

# Fund Marketing and Overseas Fund Regime HM Treasury Consultation Paper

Article By:

Paul Anderson

---

Many investment funds domiciled in the EU are currently marketed in the UK through the EU's passporting regime. Shortly after the end of the Brexit transition period of 31 December 2020, and the end of the UK's temporary regime to permit marketing, this will change and funds will have to gain permanent market access in the UK.

In response to this challenge, HM Treasury has published a consultation on two new regimes, one for retail investment funds and one for money market funds ("**MMFs**"), based on the principle of equivalence. With the consultation set to run to 11 May, investment managers, asset management firms, investment platforms, financial advisers, individual investors and consumer groups are advised to consider the impacts of these new regimes and respond as necessary.

In this post we focus on some of the key aspects those interested in the proposed regimes may want to consider.

## Granting Equivalence

The new regimes will be based on the principle of equivalence whereby the Government will be able to make an equivalence determination in respect of another country's regime for retail funds or MMFs allowing them to be marketed within the UK under Part 17 of the Financial Services and Markets Act 2000 ("**FSMA**"). The Government will consult with the FCA on the regulatory regimes of overseas countries before granting equivalence status and as such will consider:

- whether they are satisfied that proposed equivalent retail fund regimes offer equivalent investor protection for retail funds;
- whether they are satisfied that proposed equivalent money market fund regimes offer equivalent regulatory regimes for MMFs;
- whether there will be adequate supervisory arrangements between the FCA and the national competent authority ("**NCA**") in the other country; and
- whether there will be adverse impacts on UK financial stability, market integrity, competition,

---

and prevention of financial crime including consideration of adherence to international standards on anti-money laundering and international or domestic sanctions.

A finding of equivalence however, does not mean that the UK cannot impose additional requirements on the funds in question, particularly to address potential inconsistencies identified in the equivalence process compared to the UK regime. Any additional requirements will be set out in the statutory instrument giving effect to the determination of equivalence and such additional requirements will be under the supervisory authority of the FCA.

## Registration or Notification?

Whether funds will have to register or notify the FCA that they are marketing to investors in the UK will be dependent on the type of fund being marketed. As such, it is expected that:

- Retail funds marketing in the UK through an equivalence determination will need to register with the FCA. The registration process is intended to be simple and straightforward, largely based on self-certification of eligibility. They will not need to notify under the National Private Placement Regime. The FCA registration process is expected to take 2 months following receipt of a completed registration form.
- MMFs structured as retail funds marketing to both retail and professional clients must either be a) located in a country with equivalence determinations for both MMFs and retail funds and register for recognition under the Overseas Fund Regime (“**OFR**”) or b) be located in a country with an equivalence determination for MMFs and be recognised under section 272 of FSMA.
- Overseas MMFs marketing only to professional clients will not be required to register but will need to submit a notification under the National Private Placement Regime.

## Obligations for Retail Funds

These are distinct from additional requirements and apply to all retail funds marketed in the UK. The proposals include:

- Alternative Dispute Resolution (“**ADR**”):
  1. Option 1 considers that the compulsory jurisdiction of the Financial Ombudsman Service (“**FOS**”) could be extended to apply to operators and depositaries of funds recognised under the OFR. The main issues with this option, however, consider firstly that decisions may be difficult to enforce in relation to overseas funds, and secondly that extension could erode the competitive edge UK funds have, given investors often invest in UK funds due to the availability of the FOS.
  2. Option 2 considers that the Government could ensure that a requirement for granting equivalence is that UK investors have access to an appropriate ADR facility in the overseas country.

- 
- Financial Compensation – whether the Financial Services Compensation Scheme (“**FSCS**”) should be expanded to include funds recognised under the OFR. This could however present difficulties for the FCA in collecting the FSCS levy and create issues with pooling of risk between UK and overseas firms.
  - Investor Consent to the availability of ADR and compensation schemes – The Government considers it is important for the availability of ADR and compensation schemes to be disclosed to investors. As such, it is consulting on whether a new requirement, that fund operators and distributors must seek an acknowledgment from UK investors that they understand the availability of ADR and compensation arrangements and how this affects their consumer rights, should be implemented.
  - Disclosures – The Government is consulting on whether the PRIIPs disclosure requirements are sufficient to put investors in an informed position as regards the availability of ADR and compensation schemes.
  - Financial Promotions – The Government proposes that operators of funds recognised under the OFR will not be deemed authorised persons which will mean a UK authorised person must make or approve their financial promotions unless exempt.
  - UK Facilities – Under current rules the FCA requires fund operators marketing recognised funds in the UK to ensure certain facilities are provided by an entity located in the UK such as a prospectus and information on unit prices. The Government proposes that the FCA have the ability to require recognised retail funds to maintain such facilities in the UK.
  - Fees – Recognised overseas funds will need to pay fees to the FCA.
  - Tax Incentivisation – Recognised retail funds will become eligible for inclusion in tax wrappers such as ISA’s and SIPPs.

## **Amendments to Section 272 FSMA**

The Government proposes to make three changes to the Section 272 recognition process:

1. Requiring the FCA to only consider matters which are the subject of current rules rather than rules which do not yet exist when determining a fund’s recognition;
2. Allowing the FCA to give directions about what changes to funds it needs to approve rather than requiring the FCA to approve immaterial changes; and
3. Requiring fund operators to notify replacement of operators, trustees or depositaries as soon as reasonably practicable rather than a month prior to any such replacement.

In framing its consultation, the Government is seeking views on the above proposals as well as more general queries it has raised to better understand the cross-border activity of funds that market in the UK. If you are thus affected by these proposals it is certainly worth considering a response.

*Co-Authored by Bethany Bloor*

© Copyright 2025 Squire Patton Boggs (US) LLP

---

National Law Review, Volume X, Number 79

Source URL: <https://natlawreview.com/article/fund-marketing-and-overseas-fund-regime-hm-treasury-consultation-paper>