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STATUTORY INSTRUMENTS

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**2001 No. 1228**

**FINANCIAL SERVICES AND MARKETS**

**The Open-Ended Investment Companies Regulations 2001**

*Made - - - - 27th March 2001*

*Coming into force in accordance with regulation 1(2)*

Whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 429(2) of the Financial Services and Markets Act 2000<sup>(1)</sup>;

Now, therefore, the Treasury, in exercise of the powers conferred on them by sections 262 and 428(3) of that Act, and of all other powers enabling them in that behalf, hereby make the following Regulations:—

**PART I**  
**GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Open-Ended Investment Companies Regulations 2001.

(2) These Regulations come into force—

- (a) for the purpose of regulation 6, on the day on which sections 247 and 248 of the Act come into force for the purpose of making rules;
- (b) for the purposes of regulations 7, 12, 13, 18(1) and (3), 74, 77 and 80 to 82, so far as relating to the making of applications for authorisation orders to be made on or after the day mentioned in sub-paragraph (c), on the day on which section 40 of the Act comes into force;
- (c) for all remaining purposes, on the day on which section 19 of the Act comes into force.

(3) Subject to regulation 20(2)(b), these Regulations have effect in relation to any open-ended investment company which has its head office situated in Great Britain.

**Interpretation**

2.—(1) In these Regulations, except where the context otherwise requires—

“the Act” means the Financial Services and Markets Act 2000;

“the 1985 Act” means the Companies Act 1985<sup>(2)</sup>;

“the 1986 Act” means the Insolvency Act 1986<sup>(3)</sup>;

“annual general meeting” has the meaning given in regulation 37(1);

“annual report” has the meaning given in regulation 66(1)(a);

“the appropriate registrar” means—

(a) the registrar of companies for England and Wales if the company’s instrument of incorporation states that its head office is to be situated in England and Wales, or that it is to be situated in Wales;

(b) the registrar of companies for Scotland if the company’s instrument of incorporation states that its head office is to be situated in Scotland;

“authorisation order” means an order made by the Authority under regulation 14;

“bearer shares” has the meaning given in regulation 48;

“certificated form” has the same meaning as in the Uncertificated Securities Regulations 1995<sup>(4)</sup>;

“court”, in relation to any proceedings under these Regulations involving an open-ended investment company the head office of which is situated—

(a) in England and Wales, means the High Court; and

(b) in Scotland, means the Court of Session;

“depository”, in relation to an open-ended investment company, has the meaning given in regulation 5(1);

“the designated person” means the person designated in the company’s instrument of incorporation for the purposes of paragraph 4 of Schedule 4 to these Regulations;

“FSA rules” means any rules made by the Authority under regulation 6(1);

“larger denomination share” has the meaning given in regulation 45(5);

“officer”, in relation to an open-ended investment company, includes a director or any secretary or manager;

“open-ended investment company” means an body incorporated by virtue of regulation 3(1) or a body treated as if it had been so incorporated by virtue of regulation 85(3)(a);

“participating issuer” and “participating security” have the same meaning as in the Uncertificated Securities Regulations 1995;

“prospectus” has the meaning given in regulation 6(2);

“relevant provision” means any requirement imposed by or under the Act;

“register of shareholders” means the register kept under paragraph 1(1) of Schedule 3 to these Regulations;

“scheme property”, in relation to an open-ended investment company, means the property subject to the collective investment scheme constituted by the company;

“share certificate” has the meaning given in regulation 46(1);

(2) 1985 c. 6.

(3) 1986 c. 45.

(4) S.I. 1995/3272, amended by S.I. 1996/2827, S.I. 1997/251, S.I. 1999/506, S.I. 2000/311 and S.I. 2000/1682.

“smaller denomination share” has the meaning given in regulation 45(5);

“transfer documents” has the meaning given in paragraph 5(3) of Schedule 4 to these Regulations;

“the Tribunal” means the Financial Services and Markets Tribunal;

“the UCITS Directive” means the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.85/611/EEC)(5);

“umbrella company” means an open-ended investment company whose instrument of incorporation provides for such pooling as is mentioned in section 235(3)(a) of the Act (collective investment schemes) in relation to separate parts of the scheme property and whose shareholders are entitled to exchange rights in one part for rights in another; and

“uncertificated form” and “uncertificated unit of a security” have the same meaning as in the Uncertificated Securities Regulations 1995.

(2) In these Regulations any reference to a shareholder of an open-ended investment company is a reference to—

(a) the person who holds the share certificate, or other documentary evidence of title relating to that share mentioned in regulation 48; and

(b) the person whose name is entered on the company’s register of shareholders in relation to any share other than a bearer share.

(3) In these Regulations, unless the contrary intention appears, expressions which are also used in the 1985 Act have the same meaning as in that Act.

## PART II

### FORMATION, SUPERVISION AND CONTROL

#### *General*

#### **Open-ended investment company**

3.—(1) If the Authority makes an authorisation order then, immediately upon the coming into effect of the order, the body to which the authorisation order relates is to be incorporated as an open-ended investment company (notwithstanding that, at the point of its incorporation by virtue of this paragraph, the body will not have any shareholders or property).

(2) The name of an open-ended investment company is the name mentioned in the authorisation order made in respect of the company or, if it changes its name in accordance with these Regulations and FSA rules, its new name.

#### **Registration by the Authority**

4.—(1) Upon making an authorisation order under regulation 14, the Authority must forthwith register—

(a) the instrument of incorporation of the company;

(b) a statement of the address of the company’s head office;

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(5) OJ No. L 375, 31.12.1985, p. 3-18, as amended by Council Directive 88/220/EEC (OJ No. L 100, 19.4.1988, p. 31-32) and European Parliament and Council Directive 95/26/EC (OJ No. L 168, 18.7.1995, p. 7-13).

- (c) a statement, with respect to each person named in the application for authorisation as director of the company, of the particulars set out in regulation 13; and
- (d) a statement of the corporate name and registered or principal office of the person named in the application for authorisation as the depository of the company.

(2) In this regulation any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation supplied for the purposes of regulation 14(1)(c).

### **Safekeeping of scheme property by depository**

5.—(1) Subject to paragraph (2), all the scheme property of an open-ended investment company must be entrusted for safekeeping to a person appointed for the purpose (“a depository”).

(2) Nothing in paragraph (1)—

- (a) applies to any scheme property designated for the purposes of this regulation by FSA rules;
- (b) prevents a depository from—
  - (i) entrusting to a third party all or some of the assets in its safekeeping; or
  - (ii) in a case falling within sub-paragraph (i), authorising the third party to entrust all or some of those assets to other specified persons.

(3) Schedule 1 to these Regulations makes provision with respect to depositories of open-ended investment companies.

### **FSA rules**

6.—(1) The Authority’s powers to make rules under section 247 (trust scheme rules) and section 248 (scheme particulars rules) of the Act in relation to authorised unit trust schemes are, subject to the provisions of these Regulations, exercisable in relation to open-ended investment companies—

- (a) for like purposes; and
- (b) subject to the same conditions.

(2) In these Regulations any document which a person is required to submit and publish by virtue of rules made by the Authority under paragraph (1) for like purposes to those in section 248 of the Act is referred to as a prospectus.

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

7.—(1) The Authority may, on the application or with the consent of any person to whom any FSA rules apply, direct that all or any of the FSA rules—

- (a) are not to apply to him as respects a particular open-ended investment company; or
- (b) are to apply to him as respects such a company with such modifications as may be specified in the direction.

(2) The Authority may, on the application or with the consent of an open-ended investment company and its depository acting jointly, direct that all or any of the FSA rules—

- (a) are not to apply to the company; or
- (b) are to apply to the company with such modifications as may be specified in the direction.

(3) Section 148(3) to (9) and (11) of the Act (modification or waiver of rules) have effect in relation to a direction under paragraph (1) as they have effect in relation to a direction under section 148(2) of the Act but with the following modifications—

- (a) subsection (4)(a) is to be read as if the words “by the authorised person” were omitted;

- (b) any reference to the authorised person (except in subsection (4)(a)) is to be read as a reference to the person mentioned in paragraph (1); and
- (c) subsection (7)(b) is to be read, in relation to a shareholder, as if the word “commercial” were omitted.

(4) Section 148(3) to (9) and (11) of the Act have effect in relation to a direction under paragraph (2) as they have effect in relation to a direction under section 148(2) of the Act but with the following modifications—

- (a) subsection (4)(a) is to be read as if the words “by the authorised person” were omitted;
- (b) subsections (7)(b), (8) and (11) are to be read as if the reference to the authorised person were a reference to each of the company and its depositary;
- (c) subsection (7)(b) is to be read, in relation to a shareholder, as if the word “commercial” were omitted; and
- (d) subsection (9) is to be read as if the reference to the authorised person were a reference to the company and its depositary acting jointly.

#### **Notices: general**

**8.** Subject to the provisions of these Regulations—

- (a) section 387 of the Act (warning notices) applies to a warning notice given under any provision of these Regulations in the same way as it applies to a warning notice given under any provision of the Act;
- (b) section 388 of the Act (decision notices) applies to a decision notice given under any provision of these Regulations in the same way as it applies to a decision notice given under any provision of the Act;
- (c) section 389 of the Act (notices of discontinuance) applies to the discontinuance of the action proposed in a warning notice or the action to which a decision notice relates given under any provision of these Regulations in the same way as it applies to a warning notice or decision notice given under any provision of the Act;
- (d) section 390 of the Act (final notices) applies to a decision notice given under any provision of these Regulations in the same way as it applies to a decision notice given under any provision of the Act.

#### **Publication**

**9.** Section 391 of the Act (publication) applies to the notices mentioned in regulation 8 in the same way as it applies to any such notice given under any provision of the Act.

#### **The Authority’s procedures**

**10.** Section 395 of the Act (the Authority’s procedures) applies to the procedure relating to the Authority’s functions in relation to supervisory notices, warning notices and decision notices given under any provision of these Regulations.

#### **The Tribunal**

**11.** Section 133 of the Act (proceedings: general provision) applies to any reference to the Tribunal under these Regulations as it applies to any reference to the Tribunal under the Act.

