

## Chapter 9

# Recognised schemes

## 9.3 Section 272 recognised schemes

### Information and documents to be supplied for a section 272 application

#### 9.3.1

D

- (1) If the *operator* of a *scheme* makes an application under section 272 of the *Act* (Individually recognised overseas schemes), the application must include the information in paragraph (4).
- (2) The *documents* must be in English or accompanied by a translation in English.
- (3) The *documents* must be certified by the *operator* to be true copies of the originals.
- (4) The *operator* of the *scheme* must provide the following information and *documents* with the application:
  - (a) the name of the *scheme*;
  - (b) the legal form of the *scheme*;
  - (c) the name and address of the *operator*;
  - (d) the address of the place in the *United Kingdom* for service on the *operator* of notices or other *documents*;
  - (e) whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;
  - (f) the name and address of any *person* to whom the property subject to the *scheme* is entrusted for safekeeping;
  - (g) the address of the place in the *United Kingdom* where *scheme* facilities (see ■ COLL 9.4) will be maintained;
  - (h) details of the arrangements for the *marketing* of *units* in the *United Kingdom*, namely:
    - (i) the proposed commencement date;
    - (ii) whether the *units* will be sold by or through any employed sales force, *authorised persons*, or unsolicited calls;
  - (i) a copy of the *instrument constituting the fund*;
  - (j) a copy of the *prospectus* or any similar document giving details of the *scheme*;
  - (k) a copy of the latest annual report and any subsequent half-yearly report;

- (l) a copy of any other *document* affecting the rights of *participants* in the *scheme*; and
- (m) (where applicable) a copy of the *key information document* (see ■ COLL 9.3.4G).

**Additional information required in the prospectus for an application under section 272**

9.3.2

R

An operator of a *recognised scheme* must ensure the prospectus:

- (1) contains a statement that "Complaints about the operation of the *scheme* may be made to the *FCA*."; and
- (2) states whether or not investors in the *scheme* would be covered by the compensation scheme, and if so, it must state how they are covered and who they would need to contact for further information.

**Preparation and maintenance of prospectus**

9.3.3

R

- (1) An operator of a *recognised scheme* must comply with the requirements set out in ■ COLL 4.2 (Pre-sale notifications).
- (2) Where a *recognised scheme* is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of ■ COLL 4.2.5 R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

**Preparation of a key information document in accordance with the PRIIPs regulation**

9.3.4

G

- (1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP* to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*).
- (2) The requirements of the *PRIIPs Regulation* are directly applicable.
- (3) As a result, when a *recognised scheme* is made available to *retail clients* in the *United Kingdom* the operator must draw up a *key information document* in accordance with the *PRIIPs Regulation*, unless the operator of such a scheme is otherwise exempt from such a requirement under the *PRIIPs Regulation* for the time being.

**Annual certificate of compliance**

9.3.5

D

- (1) An operator of a *scheme* recognised under section 272 of the *Act* must provide a certificate to the *FCA* in writing that:
  - (a) sets out what steps it has taken to inform itself of any changes to the regulatory requirements for the relevant type of comparable authorised *scheme* taking effect during the most recent financial year of the *scheme*; and
  - (b) explains whether, and if so how, any such changes, together with any changes to the *scheme* that have occurred during this period,

may affect the *scheme's* ability to satisfy the requirements referred to in section 272(1)(d) of the *Act*.

- (2) The certificate must be provided to the *FCA* no later than:
  - (a) one *month* following the publication of the *annual report and accounts* of the *scheme*; or
  - (b) if the publication of the *annual report and accounts* of the *scheme* is delayed, one *month* after the last day on which the publication of the *annual report and accounts* of the *scheme* was due.
- (3) The certificate must be signed by an authorised signatory of the *operator*.
- (4) The certificate may apply to multiple *sub-funds* in an *umbrella* that are recognised under section 272 of the *Act*, if the names of each relevant *sub-fund* and of the *umbrella* are clearly stated.
- (5) The certificate must be delivered to the *FCA* by:
  - (a) sending a copy by email addressed to [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk), including the subject line: "S.277A Certificate – [insert full name(s) of scheme]"; or
  - (b) by *post* to: Financial Conduct Authority, attn. S.277A Certificates, Fund Authorisations Team, Asset Management Department, Wholesale Supervision, 12 Endeavour Square, London E20 1JN, United Kingdom.

