

Chapter 3A

The FCA's responsibilities under the Act



3A.1

Introduction

3A.1.1

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Part 17 of the *Act* deals specifically with *collective investment schemes*. The main features and practical effects of Part 17, and how the *FCA* exercises its responsibilities, are described below. References to sections are to the numbered sections of Part 17.

Promotion of schemes in the United Kingdom (section 238)

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(1) Before a *scheme* can be promoted to the public in the *United Kingdom*, it must be authorised or recognised by the *FCA* as a *regulated collective investment scheme* (see ■ COLLG 1A.1.3 G).

(2) A *regulated collective investment scheme* may be promoted to the public by an *authorised person*.

Application for authorisation as an authorised unit trust (sections 242 and 243)

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(1) The *FCA* requires an application for authorisation of a *unit trust scheme* to be made jointly by the *manager* and *trustee*, both of which must be:

(a) *authorised persons* under the *Act* with the appropriate *Part 4A permissions*; and

(b) independent of each other (see ■ COLL 6.9.2 G (Independence of depositaries and scheme operators) which provides *guidance* on independence).

(2) The application must contain details of the *manager* and *trustee*, of the *scheme* itself, and of other *persons* to whom functions are to be delegated (e.g. the *registrar* and the *investment adviser*).

(3) Application forms are available free of charge from the forms page at <https://www.handbook.fca.org.uk/form> .

(4) A *fee* is payable and must be submitted with the application (see ■ FEES 3 Annex 2 R (Application and notification fees payable in relation to collective investment schemes)).

(5) The following items must be provided with the application:

(a) a copy of the *trust deed*;

(b) a solicitor's certificate stating that the *trust deed* complies with the *rules* made under section 247 (Trust scheme rules);

- (c) a copy of the *prospectus*, with a checklist indicating the location of the information required by *COLL* to be contained in it;
 - (d) in the case of an application relating to the authorisation of a *UCITS scheme*, a copy of the *key investor information document*; and
 - (e) if applicable, *documents* evidencing any guarantee arrangement.
- (6) The name of the *scheme* must not be undesirable or misleading and its purpose must be reasonably capable of being successfully carried into effect. ■ [COLL 6.9](#) (Independence, names and UCITS business restrictions) provides *guidance* on what the *FCA* considers undesirable or misleading names.

Determining and refusing applications (sections 244 and 245)

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- (1) Under section 244 (Determination of applications), the *FCA* has:
- (a) up to 2 *months* in the case of a proposed *UCITS*; or
 - (b) up to 6 *months* in the case of any other proposed *scheme*;
- in which to consider a completed application following its receipt and must inform the *manager* and *trustee* of its decision within that timescale. In practice, the *FCA* aims to process 75% of completed applications relating to a *UCITS scheme* within 6 weeks. If the *FCA* is satisfied with the application, an *authorisation order* is issued for the *scheme*.
- (2) If the *FCA* proposes to refuse an application, it must give a *warning notice* which will contain the reasons for the refusal. If, having given the *warning notice*, it decides to refuse the application, a *decision notice* will be sent and the applicant may refer the matter to the *Tribunal*.

Revocation of authorisation (section 254)

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- (1) The *FCA* can revoke an *authorisation order* if:
- (a) the requirements of authorisation are no longer satisfied; or
 - (b) the *manager* or *trustee* has contravened any provision of the *Act* or any *rules* or regulations made under it, or has given false or misleading information to the *FCA*; or
 - (c) no *regulated activity* is being carried on in relation to the *scheme* and the period of that inactivity began at least twelve *months* earlier; or
 - (d) it is undesirable for investors or potential investors that the *authorised unit trust scheme* should continue.
- (2) The *FCA* may refuse to revoke an *authorisation order* if it considers that:
- (a) any matter should be investigated prior to revocation; or
 - (b) revocation would not be in the interests of investors; or
 - (c) revocation would be incompatible with the *UCITS Directive*.

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- (3) If the *FCA* proposes to revoke an *authorisation order*, a separate *warning notice* will be sent to the *manager* and *trustee*. The same procedures as stated for refusal of authorisation, in relation to the *warning notice* and *decision notice*, will apply.

Notification of changes to unit trusts (sections 251 and 252A)

- (1) The *manager* must give written notice to the *FCA* when:
- (a) an alteration to the *authorised unit trust scheme* is proposed; or
 - (b) it is proposed that the *trustee* should retire and be replaced.
- (2) Any proposal that involves a change in the *trust deed* must be accompanied by a solicitor's certificate stating that the change will not affect the compliance of the *trust deed* with the *rules*.
- (3) The *trustee* must give written notice to the *FCA* of a proposal to replace the *manager*.
- (4) The *FCA* has one *month* following receipt of notice under section 251 (Alteration of schemes and changes or manager or trustee) to consider whether or not to refuse the proposal. In the case of a notice under section 252A (Proposal to convert a non-feeder UCITS) the period available to the *FCA* is 15 working days.

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Powers of intervention (sections 257 and 281)

The *FCA* has powers of intervention if there is a breach of the *Act* or *COLL*, or if it is in the interests of *Unitholders* or potential *Unitholders* in a *scheme*. In respect of an *AUT*, directions can be made for the *manager* to suspend the *issue* and *redemption* of *units* or to wind up the *scheme*.

