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## SCHEDULES

### SCHEDULE 9

#### COLLECTIVE INVESTMENT SCHEMES AUTHORISED IN APPROVED COUNTRIES

##### PART 1

###### PROVISIONS TO BE INSERTED IN CHAPTER 5 OF PART 17 OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

- 1 In Chapter 5 of Part 17 of the Financial Services and Markets Act 2000 (recognised overseas schemes), before section 272 (and the italic heading before that section) insert—

*“Schemes authorised in approved countries*

##### **Schemes authorised in approved countries**

- 271A) A collective investment scheme which is authorised under the law of a country or territory outside the United Kingdom is a recognised scheme if—
- (a) regulations made by the Treasury approving the country or territory for the purposes of this section are in force,
  - (b) the scheme is of a description specified in the regulations in relation to which the country or territory is approved,
  - (c) the operator of the scheme has applied to the FCA for recognition of the scheme,
  - (d) the FCA has made (and has not revoked) an order granting the application, and
  - (e) no direction under section 271L (suspension of recognition) has effect in relation to the scheme.
- (2) In making regulations under this section, the Treasury may have regard to any matter that they consider relevant (and see the restrictions in sections 271B and 271C).

##### **Approval of country: equivalent protection afforded to participants**

- 271B) The Treasury may not make regulations under section 271A approving a country or territory and specifying a description of collective investment scheme unless satisfied that the equivalent protection test is met.
- (2) The equivalent protection test is met if the protection afforded to participants or potential participants in the schemes by the law and practice of the country or territory is at least equivalent to that afforded to participants or potential participants in comparable authorised schemes by the law and practice of the United Kingdom under which such schemes are authorised and supervised.

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(3) In this section—

“comparable authorised schemes” means whichever of the following the Treasury consider to be the most appropriate—

- (a) authorised unit trust schemes;
- (b) authorised contractual schemes which are co-ownership schemes;
- (c) authorised contractual schemes which are partnership schemes;
- (d) authorised open-ended investment companies;
- (e) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (d);

“participants” means participants in the United Kingdom.

#### **Approval of country: regulatory co-operation**

271C(1) The Treasury may not make regulations under section 271A approving a country or territory and specifying a description of collective investment scheme unless satisfied that adequate arrangements exist, or will exist, for co-operation between the FCA and the overseas regulator.

(2) In this section, “the overseas regulator” means the authority responsible for the authorisation and supervision of schemes of that description in the country or territory.

#### **Report by the FCA in relation to approval**

271D(1) When considering whether to make, vary or revoke regulations under section 271A approving a country or territory and specifying a description of collective investment scheme, the Treasury may ask the FCA to prepare a report on—

- (a) the law and practice of the country or territory under which such schemes are authorised and supervised, or particular aspects of such law and practice, and
- (b) any existing or proposed arrangements for co-operation between the FCA and the overseas regulator.

(2) A request for a report under subsection (1) must be made in writing.

(3) If the Treasury ask for a report under subsection (1), the FCA must provide the Treasury with the report.

(4) In this section, “the overseas regulator” has the same meaning as in section 271C.

#### **Power to impose requirements on schemes**

271E(1) The Treasury may by regulations—

- (a) provide that a section 271A scheme of a description specified in the regulations must comply with requirements specified in the regulations, and
- (b) impose requirements on the operator of such a scheme.

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- (2) In making regulations under this section in relation to a description of section 271A scheme, the Treasury must have regard to any requirements imposed in relation to comparable authorised schemes by or under this Act.
- (3) Regulations under this section may describe requirements by reference to—
  - (a) rules made or to be made by the FCA, or
  - (b) other enactments.
- (4) The power under subsection (3) includes power to make provision by reference to rules or other enactments as amended from time to time.
- (5) The FCA may make, amend or revoke a rule if it considers it necessary or appropriate to do so for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this section which is described by reference to a rule made or to be made by the FCA.
- (6) If, for the purposes of a requirement imposed (or varied or withdrawn) by regulations under this section which is described by reference to a rule made or to be made by the FCA, the Treasury consider that it is necessary or appropriate for the FCA to make, amend or revoke a rule, they may direct the FCA to do so.
- (7) If the Treasury give a direction under subsection (6), the FCA must comply with the direction within such time as the Treasury may specify in the direction.
- (8) The references in paragraphs (5) and (6) to the amendment or revocation of rules are to the amendment or revocation of rules made by the FCA.
- (9) Section 141A (power to make consequential amendments of references to rules) applies in relation to the FCA's power to make, amend or revoke rules under this section as it applies in relation to its power to make, amend or revoke rules under Part 9A.
- (10) In this section—
  - “comparable authorised schemes” has the same meaning as in section 271B;
  - “enactment” includes—
    - (a) retained direct EU legislation,
    - (b) an enactment comprised in subordinate legislation,
    - (c) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
    - (d) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
    - (e) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

