

12th February 2024

Financial Conduct Authority
12 Endeavour Square
London
E10 1JN

Submitted via email to: cp23-26@fca.org.uk

RE: CP23/26: Implementing the Overseas Funds Regime (OFR)

BlackRock¹ is pleased to have the opportunity to respond to CP23/26: Implementing the Overseas Funds Regime (OFR).

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs.

We welcome the opportunity to comment on the issues raised by this consultation paper and will continue to contribute to the thinking of the FCA on any issues that may assist in the final outcome.

We welcome further discussion on any of the points that we have raised.

Yours faithfully,

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¹ BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

Executive summary

BlackRock is supportive of the implementation of an effective and efficient OFR that continues to provide access for UK investors and supports the stated aim of the UK Government to continue to promote the UK as both a leading investment fund domicile and asset management hub. We welcome the recent announcement by His Majesty's Treasury ("HMT") regarding the conclusion that European Economic Area ("EEA") states are deemed equivalent under the OFR following their detailed assessment of the application of the Undertakings for Collective Investment in Transferable Securities ("UCITS") regime. This announcement provides much needed certainty to the industry whilst recognising that areas remain where further consultation or consideration is needed.

Please note that we have contributed to the Investment Association's response to the consultation paper and are supportive of its position. Additionally, we have inputted into the responses being submitted by EFAMA, ALFI and Irish Funds.

Responses to questions

This response is intended to highlight those areas where we believe that further attention by the FCA is warranted. We welcome the opportunity to comment on the issues raised by this consultation paper and will continue to work with the industry and the FCA on this matter and other topics.

Timing and Logistics

BlackRock welcomes the intention of the UK Government to extend the Temporary Permissions Regime ("TPR") to the end of 2026 to provide time for a smooth transition to the OFR. BlackRock would encourage the FCA to review the currently proposed timeframe for landing slots in light of this decision, noting the importance of providing the industry with sufficient time to prepare for such a transition.

Whilst we recognise the considerable resource lift required from the FCA to process a significant number of OFR applications and its need to operationalise this process as quickly as possible, in order for this to happen smoothly, sufficient time should be given for firms to prepare and transition into the OFR, which we do not believe the current proposed timings provide. The usual implementation period for such a significant regulatory project would be at least 12 months from receipt of final rules. Considering the HMT decision to extend the TPR, the industry would welcome some certainty on the final rules along with sufficient time to complete the transition.

In considering any proposed timeframe for transition, we would note that some of the challenges faced by the industry when first operationalising the TPR should be considered in determining the proposed timeframe. BlackRock currently has 600 funds (and c.3600 share classes) registered under the TPR and this population grows by approximately 10% per annum. This is a considerable segment of the overseas funds noted by the FCA as registered under the TPR (just over 7% of the 8366 overseas schemes²). We note some of the operational challenges below:

- Data points requested at a share class level (i.e. minimum investment amount, fees) could result in thousands of fields to be inputted by firms. We currently

² Data sourced as at 12 February 2024

expect 9 of the fields to be at a share class level, 11 at a sub-fund level and 11 at a fund umbrella level for a fund launch.

- Some data points are not easily available within existing systems, nor are they covered by the current registrations process. These may not be systematised and, therefore, would require extraction at a sub fund/share class level from other documentation. Some information points such as information on use of derivatives, any particular ESG focus or availability of liquidity management tools for example would be contained in other documentation such as the prospectus. Fee related information would be captured in the KID. As a result, much of this data may lie within a number of systems or documents and firms need sufficient time to gather this information.
- During the process of implementing the TPR we had to undertake a reconciliation exercise to ensure that internal registers aligned with those of the FCA and, in the case of listed products, the FCA's Primary Markets function's (formerly the UK Listing Authority) data. This exercise would have to be undertaken again.
- When registering ETFs under the TPR, late in the day we found a number of disconnected points between various fund lists maintained by the FCA Primary Markets function. We would ask that the FCA considers the needs of this function in connection with the OFR and seeks to ensure interoperability of record keeping across relevant stakeholders (e.g. consistency of fund identifiers) to mitigate any potential cliff-edges. We would be happy to provide examples of such discrepancies.
- The process for the TPR was not able to be completed in bulk. Each fund had its own submission which had individual fields and often required specific formatting/word limits etc. Such a manual process is incredibly resource intensive/administratively burdensome. We would request that the FCA's systems are adapted to allow for easy upload of information or sufficient User Acceptance Testing (UAT) to allow for efficient processes to be developed to mitigate the significant operational lift required by firms seeking to use the OFR.

