Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

INTERPRETATION

235 Collective investment schemes.

(1) In this Part "collective investment scheme" means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate ("participants") do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

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(5) The Treasury may by order provide that arrangements do not amount to a collective investment scheme—
  (a) in specified circumstances; or
  (b) if the arrangements fall within a specified category of arrangement.

[F1 235A. Contractual schemes

(1) In this Part "contractual scheme" means—
  (a) a co-ownership scheme; or
  (b) a partnership scheme.

(2) In this Part "co-ownership scheme" means a collective investment scheme which satisfies the conditions in subsection (3).

(3) The conditions are—
  (a) that the arrangements constituting the scheme are contractual;
  (b) that they are set out in a deed that is entered into between the operator and a depositary and meets the requirements of subsection (4);
  (c) that the scheme does not constitute a body corporate, a partnership or a limited partnership;
  (d) that the property subject to the scheme is held by, or to the order of, a depositary; and
  (e) that either—
    (i) the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants); or
    (ii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, each part is beneficially owned by the participants in that part as tenants in common (or, in Scotland, is the common property of the participants in that part).

(4) The deed—
  (a) must contain a statement that the arrangements are intended to constitute a co-ownership scheme as defined in section 235A of the Financial Services and Markets Act 2000;
  (b) must make provision for the issue and redemption of units;
  (c) must—
    (i) prohibit the transfer of units,
    (ii) allow units to be transferred only if specified conditions are met, or
    (iii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, in relation to each separate part make provision falling within sub-paragraph (i) or (ii);
  (d) must authorise the operator—
    (i) to acquire, manage and dispose of property subject to the scheme; and
    (ii) to enter into contracts which are binding on participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme; and

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(e) must make provision requiring the operator and depositary to wind up the scheme in specified circumstances.

(5) In this Part "partnership scheme" means a collective investment scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

(a) that the scheme is a limited partnership;

(b) that the limited partnership—

(i) at any time has only one general partner; and

(ii) on formation has only one limited partner, who is a person nominated by the general partner ("the nominated partner");

(c) that the arrangements constituting the partnership are set out in a deed that is entered into between the general partner and the nominated partner;

(d) that the deed prohibits such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and

(e) that the deed provides that if an authorisation order is made in respect of the limited partnership under section 261D(1)—

(i) the property subject to the scheme is to be held by, or to the order of, a person appointed to be a depositary;

(ii) the limited partners, other than the nominated partner, are to be the participants in the scheme; and

(iii) the partnership is not dissolved on any person ceasing to be a limited partner provided that there remains at least one limited partner.

(7) In this section "general partner", "limited partner" and "limited partnership" have the same meaning as in the Limited Partnerships Act 1907.

(8) In this Part "contractual scheme deed" means—

(a) in relation to a co-ownership scheme, the deed referred to in subsection (3)(b); and

(b) in relation to a partnership scheme, the deed referred to in subsection (6)(c).**]**

Textual Amendments

F1 S. 235A inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(5)** (with reg. 24)

236 Open-ended investment companies.

(1) In this Part "an open-ended investment company" means a collective investment scheme which satisfies both the property condition and the investment condition.

(2) The property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate ("BC") having as its purpose the investment of its funds with the aim of—

(a) spreading investment risk; and

(b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.

(3) The investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme—

(a) expect that he would be able to realize, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and

(b) be satisfied that his investment would be realized on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

(4) In determining whether the investment condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—

[[F2](a) Chapters 3 to 7 of Part 18 of the Companies Act 2006;**]**

(c) corresponding provisions in force in another EEA State; or

(d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding provisions.

(5) The Treasury may by order amend the definition of "an open-ended investment company" for the purposes of this Part.

Textual Amendments

F2 S. 236(4)(a) substituted (1.10.2009) for s. 236(4)(a)(b) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 181(3)** (with art. 10)

237 Other definitions.

(1) In this Part "unit trust scheme" means a collective investment scheme under which the property is held on trust for the participants **[**[F3], except that it does not include a contractual scheme**]**.

(2) In this Part—

"trustee", in relation to a unit trust scheme, means the person holding the property in question on trust for the participants;

"depositary", in relation to—

(a) a collective investment scheme which is constituted by a body incorporated by virtue of regulations under section 262, or

(b) any other collective investment scheme which is not a unit trust scheme,

means any person to whom the property subject to the scheme is entrusted for safekeeping;

[[F4]"management company" has the meaning given in Article 2.1(b) of the UCITS directive;**]**

[[F5]"the operator"—

(a) in relation to a unit trust scheme with a separate trustee, means the manager;

(aa) **[**[F6]in relation to a co-ownership scheme, means the operator appointed under the terms of the contractual scheme deed;

(ab) in relation to a partnership scheme, means the general partner;**]**

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(b) in relation to an open-ended investment company, means that company; and

(c) in relation to an EEA UCITS which is not an open-ended investment company or unit trust scheme, means the management company for that UCITS;**]**

"units" means the rights or interests (however described) of the participants in a collective investment scheme.

[[F7]"working day" has the meaning given in section 191G(2).**]**

(3) In this Part—

"an authorised unit trust scheme" means a unit trust scheme which is authorised for the purposes of this Act by an authorisation order in force under section 243;

[[F8]"an authorised contractual scheme" means a contractual scheme which is authorised for the purposes of this Act by an authorisation order in force under section 261D(1);**]**

"an authorised open-ended investment company" means a body incorporated by virtue of regulations under section 262 in respect of which an authorisation order is in force under any provision made in such regulations by virtue of subsection (2)(l) of that section;

[[F9]"EEA UCITS" means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State other than the United Kingdom;

"feeder UCITS" means a UCITS, or a sub-fund of a UCITS, which has been approved by the **[**[F10]FCA**]** or (where relevant) by its home state regulator to invest 85% or more of the total property which is subject to the collective investment scheme constituted by the UCITS in units of another UCITS or UCITS sub-fund (the "master UCITS");**]**

"a recognised scheme" means a scheme recognised under section 264 [F11]... or 272.

[[F12]"UCITS" has the meaning given in Article 1.2 of the UCITS directive;

"UK UCITS" means a UCITS which is an authorised unit trust scheme **[**[F13], an authorised contractual scheme**]** or an authorised open-ended investment company.**]**

[[F14](4) In this Part, references to a sub-fund of a UCITS are references to a part of the property of the UCITS which forms a separate pool where—

(a) the UCITS provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and

(b) the participants are entitled to exchange rights in one pool for rights in another.**]**

[[F15](5) In this Part "umbrella co-ownership scheme" means an authorised contractual scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

(a) that the scheme is a co-ownership scheme;

(b) that the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and

(c) that the participants are entitled under the terms of the scheme to exchange rights in one part for rights in another.

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(7) In this Part "sub-scheme", in relation to an umbrella co-ownership scheme, means the arrangements constituting the scheme so far as they relate to a separate part of the property.

(8) In this Part "stand-alone co-ownership scheme" means an authorised contractual scheme which—

(a) is a co-ownership scheme; and

(b) is not an umbrella co-ownership scheme.**]**

Textual Amendments

F3 Words in s. 237(1) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(6)(a)** (with reg. 24)

F4 S. 237(2): definition of "management company" inserted after definition of "depositary" (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(14)(a)(i)**

F5 S. 237(2) definition of "the operator" substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(14)(a)(ii)**

F6 Words in s. 237(2) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(6)(b)** (with reg. 24)

F7 S. 237(2) definition of "working day" inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(14)(a)(iii)**

F8 Words in s. 237(3) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(6)(c)(i)** (with reg. 24)

F9 S. 237(3): definitions of "EEA UCITS" and "feeder UCITS" inserted after definition of "an authorised open-ended investment company" (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(14)(b)(i)**

F10 Word in ss. 237-239 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F11 Word in s. 237(3) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 16**

F12 S. 237(3): definitions of "UCITS" and "UK UCITS" inserted after definition of "a recognised scheme" (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(14)(b)(ii)**

F13 Words in s. 237(3) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(6)(c)(ii)** (with reg. 24)

F14 S. 237(4) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(14)(c)**

F15 S. 237(5)-(8) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(6)(d)** (with reg. 24)

CHAPTER II

RESTRICTIONS ON PROMOTION

Modifications etc. (not altering text)

C1 Pt. XVII Ch. II (ss. 238-241) modified (31.10.2001) by S.I. 2001/3347, **Sch. para. 8**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

238 Restrictions on promotion.

(1) An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme.

(2) But that is subject to the following provisions of this section and to section 239.

(3) Subsection (1) applies in the case of a communication originating outside the United Kingdom only if the communication is capable of having an effect in the United Kingdom.

(4) Subsection (1) does not apply in relation to—

(a) an authorised unit trust scheme;

[[F16](aa) an authorised contractual scheme;**]**

(b) a scheme constituted by an authorised open-ended investment company; or

(c) a recognised scheme.

(5) Subsection (1) does not apply to anything done in accordance with rules made by the **[**[F10]FCA**]** for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.

(6) The Treasury may by order specify circumstances in which subsection (1) does not apply.

(7) An order under subsection (6) may, in particular, provide that subsection (1) does not apply in relation to communications—

(a) of a specified description;

(b) originating in a specified country or territory outside the United Kingdom;

(c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or

(d) originating outside the United Kingdom.

(8) The Treasury may by order repeal subsection (3).

(9) "Communicate" includes causing a communication to be made.

(10) "Promotion otherwise than to the general public" includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable.

(11) "Participate", in relation to a collective investment scheme, means become a participant (within the meaning given by section 235(2)) in the scheme.

Textual Amendments

F10 Word in ss. 237-239 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F16 S. 238(4)(aa) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(7)** (with reg. 24)

Commencement Information

I1 S. 238 wholly in force at 1.12.2001; s. 238 not in force at Royal Assent see s. 431(2); s. 238 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 238 in force for specified

purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 238 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

239 Single property schemes.

(1) The Treasury may by regulations make provision for exempting single property schemes from section 238(1).

(2) For the purposes of subsection (1) a single property scheme is a scheme which has the characteristics mentioned in subsection (3) and satisfies such other requirements as are prescribed by the regulations conferring the exemption.

(3) The characteristics are—

(a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—

(i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme, or

(ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,

with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and

(b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.

(4) If regulations are made under subsection (1), the **[**[F10]FCA**]** may make rules imposing duties or liabilities on the operator and (if any) the trustee or depositary of a scheme exempted by the regulations.

(5) The rules may include, to such extent as the **[**[F10]FCA**]** thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.