## *Authorisation*

### **Applications for authorisation**

**12.**—(1) Any application for an authorisation order in respect of a proposed open-ended investment company—

- (a) must be made in such manner as the Authority may direct;
- (b) must state with respect to each person proposed in the application as a director of the company the particulars set out in regulation 13;
- (c) must state the corporate name and registered or principal office of the person proposed in the application as depositary of the company; and
- (d) must contain or be accompanied by such other information as the Authority may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it the Authority may require the applicant to furnish additional information.

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

(4) Any information to be furnished to the Authority under this regulation must be in such form or verified in such manner as it may specify.

(5) A person commits an offence if—

- (a) for the purposes of or in connection with any application under this regulation; or
- (b) in purported compliance with any requirement imposed on him by or under this regulation;

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(6) A person guilty of an offence under paragraph (5) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

### **Particulars of directors**

**13.**—(1) Subject to paragraph (2), an application for an authorisation order must contain the following particulars with respect to each person proposed as a director of the company—

- (a) in the case of an individual, his present name, any former name, his usual residential address, his nationality, his business occupation (if any), particulars of any other directorships held by him or which have been held by him and his date of birth;
- (b) in the case of a body corporate of Scottish firm, its corporate or firm name and the address of its registered or principal office.

(2) The application need not contain particulars of a directorship—

- (a) which has not been held by a director at any time during the 5 years preceding the date on which the application is delivered to the Authority;
- (b) which is held by a director in a body corporate which is dormant and, if he also held that directorship for any period during those 5 years, which was dormant for the whole of that period; or

- (c) which was held by a director for any period during those 5 years in a body corporate which was dormant for the whole of that period.
- (3) For the purposes of paragraph (2), a body corporate is dormant during a period in which no significant transaction occurs; and it ceases to be dormant on the occurrence of such a transaction.
- (4) In paragraph (1)(a)—
  - (a) name means a person's Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them;
  - (b) the reference to a former name does not include—
    - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title;
    - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more; or
    - (iii) in the case of a married woman, the name by which she was known previous to the marriage; and
  - (c) the reference to directorships is a reference to directorships in any body corporate whether or not incorporated in Great Britain.
- (5) In paragraph (3) the reference to a significant transaction is, in relation to a company within the meaning of section 735(1) of the 1985 Act, a reference to a significant accounting transaction within the meaning of section 249AA(5)(6) of that Act.

### **Authorisation**

- 14.**—(1) Where an application is duly made under regulation 12, the Authority may make an authorisation order in respect of an open-ended investment company if—
- (a) it is satisfied that the company will, on the coming into effect of the authorisation order, comply with the requirements in regulation 15;
  - (b) it is satisfied that the company will, at that time, comply with the requirements of FSA rules;
  - (c) it has been provided with a copy of the proposed company's instrument of incorporation and a certificate signed by a solicitor to the effect that the instrument of incorporation complies with Schedule 2 to these Regulations and with such of the requirements of FSA rules as relate to the contents of that instrument of incorporation; and
  - (d) it has received a notification under regulation 18(3) from the appropriate registrar.
- (2) If the Authority makes an order under paragraph (1), it must give written notice of the order to the applicant.
- (3) In determining whether the requirement referred to in regulation 15(5) is satisfied in respect of any proposed director of a company, the Authority may take into account—
- (a) any matter relating to any person who is or will be employed by or associated with the proposed director, for the purposes of the business of the company;
  - (b) if the proposed director is a body corporate, any matter relating to any director or controller of the body, to any other body corporate in the same group or to any director or controller of any such other body corporate;
  - (c) if the proposed director is a partnership, any matter relating to any of the partners; and

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(6) Section 249AA was inserted by the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000 (S.I. 2000/1430).

- (d) if the proposed director is an unincorporated association, any matter relating to any member of the governing body of the association or any officer or controller of the association.
- (4) An application must be determined by the Authority before the end of the period of six months beginning with the date on which it receives a completed application.
- (5) The Authority may determine an incomplete application if it considers it appropriate to do so and, if it does so, it must determine the application within the period of twelve months beginning with the date on which it first receives the application.
- (6) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.
- (7) An authorisation order must specify the date on which it is to come into effect.
- (8) Schedule 2 to these Regulations makes provision with respect to the contents, alteration and binding nature of the instrument of incorporation of an open-ended investment company.

### **Requirements for authorisation**

- 15.**—(1) The requirements referred to in regulation 14(1)(a) are as follows.
- (2) The company and its instrument of incorporation must comply with the requirements of these regulations and FSA rules.
  - (3) The head office of the company must be situated in England and Wales, Wales or Scotland.
  - (4) The company must have at least one director.
  - (5) The directors of the company must be fit and proper persons to act as such.
  - (6) If the company has only one director, that director must be a body corporate which is an authorised person and which has permission under Part IV of the Act to act as sole director of an open-ended investment company.
  - (7) If the company has two or more directors, the combination of their experience and expertise must be such as is appropriate for the purposes of carrying on the business of the company.
  - (8) The person appointed as the depositary of the company—
    - (a) must be a body corporate incorporated in the United Kingdom or another EEA State;
    - (b) must have a place of business in the United Kingdom;
    - (c) must have its affairs administered in the country in which it is incorporated;
    - (d) must be an authorised person;
    - (e) must have permission under Part IV of the Act to act as the depositary of an open-ended investment company; and
    - (f) must be independent of the company and of the persons appointed as directors of the company.
  - (9) The name of the company must not be undesirable or misleading.
  - (10) The aims of the company must be reasonably capable of being achieved.
  - (11) The company must meet one or both of the following requirements—
    - (a) shareholders are entitled to have their shares redeemed or repurchased upon request at a price related to the net value of the scheme property and determined in accordance with the company's instrument of incorporation and FSA rules; or
    - (b) shareholders are entitled to sell their shares on an investment exchange at a price not significantly different from that mentioned in sub-paragraph (a).



### **Representations against refusal of authorisation**

16.—(1) If the Authority proposes to refuse an application made under regulation 12, it must give the applicant a warning notice.

- (2) If the Authority decides to refuse the application—
- (a) it must give the applicant a decision notice; and
  - (b) the applicant may refer the matter to the Tribunal.

### **Certificates**

17.—(1) If an open-ended investment company which complies with the conditions necessary to enable it to enjoy the rights conferred by the UCITS Directive so requests, the Authority may issue a certificate to the effect that the company complies with those conditions.

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

### *Names*

### **Registrar's approval of names**

18.—(1) Where, in respect of a proposed open-ended investment company, it appears to the Authority that the requirements of regulation 14(1)(a) to (c) are or will be met, the Authority must notify the appropriate registrar of the name by which it is proposed that the company should be incorporated.

(2) Every open-ended investment company must obtain the Authority's approval to any proposed change in the name by which the company is incorporated and the Authority must notify the appropriate registrar of the proposed name.

(3) If it appears to the appropriate registrar that the provisions of regulation 19(1) are not contravened in relation to the proposed name, he must notify the Authority to that effect.

### **Prohibition on certain names**

19.—(1) No open-ended investment company is to have a name that—

- (a) includes any of the following words or expressions, that is to say—
  - (i) limited, unlimited or public limited company, or their Welsh equivalents (“cyfyngedig”, “anghyfyngedig” and “cwmni cyfyngedig cyhoeddus” respectively); or
  - (ii) European Economic Interest Grouping or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989(7);
- (b) includes an abbreviation of any of the words or expressions referred to in subparagraph (a); or
- (c) is the same as any other name appearing in the registrar's index of company names.

(2) In determining for the purposes of paragraph (1)(c) whether one name is the same as another, there are to be disregarded—

- (a) the definite article, where it is the first word of the name;

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(7) [S.I. 1989/638](#). The Regulations were modified by virtue of section 2(1) of the European Economic Area Act 1994 (c. 51) so that, for any limitation in the Regulations that proceeds by reference to the Communities, there is substituted a corresponding limitation relating to the European Economic Area.

- (b) the following word and expressions where they appear at the end of the name—
- “company” or its Welsh equivalent (“cwmni”);
  - “and company” or its Welsh equivalent (“a'r cwmni”);
  - “company limited” or its Welsh equivalent (“cwmni cyfyngedig”);
  - “limited” or its Welsh equivalent (“cyfyngedig”);
  - “unlimited” or its Welsh equivalent (“anghyfyngedig”);
  - “public limited company” or its Welsh equivalent (“cwmni cyfyngedig cyhoeddus”);
  - “European Economic Interest Grouping” or any equivalent set out in Schedule 3 to the European Economic Interest Grouping Regulations 1989;
  - “investment company with variable capital” or its Welsh equivalent (“cwmni buddsoddi â chyalaf newidiol”);
  - “open-ended investment company” or its Welsh equivalent (“cwmni buddsoddiant penagored”);
- (c) abbreviations of any of those words or expressions where they appear at the end of the name; and
- (d) type and case of letters, accents, spaces between letters and punctuation marks;
- and “and” and “&” are to be taken as the same.

### **Registrar’s index of company names**

**20.**—(1) Upon making an authorisation order in respect of an open-ended investment company or upon approving any change in the name of such a company, the Authority must notify the appropriate registrar of the name by which the company is incorporated or, as the case may be, of the company’s new name.

(2) Section 714(8) of the 1985 Act (registrar’s index of company and corporate names) has effect as if the bodies listed in subsection (1) of that section included—

- (a) open-ended investment companies in respect of which an authorisation order has come into effect; and
- (b) collective investment schemes which are open-ended investment companies and which have a head office situated in Northern Ireland.

### *Alterations*

### **The Authority’s approval for certain changes in respect of a company**

- 21.**—(1) An open-ended investment company must give written notice to the Authority of —
- (a) any proposed alteration to the company’s instrument of incorporation;
  - (b) any proposed alteration to the company’s prospectus which, if made, would be significant;
  - (c) any proposed reconstruction or amalgamation involving the company;
  - (d) any proposal to wind up the affairs of the company otherwise than by the court;
  - (e) any proposal to replace a director of the company, to appoint any additional director or to decrease the number of directors in post; and
  - (f) any proposal to replace the depositary of the company.

(2) Any notice given under paragraph (1)(a) must be accompanied by a certificate signed by a solicitor to the effect that the change in question will not affect the compliance of the instrument of incorporation with Schedule 2 to these Regulations and with such of the requirements of FSA rules as relate to the contents of that instrument.

