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STATUTORY INSTRUMENTS

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**2013 No. 1388**

**The Collective Investment in Transferable  
Securities (Contractual Scheme) Regulations 2013**

**PART 2**

**AMENDMENTS TO PRIMARY LEGISLATION**

**Amendments to the Financial Services and Markets Act 2000**

**3.**—(1) FSMA is amended as follows.

(2) In section 90ZA(1) (liability for key investor information), in subsection (1), after “section 248” insert “or 261J”.

(3) In section 133(2) (proceedings before Tribunal: general provision), in subsection (7A)(l), after “section 249” insert “or 261K”.

(4) In section 138A(3) (modification or waiver of rules), in subsection (2)(b), for “or section 248 (scheme particulars rules)” substitute “, section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules)”.

(5) After section 235 (collective investment schemes) insert—

**“Contractual schemes**

**235A.**—(1) In this Part “contractual scheme” means—

- (a) a co-ownership scheme; or
- (b) a partnership scheme.

(2) In this Part “co-ownership scheme” means a collective investment scheme which satisfies the conditions in subsection (3).

(3) The conditions are—

- (a) that the arrangements constituting the scheme are contractual;
- (b) that they are set out in a deed that is entered into between the operator and a depository and meets the requirements of subsection (4);
- (c) that the scheme does not constitute a body corporate, a partnership or a limited partnership;
- (d) that the property subject to the scheme is held by, or to the order of, a depository; and
- (e) that either—

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(1) Section 90ZA was inserted by [S.I. 2011/1613](#).

(2) Section 133 was substituted by [S.I. 2010/22](#). Subsection (7A) was inserted by section 23(2)(c) of the Financial Services Act 2012.

(3) Section 138A was substituted by section 24(1) of the Financial Services Act 2012.

- (i) the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants); or
  - (ii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, each part is beneficially owned by the participants in that part as tenants in common (or, in Scotland, is the common property of the participants in that part).
- (4) The deed—
  - (a) must contain a statement that the arrangements are intended to constitute a co-ownership scheme as defined in section 235A of the Financial Services and Markets Act 2000;
  - (b) must make provision for the issue and redemption of units;
  - (c) must—
    - (i) prohibit the transfer of units,
    - (ii) allow units to be transferred only if specified conditions are met, or
    - (iii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, in relation to each separate part make provision falling within sub-paragraph (i) or (ii);
  - (d) must authorise the operator—
    - (i) to acquire, manage and dispose of property subject to the scheme; and
    - (ii) to enter into contracts which are binding on participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme; and
  - (e) must make provision requiring the operator and depositary to wind up the scheme in specified circumstances.
- (5) In this Part “partnership scheme” means a collective investment scheme which satisfies the conditions in subsection (6).
- (6) The conditions are—
  - (a) that the scheme is a limited partnership;
  - (b) that the limited partnership—
    - (i) at any time has only one general partner; and
    - (ii) on formation has only one limited partner, who is a person nominated by the general partner (“the nominated partner”);
  - (c) that the arrangements constituting the partnership are set out in a deed that is entered into between the general partner and the nominated partner;
  - (d) that the deed prohibits such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and
  - (e) that the deed provides that if an authorisation order is made in respect of the limited partnership under section 261D(1)—
    - (i) the property subject to the scheme is to be held by, or to the order of, a person appointed to be a depositary;
    - (ii) the limited partners, other than the nominated partner, are to be the participants in the scheme; and

