



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVII **U.K.**

#### COLLECTIVE INVESTMENT SCHEMES

#### [<sup>F1</sup>CHAPTER 3A **U.K.**

#### AUTHORISED CONTRACTUAL SCHEMES

#### *[<sup>F1</sup>Powers of intervention*

#### Textual Amendments

- F1** 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)

#### 261X. Directions **U.K.**

- (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 depository 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 depository 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

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A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked.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

- (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;

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(b) in Scotland, the Court of Session.

## **261Z. Winding up or merger of master UCITS** **U.K.**

- (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 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** **U.K.**

- (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).

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- (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;
  - (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.

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- (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** U.K.

- (1) If on an application under section 261X(6) for a direction to be revoked or varied the 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 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** U.K.

- (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** U.K.

- (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** U.K.

- (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;

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- (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—
- (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.]

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