(3) Effect must not be given to any proposal falling within paragraph (1) unless—

- (a) the Authority, by written notice, has given its approval to the proposal; or
- (b) one month, beginning with the date on which notice of the proposal was given, has expired without the company or the depositary having received from the Authority a warning notice under regulation 22 in respect of the proposal.

(4) No change falling within paragraph (1)(e) may be made if any of the requirements set out in regulation 15(4) to (7) and (8)(f) would not be satisfied if the change were made and no change falling within paragraph (1)(f) may be made if any of the requirements in regulation 15(8) would not be satisfied if the change were made.

### **Procedure when refusing approval of proposed changes**

**22.**—(1) If the Authority proposes to refuse approval of a proposal to replace the depositary, or any director, of an open-ended investment company, it must give a warning notice to the company.

(2) If the Authority proposes to refuse approval of any other proposal falling within regulation 21, it must give separate warning notices to the company and its depositary.

(3) To be valid the warning notice must be received by that person 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 Authority decides to refuse approval—

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

(5) If, having given a warning notice to a person, the Authority decides to approve the proposal, it must give him a decision notice.

### *Ending of authorisation*

### **Ending of authorisation**

**23.**—(1) The Authority may revoke an authorisation order if it appears to it that—

- (a) any requirement for the making of the order is no longer satisfied;
- (b) the company, any of its directors or its depositary—
  - (i) has contravened any relevant provision; or
  - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
- (c) no regulated activity has been carried on in relation to the company for the previous twelve months; or
- (d) it is desirable to revoke the authorisation order in order to protect the interests of shareholders or potential shareholders in the company.

(2) For the purposes of paragraph (1)(d), the Authority may take into account any matter relating to—

- (a) the company or its depositary;
- (b) any director or controller of the depositary;

- (c) any person employed by or associated, for the purposes of the business of the company, with the company or its depositary;
- (d) any director of the company;
- (e) any person exercising influence over any director of the company or its depositary;
- (f) any body corporate in the same group as any director of the company or its depositary;
- (g) any director of any such body corporate;
- (h) any person exercising influence over any such body corporate;
- (i) any person who would be such a person as is mentioned in regulation 14(3)(a) to (d) were it to apply to a director as it applies to a proposed director.

(3) Before revoking any authorisation order that has come into effect, the Authority must ensure that such steps as are necessary and appropriate to secure the winding up of the company (whether by the court or otherwise) have been taken.

### **Procedure**

**24.**—(1) If the Authority proposes to make an order revoking an authorisation order (“a revoking order”), it must give separate warning notices to the company and its depositary.

(2) If, having given warning notices, the Authority decides to make a revoking order it must without delay give the company and its depositary a decision notice and either of them may refer the matter to the Tribunal.

(3) Sections 393 and 394 of the Act apply to a warning notice or a decision notice given in accordance with this regulation.

### *Powers of intervention*

### **Directions**

**25.**—(1) The Authority may give a direction under this regulation if it appears to the Authority that—

- (a) one or more requirements for the making of an authorisation order are no longer satisfied;
  - (b) the company, any of its directors or its depositary—
    - (i) has contravened or is likely to contravene any relevant provision; or
    - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
  - (c) it is desirable to give a direction in order to protect the interests of shareholders or potential shareholders in the company.
- (2) A direction under this regulation may—
- (a) require the company to cease the issue or redemption, or both the issue and redemption, of shares or any class of shares in the company;
  - (b) in the case of a director of the company who is the designated person, require that director to cease transfers to or from, or both to and from, his own holding of shares, or of any class of shares, in the company;
  - (c) in the case of an umbrella company, require that investments made in respect of one or more parts of the scheme property which are pooled separately be realised and, following the discharge of such liabilities of the company as are attributable to the relevant part or parts of the scheme property, that the resulting funds be distributed to shareholders in accordance with FSA rules;

(d) require any director of the company to present a petition to the court to wind up the company; or

(e) require that the affairs of the company be wound up otherwise than by the court.

(3) Subject to paragraph (4), if the authorisation order is revoked, the revocation does not affect the operation of any direction under this regulation which is then in force; and a direction under this regulation may be given in relation to a company in the case of which an authorisation order has been revoked if a direction under this regulation was already in force at the time of revocation.

(4) Where a winding-up order has been made by the court, no direction under this regulation is to have effect in relation to the company concerned.

(5) For the purposes of paragraph (1)(c), the Authority may take into account any matter relating to any of the persons mentioned in regulation 23(2).

(6) If a person contravenes a direction under this regulation, section 150 (actions for damages) applies to the contravention as it applies to a contravention mentioned in that section.

(7) The Authority may, on its own initiative or on the application of the company or its depositary, revoke or vary a direction given under this regulation if it appears to the Authority—

(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**

**26.**—(1) This regulation applies if the Authority could give a direction under regulation 25 in relation to an open-ended investment company.

(2) The Authority may apply to the court for an order removing the depositary or any director of the company and replacing any such person with a person or persons nominated by the Authority.

(3) The Authority may nominate a person for the purposes of paragraph (2) only if it is satisfied that, if the order were made, the requirements of paragraphs (4) to (7) or, as the case may be, of paragraph (8) of regulation 15 would be met.

(4) If it appears to the Authority that there is no person whom it may nominate for the purposes of paragraph (2), it may apply to the court for an order removing the director in question or the depositary (or both) and appointing an authorised person to wind up the company.

(5) On an application under this regulation the court may make such order as it thinks fit.

(6) The court may, on the application of the Authority, rescind any such order as is mentioned in paragraph (4) and substitute such an order as is mentioned in paragraph (2).

(7) The Authority must—

(a) give written notice of the making of an application under this section to—

(i) the company;

(ii) its depositary; and

(iii) where the application seeks the removal of any director of the company, that director; and

(b) take such steps as it considers appropriate for bringing the making of the application to the attention of the shareholders of the company.

**Procedure on giving directions under regulation 25 and varying them on Authority's own initiative**

27.—(1) A direction takes effect—

- (a) immediately, if the notice given under paragraph (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 may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under regulation 25, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under regulation 25, or gives such a direction with immediate effect, it must give separate written notices to the company and its depositary.

(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 Authority'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 he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
- (e) inform him of his right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under regulation 25(2)(a) or (b), the notice must state that the requirement has effect until—

- (a) a specified date; or
- (b) a further direction.

(6) If the direction imposes a requirement under regulation 25(2)(d) or (e), the petition must be presented (or, as the case may be, the company must be wound up)—

- (a) by a date specified in the notice; or
- (b) if no date is specified, as soon as possible.

(7) The Authority 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 Authority 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 notices to the company and its depositary.

(9) If, having considered any representations made by a person to whom the notice was given, the Authority 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 notices to the company and its depositary.

(10) A notice given under paragraph (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(11) A notice under paragraph (9)(b) must comply with paragraph (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This regulation applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of the Act.

(15) Section 395 of the Act (the Authority's procedures) has effect as if subsection (13) included a reference to a notice given in accordance with paragraph (3), (8) or (9)(b).

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

**28.**—(1) If on an application under regulation 25(7) for a direction to be revoked or varied the Authority 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 Authority 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**

**29.**—(1) If the Authority decides on its own initiative to revoke a direction under regulation 25 it must give separate written notices of its decision to the company and its depositary.

(2) If on an application made under regulation 25(7) for a direction to be revoked or varied, the Authority decides to revoke or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this regulation must specify the date on which the decision takes effect.

(4) The Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.

### *Investigations*

#### **Power to investigate**

**30.**—(1) The Authority or the Secretary of State may appoint one or more competent persons to investigate and report on the affairs of, or of any director or depositary of, an open-ended investment company if it appears to either of them that it is in the interests of shareholders or potential shareholders of the company to do so or that the matter is of public concern.

(2) A person appointed under paragraph (1) to investigate the affairs of, or of any director or depositary of, a company may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of (or of the directors, depositary, trustee or operator of)—

- (a) an open-ended investment company the directors of which include any of the directors of the company whose affairs are being investigated by virtue of that paragraph;
- (b) an open-ended investment company the directors of which include any of the directors of the depositary whose affairs are being investigated by virtue of that paragraph;

- (c) an open-ended investment company the depositary of which is—
  - (i) the same as the depositary of the company whose affairs are being investigated by virtue of that paragraph; or
  - (ii) the depositary whose affairs are being investigated by virtue of that paragraph;
- (d) an open-ended investment company the directors of which include—
  - (i) the director whose affairs are being investigated by virtue of that paragraph; or
  - (ii) any director of a body corporate which is the director whose affairs are being investigated by virtue of that paragraph;
- (e) a collective investment scheme the manager, depositary or operator of which is a director of the company whose affairs are being investigated by virtue of that paragraph;
- (f) a collective investment scheme the trustee of which is—
  - (i) the same as the depositary of the company whose affairs are being investigated by virtue of that paragraph; or
  - (ii) the depositary whose affairs are being investigated by virtue of that paragraph; or
- (g) a collective investment scheme the manager, depositary or operator of which is—
  - (i) the director whose affairs are being investigated by virtue of that paragraph; or
  - (ii) a director of a body corporate which is the director whose affairs are being investigated by virtue of that paragraph.

(3) If the person (“A”) appointed to conduct an investigation under this regulation considers that a person (“B”) is or may be able to give information which is relevant to the investigation, A may require B—

- (a) to produce to A any documents in B’s possession or under his control which appear to A to be relevant to that investigation;
- (b) to attend before A; and
- (c) otherwise to give A all such assistance in connection with the investigation which B is reasonably able to give;

and it is B’s duty to comply with that requirement.

- (4) Subsection (5) to (9) of section 170 of the Act (investigations: general) apply if—
- (a) the Authority appoints a person under this regulation to conduct an investigation on its behalf; or
  - (b) the Secretary of State appoints a person under this regulation to conduct an investigation on his behalf;

as they apply in the cases mentioned in subsection (1) of that section.

(5) Section 174 of the Act (admissibility of statements made to investigators) applies to a statement made by a person in compliance with a requirement imposed on him under this regulation as it applies to a statement mentioned in that section.