Textual Amendments

F10 Word in ss. 237-239 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I2 S. 239 wholly in force at 18.6.2001; s. 239 not in force at Royal Assent see s. 431(2); s. 239(1)-(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 239 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

240 Restriction on approval of promotion.

(1) An authorised person may not approve for the purposes of section 21 the content of a communication relating to a collective investment scheme if he would be prohibited by section 238(1) from effecting the communication himself or from causing it to be communicated.

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(2) For the purposes of determining in any case whether there has been a contravention of section 21(1), an approval given in contravention of subsection (1) is to be regarded as not having been given.

241 Actions for damages.

If an authorised person contravenes a requirement imposed on him by section 238 or 240, **[**[F17]section 138D**]** applies to the contravention as it applies to a contravention mentioned in **[**[F17]section 138D(2)**]**.

Textual Amendments

F17 Words in s. 241 substituted (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments) Order 2013 (S.I. 2013/636), art. 1(2), **Sch. para. 6**

CHAPTER III

AUTHORISED UNIT TRUST SCHEMES

Applications for authorisation

242 Applications for authorisation of unit trust schemes.

(1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme must be made to the **[**[F18]FCA**]** by the manager and trustee, or proposed manager and trustee, of the scheme.

(2) The manager and trustee (or proposed manager and trustee) must be different persons.

(3) The application—

(a) must be made in such manner as the **[**[F18]FCA**]** may direct; and

(b) must contain or be accompanied by such information as the **[**[F18]FCA**]** may reasonably require for the purpose of determining the application.

(4) At any time after receiving an application and before determining it, the **[**[F18]FCA**]** may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications.

(6) The **[**[F18]FCA**]** may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the **[**[F18]FCA**]** may direct.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C2 S. 242 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 39(1) (with art. 23(2))

Commencement Information

I3 S. 242 wholly in force at 1.12.2001; s. 242 not in force at Royal Assent see s. 431(2); s. 242(3) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 242 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 242 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

243 Authorisation orders.

(1) If, on an application under section 242 in respect of a unit trust scheme, the **[**[F18]FCA**]**—

(a) is satisfied that the scheme complies with the requirements set out in this section,

(b) is satisfied that the scheme complies with the requirements of the trust scheme rules, and

(c) has been provided with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the **[**[F18]FCA**]** may make an order declaring the scheme to be an authorised unit trust scheme.

(2) If the **[**[F18]FCA**]** makes an order under subsection (1), it must give written notice of the order to the applicant.

(3) In this Chapter "authorisation order" means an order under subsection (1).

(4) The manager and the trustee must be persons who are independent of each other.

[[F19](5) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.

(5A) The trustee must have a place of business in the United Kingdom, and the manager must have a place of business in the United Kingdom or in another EEA State.**]**

(6) If the manager is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(7) The manager and the trustee must each be an authorised person and the manager must have permission to act as manager and the trustee must have permission to act as trustee.

[[F20](7A) The manager must be a fit and proper person to manage the unit trust scheme to which the application relates.**]**

(8) The name of the scheme must not be undesirable or misleading.

(9) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price—

(a) related to the net value of the property to which the units relate; and

(b) determined in accordance with the scheme.

(11) But a scheme is to be treated as complying with subsection (10) if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F19 S. 243(5)(5A) substituted for s. 243(5) (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(15)(a)**

F20 S. 243(7A) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(15)(b)**

Modifications etc. (not altering text)

C3 S. 243(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(1); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I4 S. 243 wholly in force at 1.12.2001; s. 243 not in force at Royal Assent see s. 431(2); s. 243 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 243 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

244 Determination of applications.

(1) **[**[F21]Subject to subsection (1A),**]** An application under section 242 must be determined by the **[**[F18]FCA**]** before the end of the period of six months beginning with the date on which it receives the completed application.

[[F22](1A) An application under section 242 for authorisation of a unit trust scheme which is a UCITS must be determined by the **[**[F18]FCA**]** before the end of two months beginning with the date on which it receives the application.**]**

(2) The **[**[F18]FCA**]** may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) The applicant may withdraw his application, by giving the **[**[F18]FCA**]** written notice, at any time before the **[**[F18]FCA**]** determines it.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F21 Words in s. 244(1) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(16)(a)**

F22 S. 244(1A) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(16)(b)**

Modifications etc. (not altering text)

C4 S. 244 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 39(1) (with art. 23(2))

Commencement Information

I5 S. 244 wholly in force at 1.12.2001; s. 244 not in force at Royal Assent see s. 431(2); s. 244 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 244 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Applications refused

245 Procedure when refusing an application.

(1) If the **[**[F18]FCA**]** proposes to refuse an application made under section 242 it must give each of the applicants a warning notice.

(2) If the **[**[F18]FCA**]** decides to refuse the application—

(a) it must give each of the applicants a decision notice; and

(b) either applicant may refer the matter to the Tribunal.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I6 S. 245 wholly in force at 1.12.2001; s. 245 not in force at Royal Assent see s. 431(2); s. 245 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 245 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Certificates

246 Certificates.

(1) If the manager or trustee of a unit trust scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant **[**[F23]EU**]** instrument so requests, the **[**[F18]FCA**]** may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F23 Word in s. 246(1) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **art. 6(1)(3)(4)**

Modifications etc. (not altering text)

C5 S. 246 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(3); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I7 S. 246 wholly in force at 1.12.2001; s. 246 not in force at Royal Assent see s. 431(2); s. 246 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 246 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Rules

247 Trust scheme rules.

(1) The **[**[F18]FCA**]** may make rules ("trust scheme rules") as to—

(a) the constitution, management and operation of authorised unit trust schemes;

(b) the powers, duties, rights and liabilities of the manager and trustee of any such scheme;

(c) the rights and duties of the participants in any such scheme; and

(d) the winding up of any such scheme.

(2) Trust scheme rules may, in particular, make provision—

(a) as to the issue and redemption of the units under the scheme;

(b) as to the expenses of the scheme and the means of meeting them;

(c) for the appointment, removal, powers and duties of an auditor for the scheme;

(d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;

(e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;

(f) requiring the preparation of periodical reports with respect to the scheme and the provision of those reports to the participants and to the **[**[F18]FCA**]**; and

(g) with respect to the amendment of the scheme.

(3) Trust scheme rules may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the deed.

(4) But trust scheme rules are binding on the manager, trustee and participants independently of the contents of the trust deed and, in the case of the participants, have effect as if contained in it.

(5) If—

(a) a modification is made of the statutory provisions in force in **[**[F24]the United Kingdom**]** relating to companies,

(b) the modification relates to the rights and duties of persons who hold the beneficial title to any shares in a company without also holding the legal title, and

(c) it appears to the Treasury that, for the purpose of assimilating the law relating to authorised unit trust schemes to the law relating to companies as so modified, it is expedient to modify the rule-making powers conferred on the **[**[F18]FCA**]** by this section,

the Treasury may by order make such modifications of those powers as they consider appropriate.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F24 Words in s. 247(5)(a) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), **art. 12(2)**

248 Scheme particulars rules.

(1) The **[**[F18]FCA**]** may make rules ("scheme particulars rules") requiring the manager of an authorised unit trust scheme—

(a) to submit scheme particulars to the **[**[F18]FCA**]**; and

(b) to publish scheme particulars or make them available to the public on request.

(2) "Scheme particulars" means particulars in such form, containing such information about the scheme and complying with such requirements, as are specified in scheme particulars rules.

(3) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if there is a significant change affecting any matter—

(a) which is contained in scheme particulars previously published or made available; and

(b) whose inclusion in those particulars was required by the rules.

(4) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if—

(a) a significant new matter arises; and

(b) the inclusion of information in respect of that matter would have been required in previous particulars if it had arisen when those particulars were prepared.

(5) Scheme particulars rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any scheme particulars, of compensation to any qualifying person who has suffered loss as a result of—

(a) any untrue or misleading statement in the particulars; or

(b) the omission from them of any matter required by the rules to be included.

(6) "Qualifying person" means a person who—

(a) has become or agreed to become a participant in the scheme; or

(b) although not being a participant, has a beneficial interest in units in the scheme.

(7) Scheme particulars rules do not affect any liability which any person may incur apart from the rules.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

249 [[F25]Disciplinary measures]

(1) If it appears to the **[**[F18]FCA**]** that an auditor has failed to comply with a duty imposed on him by trust scheme rules, **[**[F26]it may do one or more of the following—

(a) disqualify the auditor from being the auditor of any authorised unit trust scheme **[**[F27], authorised contractual scheme**]** or authorised open-ended investment company;

(b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;

(c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.**]**

[[F28](2) Sections 345B to 345E have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).**]**

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F25 S. 249 heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 10(4)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F26 Words in s. 249(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 10(2)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

F27 Words in s. 249(1)(a) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(8)** (with reg. 24)

F28 S. 249(2) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 10(3)** (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C6 S. 249(1) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) (S.R. 2004/335), regs. 1(1)(b), 69, {Sch. 5 para. 20} (with reg. 1(2))

C7 S. 249(1) applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), **12(2)**

250 Modification or waiver of rules.

(1) In this section "rules" means—

(a) trust scheme rules; or

(b) scheme particulars rules.

(2) The **[**[F18]FCA**]** may, on the application or with the consent of any person to whom any rules apply, direct that all or any of the rules—

(a) are not to apply to him as respects a particular scheme; or

(b) are to apply to him, as respects a particular scheme, with such modifications as may be specified in the direction.

(3) The **[**[F18]FCA**]** may, on the application or with the consent of the manager and trustee of a particular scheme acting jointly, direct that all or any of the rules—

(a) are not to apply to the scheme; or

(b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) **[**[F29]Section 138A and subsections (1) to (3), (5) and (6) of section 138B**]** have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under **[**[F30]section 138A(1)**]** but with the following modifications—

(a) [F31]. . . . . .

(b) any reference to the **[**[F32]person**]** is to be read as a reference to the person mentioned in subsection (2); and

(c) **[**[F33]section 138B(3)(c)**]** is to be read, in relation to a participant of the scheme, as if the word "commercial" were omitted.

