold shares/units in the funds affected, they will not be able to hold those funds in tax efficient vehicles such as ISAs. Operators running those funds will not be able to market them to UK investors.

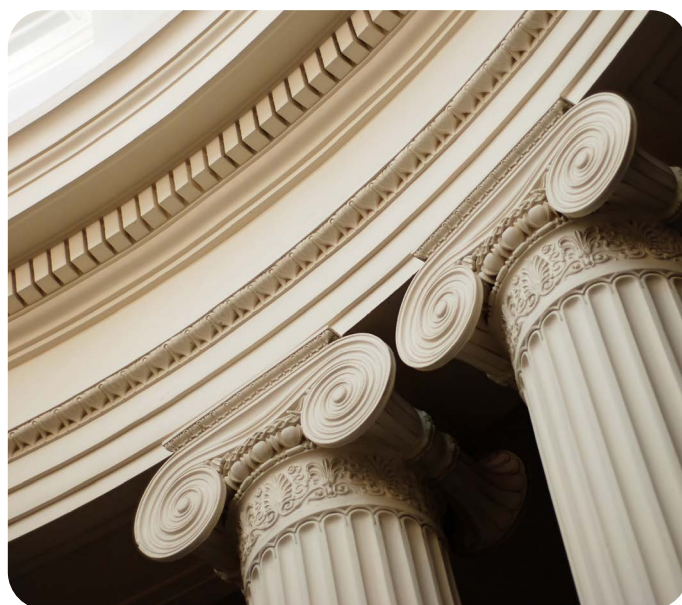
### Checklist

- *TMPR funds* – Annex 3 of PS24/7 states that operators with UCITS in the TMPR should check the details of funds, including fund population and contact information, are correctly recorded, and up-to-date on the FCA Register. If any alterations are needed, operators should notify the CA at [recognisedcis@fcs.org.uk](mailto:recognisedcis@fcs.org.uk). This should be done at least ten weeks prior to the operator's landing slot.
- *All operators* – Register for Connect – all submissions, from the initial application, through alterations to termination will be made through the FCA Connect portal. Operators that intend to seek recognition for their funds are urged by the FCA to register for Connect as soon as possible if they have not already done so.
- *Review fund documents* – Annex 3 of PS24/7 contains a summary of the information the FCA will ask for as part of its recognition process. Operators intending to apply for recognition should ensure the fund documents are in English, or that English translations have been prepared.

### What about EEA UCITS MMFs?

As already noted, EEA UCITS that are captured by the EEA Money Market Funds Regulation are excluded from the UK government's recognition of EEA UCITS regimes, and as a result EEA UCITS MMFs (including MMF sub-funds of an umbrella) are not captured by the OFR.

The UK government states in the Roadmap that it is, "designing a more permanent access route for overseas MMFs, and consulted on this in December 2023. The Government will consider further extensions to the TMPR as necessary to avoid any potential 'cliff edge' risks for these products. Further information on the future regulatory treatment of MMFs will be provided in due course."<sup>9</sup>



<sup>1</sup> See The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018: explanatory information (updated August 2019) at <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>

<sup>2</sup> See CP23/26 at <https://www.fca.org.uk/publication/consultation/cp23-26.pdf>

<sup>3</sup> See *A roadmap to implementing the Overseas Funds Regime* at <https://www.fca.org.uk/publication/corporate/roadmap-to-implementing-overseas-funds-regime.pdf>

<sup>4</sup> See PS24/7 at <https://www.fca.org.uk/publications/policy-statements/ps24-7-implementing-overseas-funds-regime-ofr>

<sup>5</sup> COLL 9.4.2 R

<sup>6</sup> COLL 9.5.3 D

<sup>7</sup> COLL 9.9.5.1 R (3)

<sup>8</sup> See *Overseas Funds Regime: Update for operators* at <https://www.fca.org.uk/operators/overseas-funds-regime-update-operators>

<sup>9</sup> See *A roadmap to implementing the Overseas Funds Regime* at <https://www.fca.org.uk/publication/corporate/roadmap-to-implementing-overseas-funds-regime.pdf>



**Please contact for further details:**

**David Morrison**

Global Head of Trustee and Fiduciary Services

[david.m.morrison@citi.com](mailto:david.m.morrison@citi.com)