(6) Subsections (2) to (4) and (6) of section 175 (information and documents: supplemental provisions) and section 177 of the Act (offences) have effect as if this regulation were contained in Part XI of the Act (information gathering and investigations).

(7) Subsections (1) to (9) of section 176 of the Act (entry of premises under warrant) apply in relation to a person appointed under paragraph (1) as if—

- (a) references to an investigator were references to a person so appointed;
- (b) references to an information requirement were references to a requirement imposed under this regulation by a person so appointed;



- (c) the premises mentioned in section 176(3)(a) were the premises of a person whose affairs are the subject of an investigation under this regulation or of an appointed representative of such a person.
- (8) No person may be required under this regulation to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on a banking business unless—
  - (a) the imposition of the requirement is authorised by the Authority or the Secretary of State (as the case may be) or the person to whom the obligation of confidence is owed; or
  - (b) the person to whom it is owed is—
    - (i) a director or depositary of any open-ended investment company which is under investigation; or
    - (ii) any other person whose own affairs are under investigation.

### *Winding up*

#### **Winding up by the court**

**31.**—(1) Where an open-ended investment company is wound up as an unregistered company under Part V of the 1986 Act, the provisions of that Act apply for the purposes of the winding up with the following modifications.

(2) A petition for the winding up of an open-ended investment company may be presented by the depositary of the company as well as by any person authorised under section 124 (application for winding up) or section 124A(9) of the 1986 Act (petition for winding up on grounds of public interest), as those sections apply by virtue of Part V of that Act, to present a petition for the winding up of the company.

(3) Where a petition for the winding up of an open ended investment company is presented by a person other than the Authority—

- (a) that person must serve a copy of the petition on the Authority; and
- (b) the Authority is entitled to be heard on the petition.

(4) If, before the presentation of a petition for the winding up by the court of an open-ended investment company as an unregistered company under Part V of the 1986 Act, the affairs of the company are being wound up otherwise than by the court—

- (a) section 129(2) of the 1986 Act (commencement of winding up by the court) is not to apply; and
- (b) any winding up of the company by the court is to be deemed to have commenced—
  - (i) at the time at which the Authority gave its approval to a proposal mentioned in paragraph (1)(d) of regulation 21; or
  - (ii) in a case falling within paragraph (3)(b) of that regulation, on the day following the end of the one-month period mentioned in that paragraph.

#### **Dissolution on winding up by the court**

**32.**—(1) Section 172(8) of the 1986 Act (final meeting of creditors and vacation of office by liquidator), as that section applies by virtue of Part V of that Act (winding up of unregistered companies) has effect, in relation to open-ended investment companies, as if the reference to the registrar of companies was a reference to the Authority.

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(9) Section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3).

- (2) Where, in respect of an open-ended investment company, the Authority receives—
- (a) a notice given for the purposes of section 172(8) of the 1986 Act (as aforesaid); or
  - (b) a notice from the official receiver that the winding up, by the court, of the company is complete;

the Authority must, on receipt of the notice, forthwith register it and, subject to the provisions of this regulation, at the end of the period of three months beginning with the day of the registration of the notice, the company is to be dissolved.

(3) The Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.

(4) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under paragraph (3).

(5) Paragraph (3) does not apply to a case where the winding-up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect be deferred for such period as the court thinks fit.

- (6) It is the duty of the person—
- (a) on whose application a direction is given under paragraph (3);
  - (b) in whose favour an appeal with respect to an application for such a direction is determined; or
  - (c) on whose application an order is made under paragraph (5);

not later than seven days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the Authority for registration a copy of the direction or determination or, in respect of an order, a certified copy of the interlocutor.

(7) If a person without reasonable excuse fails to deliver a copy as required by paragraph (6), he is guilty of an offence.

- (8) A person guilty of an offence under paragraph (7) is liable, on summary conviction—
- (a) to a fine not exceeding level 1 on the standard scale; and
  - (b) on a second or subsequent conviction instead of the penalty set out in sub-paragraph (a), to a fine of £100 for each day on which the contravention is continued.

### **Dissolution in other circumstances**

**33.**—(1) Where the affairs of an open-ended investment company have been wound up otherwise than by the court, the Authority must, as soon as is reasonably practicable after the winding up is complete, register that fact and, subject to the provisions of this regulation, at the end of the period of three months beginning with the day of the registration, the company is to be dissolved.

(2) The court may, on the application of the Authority or the company, make an order deferring the date at which the dissolution of the company is to take effect for such period as the court thinks fit.

(3) It is the duty of the company, on whose application an order of the court under paragraph (2) is made, to deliver to the Authority, not later than seven days after the making of the order, a copy of the order for registration.

(4) Where any company, the head office of which is situated in England and Wales, or Wales, is dissolved by virtue of paragraph (1), any sum of money (including unclaimed distributions) standing to the account of the company at the date of the dissolution must on such date as is determined in accordance with FSA rules, be paid into court.

(5) Where any company, the head office of which is situated in Scotland, is dissolved by virtue of paragraph (1), any sum of money (including unclaimed dividends and unapplied or undistributable balances) standing to the account of the company at the date of the dissolution must—

- (a) on such date as is determined in accordance with FSA rules, be lodged in an appropriate bank or institution as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985<sup>(10)</sup> (interpretation) in the name of the Accountant of the Court; and
- (b) thereafter be treated as if it were a sum of money lodged in such an account by virtue of section 193 of the 1986 Act (unclaimed dividends (Scotland)), as that section applies by virtue of Part V of that Act.

## PART III CORPORATE CODE

### *Organs*

#### **Directors**

**34.**—(1) On the coming into effect of an authorisation order in respect of an open-ended investment company, the persons proposed in the application under regulation 12 as directors of the company are deemed to be appointed as its first directors.

(2) Subject to regulations 21 and 26, any subsequent appointment as a director of a company must be made by the company in general meeting, save that the directors of the company may appoint a person to act as director to fill any vacancy until such time as the next annual general meeting of the company takes place.

(3) Any act of a director is valid notwithstanding—

- (a) any defect that may thereafter be discovered in his appointment or qualifications; or
- (b) that it is afterwards discovered that his appointment had terminated by virtue of any provision contained in FSA rules which required a director to retire upon attaining a specified age.

(4) The business of a company must be managed—

- (a) where a company has only one director, by that director; or
- (b) where a company has more than one director, by the directors but subject to any provision contained in FSA rules as to the allocation between the directors of responsibilities for the management of the company (including any provision there may be as to the allocation of such responsibility to one or more directors to the exclusion of others).

(5) Subject to the provisions of these Regulations, FSA rules and the company's instrument of incorporation, the directors of a company may exercise all the powers of the company.

#### **Directors to have regard to interests of employees**

**35.**—(1) The matters to which a director of an open-ended investment company must have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its shareholders.

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<sup>(10)</sup> 1985 c. 66; the definition of "appropriate bank or institution" was substituted by section 108(1) of, and paragraph 20 of Schedule 6 to, the Banking Act 1987 (c. 22).

(2) The duty imposed by this regulation on a director is owed by him to the company (and the company alone) and is enforceable in the same way as any other fiduciary duty owed to a company by its directors.

### **Inspection of directors' service contracts**

**36.**—(1) Every open-ended investment company must keep at an appropriate place—

- (a) in the case of each director whose contract of service with the company is in writing, a copy of that contract; and
- (b) in the case of each director whose contract of service with the company is not in writing, a written memorandum setting out its terms.

(2) All copies and memoranda kept by a company in accordance with paragraph (1) must be kept at the same place.

(3) The following are appropriate places for the purposes of paragraph (1)—

- (a) the company's head office;
- (b) the place where the company's register of shareholders is kept; and
- (c) where the designated person is a director of the company and is a body corporate, the registered or principal office of that person.

(4) Every copy and memorandum required by paragraph (1) to be kept must be open to the inspection of any shareholder of the company.

(5) If such an inspection is refused, the court may by order compel an immediate inspection of the copy or memorandum concerned.

(6) Every copy and memorandum required by paragraph (1) to be kept must be made available by the company for inspection by any shareholder at the company's annual general meeting.

(7) Paragraph (1) applies to a variation of a director's contract of service as it applies to the contract.

### **General meetings**

**37.**—(1) Subject to paragraph (2), every open-ended investment company must in each year hold a general meeting ("annual general meeting") in addition to any other meetings, whether general or otherwise, it may hold in that year.

(2) If a company holds its first annual general meeting within 18 months of the date on which the authorisation order made by the Authority in respect of the company comes into effect, paragraph (1) does not require the company to hold any other meeting as its annual general meeting in the year of its incorporation or in the following year.

(3) Subject to paragraph (2), not more than 15 months may elapse between the date of one annual general meeting of a company and the date of the next.

### **Capacity of company**

**38.**—(1) The validity of an act done by an open-ended investment company cannot be called into question on the ground of lack of capacity by reason of anything in these Regulations, FSA rules or the company's instrument of incorporation.

(2) Nothing in paragraph (1) affects the duty of the directors to observe any limitation on their powers.

### **Power of directors and general meeting to bind the company**

**39.**—(1) In favour of a person dealing in good faith, the following powers, that is to say—

- (a) the power of the directors of an open-ended investment company (whether or not acting as a board) to bind the company, or authorise others to do so; and
- (b) the power of such a company in general meeting to bind the company, or authorise others to do so;

are deemed to be free of any limitation under the company's constitution.

(2) For the purposes of this regulation—

- (a) a person deals with a company if he is party to any transaction or other act to which the company is a party;
- (b) subject to paragraph (4), a person is not to be regarded as acting in bad faith by reason only of his knowing that, under the company's constitution, an act is beyond any of the powers referred to in paragraph (1)(a) or (b); and
- (c) subject to paragraph (4), a person is presumed to have acted in good faith unless the contrary is proved.

(3) The reference in paragraph (1) to any limitation under the company's constitution on the powers therein set out includes any limitation deriving from these Regulations, from FSA rules or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

(4) Sub-paragraphs (b) and (c) of paragraph (2) do not apply where—

- (a) by virtue of a limitation deriving from these Regulations or from FSA rules, an act is beyond any of the powers referred to in paragraph (1)(a) or (b); and
- (b) the person in question—
  - (i) has actual knowledge of that fact; or
  - (ii) has deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

(5) Paragraph (1) does not affect any liability incurred by the directors or any other person by reason of the directors exceeding their powers.