### **Application for recognition to the FCA**

- 271(F) An application for recognition of a collective investment scheme under section 271A—

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- (a) must be made in such manner as the FCA may direct,
  - (b) must contain the address of a place in the United Kingdom for service of notices, or other documents, required or authorised to be served on the operator under this Act, and
  - (c) must contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.
- (2) Where requirements imposed by regulations under section 271E would apply to the scheme or its operator if the application were granted, the application must contain an explanation of how each requirement would be satisfied.
- (3) At any time after the application is received and before it is determined, the 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) The FCA may require the applicant to present information provided under this section in such form, or to verify the information in such a way, as the FCA may direct.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications.

### **Determination of applications**

271(1) The FCA—

- (a) may only make an order under section 271A granting an application under that section if it is satisfied that the conditions in subsection (2) are met, and
  - (b) if it is so satisfied, must make such an order unless it is permitted to refuse the application under subsection (3) or required to do so under subsection (4).
- (2) Those conditions are—
- (a) that the scheme is authorised in a country or territory which is approved by the Treasury in regulations under section 271A,
  - (b) that the scheme is of a description of scheme specified in the regulations,
  - (c) that adequate arrangements exist for co-operation between the FCA and the overseas regulator, and
  - (d) that, where requirements imposed by regulations under section 271E would apply to the scheme or its operator if the application were granted, each such requirement would be satisfied.
- (3) The FCA may refuse an application under section 271A if it appears to the FCA that the operator of the scheme—
- (a) has contravened a requirement imposed on them by or under this Act, or would contravene such a requirement if the application were granted, or
  - (b) has, in purported compliance with such a requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular.

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- (4) The FCA must refuse an application under section 271A if it considers it desirable to do so in order to protect the interests of participants or potential participants in the scheme in the United Kingdom.
- (5) Where the FCA receives an application under section 271A which is complete, it must give the applicant a notice under section 271H(1) or (2) before the end of the period of two months beginning with the day on which the FCA receives the application.
- (6) An application under section 271A is complete if the FCA considers that the application satisfies section 271F(1) and (2).
- (7) Where the FCA receives an application under section 271A which is not complete, it must—
  - (a) notify the operator of the scheme that it does not consider that the application satisfies section 271F(1) or (2) (as applicable), and
  - (b) identify the information needed to complete the application.
- (8) In this section, “the overseas regulator” has the same meaning as in section 271C.

#### **Procedure when determining an application**

- 271H) If the FCA decides to make an order under section 271A granting an application under that section, it must give written notice of its decision to the applicant.
- (2) If the FCA proposes to refuse an application under section 271A, it must give the applicant a warning notice.
  - (3) If the FCA decides to refuse the application, it must give the applicant a decision notice.
  - (4) If the FCA gives the applicant a decision notice under subsection (3), the applicant may refer the matter to the Tribunal, except where the FCA refuses the application on the ground that it is not satisfied that a condition in section 271G(2)(a) or (c) is met.

#### **Obligations on operator of a section 271A scheme**

- 271I) The operator of a section 271A scheme must notify the FCA if the operator becomes aware that it has contravened, or expects to contravene, a requirement imposed on it by or under this Act.
- (2) The operator of a section 271A scheme must notify the FCA of any change to—
    - (a) the name or address of the operator of the scheme,
    - (b) the name or address of any trustee or depositary of the scheme,
    - (c) the name or address of any representative of the operator in the United Kingdom, and
    - (d) the address of the place in the United Kingdom for service of notices, or other documents, required or authorised to be served on the operator under this Act.

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- (3) A notification under subsection (1) or (2) must be made in writing as soon as reasonably practicable.