- (iii) the partnership is not dissolved on any person ceasing to be a limited partner provided that there remains at least one limited partner.
- (7) In this section “general partner”, “limited partner” and “limited partnership” have the same meaning as in the Limited Partnerships Act 1907<sup>(4)</sup>.
- (8) In this Part “contractual scheme deed” means—
- (a) in relation to a co-ownership scheme, the deed referred to in subsection (3)(b); and
  - (b) in relation to a partnership scheme, the deed referred to in subsection (6)(c).”.
- (6) In section 237<sup>(5)</sup> (other definitions)—
- (a) in subsection (1), at the end insert “, except that it does not include a contractual scheme”;
  - (b) in subsection (2), in the definition of “the operator”, after paragraph (a) insert—
    - “(aa) in relation to a co-ownership scheme, means the operator appointed under the terms of the contractual scheme deed;
    - (ab) in relation to a partnership scheme, means the general partner;”;
  - (c) in subsection (3)—
    - (i) after the definition of “an authorised unit trust scheme” insert—
      - ““an authorised contractual scheme” means a contractual scheme which is authorised for the purposes of this Act by an authorisation order in force under section 261D(1);”;
    - (ii) in the definition of “UKUCITS”, after “a UCITS which is an authorised unit trust scheme” insert “, an authorised contractual scheme”; and
  - (d) after subsection (4) insert—
    - “(5) In this Part “umbrella co-ownership scheme” means an authorised contractual scheme which satisfies the conditions in subsection (6).
    - (6) The conditions are—
      - (a) that the scheme is a co-ownership scheme;
      - (b) that the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and
      - (c) that the participants are entitled under the terms of the scheme to exchange rights in one part for rights in another.
    - (7) In this Part “sub-scheme”, in relation to an umbrella co-ownership scheme, means the arrangements constituting the scheme so far as they relate to a separate part of the property.
    - (8) In this Part “stand-alone co-ownership scheme” means an authorised contractual scheme which—
      - (a) is a co-ownership scheme; and
      - (b) is not an umbrella co-ownership scheme.”.
- (7) In section 238<sup>(6)</sup> (restrictions on promotion), in subsection (4), after paragraph (a) insert—
  - “(aa) an authorised contractual scheme;”.
- (8) In section 249<sup>(7)</sup> (disciplinary measures), in subsection (1)(a), after “authorised unit trust scheme” insert “, authorised contractual scheme”.

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(4) 1907 c.24.

(5) Section 237 was amended by S.I. 2011/1613 and by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(a).

(6) Section 238 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(a).

(7) Section 249 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b) and paragraph 10.

- (9) In section 258A(8) (winding up or merger of master UCITS), in subsection (1)—
- (a) after “section 257” insert “or 261X”; and
  - (b) after “section 258” insert “or 261Y”.
- (10) In section 259(9) (procedure on giving directions under section 257 or 258A and varying them on FCA’s own initiative)—
- (a) in subsection (2)—
    - (i) after “A direction” insert “under section 257”;
    - (ii) for “section 257” substitute “that section”; and
  - (b) in subsection (3), for the words “section 257, or gives such a direction” substitute “section 257 or 258A, or gives a direction under either section”.
- (11) In section 261B(10) (information for feeder UCITS), in subsection (1), after “feeder UCITS of an authorised unit trust scheme” insert “, an authorised contractual scheme”.
- (12) After section 261B insert—

“CHAPTER 3A

AUTHORISED CONTRACTUAL SCHEMES

*Applications for authorisation*

**Applications for authorisation of contractual schemes**

**261C.**—(1) Any application for an order declaring a contractual scheme to be an authorised contractual scheme must be made to the FCA by the operator and depositary, or proposed operator and depositary, of the scheme.

(2) The application—

- (a) must be made in such manner as the FCA may direct;
- (b) must state the name and the registered office, or if it does not have a registered office, the head office, of the operator or proposed operator and of the depositary or proposed depositary; and
- (c) in the case of a partnership scheme, must be accompanied by a copy of the certificate of registration as a limited partnership under the Limited Partnerships Act 1907.

(3) At any time after receiving an application and before determining it, the FCA may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The FCA may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the FCA may direct.

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(8) Section 258A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

(9) Section 259 was amended by [S.I. 2011/1613](#) and by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

(10) Section 261B was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

### **Authorisation orders**

**261D.**—(1) If, on an application under section 261C in respect of a contractual scheme, the FCA—

- (a) is satisfied that the scheme complies with the requirements set out in this section and section 261E,
- (b) is satisfied that the scheme complies with the requirements of contractual scheme rules, and
- (c) has been provided with a copy of the contractual scheme deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the FCA may make an order declaring the scheme to be an authorised contractual scheme.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicants.