(5) **[**[F34]Section 138A and subsections (1) to (3), (5) and (6) of section 138B**]** have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under **[**[F35]section 138A(1)**]** but with the following modifications—

(a) **[**[F36]subsection (4)(a) of section 138A**]** is to be read as if the words "by the [F37]. . . person" were omitted;

(b) **[**[F38]section 138B(3)(c) and the definition of "immediate group" in section 421ZA as it applies to that section**]** are to be read as if references to the [F37]. . . person were references to each of the manager and the trustee of the scheme;

(c) **[**[F39]section 138B(3)(c)**]** is to be read, in relation to a participant of the scheme, as if the word "commercial" were omitted;

(d) **[**[F40]section 138B(5)**]** is to be read as if the reference to the [F37]. . . person concerned were a reference to the scheme concerned and to its manager and trustee; and

(e) **[**[F41]section 138A(7)**]** is to be read as if the reference to the [F37]. . . person were a reference to the manager and trustee of the scheme acting jointly.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F29 Words in s. 250(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F30 Words in s. 250(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F31 S. 250(4)(a) omitted (12.7.2007) by virtue of The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), **art. 11(a)**

F32 Word in s. 250(4)(b) substituted (12.7.2007) by The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), **art. 11(b)**

F33 Words in s. 250(4)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(2)(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F34 Words in s. 250(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F35 Words in s. 250(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F36 Words in s. 250(5)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(3)(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F37 Word in s. 250(5)(a)(b)(d)(e) omitted (12.7.2007) by virtue of The Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (S.I. 2007/1973), **art. 11(c)**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F38 Words in s. 250(5)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(3)(d)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F39 Words in s. 250(5)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(3)(e)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F40 Words in s. 250(5)(d) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(3)(f)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F41 Words in s. 250(5)(e) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 11(3)(g)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C8 S. 250(2) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(6); S.I. 2001/3538, **art. 2(1)**

Alterations

251 Alteration of schemes and changes of manager or trustee.

[[F42](A1) This section applies where the manager of an authorised unit trust scheme proposes—

(a) to make an alteration to the scheme, other than an alteration—

(i) to which section 252A applies; or

(ii) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (mergers) applies; or

(b) to replace its trustee.

(1) The manager must give written notice of the proposal to the **[**[F18]FCA**].]**

(2) Any notice given in respect of a proposal to alter the scheme involving a change in the trust deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules.

(3) The trustee of an authorised unit trust scheme must give written notice to the **[**[F18]FCA**]** of any proposal to replace the manager of the scheme.

(4) Effect is not to be given to any proposal of which notice has been given under subsection (1) or (3) unless—

(a) the **[**[F18]FCA**]**, by written notice, has given its approval to the proposal; or

(b) one month, beginning with the date on which the notice was given, has expired without the manager or trustee having received from the **[**[F18]FCA**]** a warning notice under section 252 in respect of the proposal.

(5) The **[**[F18]FCA**]** must not approve a proposal to replace the manager or the trustee of an authorised unit trust scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 243(4) to (7).

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F42 S. 251(A1)(1) substituted for s. 251(1) (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(17)**

Modifications etc. (not altering text)

C9 S. 251 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**

C10 S. 251(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 40(1) (with art. 23(2))

C11 S. 251(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 41(1) (with art. 23(2))

Commencement Information

I8 S. 251 wholly in force at 1.12.2001; s. 251 not in force at Royal Assent see s. 431(2); s. 251 (except subsection (4)(b)) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 251 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

252 Procedure when refusing approval [F43of a proposal under section 251].

(1) If the **[**F18FCA**]** proposes to refuse approval of a proposal **[**F44under section 251**]** to replace the trustee or manager of an authorised unit trust scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 251(1) or (3).

(2) If the **[**F18FCA**]** proposes to refuse approval of a proposal **[**F44under section 251**]** to alter an authorised unit trust scheme it must give separate warning notices to the manager and the trustee of the scheme.

(3) To be valid the warning notice must be received by that person before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the **[**F18FCA**]** decides to refuse approval—

(a) it must give him a decision notice; and

(b) he may refer the matter to the Tribunal.

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F43 Words in s. 252 heading substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(18)(a)**

F44 Words in s. 252(1)(2) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(18)(b)**

Modifications etc. (not altering text)

C12 S. 252 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**

C13 S. 252(3) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 40(3), 41(2) (with art. 23(2))

Commencement Information

I9 S. 252 wholly in force at 1.12.2001; s. 252 not in force at Royal Assent see s. 431(2); s. 252 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 252 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F45]252A Proposal to convert to a non-feeder UCITS

(1) This section applies where the manager of an authorised unit trust scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
  (a) involves a change in the trust deed, and
  (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The manager must give written notice of the proposal to the **[**[F18]FCA**]**.

(3) Any notice given in respect of such a proposal must be accompanied by—
  (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules; and
  (b) the specified information.

(4) The **[**[F18]FCA**]** must, within 15 working days after the date on which it received the notice under subsection (2), give—
  (a) written notice to the manager of the scheme that the **[**[F18]FCA**]** approves the proposed amendments to the trust deed, or
  (b) separate warning notices to the manager and trustee of the scheme that the **[**[F18]FCA**]** proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the **[**[F18]FCA**]**, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the **[**[F18]FCA**]** decides to refuse approval—
  (a) it must give that person a decision notice; and
  (b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—
  (a) the notice given under subsection (2) relates to a proposal to amend the trust deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
  (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended trust deed and scheme rules.

(8) Where this subsection applies, the **[**[F18]FCA**]** may only approve the proposal subject to the conditions set out in section 283A(5) and (6).

(9) In this section, "specified" means—
  (a) specified in rules made by the **[**[F18]FCA**]** to implement the UCITS directive, or
  (b) specified in any directly applicable Community regulation or decision made under the UCITS directive.**]**

Textual Amendments

F18 Word in ss. 242-252A substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F45 S. 252A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(19)**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Exclusion clauses

253 Avoidance of exclusion clauses.

Any provision of the trust deed of an authorised unit trust scheme is void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

Ending of authorisation

254 Revocation of authorisation order otherwise than by consent.

(1) An authorisation order may be revoked by an order made by the **[**[F46]FCA**]** if it appears to the **[**[F46]FCA**]** that—

(a) one or more of the requirements for the making of the order are no longer satisfied;

(b) the manager or trustee of the scheme concerned has contravened a requirement imposed on him by or under this Act;

(c) the manager or trustee of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the **[**[F46]FCA**]** information which is false or misleading in a material particular;

(d) 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

(e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the **[**[F46]FCA**]** may take into account any matter relating to—

(a) the scheme;

(b) the manager or trustee;

(c) any person employed by or associated with the manager or trustee in connection with the scheme;

(d) any director of the manager or trustee;

(e) any person exercising influence over the manager or trustee;

(f) any body corporate in the same group as the manager or trustee;

(g) any director of any such body corporate;

(h) any person exercising influence over any such body corporate.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C14 S. 254 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(4)(5) (with art. 23(2))

C15 S. 254(1)(a) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(2); S.I. 2001/3538, **art. 2(1)**

C16 S. 254(1)(d) excluded (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(2); S.I. 2001/3538, **art. 2(1)**

255 Procedure.

(1) If the **[**[F46]FCA**]** proposes to make an order under section 254 revoking an authorisation order ("a revoking order"), it must give separate warning notices to the manager and the trustee of the scheme.

(2) If the **[**[F46]FCA**]** decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C17 S. 255(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(1) (with art. 23(2))

256 Requests for revocation of authorisation order.

(1) An authorisation order may be revoked by an order made by the **[**[F46]FCA**]** at the request of the manager or trustee of the scheme concerned.

(2) If the **[**[F46]FCA**]** makes an order under subsection (1), it must give written notice of the order to the manager and trustee of the scheme concerned.

(3) The **[**[F46]FCA**]** may refuse a request to make an order under this section if it considers that—

(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or

(b) revocation would not be in the interests of the participants or would be incompatible with **[**[F47]an EU**]** obligation.

(4) If the **[**[F46]FCA**]** proposes to refuse a request under this section, it must give separate warning notices to the manager and the trustee of the scheme.

(5) If the **[**[F46]FCA**]** decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F47 Words in s. 256(3)(b) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), **art. 6(1)(3)(4)**

Modifications etc. (not altering text)

C18 S. 256(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(6) (with art. 23(2))

Powers of intervention

257 Directions.

(1) The **[**[F46]FCA**]** may give a direction under this section if it appears to the **[**[F46]FCA**]** that—

(a) one or more of the requirements for the making of an authorisation order are no longer satisfied;

[[F48](b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed—

(i) by or under this Act; or

(ii) by any directly applicable Community regulation or decision made under the UCITS directive;**]**

(c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the **[**[F46]FCA**]** information which is false or misleading in a material particular; or

(d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section may—

(a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;

(b) require the manager and trustee of the scheme to wind it up.

(3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.

(4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.

(5) If a person contravenes a direction under this section, **[**[F49]section 138D**]** applies to the contravention as it applies to a contravention mentioned in that section.

(6) The **[**[F46]FCA**]** may, either on its own initiative or on the application of the manager or trustee of the scheme concerned, revoke or vary a direction given under this section if it appears to the **[**[F46]FCA**]**—

(a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;

(b) in the case of variation, that the direction should take effect or continue in force in a different form.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F48 S. 257(1)(b) substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(20)**

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F49 Words in s. 257(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 12** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C19 S. 257(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(1); S.I. 2001/3538, **art. 2(1)**

C20 S. 257(6) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(3); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I10 S. 257 wholly in force at 1.12.2001; s. 257 not in force at Royal Assent see s. 431(2); s. 257 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 257 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

258 Applications to the court.

(1) If the **[**[F46]FCA**]** could give a direction under section 257, it may also apply to the court for an order—

(a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and

(b) replacing the person or persons removed with a suitable person or persons nominated by the **[**[F46]FCA**]**.

(2) The **[**[F46]FCA**]** may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 243(4) to (7) would be complied with.

(3) If it appears to the **[**[F46]FCA**]** that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—

(a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and

(b) appointing an authorised person to wind up the scheme.

(4) On an application under this section the court may make such order as it thinks fit.

(5) The court may, on the application of the **[**[F46]FCA**]**, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The **[**[F46]FCA**]** must give written notice of the making of an application under this section to the manager and trustee of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—

(a) the High Court;

(b) in Scotland, the Court of Session.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F50]258A Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes is wound up, whether as a result of a direction given by the **[**[F46]FCA**]** under section 257 **[**[F51]or 261X**]**, an order of the court under section 258 **[**[F52]or 261Y**]**, rules made by the **[**[F46]FCA**]** or otherwise.

(2) The **[**[F46]FCA**]** must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—

(a) the **[**[F46]FCA**]** approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or

(b) the **[**[F46]FCA**]** approves under section 252A an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes—

(a) merges with another UCITS, or

(b) is divided into two or more UCITS.