### **Provision of information to the FCA**

- 271(1) The operator of a section 271A scheme 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—
- (a) the conditions set out in section 271G(2)(a) to (c) are met, and
  - (b) any requirements relating to the scheme or its operator imposed by or under this Act are satisfied.
- (2) The FCA may require the operator to present information provided under this section in such form, or to verify the information in such a way, as the FCA may direct.
- (3) Different directions may be given in relation to different schemes or different descriptions of scheme.

### **Rules as to scheme particulars**

- 271(1) The FCA may make rules in relation to section 271A schemes for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.
- (2) For the purposes of subsection (1), a reference in section 248 to the manager of an authorised unit trust scheme is to be read as a reference to the operator of a section 271A scheme.
- (3) Rules made under this section do not affect any liability which a person may incur apart from the rules.

### **Suspension of recognition**

- 271(1) The FCA may direct that a section 271A scheme is not to be a recognised scheme—
- (a) for a specified period,
  - (b) until the occurrence of a specified event, or
  - (c) until specified conditions are complied with.
- (2) The FCA may give a direction under subsection (1) only if—
- (a) the FCA is no longer satisfied that the conditions set out in section 271G(2)(a) to (c) are met,
  - (b) it appears to the FCA that a requirement relating to the scheme or its operator imposed by or under this Act has not been satisfied, or is likely not to be satisfied,
  - (c) it appears to the FCA that the operator 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, or

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- (d) although none of paragraphs (a) to (c) applies, the FCA considers it desirable to do so in order to protect the interests of participants or potential participants in the United Kingdom.

### **Procedure when suspending recognition**

271M) A direction under section 271L takes effect—

- (a) immediately, if the notice given under subsection (3) states that to be the case,
  - (b) on a day specified in the notice, or
  - (c) if no day is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction under section 271L may be expressed to take effect immediately or on a specified day only if the FCA, having regard to its reason for giving the direction, reasonably considers that it is necessary for the direction to take effect immediately or on that day (as appropriate).
- (3) If the FCA proposes to give a direction under section 271L, or gives such a direction with immediate effect, it must give written notice to—
- (a) the operator of the scheme, and
  - (b) the trustee or depositary of the scheme (if any).
- (4) The notice must—
- (a) set out details of the direction,
  - (b) set out when the direction takes effect,
  - (c) state the FCA's reasons for giving the direction and for its determination as to when the direction takes effect,
  - (d) state that the recipient of the notice may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal), and
  - (e) set out the recipient's right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) The FCA must give written notice to the operator and (if any) the trustee or depositary of the scheme concerned if, having considered any representations made, the FCA decides—
- (a) to give the direction in the way proposed, or
  - (b) if it has been given, not to revoke the direction.
- (7) The FCA must give written notice to the operator and (if any) the trustee or depositary of the scheme concerned if, having considered any representations made, 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) where the direction has been given, to revoke it.
- (8) A notice under subsection (6) must set out the recipient's right to refer the matter to the Tribunal.
- (9) A notice under subsection (7)(b) must comply with subsection (4).

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- (10) Where a notice sets out the right of the recipient 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 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).

### **Revocation of recognition on the FCA's initiative**

- 271N) The FCA may revoke an order made under section 271A in relation to a collective investment scheme if—
- (a) the FCA is no longer satisfied that the conditions set out in section 271G(2)(a) to (c) are met,
  - (b) it appears to the FCA that a requirement relating to the scheme or its operator imposed by or under this Act has not been satisfied,
  - (c) it appears to the FCA that the operator 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, or
  - (d) although none of paragraphs (a) to (c) applies, the FCA considers it desirable to revoke the order to protect the interests of participants or potential participants in the United Kingdom.
- (2) If the FCA proposes to revoke an order made under section 271A, it must give a warning notice to—
- (a) the operator of the scheme, and
  - (b) the trustee or depositary of the scheme (if any).
- (3) If the FCA decides to revoke the order—
- (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, trustee or depositary may refer the matter to the Tribunal.

### **Requests for revocation of recognition**

- 271O) The FCA may revoke an order made under section 271A in relation to a collective investment scheme at the request of the scheme's operator.
- (2) If the FCA decides to do so, it must give written notice to the operator and (if any) the trustee or depositary of the scheme.
- (3) The FCA may refuse a request 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 order should be revoked, or
  - (b) revocation would not be in the interests of participants in the scheme.
- (4) If the FCA proposes to refuse a request under this section, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.



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- (5) If the FCA decides to refuse the request—
- (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, trustee or depositary may refer the matter to the Tribunal.