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Scheme particulars (section 248)

The *Act* empowers the *FCA* to require a *manager* to publish *scheme particulars*. ■ COLL 4 (Investor relations) which refers to the *scheme particulars* as a *prospectus*, sets out details of the required contents, the timing of publication, and how and when the *prospectus* must be offered to prospective investors.

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Recognition of overseas schemes

Recognition by the *FCA* enables overseas *schemes* to be *marketed* to the public in the *United Kingdom*.

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Recognition of schemes constituted in other EEA states (section 264)

- (1) Section 264 covers *schemes* constituted in another *EEA State* that are certified by their *Home State regulator* as meeting the requirements of the *UCITS Directive* (*EEA UCITS schemes*). The *scheme* becomes recognised as soon as its *Home State regulator* has transmitted to the *FCA* the notification of the *scheme operator's* intention to access the market in the *United Kingdom*, together with the *documents*

prescribed in Article 93 of the Directive that the *scheme operator* has filed with its *Home State regulator*.

- (2) If there is a change in the information supplied to the *FCA* in accordance with ■ COLL 9.2 (Section 264 recognised schemes) following initial recognition, the *FCA* should be notified by the operator before the change is implemented.

Recognition of schemes authorised in designated territories (section 270)

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- (1) Section 270 covers *schemes* that are managed in and authorised under the law of a country or territory outside the *United Kingdom* that has been designated for this purpose by an order made by HM Treasury ("the Designation Order"). These include Jersey, Guernsey and the Isle of Man. It should be noted that HM Treasury:
 - (a) retains responsibility for the designation of countries or territories and must be satisfied that their laws and practices relating to the authorisation and regulation of their *collective investment schemes* provide a level of protection at least equivalent to that provided under the *Act*;
 - (b) must be content that adequate arrangements exist for co-operation between regulators in each country or territory and the *FCA*; and
 - (c) may request the *FCA* provide a report on the regimes of regulation in existing or prospective designated territories.
- (2) Notification forms are available, free of charge, at the *FCA* website and ■ COLL 9.3 (Section 270 and 272 recognised schemes) provides further information on the *documents* to be supplied to the *FCA*. The *scheme* becomes recognised on the *FCA*'s written approval, or automatically after two *months* from notification.

Recognition of individual overseas schemes (section 272)

3A.1.12

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- (1) Section 272 covers overseas *schemes* that are not recognised by virtue of section 264 or section 270. The *FCA* may make an order declaring the *scheme* to be recognised if it is satisfied that the *scheme* will afford adequate protection (i.e. a similar level of protection to that provided under the *Act*) for investors, and the arrangements for the *scheme*'s constitution and management, and the powers and duties of the *operator* and of any *trustee* or *depository*, are also "adequate". In deciding what is adequate, the *FCA* will consider the *rules* applicable to *AUTs* or *ICVCs*.
- (2) A section 272 application requires detailed and rigorous analysis of all aspects of the *scheme* and the level of investor protection provided by the regime under which the *scheme* operates, so the *FCA* has 6 *months* in which to determine a completed application. Details of the information and *documents* required for a section 272 application can be found in ■ COLL 9.3 (Section 270 and 272 recognised schemes).

	Subsequent notification in respect of schemes recognised under section 272 of the Act
3A.1.13	<div>G</div> <div><div>(1) The <i>FCA</i> wishes to be informed of changes in the information supplied by the <i>operator</i> of a section 272 <i>scheme</i> under ■COLL 9.3.1 D (Information and documents to be supplied for a section 270 notification or section 272 application).</div><div>(2) Any revised <i>documents</i> sent under (1) should be certified as true copies of the originals and accompanied, where relevant, by written evidence of the approval of the <i>overseas regulator</i> to the change.</div></div>
	Refusal of approval: schemes recognised under sections 270 and 272 of the Act
3A.1.14	<div>G</div> <div>The <i>FCA</i>'s power to refuse recognition and the procedures for this are set out in section 271 (Procedure) for <i>schemes</i> recognised under section 270, and section 276 (Procedure when refusing an application) for <i>schemes</i> recognised under section 272.</div>
	Revocation of recognition of overseas schemes
3A.1.15	<div>G</div> <div><div>(1) If the <i>operator</i> of a <i>scheme</i> recognised under section 264 gives written notice to the <i>FCA</i> under section 264(6) that it desires the <i>scheme</i> to no longer be recognised, then the <i>scheme</i> ceases to be recognised.</div><div>(2) Under section 279 (Revocation of recognition), the <i>FCA</i> may direct that a <i>scheme</i> shall cease to be recognised under section 270, or revoke its recognition under section 272, on similar grounds to those provided for in the revocation of <i>authorised funds</i> under section 254 (Revocation of authorisation order otherwise than by consent).</div><div>(3) If the <i>FCA</i> proposes to give a direction under section 279 or to revoke a <i>scheme's</i> recognition, it will give a <i>warning notice</i>. Should the <i>FCA</i> decide to give a direction or revoke recognition, it will issue a <i>decision notice</i>. Thereafter, the matter may be referred to the <i>Tribunal</i>.</div></div>
	Scheme facilities in the United Kingdom (section 283)
3A.1.16	<div>G</div> <div>This section enables the <i>FCA</i> to make <i>rules</i> requiring <i>recognised schemes</i> to maintain <i>scheme</i> facilities in the <i>United Kingdom</i> and to provide certain information to be supplied on request. Details are contained in ■COLL 9.4 (Facilities in the United Kingdom).</div>