(3) In this Chapter “authorisation order” means an order under subsection (1).

(4) The operator and the depositary must be persons who are independent of each other.

(5) The operator and the depositary must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.

(6) The depositary must have a place of business in the United Kingdom, and the operator must have a place of business in the United Kingdom or in another EEA State.

(7) If the operator is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(8) The operator and the depositary must each be an authorised person, and the operator must have permission to act as operator and the depositary must have permission to act as depositary.

(9) The operator must be a fit and proper person to manage the scheme to which the application relates.

(10) The name of the scheme must not be undesirable or misleading.

(11) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

### **Authorisation orders: holding of units**

**261E.**—(1) The participants in a contractual scheme must be entitled to have their units redeemed in accordance with the scheme at a price—

- (a) related to the net value of the property to which the units relate; and
- (b) determined in accordance with the scheme.

(2) The scheme must not allow units in the scheme to be issued to anyone other than—

- (a) a professional investor;
- (b) a large investor; or
- (c) a person who already holds units in the scheme.

(3) The scheme must require the operator, if it becomes aware that units have become vested in a person to whom as a result of subsection (2) the units could not have been issued, to redeem the units as soon as practicable.

(4) In subsection (2)—

“professional investor” means a person who falls within one of the categories (1) to (4) of Section I of Annex II to the markets in financial instruments directive (professional clients for the purpose of that directive); and

“large investor” means a person who, in exchange for units in the scheme, makes a payment of, or contributes property with a value of, not less than £1,000,000.

### **Determination of applications**

**261F.**—(1) Subject to subsection (2), an application under section 261C must be determined by the FCA before the end of the period of six months beginning with the date on which it receives the completed application.

(2) An application under section 261C for authorisation of a contractual scheme which is a UCITS must be determined by the FCA before the end of two months beginning with the date on which it receives the application.

(3) The FCA may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(4) The applicants may withdraw the application, by giving the FCA written notice, at any time before the FCA determines it.

### *Applications refused*

### **Procedure when refusing an application**

**261G.**—(1) If the FCA proposes to refuse an application made under section 261C, it must give each of the applicants a warning notice.

(2) If the FCA decides to refuse the application—

- (a) it must give each of the applicants a decision notice; and
- (b) either applicant may refer the matter to the Tribunal.

### *Certificates*

### **Certificates**

**261H.**—(1) If the operator of a contractual scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant EU instrument so requests, the FCA may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

### *Rules*

### **Contractual scheme rules**

**261I.**—(1) The FCA may by rules (“contractual scheme rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 247(11) in relation to authorised unit trust schemes.

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(11) Section 247 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b).

(2) For the purposes of subsection (1), section 247 is to be read with the following modifications—

- (a) a reference to trust scheme rules is to be read as a reference to contractual scheme rules;
- (b) a reference to authorised unit trust schemes is to be read as a reference to authorised contractual schemes;
- (c) a reference to the manager is to be read as a reference to the operator;
- (d) a reference to the trustee is to be read as a reference to the depositary; and
- (e) a reference to the trust deed is to be read as a reference to the contractual scheme deed.

(3) The Treasury’s power by order under section 247(5) to modify the FCA’s power to make trust scheme rules shall also be exercisable in relation to the FCA’s power to make contractual scheme rules.

(4) For the purposes of subsection (3), section 247(5) is to be read as if the reference to authorised unit trust schemes were a reference to authorised contractual schemes.

#### **Contractual scheme particulars rules**

**261J.**—(1) The FCA may by rules (“contractual scheme particulars rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 248(12) in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 248 is to be read with the following modifications—

- (a) a reference to scheme particulars rules is to be read as a reference to contractual scheme particulars rules;
- (b) a reference to scheme particulars is to be read as a reference to contractual scheme particulars; and
- (c) a reference to the manager of an authorised unit trust scheme is to be read as a reference to the operator of an authorised contractual scheme.

#### **Disciplinary measures**

**261K.**—(1) If it appears to the FCA that an auditor has failed to comply with a duty imposed on the auditor by contractual scheme rules, it may do one or more of the following—

- (a) disqualify the auditor from being the auditor of any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company;
- (b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;
- (c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(2) Sections 345B to 345E(13) have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).

