

# HM Treasury Consultation on the Overseas Funds Regime

## Background

EU UCITS that exercised their rights to market in the UK via a passport prior to the end of the Brexit transition period can currently avail of the UK temporary marketing permissions regime ("TPR") introduced under the UK Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 ("CIS EU Exit Regulations").

However, in order for EU UCITS to continue to be recognised in the UK after the end of the TPR for offers to retail investors, the fund must apply under section 272 of the Financial Services and Markets Act 2000 ("FSMA").

Following on from concerns raised by stakeholders that section 272 would be an operational challenge for both UCITS funds and the UK Financial Conduct Authority ("FCA") given that it requires an in-depth assessment of individual funds, on 11 March 2020 HM Treasury ("HMRC") published a [consultation paper](#) on a new Overseas Funds Regime ("OFR") which sets out a more streamlined regime for overseas funds. The consultation will close on 11 May 2020.

## Equivalence Regime for Retail Funds and MMFs

The proposed OFR will introduce two new regimes based on the principle of equivalence: one for retail investment funds and the other for money market funds ("MMFs"). This will enable HMRC to grant equivalence to a country and allow streamlined access to marketing in the UK.

Section 272 of the FSMA will continue to be available for individual funds that are not eligible to be recognised through the OFR because they are not covered by an equivalence determination for retail investment funds.

Making an equivalence determination under the regime for retail funds will allow eligible funds to gain 'recognition' for the purpose of Part 17 of FSMA. This means the funds can be marketed to all investors in the UK, including retail investors. An equivalence determination under the MMFs regime will allow eligible funds to gain access to the UK. The process for gaining market access will be dependent on the client (professional or retail) in which the MMF intends to market.

## Conditions

HMRC will require that two conditions are met before granting equivalence:

- (a) HMRC must be satisfied that the regulatory regime of the relevant jurisdiction meets the required standard on the following basis:
  - i. For retail funds, the regulatory regime must achieve equivalent investor protection to comparable UK authorised funds; and
  - ii. For MMFs, the regulatory regime must be equivalent to The Money Market Funds (Amendment) (EU Exit) Regulations 2019.
- (b) There must be "adequate supervisory cooperation arrangements" between the FCA and the national competent authority ("NCA") of the relevant jurisdiction.

In addition, retail funds may be subject to additional requirements as a condition of being recognised in the UK. However, it is not

# UPDATE

anticipated this will be necessary in most instances.

## Registration for Retail Funds

Following an equivalence determination, retail funds (including MMFs choosing to market to retail clients) will be required to register with the FCA to become recognised. The registration process is straightforward and the FCA will not be responsible for verifying funds' compliance with the overseas regulatory framework.

Funds or their operators registering under the retail scheme will not be required to notify under the National Private Placement Regime ("NPPR").

The FCA will have two months to provide their recognition determination to new funds, following receipt of a completed registration form.

However, new equivalence determinations are likely to result in a short-term spike in registrations and, as such, a longer period in the first instance may be required.

The FCA will be expected to rely on self-certifications from funds that they are eligible for recognition and the FCA may require supplementary evidence, if deemed necessary.

The NCA of the fund will not have any supervisory responsibility for any additional requirements. The FCA will therefore need to be satisfied that funds comply with any such requirements.

Unlike the passporting regime which allowed funds to market on receipt of a simple notification, this new regime means that the FCA will be much more involved in the process.

## Recognition Process for MMFs

Once deemed equivalent, eligible MMFs which market solely to professional clients may notify under the existing NPPR.

Should MMFs wish to be marketed to retail clients, they must also gain recognition under Part 17 of FSMA. MMFs that are eligible to be recognised under an equivalence determination for retail funds, and that wish to be marketed to retail clients, must register under the retail funds regime.

For the avoidance of doubt, MMFs that are not in scope of an equivalence determination for retail

funds, would be required to apply for recognition under section 272 of FSMA.

## How the Maples Group can help

The Maples Group Global Registration Services ("GRS") team supports UCITS<sup>1</sup> and AIFMs<sup>1</sup> in their multi-market distribution strategies by providing an integrated global network of experts coordinated by a dedicated central team supporting all legal and regulatory aspects governing the cross border marketing of investment funds on both a private placement and public offer basis.

## Further Information

If you would like further information, please liaise with your usual Maples Group GRS contact or:

### Dublin

#### Emma Conaty

+353 1 619 2708

emma.conaty@maples.com

#### Jamie Quirke

+353 1 619 2113

jamie.quirke@maples.com

**The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2019).**

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<sup>1</sup> Domiciled in Ireland and Luxembourg.