Other considerations

In addition to the above operational considerations, we encourage the FCA to consider:

- **The extent to which the OFR creates a level playing field:** There are elements (e.g., information on costs and charges, pre-notification requirements to the FCA for suspensions/terminations) that go beyond the requirements for UK domiciled funds, which may lead to unintended friction negatively impacting UK investors and their access to European products.
- **Time to market:** Additionally, we encourage a regime that provides access to a wide range of products for UK investors, and note that an overly complex, administrative, or time-consuming process may disincentivise managers and increase the time for products to get to the UK market. In particular, the additional time required to register and list ETFs may ultimately reduce the desirability of the UK market as a listing location and/or lead to sub-optimal outcomes for UK retail investors wishing to invest in such products when compared to their European counterparts.
- **Scope of OFR:** There are elements within the OFR where it could be said the FCA is adopting an extra-territorial approach. The current consultation suggests that OFR fund prospectuses would need to comply with the COLL (FCA Handbook) content requirements, however, this represents extra-territoriality in respect of requirements on fund documentation. We would expect any

assessment supporting the equivalence determination would also have considered matters such as disclosure.

Request for further clarity

Whilst the consultation paper provides clarity and a way forward in a number of areas, there are significant topics which the industry remains focussed on, particularly the application of the Sustainable Disclosure Requirements (SDR) and the treatment of Money Market Funds (MMF) under the OFR. We appreciate that a number of these policy decisions ultimately lie with HMT rather than the FCA, but the following points are likely to have a material impact on firms using the OFR and could require changes to fund governance procedures and/or the incorporation of additional disclosures (possibly even product level changes) into fund prospectuses. Firms will require sufficient time to implement any such changes.

The fund launch/change notification process is unclear as drafted and further detail is required in the final rules to establish whether this is a notification procedure or a request for approval. For example, suspensions and terminations under the proposals require 30 days' notice; however, these actions are often taken in response to market events or large redemptions and may require faster action to protect all investors including UK investors. We would also urge clarity as to the FCA's expectations for the interoperability of the proposed OFR notification requirements and any legal obligations already imposed by the Market Abuse Regulation and the listing rules operated by the various venues where ETFs are listed. It is also unclear how the notification process would function when launching new share classes of existing products (where substantially similar in nature to a live class) and any timing implications thereof and how the deregistration process would work for such classes.

Specifically in relation to costs and charges, we would urge the FCA to provide further clarity with respect to the information request for 'third-party' costs and the reach of any such request for information. As drafted, the proposed rules are unclear with respect to the type and scope of costs captured and whether managers would be in position to provide data with respect to costs over which they have no control.

We would also welcome further information as to the interaction of OFR and the TPR. Notably, it is not clear how funds that miss their landing slot may be treated and when funds must cease to be marketed given that the TPR continues to run until the end of 2026 from a legislative perspective.

In terms of ETF-specific considerations, in addition to the general points above, we would note that certain information (e.g., on dealing frequency and minimum investment amounts) would not be applicable to ETFs. We encourage the FCA's system to have requisite functionality to allow for non-relevant data points to be disregarded.

Looking at the intended application process as a whole, we would welcome the opportunity to work with your Technology Team to understand how the industry can leverage emerging technology solutions for OFR applications.

Conclusion

We are supportive of HMT's conclusion in respect of equivalence of EEA UCITS and the ongoing work by the FCA to finalise the framework and operational mechanics for the implementation of the OFR. This important regulatory initiative will have significant

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implications for both the UK and EU asset management industry, and it is imperative that the regime functions to best meet the needs of investors.

We welcome the opportunity to comment on the issues raised by this consultation paper and will continue to contribute to the thinking of the industry and the FCA. We welcome further discussion on any of the points that we have raised.