#### **Modification or waiver of rules**

**261L.**—(1) In this section “rules” means—

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(12) Section 248 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b).

(13) Sections 345B to 345E were substituted by the Financial Services Act 2012, Schedule 13, paragraph 7.

- (a) contractual scheme rules; or
  - (b) contractual scheme particulars rules.
- (2) The FCA may, on the application or with the consent of any person to whom rules apply, direct that all or any of the rules—
- (a) are not to apply to that person as respects a particular scheme; or
  - (b) are to apply to that person, as respects a particular scheme, with such modifications as may be specified in the direction.
- (3) The FCA may, on the application or with the consent of the operator and depositary of a particular scheme acting jointly, direct that all or any of the rules—
- (a) are not to apply to the scheme; or
  - (b) are to apply to the scheme with such modifications as may be specified in the direction.
- (4) Section 138A and subsections (1) to (3), (5) and (6) of section 138B(14) have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 138A(1) but with the following modifications—
- (a) any reference to the person is to be read as a reference to the person mentioned in subsection (2); and
  - (b) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted.
- (5) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 138A(1) but with the following modifications—
- (a) subsection (4)(a) of section 138A is to be read as if the words “by the person” were omitted;
  - (b) section 138B(3)(c) and the definition of “immediate group” in section 421ZA(15) as it applies to that section are to be read as if references to the person were references to each of the operator and the depositary of the scheme;
  - (c) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted;
  - (d) section 138B(5) is to be read as if the reference to the person concerned were a reference to the scheme concerned and to its operator and depositary; and
  - (e) section 138A(7) is to be read as if the reference to the person were a reference to the operator and depositary of the scheme acting jointly.

*Co-ownership schemes: rights and liabilities of participants*

### **Contracts**

**261M.**—(1) In this section “authorised contract” means a contract which the operator of a co-ownership scheme is authorised to enter into on behalf of the relevant participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme (but does not include a contract by which a person becomes a participant in the scheme).

- (2) The relevant participants are—

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(14) Sections 138A and 138B were substituted by section 24(1) of the Financial Services Act 2012.

(15) Section 421ZA was inserted by section 48(2) of the Financial Services Act 2012.



- (a) in the case of a contract relating to a stand-alone co-ownership scheme, the participants in the scheme;
  - (b) in the case of a contract relating to an umbrella co-ownership scheme, the participants in the sub-scheme of the umbrella co-ownership scheme to which the contract relates.
- (3) The operator on behalf of the relevant participants may—
- (a) exercise rights under an authorised contract;
  - (b) bring and defend proceedings for the resolution of any matter relating to an authorised contract; and
  - (c) take action in relation to the enforcement of any judgment given in such proceedings.
- (4) The relevant participants may not themselves do any of the things mentioned in subsection (3), but this does not affect their rights as against the operator.
- (5) A person who enters into a contract which purports to be an authorised contract is deemed to have actual knowledge of the scope of the authority given to the operator by the contractual scheme deed.
- (6) The validity of an authorised contract is not to be called into question on the ground that a participant lacks capacity to authorise the operator to enter into such a contract.
- (7) An authorised contract must make provision for any property which is acquired under or by virtue of the contract to be held by, or to the order of, the depositary of the scheme concerned.

### **Effect of becoming or ceasing to be a participant**

**261N.**—(1) A person who at any time becomes a participant in a relevant scheme acquires the rights and becomes subject to the liabilities to which the other participants in the relevant scheme are entitled or subject at that time under, or in connection with, authorised contracts.

(2) A person who ceases to be a participant in a relevant scheme ceases to have any of the rights and to be subject to any of the liabilities to which a participant in the relevant scheme is entitled or subject under, or in connection with, authorised contracts.

(3) In this section—

- (a) “authorised contract” has the meaning given in section 261M(1); and
- (b) each of the following is a “relevant scheme”—
  - (i) a stand-alone co-ownership scheme; and
  - (ii) a sub-scheme of an umbrella co-ownership scheme.

