



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

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;^{F1} . . .
 - [^{F2}(b) the home state regulator of the operator of the scheme has transmitted to the [^{F3}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) ^{F4}
- (3) ^{F4}
- (4) ^{F4}
- (5) For the purposes of this section a collective investment scheme is constituted in another EEA State [^{F5}(“the home state”)] if—

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- (a) it is constituted under the law of [^{F6}the home state] by a contract or under a trust and is managed by a body corporate incorporated under [^{F7}the law of any EEA State]; or
- (b) it takes the form of an open-ended investment company incorporated under [^{F8}the law of the home state].
- (6) The operator of a recognised scheme may give written notice to the [^{F3}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

- F1** 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)**
- F2** 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)**
- F3** 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.
- F4** 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)**
- F5** 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)**
- F6** 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)**
- F7** 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)**
- F8** 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)

- C1** S. 264 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 66(1); S.I. 2001/3538, **art. 2(1)**
- C2** 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

- I1** 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.

^{F9}

Textual Amendments

- F9** 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)**

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266 Disapplication of rules.

(1) Apart from—

- (a) financial promotion rules, and
- (b) rules under section 283(1),

rules made by the ^{F10}FCA 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.

^{F11}(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

F10 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.](#)

F11 S. 266(1A) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\), reg. 9](#)

267 Power of ^{F12}FCA to suspend promotion of scheme.

(1) Subsection (2) applies if it appears to the ^{F13}FCA 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 ^{F14}FCA 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 ^{F15}FCA 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 ^{F15}FCA that the direction should take effect or continue in force in a different form.

(5) The ^{F16}FCA 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 ^{F16}FCA—

- (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.

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- (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

- F12** 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.](#)
- F13** 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.](#)
- F14** 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.](#)
- F15** 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.](#)
- F16** 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 [^{F17}FCA'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 [^{F18}FCA], 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 [^{F19}the 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 [^{F20}FCA's] reasons for giving the direction and for its determination as to when the direction takes effect;

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- (d) inform the operator that he may make representations to the [F²¹FCA] 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 [F²²FCA] 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 [F²³FCA] decides—
- (a) to give the direction in the way proposed, or
 - (b) if it has been given, not to revoke the direction.
- (7) [F²⁴The 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 [F²⁵FCA] 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.
- (9) [F²⁶The 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 [F²⁷FCA'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

- F17** 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.](#)
- F18** 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.](#)
- F19** 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.](#)
- F20** 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.](#)
- F21** 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.](#)

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- F22** 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.
- F23** 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.
- F24** 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.
- F25** 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.
- F26** 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.
- F27** 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 ^[F28]FCA proposes—
- to vary a direction otherwise than in accordance with the application, or
 - to refuse the application,
- it must give the operator of the scheme concerned a warning notice.
- (2) If, on such an application, the ^[F29]FCA decides—
- to vary a direction otherwise than in accordance with the application, or
 - 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 ^[F30]FCA decides to grant the application it must give the operator of the scheme concerned written notice.
- (5) If the ^[F31]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) ^[F32]The FCA must inform the competent authorities in the scheme's home State of any notice given under this section.

Textual Amendments

- F28** 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.
- F29** 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.
- F30** 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.
- F31** 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.
- F32** 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.

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