

**COLLECTIVE INVESTMENT SCHEMES (INDIVIDUALLY RECOGNISED
OVERSEAS SCHEMES AND MISCELLANEOUS AMENDMENTS) INSTRUMENT
2022**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 247 (Trust scheme rules);
 - (e) section 261I (Contractual scheme rules);
 - (f) section 277 (Alteration of schemes and changes to the operator, trustee or depositary);
 - (g) section 282B (Public censure); and
 - (h) section 395 (The FCA’s procedures);
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 January 2023.

Amendments to the FCA Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Decision Procedure and Penalties manual (DEPP)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C

Amendments to the material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex D to this instrument.

Citation

- F. This instrument may be cited as the Collective Investment Schemes (Individually Recognised Overseas Schemes and Miscellaneous Amendments) Instrument 2022.

By order of the Board
15 December 2022

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definitions as shown.

<i>breach</i>	<p>in <i>DEPP</i>:</p> <p>...</p> <p>(10) ...</p> <p><u>(10A)</u> <u>a contravention in respect of which the <i>FCA</i> is empowered to take action pursuant to section 282B (Public censure) of the <i>Act</i>;</u></p> <p>...</p>
<i>public censure</i>	<p>...</p> <p>(4) a statement published under section 87M (Public censure of issuer) of the <i>Act</i>, under section 88A (Disciplinary powers: contravention of s88(3)(c) or (e)) of the <i>Act</i> or under section 91 (Penalties for breach of Part 6 rules) of the <i>Act</i>;</p> <p><u>(5)</u> <u>a statement published under section 282B (Public censure) of the <i>Act</i>.</u></p>

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text, unless otherwise stated.

2 Statutory notices and the allocation of decision making

...

2.5 Provision for certain categories of decision

...

2.5.13 G The decisions referred to in *DEPP* 2.5.12G are:

...

- (2) the decision to give a *warning notice* or *decision notice* pursuant to section 280(1) or (2)(a) (revocation of recognised investment scheme) or section 282B (public censure) of the Act;

...

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

...

Section of the Act	Description	Handbook reference	Decision maker
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...

280(1)/(2)

...

282B

when the FCA is proposing or deciding to publish a statement censuring the operator of a scheme recognised under section 272 of the Act.

COLL 9

Executive procedures

...

6A The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition

...

Insert the following new section, DEPP 6A.5, after DEPP 6A.4 (The interaction between the power to impose suspensions, restrictions, conditions, limitations or disciplinary prohibitions and the power to impose penalties or public censures). The text is not underlined.

6A.5 Collective investment schemes: the interaction between the power to revoke recognition and the power to issue public censures

- 6A.5.1 G Under sections 279, 281 and 282B of the *Act*, the *FCA* can revoke recognition of a *scheme* recognised under section 272 and/or issue the *operator* with a *public censure*. Following the approach in *DEPP* 6A.4.1G and *DEPP* 6A.4.2G(3), where the *FCA* considers it appropriate to impose both sanctions, it will decide whether the combined impact on the *operator* is likely to be disproportionate in respect to the *breach* and the deterrent effect of the sanctions.

Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 Investor Relations

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4.3 Approvals and notifications

...

~~Appointment of an AFM without prior written notice to Unitholders~~

4.3.10 R (1) ...

- (2) ~~The new authorised fund manager must immediately notify unitholders of its appointment under (1) in an appropriate manner.~~
[deleted]

...

6 Operating duties and responsibilities

...

6.6A Duties of AFMs in relation to UCITS schemes ~~and EEA UCITS schemes~~

...

6.6B UCITS depositaries

...

Limitation on delegation

...

6.6B.24 G ...

- (3) (a) ...
(b) (i) ...
(ii)

For example, the FCA's ability to supervise the *depositary* might be impeded if the *depositary* performed tasks other than administrative and supporting tasks from its *branch* ~~or registered office~~ in ~~another~~ an EEA State.

...

6.9 Independence, names and UCITS business restrictions

...

Connected activities: guidance

- 6.9.10 G (1) ...
- (2) ~~The activities referred to at COLL 6.9.9R (3) (a) to COLL 6.9.9R (3) (c) may be performed on behalf of EEA UCITS management companies. [deleted]~~

...

9 Recognised schemes

...

9.3 Section 272 recognised schemes

...

9.3.7 ...

Notification of alterations to schemes

9.3.8 G Section 277(1) of the Act (Alteration of schemes and changes of operator, trustee or depositary) 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 depositary. 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.

Annex D

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

7 Financial penalties and other disciplinary sanctions

7.1 The FCA's use of sanctions

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7.1.2 The FCA has the following powers to impose sanctions.

(1) It may publish a statement:

...

(ec) ...

(eca) against an operator of a scheme recognised under section 272 of the Act;

...

...

...

14 Collective Investment Schemes

...

14.4 Exercise of the powers in respect of recognised schemes: sections 279, and 281 and 282B of the Act – powers to revoke recognition of schemes recognised under section 272 or issue the operators of such schemes with a public censure: the FCA's policy