### **Limited liability**

**261O.**—(1) The debts of a relevant scheme are to be paid by the operator out of the property subject to the relevant scheme.

(2) The participants in a relevant scheme are not liable for the debts of the relevant scheme beyond the amount of the property subject to the relevant scheme which is available to the operator to meet the debts.

(3) In this section—

- (a) a reference to the debts of a relevant scheme is a reference to debts and obligations incurred under, or in connection with, authorised contracts;
- (b) “authorised contract” has the meaning given in section 261M(1); and
- (c) “relevant scheme” has the meaning given in section 261N(3).

**Segregated liability in relation to umbrella co-ownership schemes**

**261P.**—(1) The property subject to a sub-scheme of an umbrella co-ownership scheme must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-scheme.

(2) Any provision contained in any contract, agreement or other document is void in so far as it is inconsistent with subsection (1), and any transaction involving the application of property in contravention of that subsection is void.

(3) The FCA may give a direction under section 261X(2) in relation to a sub-scheme of an umbrella co-ownership scheme as if the sub-scheme were an authorised contractual scheme, but this subsection does not enable the FCA to apply to the court for an order under section 261Y in relation to a sub-scheme of an umbrella co-ownership scheme.

(4) Where such a direction is given, the reference in section 261Z1(6) to the scheme is to be read as a reference to the sub-scheme concerned.

*Alterations***Alteration of contractual schemes and changes of operator or depositary**

**261Q.**—(1) This section applies where the operator of an authorised contractual scheme proposes to make an alteration to the scheme, other than an alteration—

- (a) to which section 261S applies; or
- (b) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011(16) (mergers) applies.

(2) The operator must give written notice of the proposal to the FCA.

(3) Any notice given in respect of a proposal to alter the scheme involving a change in the contractual scheme deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules.

(4) The operator of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the depositary of the scheme.

(5) The depositary of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the operator of the scheme.

(6) Effect is not to be given to any proposal of which notice has been given under subsection (2), (4) or (5) unless—

- (a) the FCA, by written notice, has given its approval to the proposal; or
- (b) one month, beginning with the date on which the notice was given, has expired without the operator or the depositary having received from the FCA a warning notice under section 261R in respect of the proposal.

(7) The FCA must not approve a proposal to replace the operator or the depositary of an authorised contractual scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 261D(4) to (9).

**Procedure when refusing approval of a proposal under section 261Q**

**261R.**—(1) If the FCA proposes to refuse approval of a proposal under section 261Q to replace the depositary or operator of an authorised contractual scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 261Q(4) or (5).

(2) If the FCA proposes to refuse approval of a proposal under section 261Q to alter an authorised contractual scheme, it must give separate warning notices to the operator and the depositary of the scheme.

(3) To be valid the warning notice must be received by the person to whom it is given before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the FCA decides to refuse approval—

- (a) it must give that person a decision notice; and
- (b) that person may refer the matter to the Tribunal.

### **Proposal to convert to a non-feeder UCITS**

**261S.**—(1) This section applies where the operator of an authorised contractual scheme which is a feeder UCITS proposes to make an alteration to the scheme which—

- (a) involves a change in the contractual scheme deed, and
- (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The operator must give written notice of the proposal to the FCA.

(3) Any notice given in respect of such a proposal must be accompanied by—

- (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules; and
- (b) the specified information.

(4) The FCA must, within 15 working days after the date on which it received the notice under subsection (2), give—

- (a) written notice to the operator of the scheme that the FCA approves the proposed amendments to the contractual scheme deed, or
- (b) separate warning notices to the operator and depositary of the scheme that the FCA proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the FCA, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the FCA decides to refuse approval—

- (a) it must give that person a decision notice; and
- (b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—

- (a) the notice given under subsection (2) relates to a proposal to amend the contractual scheme deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
- (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended contractual scheme deed and contractual scheme rules.

(8) Where this subsection applies, the FCA may only approve the proposal subject to the conditions set out in section 283A(5) and (6)(17).

(9) In this section “specified” means—

- (a) specified in rules made by the FCA to implement the UCITS directive, or

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(17) Section 283A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(f).