(4) The **[**[F46]FCA**]** must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—

(a) the **[**[F46]FCA**]** approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—

(i) the master UCITS which results from the merger;

(ii) one of the UCITS resulting from the division; or

(iii) another UCITS or master UCITS;

(b) the **[**[F46]FCA**]** approves under section 252A an amendment of the trust deed of the scheme which would enable it to convert into a UCITS which is not a feeder UCITS.**]**

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F50 S. 258A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(21)**

F51 Words in s. 258A(1) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(9)(a)** (with reg. 24)

F52 Words in s. 258A(1) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(9)(b)** (with reg. 24)

259 Procedure on giving directions under section 257 [[F53]or 258A] and varying them on [[F54]FCA's] own initiative.

(1) A direction **[**[F55]under section 257 or 258A**]** takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

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(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction **[**[F56]under section 257**]** may be expressed to take effect immediately (or on a specified date) only if the **[**[F46]FCA**]**, having regard to the ground on which it is exercising its power under **[**[F57]that section**]**, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the **[**[F46]FCA**]** proposes to give a direction under **[**[F58]section 257 or 258A, or gives a direction under either section**]** with immediate effect, it must give separate written notice to the manager and the trustee of the scheme concerned.

(4) The notice must—

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the **[**[F46]FCA's**]** reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that he may make representations to the **[**[F46]FCA**]** within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 257(2)(a), the notice must state that the requirement has effect until—

(a) a specified date; or

(b) a further direction.

(6) If the direction **[**[F59]is given under section 257(2)(b) or section 258A(2) or (4)**]**, the scheme must be wound up—

(a) by a date specified in the notice; or

(b) if no date is specified, as soon as practicable.

(7) The **[**[F46]FCA**]** may extend the period allowed under the notice for making representations.

(8) If, having considered any representations made by a person to whom the notice was given, the **[**[F46]FCA**]** decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction,

it must give separate written notice to the manager and the trustee of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the **[**[F46]FCA**]** decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect,

it must give separate written notice to the manager and the trustee of the scheme concerned.

(10) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the **[**[F46]FCA's**]** own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F53 Words in s. 259 heading inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(22)(a)**

F54 Word in s. 259 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F55 Words in s. 259(1) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(22)(b)**

F56 Words in s. 259(2) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(10)(a)(i)** (with reg. 24)

F57 Words in s. 259(2) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(10)(a)(ii)** (with reg. 24)

F58 Words in s. 259(3) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(10)(b)** (with reg. 24)

F59 Words in s. 259(6) substituted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(22)(c)**

Commencement Information

I11 S. 259 wholly in force at 1.12.2001; s. 259 not in force at Royal Assent see s. 431(2); s. 259 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 259 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

260 Procedure: refusal to revoke or vary direction.

(1) If on an application under section 257(6) for a direction to be revoked or varied the **[**[F46]FCA**]** proposes—

(a) to vary the direction otherwise than in accordance with the application, or

(b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the **[**[F46]FCA**]** decides to refuse to revoke or vary the direction—

(a) it must give the applicant a decision notice; and

(b) the applicant may refer the matter to the Tribunal.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I12 S. 260 wholly in force at 1.12.2001; s. 260 not in force at Royal Assent see s. 431(2); s. 260 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 260 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

261 Procedure: revocation of direction and grant of request for variation.

(1) If the **[**[F46]FCA**]** decides on its own initiative to revoke a direction under section 257 it must give separate written notices of its decision to the manager and trustee of the scheme.

(2) If on an application under section 257(6) for a direction to be revoked or varied the **[**[F46]FCA**]** decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The **[**[F46]FCA**]** may publish such information about the revocation or variation, in such way, as it considers appropriate.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I13 S. 261 wholly in force at 1.12.2001; s. 261 not in force at Royal Assent see s. 431(2); s. 261 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**; s. 261 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

[[F60]261A Information for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the **[**[F46]FCA**]** to implement Article 66 of the UCITS directive, the **[**[F46]FCA**]** is informed by the manager of an authorised unit trust scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The **[**[F46]FCA**]** must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F60 Ss. 261A, 261B inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(23)**

261B Information for feeder UCITS

(1) The **[**[F46]FCA**]** must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an authorised unit trust scheme **[**[F61], an authorised

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contractual scheme**]** or an authorised open-ended investment company (the master UCITS) of—

(a) any failure of which the **[**[F46]FCA**]** becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;

(b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the **[**[F46]FCA**]**;

(c) any information reported to the **[**[F46]FCA**]** pursuant to rules of the **[**[F46]FCA**]** made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The **[**[F46]FCA**]** must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an EEAUCITS of any information received from the home state regulator of the EEAUCITS in relation to—

(a) any failure by the EEAUCITS to comply with any requirement in Chapter VIII of the UCITS directive;

(b) any decision or measure imposed on the EEAUCITS under provisions implementing Chapter VIII of the UCITS directive;

(c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEAUCITS, its operator, depositary or auditor.

(3) Where the **[**[F46]FCA**]** has the information described in subsection (1)(a), (b) or (c) in relation to an authorised unit trust scheme which is a master UCITS for one or more feeder UCITS which are EEAUCITS, the **[**[F46]FCA**]** must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.**]**

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F60 Ss. 261A, 261B inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(23)**

F61 Words in s. 261B(1) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(11)** (with reg. 24)

[[F62]**CHAPTER 3A**

AUTHORISED CONTRACTUAL SCHEMES

Textual Amendments

F62 Pt. XVII Ch. 3A inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(12)** (with reg. 24)

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Applications for authorisation

261C. Applications for authorisation of contractual schemes

(1) Any application for an order declaring a contractual scheme to be an authorised contractual scheme must be made to the FCA by the operator and depositary, or proposed operator and depositary, of the scheme.

(2) The application—
- (a) must be made in such manner as the FCA may direct;
- (b) must state the name and the registered office, or if it does not have a registered office, the head office, of the operator or proposed operator and of the depositary or proposed depositary; and
- (c) in the case of a partnership scheme, must be accompanied by a copy of the certificate of registration as a limited partnership under the Limited Partnerships Act 1907.

(3) At any time after receiving an application and before determining it, the FCA may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The FCA may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the FCA may direct.

261D. Authorisation orders

(1) If, on an application under section 261C in respect of a contractual scheme, the FCA—
- (a) is satisfied that the scheme complies with the requirements set out in this section and section 261E,
- (b) is satisfied that the scheme complies with the requirements of contractual scheme rules, and
- (c) has been provided with a copy of the contractual scheme deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the FCA may make an order declaring the scheme to be an authorised contractual scheme.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicants.

(3) In this Chapter "authorisation order" means an order under subsection (1).

(4) The operator and the depositary must be persons who are independent of each other.

(5) The operator and the depositary must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.

(6) The depositary must have a place of business in the United Kingdom, and the operator must have a place of business in the United Kingdom or in another EEA State.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) If the operator is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(8) The operator and the depositary must each be an authorised person, and the operator must have **[**[F63]such permission as may be necessary to act as operator**]** and the depositary must have permission to act as depositary.

(9) The operator must be a fit and proper person to manage the scheme to which the application relates.

(10) The name of the scheme must not be undesirable or misleading.

(11) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

Textual Amendments

F63 Words in s. 261D(8) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 17**

261E. Authorisation orders: holding of units

(1) The participants in a contractual scheme must be entitled to have their units redeemed in accordance with the scheme at a price—

(a) related to the net value of the property to which the units relate; and

(b) determined in accordance with the scheme.

(2) The scheme must not allow units in the scheme to be issued to anyone other than—

(a) a professional investor;

(b) a large investor; or

(c) a person who already holds units in the scheme.

(3) The scheme must require the operator, if it becomes aware that units have become vested in a person to whom as a result of subsection (2) the units could not have been issued, to redeem the units as soon as practicable.

(4) In subsection (2)—

"professional investor" means a person who falls within one of the categories (1) to (4) of Section I of Annex II to the markets in financial instruments directive (professional clients for the purpose of that directive); and

"large investor" means a person who, in exchange for units in the scheme, makes a payment of, or contributes property with a value of, not less than £1,000,000.

261F. Determination of applications

(1) Subject to subsection (2), an application under section 261C must be determined by the FCA before the end of the period of six months beginning with the date on which it receives the completed application.

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Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) An application under section 261C for authorisation of a contractual scheme which is a UCITS must be determined by the FCA before the end of two months beginning with the date on which it receives the application.

(3) The FCA may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(4) The applicants may withdraw the application, by giving the FCA written notice, at any time before the FCA determines it.

Applications refused

261G. Procedure when refusing an application

(1) If the FCA proposes to refuse an application made under section 261C, it must give each of the applicants a warning notice.

(2) If the FCA decides to refuse the application—
   (a) it must give each of the applicants a decision notice; and
   (b) either applicant may refer the matter to the Tribunal.

Certificates

261H. Certificates

(1) If the operator of a contractual scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant EU instrument so requests, the FCA may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

Rules

261I. Contractual scheme rules

(1) The FCA may by rules ("contractual scheme rules") make in relation to authorised contractual schemes provision corresponding to that which may be made under section 247 in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 247 is to be read with the following modifications—
   (a) a reference to trust scheme rules is to be read as a reference to contractual scheme rules;
   (b) a reference to authorised unit trust schemes is to be read as a reference to authorised contractual schemes;
   (c) a reference to the manager is to be read as a reference to the operator;
   (d) a reference to the trustee is to be read as a reference to the depositary; and
   (e) a reference to the trust deed is to be read as a reference to the contractual scheme deed.

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(3) The Treasury's power by order under section 247(5) to modify the FCA's power to make trust scheme rules shall also be exercisable in relation to the FCA's power to make contractual scheme rules.

(4) For the purposes of subsection (3), section 247(5) is to be read as if the reference to authorised unit trust schemes were a reference to authorised contractual schemes.

261J. Contractual scheme particulars rules

(1) The FCA may by rules ("contractual scheme particulars rules") make in relation to authorised contractual schemes provision corresponding to that which may be made under section 248 in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 248 is to be read with the following modifications—
   (a) a reference to scheme particulars rules is to be read as a reference to contractual scheme particulars rules;
   (b) a reference to scheme particulars is to be read as a reference to contractual scheme particulars; and
   (c) a reference to the manager of an authorised unit trust scheme is to be read as a reference to the operator of an authorised contractual scheme.

261K. Disciplinary measures

(1) If it appears to the FCA that an auditor has failed to comply with a duty imposed on the auditor by contractual scheme rules, it may do one or more of the following—
   (a) disqualify the auditor from being the auditor of any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company;
   (b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;
   (c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(2) Sections 345B to 345E have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).

261L. Modification or waiver of rules

(1) In this section "rules" means—
   (a) contractual scheme rules; or
   (b) contractual scheme particulars rules.

(2) The FCA may, on the application or with the consent of any person to whom rules apply, direct that all or any of the rules—
   (a) are not to apply to that person as respects a particular scheme; or
   (b) are to apply to that person, as respects a particular scheme, with such modifications as may be specified in the direction.

