

Telephone: 020 7066 9346  
Email: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)

Personal Finances & Funds,  
1 Blue, HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

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By email:  
[overseasfundsregime@hmtreasury.gov.uk](mailto:overseasfundsregime@hmtreasury.gov.uk)

Dear Sir / Madam,

## **Financial Services Consumer Panel response to the HMT's Overseas Fund Regime (OFR) Consultation**

The Financial Services Consumer Panel is an independent body established by statute to advise the Financial Conduct Authority (FCA). We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

The Panel is pleased that HMT seeks to maintain quality, well-regulated products in the UK's asset management sector post-Brexit, especially as it has the largest asset management sector in Europe. Despite the benefits of the more streamlined OFR, it is important the consumer is not lost in its implementation.

Consumers must have the ease of access to the same protections from the FSCS and recourse to the FOS, when necessary, for OFR funds as they do for UK funds. The Panel feels the compulsory jurisdiction of the FOS should be extended to cover funds recognised under the OFR.

It is also imperative that the same high standards of disclosure that the UK has been working towards for some time is also maintained so consumers can make informed decisions about their investments.

Yours faithfully

Wanda Goldwag

Chair, Financial Services Consumer Panel

## **Consultation Questions**

### **1. Are there any other relevant factors HM Treasury should consider in the design of the equivalence regime for retail funds?**

We would ask that HMT should consider the relevant redress processes in the design of the equivalence regime for retail funds. What options for redress do consumers have access to when things go wrong (such as the FOS and FSCS in the UK) and how will these be accessed by the consumer? Will a consumer have to apply for redress in the overseas regime or will cover be offered in the UK by non-UK based schemes?

HMT should give the FCA powers to require overseas funds to provide equivalent information to consumers, include the Assessment of Value reports. This would assist the consumer to better understand and make judgement regarding the value for money (VFM) offered by any specific overseas fund in comparison with the information available in the new Assessment of Value report for UK domiciled funds.

**2. Should the OFR allow for funds which make use of the management company passport under the EU UCITS Directive? Do similar arrangements, which allow the management company to be located in a separate country from the fund, exist outside of the EU?**

No comment.

**3. In your view, what additional requirements should be applied to funds accessing the UK via the OFR from the EU? Are there any aspects of the UK regime that would not be suitable to apply? Please explain your answer.**

In our view, retail funds accessing the UK via the OFR from the EU should offer consumers the same level of information, protection and access to redress and compensation as UK funds.

**4. Do you consider that any other special provision should be made for the equivalence regime for MMFs?**

No comment.

**5. Do you agree with the proposed approach of relying on self-certification from funds that they are eligible for recognition?**

No comment.

**6. Do you agree that, where necessary, the FCA should require information from funds to ensure that they are satisfied that the funds comply with any additional requirements?**

In our view, where the FCA has seen it fit to apply additional requirements (some of which may be with regard to consumer protection issues) on a fund it should also require information to satisfy themselves that the funds comply with these requirements.

**7. Are there any other circumstances, apart from those already listed in paragraph 4.14, in which funds should be refused recognition?**

No comment.

**8. Do you agree that MMFs targeting solely professional clients should only notify under the NPPR?**

No comment.

**9. Do you agree that MMFs eligible to be recognised under an equivalence determination for retail funds should follow the registration procedure for retail investment funds set out in paragraphs 4.6-4.14?**

No comment.

**10. Do you agree with the circumstances in which the FCA would be able to suspend or revoke the recognition (or access to the market as an MMF) of a fund? Are there any other valid reasons for suspending or revoking a fund's recognition?**

We agree with the circumstances under which the FCA would be able to suspend or revoke the recognition of a fund, especially in order to protect the interests of the current and future participants in the UK. We would suggest that consumer focused data such as complaint levels from UK participants (compared to non-UK) received by the Fund Manager, complaint levels received by the FCA, the number of FOS complaints etc. could be used to evaluate potential harm to the interests of participants.

**11. Do you agree with the actions proposed to inform investors that a fund's recognition (or access to the market as an MMF) has been suspended or revoked? Are there any other factors that the government should consider?**

HMT should consider whether UK platforms hosting OFR retail funds should have an obligation to track FCA decisions relating to suspension or revocation of OFR funds, and immediately communicate these to consumers directly (by email, text message, phone or post) rather than hosting messages on websites / platforms that may take consumers considerable time to access. We believe that consumers consider platforms as having their interests in mind, and platforms should therefore proactively and directly communicate to consumers rather than posting messages that customers will need to find to be informed.