### **Obligations on operator where recognition is revoked or suspended**

- 271(1) This section applies where—
- (a) the FCA gives a decision notice under section 271N(3), or a written notice under section 271O(2), in relation to a section 271A scheme, or
  - (b) a direction given by the FCA under section 271L(1) in relation to a section 271A scheme takes effect.
- (2) The operator of the scheme must notify such persons as the FCA may direct that the FCA has revoked an order under section 271A for recognition of the scheme or given a direction under section 271L in relation to the scheme (as applicable).
- (3) A notification under subsection (2) that relates to a direction under section 271L must set out the terms of the direction.
- (4) A notification under subsection (2) must—
- (a) contain such information as the FCA may direct, and
  - (b) be made in such form and manner as the FCA may direct.
- (5) Different directions may be given under subsection (2) or (4) in relation to—
- (a) different schemes or different descriptions of scheme;
  - (b) different persons or descriptions of persons to whom a notification under subsection (2) must be given.

### **Effect of variation or revocation of Treasury regulations**

- 271(1) This section applies, in relation to a section 271A scheme, where the Treasury vary or revoke regulations under section 271A and, as a result, the scheme ceases to be a recognised scheme because—
- (a) the country or territory in which the scheme is authorised is no longer approved for the purposes of that section, or
  - (b) the scheme is no longer of a description of scheme specified in regulations under that section.
- (2) Where this section applies, the order given by the FCA under section 271A in relation to the scheme is revoked.
- (3) The Treasury may by regulations make provision, in relation to a scheme which has ceased to be recognised under section 271A by virtue of this section—
- (a) requiring an application under section 272 by such a scheme to be made during a period specified in the regulations or in a direction given by the FCA, and

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- (b) modifying or disapplying section 275(1) and (2) (time limits for determining applications under section 272) for the purposes of an application under section 272 relating to such a scheme.

### **Public censure**

271R(1) This section applies where the FCA considers that—

- (a) a requirement imposed by regulations under section 271E has been contravened,
  - (b) rules made under section 271K have been contravened,
  - (c) the operator of a section 271A scheme has contravened section 271I, 271J or 271P, or
  - (d) the operator of a section 271A scheme has contravened a rule made, or a requirement imposed, under section 283.
- (2) The FCA may publish a statement to that effect.
- (3) Where the FCA proposes to publish a statement under subsection (2) relating to a scheme or the operator of a scheme, it must give the operator a warning notice setting out the terms of the statement.
- (4) If the FCA decides to publish the statement—
- (a) it must give the operator, without delay, a decision notice setting out the terms of the statement, and
  - (b) the operator may refer the matter to the Tribunal.
- (5) After a statement under subsection (2) is published, the FCA must send a copy of it to the operator and to any person to whom a copy of the decision notice was given under section 393(4).

### **Recognition of parts of schemes under section 271A**

271S(1) Section 271A(1) applies in relation to a part of a collective investment scheme as it applies in relation to such a scheme.

- (2) Accordingly, the following include a part of a scheme recognised under section 271A—
- (a) the reference to a scheme recognised under section 271A in the definition of “section 271A scheme” in section 237(3), and
  - (b) other references to such a scheme (however expressed) in or in provision made under this Part of this Act (unless the contrary intention appears).
- (3) Provisions of or made under this Part of this Act have effect in relation to parts of schemes recognised, or seeking recognition, under section 271A with appropriate modifications.
- (4) The Treasury may by regulations—
- (a) make provision about what are, or are not, appropriate modifications for the purposes of subsection (3);
  - (b) make provision so that a relevant enactment has effect in relation to parts of schemes recognised, or seeking recognition, under

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- section 271A with such modifications as the Treasury consider appropriate;
- (c) make provision so that a relevant enactment does not have effect in relation to such parts of schemes.
- (5) Regulations under subsection (4)(b) or (c) may amend, repeal or revoke an enactment.
- (6) In this section—
- “enactment” has the same meaning as in section 271E;
- “relevant enactment” means an enactment passed or made before the day on which subsection (1) comes into force that makes provision in relation to collective investment schemes recognised, or seeking recognition, under section 271A.”

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**Commencement Information**

**II** Sch. 9 para. 1 in force at 23.2.2022 by S.I. 2022/163, reg. 2(a)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by [S.I. 2021/1163 reg. 2](#)