(3) The FCA may, on the application or with the consent of the operator and depositary of a particular scheme acting jointly, direct that all or any of the rules—

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(a) are not to apply to the scheme; or
(b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 138A(1) but with the following modifications—
(a) any reference to the person is to be read as a reference to the person mentioned in subsection (2); and
(b) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word "commercial" were omitted.

(5) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 138A(1) but with the following modifications—
(a) subsection (4)(a) of section 138A is to be read as if the words "by the person" were omitted;
(b) section 138B(3)(c) and the definition of "immediate group" in section 421ZA as it applies to that section are to be read as if references to the person were references to each of the operator and the depositary of the scheme;
(c) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word "commercial" were omitted;
(d) section 138B(5) is to be read as if the reference to the person concerned were a reference to the scheme concerned and to its operator and depositary; and
(e) section 138A(7) is to be read as if the reference to the person were a reference to the operator and depositary of the scheme acting jointly.

Co-ownership schemes: rights and liabilities of participants

261M. Contracts

(1) In this section "authorised contract" means a contract which the operator of a co-ownership scheme is authorised to enter into on behalf of the relevant participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme (but does not include a contract by which a person becomes a participant in the scheme).

(2) The relevant participants are—
(a) in the case of a contract relating to a stand-alone co-ownership scheme, the participants in the scheme;
(b) in the case of a contract relating to an umbrella co-ownership scheme, the participants in the sub-scheme of the umbrella co-ownership scheme to which the contract relates.

(3) The operator on behalf of the relevant participants may—
(a) exercise rights under an authorised contract;
(b) bring and defend proceedings for the resolution of any matter relating to an authorised contract; and
(c) take action in relation to the enforcement of any judgment given in such proceedings.

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(4) The relevant participants may not themselves do any of the things mentioned in subsection (3), but this does not affect their rights as against the operator.

(5) A person who enters into a contract which purports to be an authorised contract is deemed to have actual knowledge of the scope of the authority given to the operator by the contractual scheme deed.

(6) The validity of an authorised contract is not to be called into question on the ground that a participant lacks capacity to authorise the operator to enter into such a contract.

(7) An authorised contract must make provision for any property which is acquired under or by virtue of the contract to be held by, or to the order of, the depositary of the scheme concerned.

261N. Effect of becoming or ceasing to be a participant

(1) A person who at any time becomes a participant in a relevant scheme acquires the rights and becomes subject to the liabilities to which the other participants in the relevant scheme are entitled or subject at that time under, or in connection with, authorised contracts.

(2) A person who ceases to be a participant in a relevant scheme ceases to have any of the rights and to be subject to any of the liabilities to which a participant in the relevant scheme is entitled or subject under, or in connection with, authorised contracts.

(3) In this section—
- (a) "authorised contract" has the meaning given in section 261M(1); and
- (b) each of the following is a "relevant scheme"—
  - (i) a stand-alone co-ownership scheme; and
  - (ii) a sub-scheme of an umbrella co-ownership scheme.

261O. Limited liability

(1) The debts of a relevant scheme are to be paid by the operator out of the property subject to the relevant scheme.

(2) The participants in a relevant scheme are not liable for the debts of the relevant scheme beyond the amount of the property subject to the relevant scheme which is available to the operator to meet the debts.

(3) In this section—
- (a) a reference to the debts of a relevant scheme is a reference to debts and obligations incurred under, or in connection with, authorised contracts;
- (b) "authorised contract" has the meaning given in section 261M(1); and
- (c) "relevant scheme" has the meaning given in section 261N(3).

261P. Segregated liability in relation to umbrella co-ownership schemes

(1) The property subject to a sub-scheme of an umbrella co-ownership scheme must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-scheme.

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(2) Any provision contained in any contract, agreement or other document is void in so far as it is inconsistent with subsection (1), and any transaction involving the application of property in contravention of that subsection is void.

(3) The FCA may give a direction under section 261X(2) in relation to a sub-scheme of an umbrella co-ownership scheme as if the sub-scheme were an authorised contractual scheme, but this subsection does not enable the FCA to apply to the court for an order under section 261Y in relation to a sub-scheme of an umbrella co-ownership scheme.

(4) Where such a direction is given, the reference in section 261Z1(6) to the scheme is to be read as a reference to the sub-scheme concerned.

Alterations

261Q. Alteration of contractual schemes and changes of operator or depositary

(1) This section applies where the operator of an authorised contractual scheme proposes to make an alteration to the scheme, other than an alteration—
   (a) to which section 261S applies; or
   (b) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (mergers) applies.

(2) The operator must give written notice of the proposal to the FCA.

(3) Any notice given in respect of a proposal to alter the scheme involving a change in the contractual scheme deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules.

(4) The operator of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the depositary of the scheme.

(5) The depositary of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the operator of the scheme.

(6) Effect is not to be given to any proposal of which notice has been given under subsection (2), (4) or (5) unless—
   (a) the FCA, by written notice, has given its approval to the proposal; or
   (b) one month, beginning with the date on which the notice was given, has expired without the operator or the depositary having received from the FCA a warning notice under section 261R in respect of the proposal.

(7) The FCA must not approve a proposal to replace the operator or the depositary of an authorised contractual scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 261D(4) to (9).

261R. Procedure when refusing approval of a proposal under section 261Q

(1) If the FCA proposes to refuse approval of a proposal under section 261Q to replace the depositary or operator of an authorised contractual scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 261Q(4) or (5).

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(2) If the FCA proposes to refuse approval of a proposal under section 261Q to alter an authorised contractual scheme, it must give separate warning notices to the operator and the depositary of the scheme.

(3) To be valid the warning notice must be received by the person to whom it is given before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the FCA decides to refuse approval—
- (a) it must give that person a decision notice; and
- (b) that person may refer the matter to the Tribunal.

261S. Proposal to convert to a non-feeder UCITS

(1) This section applies where the operator of an authorised contractual scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
- (a) involves a change in the contractual scheme deed, and
- (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The operator must give written notice of the proposal to the FCA.

(3) Any notice given in respect of such a proposal must be accompanied by—
- (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules; and
- (b) the specified information.

(4) The FCA must, within 15 working days after the date on which it received the notice under subsection (2), give—
- (a) written notice to the operator of the scheme that the FCA approves the proposed amendments to the contractual scheme deed, or
- (b) separate warning notices to the operator and depositary of the scheme that the FCA proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the FCA, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the FCA decides to refuse approval—
- (a) it must give that person a decision notice; and
- (b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—
- (a) the notice given under subsection (2) relates to a proposal to amend the contractual scheme deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
- (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended contractual scheme deed and contractual scheme rules.

(8) Where this subsection applies, the FCA may only approve the proposal subject to the conditions set out in section 283A(5) and (6).

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(9) In this section "specified" means—
- (a) specified in rules made by the FCA to implement the UCITS directive, or
- (b) specified in any directly applicable EU regulation or decision made under the UCITS directive.

Exclusion clauses

261T. Avoidance of exclusion clauses

Any provision—
- (a) of the contractual scheme deed of an authorised contractual scheme, or
- (b) in the case of an authorised contractual scheme which is a partnership scheme, of the contract under which the depositary of the scheme is appointed,

is void in so far as it would have the effect of exempting the operator or the depositary from liability for any failure to exercise due care and diligence in the discharge of its functions in respect of the scheme.

Ending of authorisation

261U. Revocation of authorisation order otherwise than by consent

(1) An authorisation order may be revoked by an order made by the FCA if it appears to the FCA that—
- (a) one or more of the requirements for the making of the order are no longer satisfied;
- (b) the operator or depositary of the scheme concerned has contravened a requirement imposed on the operator or depositary by or under this Act;
- (c) the operator or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular;
- (d) 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
- (e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the FCA may take into account any matter relating to—
- (a) the scheme;
- (b) the operator or depositary;
- (c) any person employed by or associated with the operator or depositary in connection with the scheme;
- (d) any director of the operator or depositary;
- (e) any person exercising influence over the operator or depositary;
- (f) any body corporate in the same group as the operator or depositary;
- (g) any director of any such body corporate;
- (h) any person exercising influence over any such body corporate.

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261V. Procedure for revoking authorisation order

(1) If the FCA proposes to make an order under section 261U revoking an authorisation order ("a revoking order"), it must give separate warning notices to the operator and the depositary of the scheme.

(2) If the FCA decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

261W. Requests for revocation of authorisation order

(1) An authorisation order may be revoked by an order made by the FCA at the request of the operator or depositary of the scheme concerned.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the operator and depositary of the scheme concerned.

(3) The FCA may refuse a request to make an order under this section if it considers that—
- (a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or
- (b) revocation would not be in the interests of the participants or would be incompatible with an EU obligation.

(4) If the FCA proposes to refuse a request under this section, it must give separate warning notices to the operator and the depositary of the scheme.

(5) If the FCA decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Powers of intervention

261X. Directions

(1) The FCA may give a direction under this section if it appears to the FCA that—
- (a) one or more of the requirements for the making of an authorisation order are no longer satisfied;
- (b) the operator or depositary of an authorised contractual scheme has contravened, or is likely to contravene, a requirement imposed—
  - (i) by or under this Act; or
  - (ii) by any directly applicable EU regulation or decision made under the UCITS directive;
- (c) the operator or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular; or
- (d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section may—
- (a) require the operator of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;
- (b) require the operator and depositary of the scheme to wind it up.

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(3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.

(4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked.

(5) If a person contravenes a direction under this section, section 138D applies to the contravention as it applies to a contravention mentioned in that section.

(6) The FCA may revoke or vary a direction given under this section, either on its own initiative or on the application of a person to whom the direction was given, if it appears to the FCA—
   (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
   (b) in the case of variation, that the direction should take effect or continue in force in a different form.

261Y. Applications to the court

(1) If the FCA could give a direction under section 261X, it may also apply to the court for an order—
   (a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and
   (b) replacing the person or persons removed with a suitable person or persons nominated by the FCA.

(2) The FCA may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 261D(4) to (9) would be complied with.

(3) If it appears to the FCA that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
   (a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and
   (b) appointing an authorised person to wind up the scheme.

(4) On an application under this section the court may make such order as it thinks fit.

(5) The court may, on the application of the FCA, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The FCA must give written notice of the making of an application under this section to the operator and depositary of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—
   (a) the High Court;
   (b) in Scotland, the Court of Session.

261Z. Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes is wound up, whether as a result of a direction

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given by the FCA under section 257 or 261X, an order of the court under section 258 or 261Y, rules made by the FCA or otherwise.

(2) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—
  (a) the FCA approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or
  (b) the FCA approves under section 261S an amendment of the contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes—
  (a) merges with another UCITS, or
  (b) is divided into two or more UCITS.