**12. In your view, should the compulsory jurisdiction of the FOS be extended to cover funds recognised under the OFR, or should the OFR rely on investors having access to an ADR service in the fund's country? What are the advantages and disadvantages of each approach?**

In our view, the compulsory jurisdiction of the FOS should be extended to cover funds recognised under the OFR. Without this we believe there is a risk that consumers will build a portfolio of investments (across UK and OFR funds), and make investing decisions, without the knowledge that some funds may not offer redress through the FOS. Whilst there may be an appropriate ADR facility in the overseas country, the expense and difficulty in accessing such a service (for example the consumer may need to raise their complaint in the overseas language) may be prohibitive for the average retail investor to pursue a claim. We would also be concerned, if we were to rely on an overseas ADR, that the complexity and any perceived barriers to accessing compensation may see a rise in Claim Management Companies (CMCs) offering services that reduce the level of compensation eventually received by the consumer.

**13. How common is it, under the passporting framework, for complaints from UK investors to be escalated to ADR services in the country where the fund is domiciled? What is the nature of these complaints?**

No comment.

**14. Where UK investors access ADR services in an EU country as a result of complaining against a passporting fund, are the complaints dealt with within a reasonable timeframe, fairly, and in English?**

No comment

**15. Have any UK investors been disadvantaged by a lack of access to the FOS for complaints concerning passported EU funds? In what way?**

No comment.

**16. Are financial compensation schemes typically available to UK investors in overseas funds?**

No comment.

**18. Where overseas compensation schemes have been available to UK investors, are there examples of UK investors requesting compensation from the overseas compensation scheme, and have any successfully received compensation? What part does the overseas regulator play under such compensation arrangements?**

No comment

**19. In your view is it necessary to extend the scope of FSCS to apply to funds recognised under the OFR? What are the advantages and disadvantages of this approach?**

In our view, it is necessary to expand the scope of the FSCS to apply to funds recognised under the OFR. Without this we believe there is a risk that consumers will build a portfolio of investments (across UK and OFR funds), and make investing decisions, without the knowledge that some funds may not offer protection via the FSCS.

**20. Assuming the scope of the FSCS and the FOS remain unchanged, should funds be required to seek acknowledgement from investors about the availability of compensation schemes and ADR? If yes, what form should this take to be most effective?**

Our starting point is that FOS and FSCS should be extended to cover overseas funds, partly because we don't think disclosure-based alternatives will work. If the Government nonetheless decides against this, we would suggest that promotion of the funds be *limited* to professional investors and retail investors categorised as 'experienced.'

Even then, we would be concerned that such disclosures might be ineffective. Recent events have shown that when products such as mini-bonds have carried similar warnings in the 'compliance area' of adverts and websites consumers have been surprised, at a later date, that these protections have not been on offer. We would therefore expect these warnings to be given clear and equal presence in any advert/communication/website to the marketing messages of a fund. We, however, remain concerned that consumer acknowledgements, especially during a single 'buy journey' where it is clear the consumer has not had the time to understand the information to hand, do not constitute 'informed decisions' and are principally designed to protect firms.

There are lots of recent examples where consumers have agreed to things without understanding the implications. Indeed, recent primary research conducted by the FSCP identified that consumers, consenting adults, confirmed tick boxes and gave consent to cookies and data-sharing etc. without reading or understanding the relevant terms, conditions and permission statements in order to quickly get to the next step in the process.<sup>1</sup>

We believe it is critical that consumers understand the product they are investing in, the risks associated with it and the protections and redress offered. The challenge with OFR funds is that consumers with no understanding, or even those with some understanding of these issues in relation to UK funds may 'sleep walk' into investing in OFR funds without a comprehension of the key, crucial, differences.

**21. Would the PRIIPs disclosures on redress and complaints ensure that investors are in an informed position as regards the availability of such schemes, in the event that the scope of FOS and FSCS remain unchanged?**

We believe the PRIIPs disclosure is one of many ways that we would wish to see an investor informed of the lack of protection (and the difference therefore compared to UK funds) if the scope of the FOS and FSCS remained unchanged, but we continue to believe this approach is sub-optimal.

**22. Do you agree with the government's proposed approach to financial promotions set out in paragraph 5.30-5.31? To what extent are the operators of EU funds already relying on UK authorised entities to make or approve financial promotions?**

We agree with the government's proposal and believe it is crucial that UK persons, authorised under the SMCR approve the financial promotions of OFR funds.

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<sup>1</sup> [https://www.fs-cp.org.uk/sites/default/files/final\\_position\\_paper\\_-\\_consenting\\_adults\\_-\\_20180419\\_0.pdf](https://www.fs-cp.org.uk/sites/default/files/final_position_paper_-_consenting_adults_-_20180419_0.pdf)

**23. Do you agree with the proposed changes to the individual fund recognition process (i.e. section 272) set out in paragraphs 7.3-7.5?**

No comment.

**24. Are there any other aspects of the individual fund recognition process which could be improved? Please give specific suggestions and explain how.**

No comment.

We have no comment for questions 25-41.