+44 (0) 20 7500 8021

**Amanda Hale**

Head of Regulatory Services

[amanda.jayne.hale@citi.com](mailto:amanda.jayne.hale@citi.com)

+44 (0)20 7508 0178

**Kelli O'Brien**

United States

Head of Fund Administration

Product

[kelli.a.obrien@citi.com](mailto:kelli.a.obrien@citi.com)

+1 617 859 3468

**Ramesh Selva**

North & South Asia (ex-Korea)

Head of Trustee & Fiduciary Services

[ramesh.selva@citi.com](mailto:ramesh.selva@citi.com)

+65 6657 4142

**Sung-Wook Han**

Korea

Head of Trustee & Fiduciary Services

[sungwook.han@citi.com](mailto:sungwook.han@citi.com)

+82 22004 2162

**Shane Baily**

EMEA Head of Fiduciary Services

UK and Europe

[shane.baily@citi.com](mailto:shane.baily@citi.com)

+353 1 622 6297

**Jan-Olov Nord**

EMEA Head of Fiduciary Services

Netherlands and New Markets

[janolov.nord@citi.com](mailto:janolov.nord@citi.com)

+31 20 651 4313

[www.citibank.com/mss](http://www.citibank.com/mss)

The market, service, or other information is provided in this communication solely for your information and "AS IS" and "AS AVAILABLE", without any representation or warranty as to accuracy, adequacy, completeness, timeliness or fitness for particular purpose. The user bears full responsibility for all use of such information. Citi may provide updates as further information becomes publicly available but will not be responsible for doing so. The terms, conditions and descriptions that appear are subject to change; provided, however, Citi has no responsibility for updating or correcting any information provided in this communication. No member of the Citi organization shall have any liability to any person receiving this communication for the quality, accuracy, timeliness or availability of any information contained in this communication or for any person's use of or reliance on any of the information, including any loss to such person.

This communication is not intended to constitute legal, regulatory, tax, investment, accounting, financial or other advice by any member of the Citi organization. This communication should not be used or relied upon by any person for the purpose of making any legal, regulatory, tax, investment, accounting, financial or other decision or to provide advice on such matters to any other person. Recipients of this communication should obtain guidance and/or advice, based on their own particular circumstances, from their own legal, tax or other appropriate advisor.

Not all products and services that may be described in this communication are available in all geographic areas or to all persons. Your eligibility for particular products and services is subject to final determination by Citigroup and/or its affiliates.

The entitled recipient of this communication may make the provided information available to its employees or employees of its affiliates for internal use only but may not reproduce, modify, disclose, or distribute such information to any third parties (including any customers, prospective customers or vendors) or commercially exploit it without Citi's express written consent in each instance. Unauthorized use of the provided information or misuse of any information is strictly prohibited.

Among Citi's affiliates, (i) Citibank, N.A., London Branch, is regulated by Office of the Comptroller of the Currency (USA), authorised by the Prudential Regulation Authority and subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority (together, the "UK Regulator") and has its registered office at Citigroup Centre, Canada Square, London E14 5LB and (ii) Citibank Europe plc, is regulated by the Central Bank of Ireland, the European Central Bank and has its registered office at 1 North Wall Quay, Dublin 1, Ireland. This communication is directed at persons (i) who have been or can be classified by Citi as eligible counterparties or professional clients in line with the rules of the UK Regulator, (ii) who have professional experience in matters relating to investments falling within Article 19(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and (iii) other persons to whom it may otherwise lawfully be communicated. No other person should act on the contents or access the products or transactions discussed in this communication. In particular, this communication is not intended for retail clients and Citi will not make such products or transactions available to retail clients. The information provided in this communication may relate to matters that are (i) not regulated by the UK Regulator and/or (ii) not subject to the protections of the United Kingdom's Financial Services and Markets Act 2000 and/or the United Kingdom's Financial Services Compensation Scheme.

© 2024 Citibank, N.A. (organized under the laws of USA with limited liability) and/or each applicable affiliate. All rights reserved by Citibank, N.A. and/or each applicable affiliate. Citi, Citi and Arc Design and other marks used herein are service marks of Citigroup Inc. or its affiliates, used and registered throughout the world.

cbs38487 08/24