(4) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—
  (a) the FCA approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—
    (i) the master UCITS which results from the merger;
    (ii) one of the UCITS resulting from the division; or
    (iii) another UCITS or master UCITS;
  (b) the FCA approves under section 261S an amendment of the contractual scheme deed of the scheme concerned which would enable it to convert into a UCITS which is not a feeder UCITS.

261Z1. Procedure on giving directions under section 261X or 261Z and varying them on FCA's own initiative

(1) A direction under section 261X or 261Z takes effect—
  (a) immediately, if the notice given under subsection (3) states that that is the case;
  (b) on such date as may be specified in the notice; or
  (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction under section 261X may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power under that section, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the FCA proposes to give a direction under section 261X or 261Z, or gives a direction under either section with immediate effect, it must give separate written notice to the operator and the depositary of the scheme concerned.

(4) The notice must—
  (a) give details of the direction;
  (b) inform the person to whom it is given of when the direction takes effect;

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(c) state the FCA's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that representations may be made to the FCA within such period as may be specified in it (whether or not the matter has been referred to the Tribunal); and

(e) inform the person to whom it is given of the right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 261X(2)(a), the notice must state that the requirement has effect until—

(a) a specified date; or

(b) a further direction.

(6) If the direction is given under section 261X(2)(b) or section 261Z(2) or (4), the scheme must be wound up—

(a) by a date specified in the notice; or

(b) if no date is specified, as soon as practicable.

(7) The FCA may extend the period allowed under the notice for making representations.

(8) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction,

it must give separate written notice to the operator and the depositary of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect,

it must give separate written notice to the operator and the depositary of the scheme concerned.

(10) A notice given under subsection (8) must inform the persons to whom it is given of the right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) If a notice informs a person of the right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the FCA's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

261Z2. Procedure: refusal to revoke or vary direction

(1) If on an application under section 261X(6) for a direction to be revoked or varied the FCA proposes—

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(a) to vary the direction otherwise than in accordance with the application, or
(b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the FCA decides to refuse to revoke or vary the direction—
(a) it must give the applicant a decision notice; and
(b) the applicant may refer the matter to the Tribunal.

261Z3. Procedure: revocation of direction and grant of request for variation

(1) If the FCA decides on its own initiative to revoke a direction under section 261X it must give separate written notice of its decision to the operator and the depositary of the scheme.

(2) If on an application under section 261X(6) for a direction to be revoked or varied the FCA decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The FCA may publish such information about the revocation or variation, in such way, as it considers appropriate.

261Z4. Information for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the FCA to implement Article 66 of the UCITS directive, the FCA is informed by the operator of an authorised contractual scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEAUCITS.

(2) The FCA must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

261Z5. Information for feeder UCITS

(1) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company (the master UCITS) of—
(a) any failure of which the FCA becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;
(b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the FCA;
(c) any information reported to the FCA pursuant to rules of the FCA made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an EEAUCITS of any information received from the home state regulator of the EEAUCITS in relation to—

Status: *Point in time view as at 26/07/2013.*
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(a) any failure by the EEAUCITS to comply with any requirement in Chapter VIII of the UCITS directive;

(b) any decision or measure imposed on the EEAUCITS under provisions implementing Chapter VIII of the UCITS directive;

(c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEAUCITS, its operator, depositary or auditor.

(3) Where the FCA has the information described in subsection (1)(a), (b) or (c) in relation to an authorised contractual scheme which is a master UCITS for one or more feeder UCITS which are EEAUCITS, the FCA must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.**]**

CHAPTER IV

OPEN-ENDED INVESTMENT COMPANIES

262 Open-ended investment companies.

(1) The Treasury may by regulations make provision for—

(a) facilitating the carrying on of collective investment by means of open-ended investment companies;

(b) regulating such companies.

(2) The regulations may, in particular, make provision—

(a) for the incorporation and registration in **[**[F64]the United Kingdom**]** of bodies corporate;

(b) for a body incorporated by virtue of the regulations to take such form as may be determined in accordance with the regulations;

(c) as to the purposes for which such a body may exist, the investments which it may issue and otherwise as to its constitution;

(d) as to the management and operation of such a body and the management of its property;

(e) as to the powers, duties, rights and liabilities of such a body and of other persons, including—

(i) the directors or sole director of such a body;

(ii) its depositary (if any);

(iii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;

(iv) its auditor; and

(v) any persons who act or purport to act on its behalf;

(f) as to the merger of one or more such bodies and the division of such a body;

(g) for the appointment and removal of an auditor for such a body;

(h) as to the winding up and dissolution of such a body;

(i) for such a body, or any director or depositary of such a body, to be required to comply with directions given by the **[**[F46]FCA**]**;

(j) enabling the **[**[F46]FCA**]** to apply to a court for an order removing and replacing any director or depositary of such a body;

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(k) for the carrying out of investigations by persons appointed by the **[**[F46]FCA**]** or the Secretary of State;

(l) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.

(3) Regulations under this section may—

(a) impose criminal liability;

(b) confer functions on the **[**[F46]FCA**]**;

(c) in the case of provision made by virtue of subsection (2)(l), authorise the making of rules by the **[**[F46]FCA**]**;

(d) confer jurisdiction on any court or on the Tribunal;

(e) provide for fees to be charged by the **[**[F46]FCA in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);

(f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);

(g) make consequential amendments, repeals and revocations of any such legislation;

(h) modify or exclude any rule of law.

(4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation.

(5) Regulations under this section may, in particular—

(a) revoke the [M1]Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996; and

(b) provide for things done under or in accordance with those regulations to be treated as if they had been done under or in accordance with regulations under this section.**]**

Textual Amendments

F46 Word in ss. 254-262 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F64 Words in s. 262(2)(a) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), **art. 12(3)**

Marginal Citations

M1 S.I. 1996/2827.

263 Amendment of section 716 Companies Act 1985.

In section 716(1) of the [M2]Companies Act 1985 (prohibition on formation of companies with more than 20 members unless registered under the Act etc.), after "this Act," insert " is incorporated by virtue of regulations made under section 262 of the Financial Services and Markets Act 2000 ".

Marginal Citations

M2 1985 c. 6.

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Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER V

RECOGNISED OVERSEAS SCHEMES

Schemes constituted in other EEA States

264 Schemes constituted in other EEA States.

(1) A collective investment scheme constituted in another EEA State is a recognised scheme if—

(a) it satisfies such requirements as are prescribed for the purposes of this section;[F65]. . .

[[F66](b) the home state regulator of the operator of the scheme has transmitted to the [[F67]FCA] notice of the operator's intention to invite persons in the United Kingdom to participate in the scheme; and

(c) the notice from the home state regulator—

(i) complies with the requirements of any directly applicable Community regulation or decision made under the UCITS directive, and

(ii) is accompanied by such other information as may be prescribed.]

(2) [F68]. . . . . .

(3) [F68]. . . . . .

(4) [F68]. . . . . .

(5) For the purposes of this section a collective investment scheme is constituted in another EEA State [[F69]("the home state")] if—

(a) it is constituted under the law of [[F70]the home state] by a contract or under a trust and is managed by a body corporate incorporated under [[F71]the law of any EEA State]; or

(b) it takes the form of an open-ended investment company incorporated under [[F72]the law of the home state].

(6) The operator of a recognised scheme may give written notice to the [[F67]FCA] that he desires the scheme to be no longer recognised by virtue of this section.

(7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

Textual Amendments

F65 Word in s. 264(1)(a) omitted (1.7.2011) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(24)(a)**

F66 S. 264(1)(b)(c) substituted for s. 264(1)(b) (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(24)(b)**

F67 Words in s. 264 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F68 s. 264(2)(3)(4) omitted (1.7.2011) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(24)(c)**

F69 Words in s. 264(5) inserted (24.8.2012) by The Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I. 2012/2015), regs. 1, **4(a)**

F70 Words in s. 264(5)(a) substituted (24.8.2012) by The Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I. 2012/2015), regs. 1, **4(b)(i)**

F71 Words in s. 264(5)(a) substituted (24.8.2012) by The Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I. 2012/2015), regs. 1, **4(b)(ii)**

F72 Words in s. 264(5)(b) substituted (24.8.2012) by The Undertakings for Collective Investment in Transferable Securities (Amendment) Regulations 2012 (S.I. 2012/2015), regs. 1, **4(c)**

Modifications etc. (not altering text)

C21 S. 264 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 66(1); S.I. 2001/3538, **art. 2(1)**

C22 S. 264 applied (with modifications) by S.I. 2001/3084, art. 3A (as inserted (24.8.2012) by The Financial Services and Markets Act 2000 (Gibraltar) (Amendment) Order 2012 (S.I. 2012/2017), arts. 1, **2(3)**)

Commencement Information

I14 S. 264 wholly in force at 1.12.2001; s. 264 not in force at Royal Assent see s. 431(2); s. 264(1)(3)(c) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 264 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 264 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

265 Representations and references to the Tribunal.

F73 . . . . . .

Textual Amendments

F73 S. 265 omitted (1.7.2011) by virtue of The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(25)**

266 Disapplication of rules.

(1) Apart from—

(a) financial promotion rules, and

(b) rules under section 283(1),

rules made by the **[**F74FCA**]** under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

[F75(1A) But subsection (1) does not affect the application of rules to an operator of a scheme if the operator is an EEA firm falling within paragraph 5(f) of Schedule 3 who qualifies for authorisation under that Schedule.**]**

(2) "Scheme" means a scheme which is a recognised scheme by virtue of section 264.

Textual Amendments

F74 Word in s. 266 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F75 S. 266(1A) inserted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg. 9**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

267 Power of [F76FCA] to suspend promotion of scheme.

(1) Subsection (2) applies if it appears to the **[**F77FCA**]** that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

(2) The **[**F78FCA**]** may direct that—

(a) the exemption from subsection (1) of section 238 provided by subsection (4)(c) of that section is not to apply in relation to the scheme; and

(b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.

(3) A direction under subsection (2) has effect—

(a) for a specified period;

(b) until the occurrence of a specified event; or

(c) until specified conditions are complied with.

(4) The **[**F79FCA**]** may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the **[**F79FCA**]** that the direction should take effect or continue in force in a different form.

(5) The **[**F80FCA**]** may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the **[**F80FCA**]**—

(a) that the conditions specified in the direction have been complied with; or

(b) that it is no longer necessary for the direction to take effect or continue in force.

(6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.

(7) For the purposes of this section and sections 268 and 269—

(a) the scheme's home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);

(b) the competent authorities in the scheme's home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.

(8) "Scheme" means a scheme which is a recognised scheme by virtue of section 264.