### **No duty to enquire as to capacity etc.**

**40.** Subject to regulation 39(4)(b)(ii), a party to a transaction with an open-ended investment company is not bound to enquire—

- (a) as to whether the transaction is permitted by these Regulations, FSA rules or the company's instrument of incorporation; or
- (b) as to any limitation on the powers referred to in regulation 39(1)(a) or (b).

### **Exclusion or deemed notice**

**41.** A person is not to be taken to have notice of any matter merely because of its being disclosed in any document made available by an open-ended investment company for inspection; but this does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such enquiries as ought reasonably to be made.

### **Restraint and ratification by shareholders**

**42.**—(1) A shareholder of an open-ended investment company may bring proceedings to restrain the doing of an act which but for regulation 38(1) would be beyond the company's capacity.

(2) Paragraph (1) of regulation 39 does not affect any right of a shareholder of an open-ended investment company to bring proceedings to restrain the doing of an act which is beyond any of the powers referred to in that paragraph.

(3) No proceedings may be brought under paragraph (1) in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company; and paragraph (2) does not have the effect of enabling proceedings to be brought in respect of any such act.

(4) Any action by the directors of a company—

- (a) which, but for regulation 38(1), would be beyond the company's capacity; or
- (b) which is within the company's capacity but beyond the powers referred to in regulation 39(1)(a);

may only be ratified by a resolution of the company in general meeting.

(5) A resolution ratifying such action does not affect any liability incurred by the directors or any other person, relief from any such liability requiring agreement by a separate resolution of the company in general meeting.

(6) Nothing in this regulation affects any power or right conferred by or arising under section 150 (actions for damages) or section 380, 382 or 384 of the Act (injunctions and restitution orders).

#### **Events affecting company status**

**43.**—(1) Where either of the conditions mentioned in paragraph (2) is satisfied, an open-ended investment company is not entitled to rely against other persons on the happening of any of the following events—

- (a) any alteration of the company's instrument of incorporation;
- (b) any change among the directors of the company;
- (c) as regards service of any document on the company, any change in the situation of the head office of the company; or
- (d) the making of a winding-up order in respect of the company or, in circumstances in which the affairs of a company are to be wound up otherwise than by the court, the commencement of the winding up.

(2) The conditions referred to in paragraph (1) are that—

- (a) the event in question had not been officially notified at the material time and is not shown by the company to have been known at that time by the other person concerned; and
- (b) if the material time fell on or before the 15th day after the date of official notification (or where the 15th day was a non-business day, on or before the next day that was a business day), it is shown that the other person concerned was unavoidably prevented from knowing of the event at that time.

(3) In this regulation "official notification" means the notification in the Gazette (by virtue of regulation 78) of any document containing the information referred to in paragraph (1) above, and "officially notified" is to be construed accordingly.

#### **Invalidity of certain transactions involving directors**

**44.**—(1) This regulation applies where—

- (a) an open-ended investment company enters into a transaction to which the parties include a director of the company or any person who is an associate of such a director; and
- (b) in connection with the transaction, the directors of the company (whether or not acting as a board) exceed any limitation on their powers under the company's constitution.

- (2) The transaction is voidable at the instance of the company.
- (3) Whether or not the transaction is avoided, any such party to the transaction as is mentioned in paragraph (1)(a), and any director of the company who authorised the transaction, is liable—
  - (a) to account to the company for any gain which he has made directly or indirectly by the transaction; and
  - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) Nothing in paragraphs (1) to (3) is to be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called into question or any liability to the company may arise.
- (5) The transaction ceases to be voidable if—
  - (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible;
  - (b) the company is indemnified for any loss or damage resulting from the transaction;
  - (c) rights which are acquired, bona fide for value and without actual notice of the directors concerned having exceeded their powers, by a person who is not a party to the transaction would be affected by the avoidance; or
  - (d) the transaction is ratified by resolution of the company in general meeting.
- (6) A person other than a director of the company is not liable under paragraph (3) if he shows that at the time the transaction was entered into he did not know that the directors concerned were exceeding their powers.
- (7) This regulation does not affect the operation of regulation 39 in relation to any party to the transaction not within paragraph (1)(a); but where a transaction is voidable by virtue of this regulation and valid by virtue of that regulation in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms as appear to the court to be just.
- (8) For the purposes of this regulation—
  - (a) “associate”, in relation to any person who is a director of the company, means that person’s spouse, child or stepchild (if under 18), employee, partner or any body corporate of which that person is a director; and if that person is a body corporate, any subsidiary undertaking or director of that body corporate (including any director or employee of such subsidiary undertaking);
  - (b) “transaction” includes any act; and
  - (c) the reference in paragraph (1)(b) to any limitation on directors’ powers under the company’s constitution includes any limitation deriving from these Regulations, from FSA rules or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

### *Shares*

#### **Shares**

- 45.**—(1) An open-ended investment company may issue more than one class of shares.
- (2) A shareholder may not have any interest in the scheme property of the company.
- (3) The rights which attach to each share of any given class are—

- (a) the right, in accordance with the instrument of incorporation, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the scheme property;
  - (b) the right, in accordance with the instrument of incorporation, to vote at any general meeting of the company or at any relevant class meeting; and
  - (c) such other rights as may be provided for, in relation to shares of that class, in the instrument of incorporation of the company.
- (4) In respect of any class of shares, the rights referred to in paragraph (3) may, if the company's instrument of incorporation so provides, be expressed in two denominations; and in the case of any such class, one (the "smaller") denomination is to be such proportion of the other (the "larger") denomination as is fixed by the instrument of incorporation.
- (5) In respect of any class of shares within paragraph (4), any share to which are attached rights expressed in the smaller denomination is to be known as a smaller denomination share; and any share to which are attached rights expressed in the larger denomination is to be known as a larger denomination share.
- (6) In respect of any class of shares, the rights which attach to each share of that class are—
- (a) except in respect of a class of shares within paragraph (4), equal to the rights that attach to each other share of that class; and
  - (b) in respect of a class of shares within that paragraph, equal to the rights that attach to each other share of that class of the same denomination.
- (7) In respect of any class of shares within paragraph (4), the rights that attach to any smaller denomination share of that class are to be a proportion of the rights that attach to any larger denomination share of that class and that proportion is to be the same as the proportion referred to in paragraph (4).

### **Share certificates**

- 46.—(1)** Subject to regulations 47 and 48, an open-ended investment company must prepare documentary evidence of title to its shares ("share certificates") as follows—
- (a) in respect of any new shares issued by it;
  - (b) where a shareholder has transferred part only of his holding back to the company, in respect of the remainder of that holding;
  - (c) where a shareholder has transferred part only of his holding to the designated person, in respect of the remainder of that holding;
  - (d) where a company has registered a transfer of shares made to a person other than the company or a person designated as mentioned in sub-paragraph (c)—
    - (i) in respect of the shares transferred to the transferee; and
    - (ii) in respect of any shares retained by the transferor which were evidenced by any certificate sent to the company for the purposes of registering the transfer;
  - (e) in respect of any holding of bearer shares for which a certificate evidencing title has already been issued but where the certificate has been surrendered to the company for the purpose of being replaced by two or more certificates which between them evidence title to the shares comprising that holding; and
  - (f) in respect of any shares for which a certificate has already been issued but where it appears to the company that the certificate needs to be replaced as a result of having been lost, stolen or destroyed or having become damaged or worn out.



(2) A company must exercise due diligence and take all reasonable steps to ensure that certificates prepared in accordance with paragraph (1)(a) to (e) are ready for delivery as soon as reasonably practicable.

(3) Certificates need be prepared in the circumstances referred to in paragraph (1)(e) and (f) only if the company has received—

- (a) a request for a new certificate;
- (b) the old certificate (if there is one);
- (c) such indemnity as the company may require; and
- (d) such reasonable sum as the company may require in respect of the expenses incurred by it in complying with the request.

(4) Each share certificate must state—

- (a) the number of shares the title to which is evidenced by the certificate;
- (b) where the company has more than one class of shares, the class of shares title to which is evidenced by the certificate; and
- (c) except in the case of bearer shares, the name of the holder.

(5) Where, in respect of any class of shares, the rights that attach to shares of that class are expressed in two denominations, the reference in paragraph (4)(a) (as it applies to shares of that class) to the number of shares is a reference to the total of—

$$N + \frac{n}{p}$$

(6) In paragraph (5)—

- (a)  $N$  is the relevant number of the larger denomination shares of the class in question;
- (b)  $n$  is the relevant number of the smaller denomination shares of that class; and
- (c)  $p$  is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

(7) Nothing in these Regulations is to be taken as preventing the total arrived at under paragraph (5) being expressed on the certificate as a single entry representing the result derived from the formula set out in that paragraph.

(8) In England and Wales, a share certificate specifying any shares held by any person which is—

- (a) under the common seal of the company; or
- (b) authenticated in accordance with regulation 59;

is prima facie evidence of that person's title to the shares.

(9) In Scotland, a share certificate specifying any shares held by any person which is—

- (a) under the common seal of the company; or
- (b) subscribed by the company in accordance with the Requirements of Writing (Scotland) Act 1995(11);

is, unless the contrary is shown, sufficient evidence of that person's title to the shares.

#### **Exceptions from regulation 46**

**47.—**(1) An open-ended investment company which is a participating issuer must not prepare share certificates in respect of any share in the company which is an uncertificated unit of a security.

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(11) 1995 c. 7.

(2) Nothing in regulation 46 requires a company to prepare share certificates in the following cases.

(3) Case 1 is any case where the company's instrument of incorporation states that share certificates will not be issued and contains provision as to other procedures for evidencing a person's entitlement to shares.

(4) Case 2 is any case where a shareholder has indicated to the company in writing that he does not wish to receive a certificate.

(5) Case 3 is any case where shares are issued or transferred to the designated person.

(6) Case 4 is any case where shares are issued or transferred to a nominee of a recognised investment exchange who is designated for the purposes of this paragraph in the rules of the investment exchange in question.