- (b) specified in any directly applicable EU regulation or decision made under the UCITS directive.

#### *Exclusion clauses*

#### **Avoidance of exclusion clauses**

**261T.** Any provision—

- (a) of the contractual scheme deed of an authorised contractual scheme, or
- (b) in the case of an authorised contractual scheme which is a partnership scheme, of the contract under which the depositary of the scheme is appointed,

is void in so far as it would have the effect of exempting the operator or the depositary from liability for any failure to exercise due care and diligence in the discharge of its functions in respect of the scheme.

#### *Ending of authorisation*

#### **Revocation of authorisation order otherwise than by consent**

**261U.**—(1) An authorisation order may be revoked by an order made by the FCA if it appears to the FCA that—

- (a) one or more of the requirements for the making of the order are no longer satisfied;
- (b) the operator or depositary of the scheme concerned has contravened a requirement imposed on the operator or depositary by or under this Act;
- (c) the operator or depositary 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;
- (d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or
- (e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the FCA may take into account any matter relating to—

- (a) the scheme;
- (b) the operator or depositary;
- (c) any person employed by or associated with the operator or depositary in connection with the scheme;
- (d) any director of the operator or depositary;
- (e) any person exercising influence over the operator or depositary;
- (f) any body corporate in the same group as the operator or depositary;
- (g) any director of any such body corporate;
- (h) any person exercising influence over any such body corporate.

### **Procedure for revoking authorisation order**

**261V.**—(1) If the FCA proposes to make an order under section 261U revoking an authorisation order (“a revoking order”), it must give separate warning notices to the operator and the depositary of the scheme.

(2) If the FCA decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

### **Requests for revocation of authorisation order**

**261W.**—(1) An authorisation order may be revoked by an order made by the FCA at the request of the operator or depositary of the scheme concerned.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the operator and depositary of the scheme concerned.

(3) The FCA may refuse a request to make an order 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 authorisation order should be revoked; or
- (b) revocation would not be in the interests of the participants or would be incompatible with an EU obligation.

(4) If the FCA proposes to refuse a request under this section, it must give separate warning notices to the operator and the depositary of the scheme.

(5) If the FCA decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

### *Powers of intervention*

### **Directions**

**261X.**—(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 depositary 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 depositary 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
- (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(18) 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.

### **Applications to the court**

**261Y.**—(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;
- (b) in Scotland, the Court of Session.

### **Winding up or merger of master UCITS**

**261Z.**—(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(19) or 261X, an order of the court under section 258(20) or 261Y, rules made by the FCA or otherwise.

(18) Section 138D was substituted by section 24(1) of the Financial Services Act 2012.

(19) Section 257 was amended by the Financial Services Act 2012, Schedule 18, paragraphs 9(1) and (2)(c) and 12.

- (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.

**Procedure on giving directions under section 261X or 261Z and varying them on FCA's own initiative**

**261Z1.**—(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).

(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.
- (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).

**Procedure: refusal to revoke or vary direction**

- 261Z2.**—(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.



### **Procedure: revocation of direction and grant of request for variation**

**261Z3.**—(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.

### **Information for home state regulator**

**261Z4.**—(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 EEA UCITS.

(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.

### **Information for feeder UCITS**

**261Z5.**—(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;
- (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 EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—

- (a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;
- (b) any decision or measure imposed on the EEA UCITS 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 EEA UCITS, 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 EEA UCITS, the FCA must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.”.

(13) In section 270(**21**) (schemes authorised in designated countries or territories), in subsection (4)—

(a) after paragraph (a) insert—

“(aa) authorised contractual schemes which are co-ownership schemes;

(ab) authorised contractual schemes which are partnership schemes;”;

(b) for paragraph (c) substitute—

“(c) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).”.

(14) In section 272(**22**) (individually recognised overseas schemes), in subsection (6)—

(a) after paragraph (a) insert—

“(aa) authorised contractual schemes which are co-ownership schemes;

(ab) authorised contractual schemes which are partnership schemes;”;

(b) for paragraph (c) substitute—

“(c) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).”.

