Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

FINANCIAL SERVICES AND MARKETS

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

Made - - - -	*2013*
Coming into force in accordance with regulation 1	*2013*

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972.

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013, and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

(**1**) S.I. 2012/1759.
(**2**) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and by the European Union (Amendment) Act 2008 (c. 7), section 3 and the Schedule, Part 1.

"the 1986 Act" means the Insolvency Act 1986(**3**);

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989(**4**);

"authorised contract" has the meaning given in section 261M(1) of FSMA(**5**);

"authorised contractual scheme" has the meaning given in section 237(3) of FSMA(**6**);

"depositary" has the meaning given in section 237(2) of FSMA;

"the FCA" means the Financial Conduct Authority;

"FSMA" means the Financial Services and Markets Act 2000(**7**);

"operator" has the meaning given in section 237(2) of FSMA(**8**);

"participant" has the meaning given in section 235(2) of FSMA;

"partnership scheme" has the meaning given in section 235A(5) of FSMA(**9**);

"stand-alone co-ownership scheme" has the meaning given in section 237(8) of FSMA(**10**);

"sub-scheme" has the meaning given in section 237(7) of FSMA;

"umbrella co-ownership scheme" has the meaning given in section 237(5) of FSMA; and

"units" has the meaning given in section 237(2) of FSMA.

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(**11**) (liability for key investor information), in subsection (1), after "section 248" insert "or 261J".

(3) In section 133(**12**) (proceedings before Tribunal: general provision), in subsection (7A)(l), after "section 249" insert "or 261K".

(4) In section 138A(**13**) (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

(**3**) 1986 c. 45.
(**4**) S.I. 1989/2405 (N.I. 19).
(**5**) Section 261M is inserted by regulation 3(12) of these Regulations.
(**6**) Section 237 was amended by S.I. 2011/1613 and by the Financial Services Act 2012 (c. 21), Schedule 18, paragraph 9(1) and (2)(a). This definition is inserted by regulation 3(6) of these Regulations.
(**7**) 2000 c. 8.
(**8**) The definition of "the operator" in section 237(2) is amended by regulation 3(6)(b) of these Regulations.
(**9**) Section 235A is inserted by regulation 3(5) of these Regulations.
(**10**) Subsections (5) to (8) of section 237 are inserted by regulation 3(6)(d) of these Regulations.
(**11**) Section 90ZA was inserted by S.I. 2011/1613.
(**12**) Section 133 was substituted by S.I. 2010/22. Subsection (7A) was inserted by section 23(2)(c) of the Financial Services Act 2012.
(**13**) Section 138A was substituted by section 24(1) of the Financial Services Act 2012.

(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 depositary 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 depositary; and

(e) that either—

(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(**14**).

(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(**15**) (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.

(**14**) 1907 c.24.
(**15**) Section 237 was amended by S.I. 2011/1613 and by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(a).

(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(**16**) (restrictions on promotion), in subsection (4), after paragraph (a) insert—

"(aa) an authorised contractual scheme;".

(8) In section 249(**17**) (disciplinary measures), in subsection (1)(a), after "authorised unit trust scheme" insert ", authorised contractual scheme".

(9) In section 258A(**18**) (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(**19**) (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(**20**) (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;

(**16**) Section 238 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(a).
(**17**) Section 249 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b) and paragraph 10.
(**18**) 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).
(**19**) Section 259 was amended by S.I. 2011/1613 and by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).
(**20**) 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).