### **Bearer shares**

**48.** An open-ended investment company may, if its instrument of incorporation so provides, issue shares ("bearer shares") evidenced by a share certificate, or by any other documentary evidence of title for which provision is made in its instrument of incorporation, which indicates—

- (a) that the holder of the document is entitled to the shares specified in it; and
- (b) that no entry will be made on the register of shareholders identifying the holder of those shares.

### **Register of shareholders**

**49.** Schedule 3 to these Regulations makes provision with respect to the register of shareholders of an open-ended investment company.

### **Power to close register**

**50.**—(1) Subject to paragraph (2), an open-ended investment company may, on giving notice by advertisement in a national newspaper circulating in all the countries in which shares in the company are sold, close the register of shareholders for any time or times not exceeding, in the whole, 30 days in each year.

(2) Paragraph (1) has effect—

- (a) in the case of a company which is a participating issuer, subject to regulation 22 of the Uncertificated Securities Regulations 1995<sup>(12)</sup> (consent of Operator of system required to close register) and to any requirements contained in FSA rules, in so far as such requirements are not inconsistent with that regulation; and
- (b) in the case of any other company, subject to any requirements contained in FSA rules.

### **Power of court to rectify register**

**51.**—(1) An application to the court may be made under this regulation if—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of shareholders of an open-ended investment company;
- (b) default is made as to the details contained in any entry on the register in respect of a person's holding of shares in the company; or
- (c) default is made or unnecessary delay takes place in amending the register so as to reflect the fact of any person having ceased to be a shareholder.

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<sup>(12)</sup> S.I. 1995/3272, amended by S.I. 1996/2827, S.I. 1997/251, S.I. 1999/506, S.I. 2000/311 and S.I. 2000/1682.

(2) An application under this regulation may be made by the person aggrieved, by any shareholder of the company or by the company itself.

(3) The court may refuse the application or may order rectification of the register of shareholders and payment by the company of any damages sustained by any party aggrieved.

(4) On such an application the court may decide any question necessary or expedient to be decided for rectification of the register of shareholders including, in particular, any question relating to the right of a person who is a party to the application to have his name entered in or omitted from the register (whether the question arises as between shareholders and alleged shareholders or as between shareholders or alleged shareholders on the one hand and the company on the other hand).

### **Share transfers**

**52.** Schedule 4 to these Regulations makes provision for the transfer of registered and bearer shares in an open-ended investment company.

### *Operation*

### **Power incidental to carrying on business**

**53.** An open-ended investment company has power to do all such things as are incidental or conducive to the carrying on of its business.

### **Name to appear in correspondence etc.**

**54.—**(1) Every open-ended investment company must have its name mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business.

(2) If an officer of a company or a person on the company's behalf signs or authorises to be signed on behalf of the company any cheque or order for money or goods in which the company's name is not mentioned as required by paragraph (1) he is personally liable to the holder of the cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

### **Particulars to appear in correspondence etc.**

**55.—**(1) Every open-ended investment company must have the following particulars mentioned in legible characters in all letters of the company and in all other documents issued by the company in the course of business—

- (a) the company's place of registration;
- (b) the number with which it is registered;
- (c) the address of its head office; and
- (d) the fact that it is an investment company with variable capital.

(2) Where, in accordance with regulation 72, the Authority makes any change of existing registered numbers in respect of any open-ended investment company then, for a period of three years beginning with the date on which the notification of the change is sent to the company by the Authority, the requirement of paragraph (1)(b) is, notwithstanding regulation 72(4), satisfied by the use of either the old number or the new.

### **Contracts: England and Wales**

**56.** Under the law of England and Wales a contract may be made—

- (a) by an open-ended investment company by writing under its common seal; or
- (b) on behalf of such a company, by any person acting under its authority (whether expressed or implied);

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of such a company.

#### **Execution of documents: England and Wales**

**57.**—(1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by an open-ended investment company.

(2) A document is executed by a company by the affixing of its common seal.

(3) A company need not have a common seal, however, and the following provisions of this regulation apply whether it does or not.

(4) A document that is signed by at least one director and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.

(5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it is to be presumed, unless a contrary intention is proved, to be delivered upon its being executed.

(6) In favour of a purchaser, a document is deemed to have been duly executed by a company if it purports to be signed by at least one director or, in the case of a director which is a body corporate, it purports to be executed by that director; and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, it is deemed to have been delivered upon its being executed.

(7) In paragraph (6), “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

#### **Execution of deeds overseas: England and Wales**

**58.**—(1) Under the law of England and Wales an open-ended investment company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom.

(2) A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company’s common seal.

#### **Authentication of documents: England and Wales**

**59.** A document or proceeding requiring authentication by an open-ended investment company is sufficiently authenticated for the purposes of the law of England and Wales—

- (a) by the signature of a director or other authorised officer of the company; or
- (b) in the case of a director which is a body corporate, if it is executed by that director.

#### **Official seal for share certificates**

**60.**—(1) An open-ended investment company which has a common seal may have, for use for sealing shares issued by the company and for sealing documents creating or evidencing shares so issued, an official seal which is a facsimile of its common seal with the addition on its face of the word “securities”.

(2) The official seal when duly affixed to a document has the same effect as the company's common seal.

(3) Nothing in this regulation affects the right of an open-ended investment company whose head office is in Scotland to subscribe such shares and documents in accordance with the Requirements of Writing (Scotland) Act 1995(13).

### **Personal liability for contracts and deeds**

**61.**—(1) A contract, which purports to be made by or on behalf of an open-ended investment company at a time before the coming into effect of an authorisation order in relation to that company, has effect (subject to any agreement to the contrary) as a contract made with the person purporting to act for the company or as agent for it, and he is accordingly personally liable under the contract.

(2) Paragraph (1) applies—

- (a) to the making of a deed under the law of England and Wales; and
- (b) to the undertaking of an obligation under the law of Scotland;

as it applies to the making of a contract.

(3) If a company enters into a transaction at any time after the authorisation order made in respect of the company has been revoked and the company fails to comply with its obligations in respect of that transaction within 21 days of being called upon to do so, the person who authorised the transaction is liable, and where the transaction was authorised by two or more persons they are jointly and severally liable, to indemnify the other party to the transaction in respect of any loss or damage suffered by him by reason of the company's failure to comply with those obligations.

### **Exemptions from liability to be void**

**62.**—(1) This regulation applies to any provision, whether contained in the instrument of incorporation of an open-ended investment company or in any contract with the company or otherwise—

- (a) which exempts any officer of the company or any person (whether or not an officer of the company) employed by the company as auditor from, or indemnifies him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company; or
- (b) which exempts the depositary of the company from, or indemnifies him against, any liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the company.

(2) Except as provided by the following paragraph, any such provision is void.

(3) This regulation does not prevent a company—

- (a) from purchasing and maintaining for any such officer, auditor or depositary insurance against any such liability; or
- (b) from indemnifying any such officer, auditor or depositary against any liability incurred by him—
  - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted; or
  - (ii) in connection with any application under regulation 63 in which relief is granted to him by the court.

**Power of court to grant relief in certain cases**

63.—(1) This regulation applies to—

- (a) any proceedings for negligence, default, breach of duty or breach of trust against an officer of an open-ended investment company or a person (whether or not an officer of the company) employed by the company as auditor; or
- (b) any proceedings against the depository of such a company for failure to exercise due care and diligence in the discharge of his functions in respect of the company.

(2) If, in any proceedings to which this regulation applies, it appears to the court hearing the case—

- (a) that the officer, auditor or depository is or may be liable in respect of the cause of action in question;
- (b) that, nevertheless, he has acted honestly and reasonably; and
- (c) that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused from the liability sought to be enforced against him;

the court may relieve him, either wholly or partly, from his liability on such terms as it may think fit.

(3) If any such officer, auditor or depository has reason to apprehend that any claim will or might be made against him in proceedings to which this regulation applies, he may apply to the court for relief.

(4) The court, on an application under paragraph (3), has the same power to relieve the applicant as under this regulation it would have had if it had been a court before which the relevant proceedings against the applicant had been brought.

(5) Where a case to which paragraph (2) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant or defender ought in pursuance of that paragraph to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant or defender on such terms as to costs or otherwise as the judge may think proper.

**Punishment for fraudulent trading**

64.—(1) If any business of an open-ended investment company is carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment not exceeding a term of two years or to a fine or to both;
- (b) on summary conviction, to imprisonment not exceeding a term of three months or to a fine not exceeding the statutory maximum or to both.

(2) This regulation applies whether or not the company has been, or is in the course of being, wound up (whether by the court or otherwise).

**Power to provide for employees on cessation or transfer of business**

65.—(1) The powers of an open-ended investment company include power to make the following provision for the benefit of persons employed or formerly employed by the company, that is to say, provision in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the company.

(2) The power conferred by paragraph (1) is exercisable notwithstanding that its exercise is not in the best interests of the company.

(3) The power which a company may exercise by virtue of paragraph (1) may only be exercised by the company—

- (a) in a case not falling within sub-paragraph (b) or (c), if sanctioned by a resolution of the company in general meeting;
- (b) if so authorised by the instrument of incorporation—
  - (i) in the case of a company that has only one director, by a resolution of that director; and
  - (ii) in any other case, by such resolution of directors as is required by FSA rules; or
- (c) if the instrument of incorporation requires the exercise of the power to be sanctioned by a resolution of the company in general meeting for which more than a simple majority of the shareholders voting is necessary, by a resolution of that majority;

and in any case after compliance with any other requirements of the instrument of incorporation applicable to the exercise of the power.

### *Reports*

#### **Reports: preparation**

**66.**—(1) The directors of an open-ended investment company must—

- (a) prepare a report (“annual report”) for each annual accounting period of the company; and
- (b) subject to paragraph (2), prepare a report (“half-yearly report”) for each half-yearly accounting period of the company.

(2) Where a company’s first annual accounting period is a period of less than 12 months, a half-yearly report need not be prepared for any part of that period.

(3) The directors of a company must lay copies of the annual report before the company in general meeting.

(4) Nothing in this regulation or in regulation 67 prejudices the generality of regulation 6(1).

(5) In this regulation any reference to annual and half-yearly accounting periods of a company is a reference to those periods as determined in relation to that company in accordance with FSA rules.