(15) In section 283A(**23**) (master-feeder structures), in sub-paragraph (ii) of subsection (5)(b), after “the trust deed” insert “, contractual scheme deed”.

(16) In section 347(**24**) (the record of authorised persons etc.)—

(a) in subsection (1), after paragraph (b) insert—

“(ba) authorised contractual scheme;”;

(b) in subsection (2), after paragraph (b) insert—

“(ba) in the case of an authorised contractual scheme, the name and address of the operator and depositary of the scheme;”;

(c) in subsection (7), after ““Authorised unit trust scheme”,” insert ““authorised contractual scheme”,”.

(17) In section 351A(**25**) (disclosure under the UCITS directive)—

(a) in subsection (2)—

(i) in paragraphs (a) and (c), after “authorised unit trust scheme” insert “or authorised contractual scheme”;

(ii) after paragraph (b) insert—

“(ba) the depositary of an authorised contractual scheme that is a master UCITS;”;

(iii) after paragraph (d) omit “or” and insert—

“(da) the depositary of an authorised contractual scheme that is a feeder UCITS; or”;

(iv) for paragraph (e) substitute—

(21) Section 270 was amended by the Financial Services Act 2012, Schedule 18, paragraph 16.

(22) Section 272 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(f).

(23) Section 283A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(f).

(24) Section 347 was amended by the Financial Services Act 2012, Schedule 12, paragraph 16. There are other amendments not relevant to these Regulations.

(25) Section 351A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 12, paragraph 22.

- “(e) a person acting on behalf of a person within any of paragraphs (a) to (da)”;
- and
- (b) in subsection (4), after ““authorised unit trust scheme”,” insert ““authorised contractual scheme”,”.
- (18) In section 391 (publication), in subsection (1ZB)(m)(26), after “section 249(1)” insert “or 261K(1)”.
- (19) In section 392(27) (application of sections 393 and 394)—
  - (a) in paragraph (a)—
    - (i) after “255(1),” insert “261V(1),”;
    - (ii) after “249(1)” insert “or 261K(1)”;
  - and
  - (b) in paragraph (b)—
    - (i) after “255(2),” insert “261V(2),”;
    - and
    - (ii) after “249(1)” insert “or 261K(1)”.
- (20) In section 395(28) (the FCA’s and PRA’s procedures), in subsection (13), after paragraph (d) insert—
  - “(da) 261Z1(3), (8) or (9)(b),”.
- (21) In Schedule 1ZA(29) (the Financial Conduct Authority), in paragraph 8(3)(c)(ii), for “or section 249(1)” insert “, section 249(1) or 261K(1)”.

#### **Amendment to the Stock Transfer Act 1963**

4. In section 1 of the Stock Transfer Act 1963(30) (simplified transfer of securities), in subsection (4)(e)(31), after “units of an authorised unit trust scheme” insert “, an authorised contractual scheme”.

#### **Amendment to the Corporation Tax Act 2010**

5. In section 1121 of the Corporation Tax Act 2010(32) (“company”), in subsection (1), after “does not include a partnership,” insert “a co-ownership scheme (as defined by section 235A of the Financial Services and Markets Act 2000),”.

#### **Amendment to the Financial Services Act 2012**

6. In section 85 of the Financial Services Act 2012(33) (relevant functions in relation to complaints scheme), in subsection (4)(c)(ii), after “section 249(1)” insert “or 261K(1)”.

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(26) Subsection (1ZB) was substituted by the Financial Services Act 2012, Schedule 9, paragraph 30(2).

(27) Section 392 was amended by the Financial Services Act 2012, Schedule 13, paragraph 8. There are other amendments not relevant to these Regulations.

(28) Section 395 was amended by the Financial Services Act 2012, Schedule 9, paragraph 34. There are other amendments not relevant to these Regulations.

(29) Schedule 1ZA was substituted by the Financial Services Act 2012, section 6(2) and Schedule 3.

(30) 1963 c. 18.

(31) Subsection (4)(e) was substituted by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 4(a), and amended by S.I. 2001/3649.

(32) 2010 c. 4.

(33) 2012 c.21.