(9) "Specified", in relation to a direction, means specified in it.

Textual Amendments

F76 Word in s. 267 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 13(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F77 Word in s. 267(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 13(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F78 Word in s. 267(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 13(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F79 Word in s. 267(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 13(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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F80 Word in s. 267(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 13(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

268 Procedure on giving directions under section 267 and varying them on [F81FCA's] own initiative.

(1) A direction under section 267 takes effect—

(a) immediately, if the notice given under subsection (3)(a) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the [F82FCA], having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If [F83the FCA] proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—

(a) give the operator of the scheme concerned written notice; and

(b) inform the competent authorities in the scheme's home State of its proposal or (as the case may be) of the direction.

(4) The notice must—

(a) give details of the direction;

(b) inform the operator of when the direction takes effect;

(c) state the [F84FCA's] reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the operator that he may make representations to the [F85FCA] within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) The [F86FCA] may extend the period allowed under the notice for making representations.

(6) Subsection (7) applies if, having considered any representations made by the operator, the [F87FCA] decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction.

(7) [F88The FCA] must—

(a) give the operator of the scheme concerned written notice; and

(b) inform the competent authorities in the scheme's home State of the direction.

(8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the [F89FCA] decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect.

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(9) **[**[F90]The FCA**]** must—

(a) give the operator of the scheme concerned written notice; and

(b) inform the competent authorities in the scheme's home State of its decision.

(10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the **[**[F91]FCA's**]** own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Textual Amendments

F81 Word in s. 268 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(i)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F82 Word in s. 268(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F83 Words in s. 268(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F84 Word in s. 268(4)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F85 Word in s. 268(4)(d) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(d)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F86 Word in s. 268(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(d)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F87 Word in s. 268(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(d)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F88 Words in s. 268(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(e)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F89 Word in s. 268(8) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(f)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F90 Words in s. 268(9) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(g)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F91 Word in s. 268(13) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 14(h)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

269 Procedure on application for variation or revocation of direction.

(1) If, on an application under subsection (4) or (5) of section 267, the **[**[F92]FCA**]** proposes—

(a) to vary a direction otherwise than in accordance with the application, or

(b) to refuse the application,

it must give the operator of the scheme concerned a warning notice.

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(2) If, on such an application, the **[**[F93]FCA**]** decides—

(a) to vary a direction otherwise than in accordance with the application, or

(b) to refuse the application,

it must give the operator of the scheme concerned a decision notice.

(3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.

(4) If, on such an application, the **[**[F94]FCA**]** decides to grant the application it must give the operator of the scheme concerned written notice.

(5) If the **[**[F95]FCA**]** decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.

(6) **[**[F96]The FCA**]** must inform the competent authorities in the scheme's home State of any notice given under this section.

Textual Amendments

F92 Word in s. 269(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 15(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F93 Word in s. 269(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 15(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F94 Word in s. 269(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 15(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F95 Word in s. 269(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 15(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F96 Words in s. 269(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 15(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F97 **…**

Textual Amendments

F97 Ss. 270, 271 and crossheading omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 18**

[F97]270 Schemes authorised in designated countries or territories.

. . . . . .

[F97]271 Procedure.

. . . . . .

Status: *Point in time view as at 26/07/2013.*
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Individually recognised overseas schemes

272 Individually recognised overseas schemes.

(1) The **[**[F98]FCA**]** may, on the application of the operator of a collective investment scheme which—

(a) is managed in a country or territory outside the United Kingdom,

(b) does not satisfy the requirements prescribed for the purposes of section 264, **[**[F99]and**]**

[F100](c) . . . . . .

(d) appears to the **[**[F98]FCA**]** to satisfy the requirements set out in the following provisions of this section,

make an order declaring the scheme to be a recognised scheme.

(2) Adequate protection must be afforded to participants in the scheme.

(3) The arrangements for the scheme's constitution and management must be adequate.

(4) The powers and duties of the operator and, if the scheme has a trustee or depositary, of the trustee or depositary must be adequate.

(5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the **[**[F98]FCA**]** must have regard to—

(a) any rule of law, and

(b) any matters which are, or could be, the subject of rules,

applicable in relation to comparable authorised schemes.

(6) "Comparable authorised schemes" means whichever of the following the **[**[F98]FCA**]** considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—

(a) authorised unit trust schemes;

[[F101](aa) authorised contractual schemes which are co-ownership schemes;

(ab) authorised contractual schemes which are partnership schemes;**]**

(b) authorised open-ended investment companies;

[[F102](c) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).**]**

(7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.

(8) The operator of the scheme must—

(a) if an authorised person, have permission to act as operator;

(b) if not an authorised person, be a fit and proper person to act as operator.

(9) The trustee or depositary (if any) of the scheme must—

(a) if an authorised person, have permission to act as trustee or depositary;

(b) if not an authorised person, be a fit and proper person to act as trustee or depositary.

(10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the **[**[F98]FCA**]** by the sharing of information and in other ways.

(11) The name of the scheme must not be undesirable or misleading.

(12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(13) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.

(14) But a scheme is to be treated as complying with subsection (13) if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

(15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F99 Word in s. 272(1) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 19(a)**

F100 S. 272(1)(c) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 19(b)**

F101 S. 272(6)(aa)(ab) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(14)(a)** (with reg. 24)

F102 S. 272(6)(c) substituted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(14)(b)** (with reg. 24)

Modifications etc. (not altering text)

C23 S. 272(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(1); S.I. 2001/3538, **art. 2(1)**

C24 S. 272(8)(9) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 9**

Commencement Information

I15 S. 272 wholly in force at 1.12.2001; s. 272 not in force at Royal Assent see s. 431(2); s. 272 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 272 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

273 Matters that may be taken into account.

For the purposes of subsections (8)(b) and (9)(b) of section 272, the **[**[F98]FCA**]** may take into account any matter relating to—

(a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;

(b) any director of the operator, trustee or depositary;

(c) any person exercising influence over the operator, trustee or depositary;

(d) any body corporate in the same group as the operator, trustee or depositary;

(e) any director of any such body corporate;

(f) any person exercising influence over any such body corporate.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I16 S. 273 wholly in force at 1.12.2001; s. 273 not in force at Royal Assent see s. 431(2); s. 273 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 273 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

274 Applications for recognition of individual schemes.

(1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the **[**[F98]FCA**]** by the operator of the scheme.

(2) The application—

(a) must be made in such manner as the **[**[F98]FCA**]** may direct;

(b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act;

(c) must contain or be accompanied by such information as the **[**[F98]FCA**]** may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the **[**[F98]FCA**]** may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The **[**[F98]FCA**]** may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the **[**[F98]FCA**]** may direct.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C25 S. 274 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 44(1) (with art. 23(2))

Commencement Information

I17 S. 274 wholly in force at 1.12.2001; s. 274 not in force at Royal Assent see s. 431(2); s. 274(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 274 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 274 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

275 Determination of applications.

(1) An application under section 272 must be determined by the **[**[F98]FCA**]** before the end of the period of six months beginning with the date on which it receives the completed application.

(2) The **[**[F98]FCA**]** may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) If the **[**[F98]FCA**]** makes an order under section 272(1), it must give written notice of the order to the applicant.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C26 S. 275(1)(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 44(2)(3) (with art. 23(2))

Commencement Information

I18 S. 275 wholly in force at 1.12.2001; s. 275 not in force at Royal Assent see s. 431(2); s. 275 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 275 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

276 Procedure when refusing an application.

(1) If the **[**[F98]FCA**]** proposes to refuse an application made under section 272 it must give the applicant a warning notice.

(2) If the **[**[F98]FCA**]** decides to refuse the application—

(a) it must give the applicant a decision notice; and

(b) the applicant may refer the matter to the Tribunal.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I19 S. 276 wholly in force at 1.12.2001; s. 276 not in force at Royal Assent see s. 431(2); s. 276 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 276 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

277 Alteration of schemes and changes of operator, trustee or depositary.

(1) The operator of a scheme recognised by virtue of section 272 must give written notice to the **[**[F98]FCA**]** of any proposed alteration to the scheme.

(2) Effect is not to be given to any such proposal unless—

(a) the **[**[F98]FCA**]**, by written notice, has given its approval to the proposal; or

(b) one month, beginning with the date on which notice was given under subsection (1), has expired without the **[**[F98]FCA**]** having given written notice to the operator that it has decided to refuse approval.

(3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the **[**[F98]FCA**]**—

(a) by the operator, trustee or depositary (as the case may be); or

(b) by the person who is to replace him.

[[F103](4) If a change is made, or is to be made, to the law which applies to such a scheme in the country or territory in which it is managed and the change affects or will affect any of the matters mentioned at section 272(2) to (4), the operator of the scheme must give written notice of the change to the FCA—

(a) at least one month before the change takes effect; or

(b) if that is not reasonably practicable, as soon as it is reasonably practicable to do so.

(5) A notice under this section—

(a) must be given in such manner as the FCA may direct; and

(b) where the notice is given under subsection (1) or (3), must include such information as the FCA may direct for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme would continue to be satisfied following the alteration or replacement that is the subject of the notice.**]**

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F103 S. 277(4)(5) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 20**

Modifications etc. (not altering text)

C27 S. 277(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(9); S.I. 2001/3538, **art. 2(1)**
S. 277(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(1) (with art. 23(2))

C28 S. 277(2)(b) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(2) (with art. 23(2))

C29 S. 277(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(3) (with art. 23(2))

Commencement Information

I20 S. 277 wholly in force at 1.12.2001; s. 277 not in force at Royal Assent see s. 431(2); s. 277 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 277 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

[[F104]**277A Regular provision of information relating to compliance with requirements for recognition**

(1) The operator of a scheme recognised by virtue of section 272 must provide to the FCA such information as the FCA may direct, at such times as the FCA may direct, for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme continue to be satisfied.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A direction under subsection (1) may not require information to be provided within the period of 12 months beginning with the date on which information was last required to be provided to the FCA in respect of the scheme pursuant to a requirement under section 274(2)(c) or a direction under subsection (1) or section 277(5)(b).