#### **Reports: accounts**

**67.**—(1) The annual report of an open-ended investment company must, in respect of the annual accounting period to which it relates, contain accounts of the company.

(2) The company’s auditors must make a report to the company’s shareholders in respect of the accounts of the company contained in its annual report.

(3) A copy of the auditor’s report must form part of the company’s annual report.

#### **Reports: voluntary revision**

**68.**—(1) If it appears to the directors of an open-ended investment company that any annual report of the company did not comply with the requirements of these Regulations or FSA rules, they may prepare a revised annual report.

(2) Where copies of the previous report have been laid before the company in general meeting or delivered to the Authority, the revisions must be confined to—

- (a) the correction of anything in the previous report which did not comply with the requirements of these Regulations or FSA rules; and
- (b) the making of any necessary consequential alterations.

#### **Auditors**

69. Schedule 5 to these Regulations makes provision with respect to the auditors of open-ended investment companies.

#### *Mergers and divisions*

#### **Mergers and divisions**

70. Schedule 6 to these Regulations makes provision with respect to mergers and divisions involving open-ended investment companies.

## **PART IV**

### **THE AUTHORITY'S REGISTRATION FUNCTIONS**

#### **Register of open-ended investment companies**

71.—(1) The Authority must maintain a register of open-ended investment companies.

(2) The Authority may keep the register in any form it thinks fit provided that it is possible to inspect the information contained on it and to obtain a copy of that information (or any part of it) for inspection.

#### **Companies' registered numbers**

72.—(1) The Authority must allocate to every open-ended investment company a number, which is to be known as the company's registered number.

(2) Companies' registered numbers must be in such form, consisting of one or more sequences of figures or letters, as the Authority may from time to time determine.

(3) The Authority may, upon adopting a new form of registered number, make such changes of existing registered numbers (including numbers allocated by the appropriate registrar) as appear to it to be necessary.

(4) A change in a company's registered number has effect from the date on which the company is notified by the Authority of the change.

#### **Delivery of documents to the Authority**

73. Any document which is required by these Regulations to be delivered to the Authority to be recorded on the register maintained pursuant to regulation 71 must be delivered in such form as the Authority may from time to time specify.

#### **Keeping of company records by the Authority**

74.—(1) The information contained in a document delivered to the Authority under any provision of these Regulations may be recorded and kept by it in any form it thinks fit, provided that it is possible to inspect the information and produce a copy of it in legible form.



(2) The originals of documents delivered to the Authority under any provision of these Regulations in legible form must be kept by it for ten years after which they may be destroyed.

(3) Where a company has been dissolved, the Authority may, at any time after the expiration of two years from the date of the dissolution, direct that any records in its custody relating to the company may be removed to the Public Record Office; and records in respect of which such a direction is given must be disposed of in accordance with the enactments relating to that Office and the rules made under them.

(4) Paragraph (3) does not extend to Scotland.

### **Inspection etc. of records kept by the Authority**

**75.**—(1) Any person may inspect any records kept by the Authority for the purposes of this Part of these Regulations and may require—

- (a) a copy, in such form as the Authority considers appropriate, of any information contained in those records; or
- (b) a certified copy of, or extract from, any such record.

(2) The right of inspection extends to the originals of documents delivered to the Authority in legible form only where the record kept by the Authority of the contents of the document is illegible or unavailable.

(3) A copy of or extract from a record kept by the Authority under these Regulations, on which is endorsed a certificate signed by a member of the Authority's staff authorised by it for that purpose certifying that it is an accurate record of the contents of any document delivered to the Authority under these Regulations, is in all legal proceedings admissible in evidence as of equal validity with the original document and as evidence of any fact stated therein of which direct oral evidence would be admissible.

(4) No process for compelling the production of a document kept by the Authority under these Regulations is to issue from any court except with the leave of the court; and any such process must bear on it a statement that it is issued with the leave of the court.

### **Provision by the Authority of documents in non-legible form**

**76.** Any requirement of these Regulations as to the supply by the Authority of a document may, if the Authority thinks fit, be satisfied by the communication by the Authority of the information in any non-legible form it thinks appropriate.

### **Documents relating to Welsh open-ended investment companies**

**77.**—(1) This regulation applies to any document which is delivered to the Authority under these Regulations and relates to an open-ended investment company (whether already registered or to be registered) whose instrument of incorporation states that its head office is to be situated in Wales.

(2) A document to which this regulation applies may be in Welsh but must be accompanied by a certified translation into English.

(3) The requirement for a translation imposed by paragraph (2) does not apply—

- (a) to documents of such description as may be specified in FSA rules; or
- (b) to documents in a form prescribed in Welsh (or partly in Welsh and partly in English) by virtue of section 26 of the Welsh Language Act 1993(14) (powers to prescribe Welsh forms).

(4) An open-ended investment company whose instrument of incorporation states that its head office is to be situated in Wales may deliver to the Authority a certified translation into Welsh of any document in English which relates to the company and which is or has been delivered to the Authority.

(5) In this regulation “certified translation” means a translation which is certified in the manner specified in FSA rules to be a correct translation.

#### **Public notice by the Authority of receipt and issue of certain documents**

**78.**—(1) The Authority must cause to be published in the Gazette notice of the issue or receipt by it of documents of any of the following descriptions (stating in the notice the name of the open-ended investment company, the description of the document and the date of issue or receipt)—

- (a) any document making or evidencing an alteration in a company’s instrument of incorporation;
- (b) any notice of a change in the address of a company’s head office;
- (c) any notice of a change in the directors of a company;
- (d) any notice of a change in the depository of a company;
- (e) any annual report of a company delivered to the Authority as required by FSA rules;
- (f) any copy of an order made under Schedule 6 to these Regulations;
- (g) any copy of a winding-up order in respect of a company; and
- (h) any copy of an instrument providing for the dissolution of a company on a winding up.

(2) In this regulation “the Gazette” means, as respects a company whose head office is in England and Wales (or Wales), the London Gazette and, as respects a company whose head office is in Scotland, the Edinburgh Gazette.

#### **Exclusion of deemed notice**

**79.** A person is not to be taken to have deemed notice of any matter merely because of its being disclosed in any document kept by the Authority (and thus available for inspection) under any provision of these Regulations.

## PART V

### MISCELLANEOUS

#### **Contraventions**

**80.** Any of the following persons, that is to say—

- (a) a person who contravenes any provision of these Regulations; and
- (b) an open-ended investment company (including any director or depository of such a company) which contravenes any provision of FSA rules,

is to be treated as having contravened rules made under section 138 of the Act (general rule-making power).

#### **Offences by bodies corporate etc.**

**81.** Section 400 of the Act (offences by bodies corporate etc.) applies to an offence under these Regulations as it applies to an offence under the Act.

### **Jurisdiction and procedure in respect of offences**

**82.** Section 403 of the Act (jurisdiction and procedure in respect of offences) applies to offences under these Regulations as it applies to offences under the Act.

### **Evidence of grant of probate etc.**

**83.** The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person must be accepted by the company as sufficient evidence of the grant.

### **Minor and consequential amendments**

**84.** The provisions mentioned in Schedule 7 to these Regulations (being minor amendments and amendments consequential on the provisions of these Regulations) have effect subject to the amendments specified in that Schedule.

### **Revocation etc.**

**85.—**(1) The Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996(15) (“the 1996 Regulations”) are revoked.

(2) Anything done under or in accordance with the 1996 Regulations has effect as if done under or in accordance with these Regulations.

(3) Without prejudice to the generality of paragraph (2)—

- (a) a body incorporated by virtue of regulation 3(1) of the 1996 Regulations is to be treated as if it had been incorporated by virtue of regulation 3(1) of these Regulations;
- (b) where an application under regulation 7 of the 1996 Regulations had not been determined by the Authority at the time when this regulation comes into force, it is to be treated as if it were an application made under regulation 12 of these Regulations;
- (c) the Authority’s registration functions under Part IV of these Regulations apply to any documents or records delivered to the appropriate registrar pursuant to regulation 4 of, and Schedule 1 to, the 1996 Regulations.

27th March 2001

*Greg Pope*  
*Clive Betts*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

## SCHEDULE 1

Regulation 5

## DEPOSITARIES

*Appointment*

1. On the coming into effect of an authorisation order in respect of an open-ended investment company, the person named in the application under regulation 12 as depositary of the company is deemed to be appointed as its first depositary.

2. Subject to regulations 21 and 26, any subsequent appointment of the depositary of a company must be made by the directors of the company.

*Retirement*

3. The depositary of a company may not retire voluntarily except upon the appointment of a new depositary.

*Rights*

4. The depositary of a company is entitled—
- (a) to receive all such notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to receive;
  - (b) to attend any general meeting of the company;
  - (c) to be heard at any general meeting which it attends on any part of the business of the meeting which concerns it as depositary;
  - (d) to convene a general meeting of the company when it sees fit;
  - (e) to require from the company's officers such information and explanations as it thinks necessary for the performance of its functions as depositary; and
  - (f) to have access, except in so far as they concern its appointment or removal, to any reports, statements or other papers which are to be considered at any meeting held by the directors of the company (when acting in their capacity as such), at any general meeting of the company or at any meeting of holders of shares of any particular class.

*Statement by depositary ceasing to hold office*

5.—(1) Where the depositary of a company ceases, for any reason other than by virtue of a court order made under regulation 26, to hold office, it may deposit at the head office of the company a statement of any circumstances connected with its ceasing to hold office which it considers should be brought to the attention of the shareholders or creditors of the company or, if it considers that there are no such circumstances, a statement that there are none.

(2) If the statement is of circumstances which the depositary considers should be brought to the attention of the shareholders or creditors of the company, the company must, not later than 14 days after the deposit of the statement, either—

- (a) send a copy of the statement to each of the shareholders whose name appears on the register of shareholders (other than the designated person) and take such steps as FSA rules may require for the purpose of bringing the fact that the statement has been made to the attention of the holders of any bearer shares; or
- (b) apply to the court;

and, where an application is made under sub-paragraph (b), the company must notify the depositary.

(3) Unless the depositary receives notice of an application to the court before the end of the period of 21 days beginning with the day on which it deposited the statement, it must, not later than seven days after the end of that period, send a copy of the statement to the Authority.