9.3.6

G

An operator of a *scheme* recognised under section 272 of the *Act* need not provide a certificate under ■ [COLL 9.3.5D](#) if it has already sent the required information to the *FCA* within the last 12 *months* as the result of:

- (1) a requirement relating to an application for recognition of the *scheme* under section 274(2)(c) of the *Act*;
- (2) a direction relating to a proposed alteration of the *scheme* or to a change to the *operator*, *trustee* or *depository* under section 277(5)(b) of the *Act*; or
- (3) a previous certificate being provided under section 277A of the *Act*.

9.3.7

G

The *operator* of a *scheme* recognised under section 272 of the *Act* should seek advice from professionals with appropriate qualifications or professional knowledge, such as a qualified solicitor, chartered accountant or compliance consultant, before submitting the certificate to the *FCA* under ■ [COLL 9.3.5D](#).

Notification of alterations to schemes

9.3.8

G

Section 277(1) of the *Act* (Alteration of schemes and changes of operator, trustee or depository) requires notification by the *operator* to the *FCA* of certain proposed alterations to a *scheme* recognised under section 272 of the *Act* which, if made, would be a material alteration. The types of alterations that constitute, or are likely to constitute, a material alteration are set out at ■ [COLL 9.3.10R](#) and ■ [COLL 9.3.11G](#).

- 9.3.9
- G
- In accordance with section 277(2) of the *Act*, effect is not to be given to any such proposed material alteration to the *scheme* unless:
- (1) the *FCA*, by written notice, has given its approval to the proposal; or

(2) one *month*, beginning with the date the notice was given under section 277(1) of the *Act*, has expired without the *FCA* having given written notice to the *operator* that it has decided to refuse approval.

Material alteration of a scheme

- 9.3.10
- R
- For the purposes of section 277(1), a material alteration is an alteration which:
- (1) changes the purpose or nature of the *scheme*;

(2) alters the risk profile of the *scheme*;

(3) may materially prejudice a *participant* in the *scheme*;

(4) affects the ability of *participants* in the *scheme* to exercise their rights in relation to their investments;

(5) introduces any new type of payment or materially increases other types of payment that a *participant* in the *scheme* would have to pay out of *scheme property*;

(6) changes the legal form of the *scheme*;

(7) changes the name of the *scheme* or the name of the *umbrella* of which a *sub-fund* is a part;

(8) will result in the restructuring of the *scheme* or a merger with another *scheme*;

(9) changes the regulatory status of the *scheme*;

(10) changes the regulatory status of the *operator* or, if the *scheme* has a *depository*, of the *depository*;

(11) changes the composition of the board of *directors*, committee of management or other governing body of the *scheme*, if it has one; or

(12) otherwise has a material effect on the *scheme* and its *participants*.

Guidance on material alterations

- 9.3.11
- G
- (1) For the purpose of ■ COLL 9.3.10R, a material alteration is likely to include:
- (a) any material changes to the investment objective or policy;

(b) any change to the investment strategy that involves taking exposure to a new class of assets with a different risk profile;

(c) any change affecting arrangements for the redemption of *units* on behalf of *participants*, including any arrangements to sell *units* on an investment exchange;

- (d) any change to the facilities maintained in the *United Kingdom*, including marketing arrangements, in accordance with ■ COLL 9.4; and
- (e) any expansion or limitation of the powers and duties of the *operator* or, if the *scheme* has a *depository*, of the *depository*.

(2) In addition to the particular matters specified in ■ COLL 9.3.10R(1) to (11), ■ COLL 9.3.10R(12) requires the *operator* of a *scheme* recognised under section 272 to notify the *FCA* of any other change which has a material effect on the *scheme* and its *participants*. Any change may be a material alteration depending on its degree of materiality and its effect on the *scheme* and its *participants*. Consequently, an *operator* will need to determine whether in each case a particular change is a material alteration or not.

Other notifications

9.3.12

G

Section 277 of the *Act* also requires notification to the *FCA* of certain other changes in relation to a *scheme* recognised under section 272 of the *Act*, such as changes to the *operator* or *depository*. This should be kept in mind when considering any proposed change.

Recognition of parts of a scheme

9.3.13

G

(1) Section 282C of the *Act* (Recognition of parts of schemes under section 272) sets out that section 272(1) of the *Act* may apply in relation to part of a *collective investment scheme* as it applies in relation to such a *scheme*. In our view, this means that the *FCA* is able to recognise one or more but not necessarily all *sub-funds* in an *umbrella*.

(2) As a result, references to a *scheme* in ■ COLL 9.3.8G to ■ COLL 9.3.12G include references to a *sub-fund* in an *umbrella*.