(3) The information must be provided in such manner as the FCA may direct.**]**

Textual Amendments

F104 S. 277A inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 21**

F105 …

Textual Amendments

F105 S. 278 crossheading omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 22**

278 Rules as to scheme particulars.

The **[**[F98]FCA**]** may make rules imposing duties or liabilities on the operator of a scheme recognised under section [F106]... 272 for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F106 Words in s. 278 omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 23**

279 Revocation of recognition.

The **[**[F98]FCA**]** may [F107]... revoke an order under section 272 if it appears to the **[**[F98]FCA**]**—

(a) that the operator, trustee or depositary of the scheme has contravened a requirement imposed on him by or under this Act;

(b) that the operator, trustee or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the **[**[F98]FCA**]** information which is false or misleading in a material particular;

(c) [F108]... that one or more of the requirements for the making of the order are no longer satisfied; or

(d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F107 Words in s. 279 omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 24(a)**

F108 Words in s. 279(c) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 24(b)**

Modifications etc. (not altering text)

C30 S. 279 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(4)(b) (with art. 23(2))
S. 279 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 48(4)(5) (with art. 23(2))

C31 S. 279(c) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(2); S.I. 2001/3538, **art. 2(1)**

280 Procedure.

(1) If the **[**[F98]FCA**]** proposes to **[**[F109]make an order under section 279**]** revoking a recognition order, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.

(2) If the **[**[F98]FCA**]** decides to [F110]... make an order under that section—

(a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme; and

(b) the operator or the trustee or depositary may refer the matter to the Tribunal.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F109 Words in s. 280(1) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 25(a)**

F110 Words in s. 280(2) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 25(b)**

Modifications etc. (not altering text)

C32 S. 280(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(1), 48(1) (with art. 23(2))

281 Directions.

(1) In this section a "relevant recognised scheme" means a scheme recognised under section [F111]... 272.

(2) If it appears to the **[**[F98]FCA**]** that—

(a) the operator, trustee or depositary of a relevant recognised scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act,

(b) the operator, trustee or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the **[**[F98]FCA**]** information which is false or misleading in a material particular,

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) one or more of the requirements for the recognition of **[**[F112]such a scheme**]** are no longer satisfied, or

(d) none of paragraphs (a) to (c) applies, but the exercise of the power conferred by this section is desirable in order to protect the interests of participants or potential participants in a relevant recognised scheme who are in the United Kingdom,

it may direct that the scheme is not to be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F111 Words in s. 281(1) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 26(a)**

F112 Words in s. 281(2)(c) substituted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 26(b)**

Modifications etc. (not altering text)

C33 S. 281 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 70(b), 71(b); S.I. 2001/3538, **art. 2(1)**
S. 281 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(9); S.I. 2001/3538, **art. 2(1)**

282 Procedure on giving directions under section 281 and varying them otherwise than as requested.

(1) A direction takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the **[**[F98]FCA**]**, having regard to the ground on which it is exercising its power under section 281, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the **[**[F98]FCA**]** proposes to give a direction under section 281, or gives such a direction with immediate effect, it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(4) The notice must—

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the **[**[F98]FCA's**]** reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that he may make representations to the **[**[F98]FCA**]** within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The **[**[F98]FCA**]** may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by a person to whom the notice was given, the **[**[F98]FCA**]** decides—
  (a) to give the direction in the way proposed, or
  (b) if it has been given, not to revoke the direction,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(7) If, having considered any representations made by a person to whom the notice was given, the **[**[F98]FCA**]** decides—
  (a) not to give the direction in the way proposed,
  (b) to give the direction in a way other than that proposed, or
  (c) to revoke a direction which has effect,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(8) A notice given under subsection (6) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(9) A notice under subsection (7)(b) must comply with subsection (4).

(10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(11) This section applies to the variation of a direction on the **[**[F98]FCA's**]** own initiative as it applies to the giving of a direction.

(12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Facilities and information in UK

283 Facilities and information in UK.

(1) The **[**[F98]FCA**]** may make rules requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified, such facilities as the **[**[F98]FCA**]** thinks desirable in the interests of participants and as are specified in rules.

(2) The **[**[F98]FCA**]** may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any communication of his which—
  (a) is a communication of an invitation or inducement of a kind mentioned in section 21(1); and
  (b) names the scheme.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) In the case of a communication originating outside the United Kingdom, subsection (2) only applies if the communication is capable of having an effect in the United Kingdom.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I21 S. 283 wholly in force at 1.12.2001; s. 283 not in force at Royal Assent see s. 431(2); s. 283(1) in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 283 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

[F113CHAPTER 5A

MASTER-FEEDER STRUCTURES

Textual Amendments

F113 Ch. 5A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(26)**

283A Master-feeder structures

(1) The operator of a UKUCITS may not invest a higher proportion of the property which is subject to the collective investment scheme constituted by that UCITS in units of another UCITS than is permitted by rules made by the **[**F98FCA**]** implementing Article 55 of the UCITS directive unless the investment is approved by the **[**F98FCA**]** in accordance with this section.

(2) An application for approval under subsection (1) of an investment must be made by the operator of the UKUCITS in such manner, and accompanied by such information, as is required by rules made by the **[**F98FCA**]**.

(3) The **[**F98FCA**]** must grant an application made under subsection (2) if it is satisfied—

(a) that the UCITS, its operator, trustee or depositary and auditor and the UCITS in which it proposes to invest, and its operator, have complied with—

(i) the requirements laid down in Chapter VIII of the UCITS directive, and

(ii) any other requirements imposed by the **[**F98FCA**]** in relation to the application;

(b) in a case where the application is made by the operator of a feeder UCITS in respect of the investment of the proceeds of the winding-up of its master UCITS, that the proceeds of the winding up are to be paid to the feeder UCITS before the date on which the investment is to be made.

(4) In a case within subsection (3)(b), approval must be subject to the conditions in subsections (5) and (6).

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The first condition is that the feeder UCITS is to receive the proceeds of the winding-up—
  (a) in cash; or
  (b) wholly or partly in assets other than cash in a case where the feeder UCITS so elects and each of the following so permits—
    (i) the decision of the master UCITS that it should be wound up;
    (ii) the trust deed **[**[F114], contractual scheme deed**]** or instrument of incorporation of the feeder UCITS; and
    (iii) either the agreement between the feeder UCITS and its master UCITS, or the internal conduct of business rules operated by the feeder UCITS and the master UCITS in accordance with rules made by the **[**[F98]FCA**]**.

(6) The second condition is that cash received by the feeder UCITS in accordance with paragraph (5)(a) may not be reinvested before the date on which the feeder UCITS proposes to invest in the new UCITS, except for the purpose of efficient cash management.

(7) The **[**[F98]FCA**]** must, within 15 working days of the date on which the **[**[F98]FCA**]** had received all the information required in relation to the application, give written notice to the operator—
  (a) that the **[**[F98]FCA**]** approves its application, or
  (b) that the **[**[F98]FCA**]** objects to the application.

(8) Following receipt of notice that the **[**[F98]FCA**]** objects to the application, the operator may refer the **[**[F98]FCA's**]** decision to the Tribunal.

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F114 Words in s. 283A(5)(b)(ii) inserted (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), regs. 1, **3(15)** (with reg. 24)

283B Reports on derivative instruments

(1) An authorised person who is the management company in relation to a UCITS must report to the **[**[F98]FCA**]** at specified intervals of not more than 12 months about any investment in derivative instruments during the specified period to which the report relates.

(2) The report must be in the specified form and contain the specified information.

(3) The **[**[F98]FCA**]** must review the regularity and completeness of the information provided by each management company under subsection (1).

(4) In this section, "specified" means specified—
  (a) in rules made by the **[**[F98]FCA**]** to implement the UCITS directive, or
  (b) in any directly applicable Community regulation or decision made under the UCITS directive.**]**

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F98 Word in ss. 271-283B substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 9(1)**(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

CHAPTER VI

INVESTIGATIONS

284 Power to investigate.

(1) An investigating authority may appoint one or more competent persons to investigate on its behalf—

(a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme,

(b) the affairs of, or of the operator, trustee or depositary of, any recognised scheme so far as relating to activities carried on in the United Kingdom, or

(c) the affairs of, or of the operator, trustee or depositary of, any other collective investment scheme except a body incorporated by virtue of regulations under section 262,

if it appears to the investigating authority that it is in the interests of the participants or potential participants to do so or that the matter is of public concern.

(2) A person appointed under subsection (1) to investigate the affairs of, or of the manager, trustee, operator or depositary of, any scheme (scheme "A"), may also, if he thinks it necessary for the purposes of that investigation, investigate—

(a) the affairs of, or of the manager, trustee, operator or depositary of, any other such scheme as is mentioned in subsection (1) whose manager, trustee, operator or depositary is the same person as the manager, trustee, operator or depositary of scheme A;

(b) the affairs of such other schemes and persons (including bodies incorporated by virtue of regulations under section 262 and the directors and depositaries of such bodies) as may be prescribed.

(3) If the person appointed to conduct an investigation under this section ("B") considers that a person ("C") is or may be able to give information which is relevant to the investigation, B may require C—

(a) to produce to B any documents in C's possession or under his control which appear to B to be relevant to the investigation,

(b) to attend before B, and

(c) otherwise to give B all assistance in connection with the investigation which C is reasonably able to give,

and it is C's duty to comply with that requirement.

(4) Subsections (5) to (9) of section 170 apply if an investigating authority appoints a person under this section to conduct an investigation on its behalf as they apply in the case mentioned in subsection (1) of that section.

(5) Section 174 applies to a statement made by a person in compliance with a requirement imposed under this section as it applies to a statement mentioned in that section.

Status: *Point in time view as at 26/07/2013.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) Subsections (2) to (4) and (6) of section 175 and section 177 have effect as if this section were contained in Part XI.

(7) Subsections (1) to (9) of section 176 apply in relation to a person appointed under subsection (1) as if—

(a) references to an investigator were references to a person so appointed;

(b) references to an information requirement were references to a requirement imposed under section 175 or under subsection (3) by a person so appointed;

(c) the premises mentioned in subsection (3)(a) were the premises of a person whose affairs are the subject of an investigation under this section or of an appointed representative of such a person.

(8) No person may be required under this section to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless subsection (9) or (10) applies.

(9) This subsection applies if—

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(b) the imposing on the person concerned of a requirement with respect to information or a document of a kind mentioned in subsection (8) has been specifically authorised by the investigating authority.

(10) This subsection applies if the person owing the obligation of confidence or the person to whom it is owed is—

(a) the manager, trustee, operator or depositary of any collective investment scheme which is under investigation;

(b) the director of a body incorporated by virtue of regulations under section 262 which is under investigation;

(c) any other person whose own affairs are under investigation.

(11) "Investigating authority" means **[**[F115]the FCA**]** or the Secretary of State.

Textual Amendments

F115 Words in s. 284 substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 17** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C34 S. 284(1) extended (with modifications) (1.12.2001) by S.I. 2001/3646, **arts. 1(2)**, 8

Commencement Information

I22 S. 284 wholly in force at 1.12.2001; s. 284 not in force at Royal Assent see s. 431(2); s. 284(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 284 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status:
Point in time view as at 26/07/2013.

Changes to legislation:
Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.