(4) If the court is satisfied that the depositary is using the statement to secure needless publicity for defamatory matter—

(a) it must direct that copies of the statement need not be sent out and that the steps required by FSA rules need not be taken; and

(b) it may further order the company's costs on the application to be paid in whole or in part by the depositary notwithstanding that the depositary is not a party to the application;

and the company must, not later than 14 days after the court's decision, take such steps in relation to a statement setting out the effect of the order as are required by sub-paragraph (2)(a) in relation to the statement deposited under sub-paragraph (1).

(5) If the court is not so satisfied, the company must, not later than 14 days after the court's decision, take the steps required by sub-paragraph (2)(a) and notify the depositary of the court's decision.

(6) The depositary must, not later than seven days after receiving such a notice, send a copy of the statement to the Authority.

(7) Where a notice of appeal is filed not later than 14 days after the court's decision, any reference to that decision in sub-paragraphs (4) and (5) is to be construed as a reference to the final determination or withdrawal of that appeal (as the case may be).

**6.—(1)** This paragraph applies where copies of a statement have been sent to shareholders under paragraph 5.

(2) The depositary who made the statement has, notwithstanding that it has ceased to hold office, the rights conferred by paragraph 4(a) to (c) in relation to the general meeting of the company next following the date on which the copies were sent out.

(3) The reference in paragraph 4(c) to business concerning the depositary as depositary is to be construed in relation to a depositary who has ceased to hold office as a reference to business concerning it as former depositary.

## SCHEDULE 2

Regulation 14

### INSTRUMENT OF INCORPORATION

**1.** The instrument of incorporation of an open-ended investment company must—

(a) contain the statements set out in paragraph 2; and

(b) contain provision made in accordance with paragraphs 3 and 4.

**2.** The statements referred to in paragraph 1(a) are—

(a) the head office of the company is situated in England and Wales, Wales or Scotland (as the case may be);

(b) the company is an open-ended investment company with variable share capital;

(c) the shareholders are not liable for the debts of the company;

(d) the scheme property is entrusted to a depositary for safekeeping (subject to any exceptions permitted by FSA rules); and

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(e) charges or expenses of the company may be taken out of the scheme property.

**3.—(1)** The instrument of incorporation must contain provision as to the following matters—

- (a) the object of the company;
- (b) any matter relating to the procedure for the appointment, retirement and removal of any director of the company for which provision is not made in these Regulations or FSA rules; and
- (c) the currency in which the accounts of the company are to be prepared.

(2) The provision referred to in sub-paragraph (1)(a) as to the object of an open-ended investment company must state clearly the kind of property in which the company is to invest and must state that the object of the company is to invest in property of that kind with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of that property.

**4.—(1)** The instrument of incorporation must also contain provision as to the following matters—

- (a) the name of the company;
- (b) the category, as specified in FSA rules, to which the company belongs;
- (c) the maximum and minimum sizes of the company's capital;
- (d) in the case of an umbrella company, the investment objectives applicable to each part of the scheme property that is pooled separately;
- (e) the classes of shares that the company may issue indicating, in the case of an umbrella company, which class or classes of shares may be issued in respect of each part of the scheme property that is pooled separately;
- (f) the rights attaching to shares of each class (including any provision for the expression in two denominations of such rights);
- (g) if the company is to be able to issue bearer shares, a statement to that effect together with details of any limitations on the classes of the company's shares which are to include bearer shares;
- (h) in the case of a company which is a participating issuer, a statement to that effect together with an indication of any class of shares in the company which is a class of participating securities;
- (i) if the company is to dispense with the requirements of regulation 46, the details of any substituted procedures for evidencing title to the company's shares; and
- (j) the form, custody and use of the company's common seal (if any).

(2) For the purposes of sub-paragraph (1)(c), the size at any time of a company's capital is to be taken to be the value at that time, as determined in accordance with FSA rules, of the scheme property of the company less the liabilities of the company.

**5.—(1)** Once an authorisation order has been made in respect of a company, no amendment may be made to the statements contained in the company's instrument of incorporation which are required by paragraph 2.

(2) Subject to sub-paragraph (1) and to any restriction imposed by FSA rules, a company may amend any provision which is contained in its instrument of incorporation.

(3) No amendment to a provision which is contained in a company's instrument of incorporation by virtue of paragraph 3 may be made unless it has been approved by the shareholders of the company in general meeting.

6.—(1) The provisions of a company's instrument of incorporation are binding on the officers and depositary of the company and on each of its shareholders; and all such persons (but no others) are to be taken to have notice of the provisions of the instrument.

(2) A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company.

## SCHEDULE 3

Regulation 49

### REGISTER OF SHAREHOLDERS

#### *General*

1.—(1) Subject to sub-paragraph (2), every open-ended investment company must keep a register of persons who hold shares in the company.

(2) Except to the extent that the aggregate numbers of shares mentioned in paragraphs 5(1)(b) and 7 include bearer shares, nothing in this Schedule requires any entry to be made in the register in respect of bearer shares.

2.—(1) Subject to sub-paragraph (2), the register of shareholders is prima facie evidence of any matters which are by these Regulations directed or authorised to be contained in it.

(2) In the case of a register kept by a company which is a participating issuer, sub-paragraph (1) has effect subject to regulation 23(7) of the Uncertificated Securities Regulations 1995<sup>(16)</sup> (purported registration of transfer of title to uncertificated unit other than in accordance with that regulation to be of no effect).

3. In the case of companies registered in England and Wales, no notice of any trust, express, implied or constructive, is to be entered on the company's register or be receivable by the company.

(2) A company must exercise all due diligence and take all reasonable steps to ensure that the information contained in the register is at all times complete and up to date.

#### *Contents*

5.—(1) The register of shareholders must contain an entry consisting of—

- (a) the name of the designated person;
- (b) a statement of the aggregate number of all shares in the company held by that person; and
- (c) in the case of a company which is a participating issuer, a statement in respect of shares of any class that is a class of participating securities of how many shares of that class are held by that person in uncertificated form and certificated form respectively.

(2) In sub-paragraph (1), for the purposes of sub-paragraph (b), the designated person is to be taken as holding all shares in the company which are in issue and in respect of which no other person's name is entered on the register.

(3) The statements referred to in sub-paragraph (1)(b) and (c) must be up-dated at least once a day.

6.—(1) This paragraph does not apply to any issue or transfer of shares to the designated person.

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<sup>(16)</sup> S.I. 1995/3272, amended by S.I. 1996/2827, S.I. 1997/251, S.I. 1999/506, S.I. 2000/311 and S.I. 2000/1682.

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(2) Where a company issues a share to any person and the name of that person is not already entered on the register, the company must enter his name on the register.

(3) In respect of any person whose name is entered on the register in accordance with sub-paragraph (2) or paragraph 6 of Schedule 4 to these Regulations, the register must contain an entry consisting of—

- (a) the address of the shareholder;
- (b) the date on which the shareholder's name was entered on the register;
- (c) a statement of the aggregate number of shares held by the shareholder, distinguishing each share by its number (if it has one) and, where the company has more than one class of shares, by its class; and
- (d) in the case of a company which is a participating issuer, a statement in respect of shares of any class that is a class of participating securities of how many shares of that class are held by the shareholder in uncertificated form and certificated form respectively.

7. The register of shareholders must contain a monthly statement of the aggregate number of all the bearer shares in issue except for any bearer shares in issue which, at the time when the statement is made, are held by the designated person.

8.—(1) This paragraph applies where the aggregate number of shares referred to in paragraphs 5 to 7 includes any shares to which attach rights expressed in two denominations.

(2) In respect of each class of shares to which are attached rights expressed in two denominations, the number of shares of that class held by any person referred to in paragraph 5 or 6, or the number of bearer shares of that class referred to in paragraph 7, is to be taken to be the total of—

$$N + \frac{n}{p}$$

(3) In sub-paragraph (2)—

- (a)  $N$  is the relevant number of larger denomination shares of that class;
- (b)  $n$  is the relevant number of smaller denomination shares of that class; and
- (c)  $p$  is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

(4) Nothing in these Regulations is to be taken as preventing the total arrived at under sub-paragraph (2) being expressed on the register as a single entry representing the result derived from the formula set out in that sub-paragraph.

#### *Location*

9. The register of shareholders of a company must be kept at its head office, except that—

- (a) if the work of making it up is done at another office of the company, it may be kept there; and
- (b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other person, it may be kept at the office of the other person at which the work is being done.

#### *Index*

10.—(1) Every company must keep an index of the names of the holders of its registered shares.

(2) The index must contain, in respect of each shareholder, a sufficient indication to enable the account of that shareholder in the register to be readily found.



(3) The index must be at all times kept at the same place as the register of shareholders.

(4) Not later than 14 days after the date on which any alteration is made to the register of shareholders, the company must make any necessary alteration in the index.

#### *Inspection*

**11.**—(1) Subject to regulation 50 and to FSA rules, the register of shareholders and the index of names must be open to the inspection of any shareholder (including any holder of bearer shares) without charge.

(2) Any shareholder may require a copy of the entries on the register relating to him and the company must cause any copy so required by a person to be sent to him free of charge.

(3) If an inspection required under this paragraph is refused, or if a copy so required is not sent, the court may by order compel an immediate inspection of the register and index, or direct that the copy required be sent to the person requiring it.

#### *Agent's default*

**12.**—(1) Sub-paragraphs (2) and (4) apply where, in accordance with paragraph 9(b), the register of shareholders is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with any of the requirements of paragraph 10 or 11.

(2) In a case to which this sub-paragraph applies, the person at whose office the register of shareholders is kept is guilty of an offence if he knowingly or recklessly authorises or permits the default in question.

(3) A person guilty of an offence under sub-paragraph (2) is liable in respect of each default on summary conviction to a fine not exceeding level 1 on the standard scale.

(4) The power of the court under paragraph 11(3) extends to the making of orders directed to the person at whose office the register of shareholders is kept and to any officer or employee of his.

## SCHEDULE 4

Regulation 52

### SHARE TRANSFERS

#### *General*

**1.** The instrument of incorporation of a company may contain provision as to share transfers in respect of any matter for which provision is not made in these Regulations or FSA rules.

**2.** Where any shares are transferred to the company, the company must cancel those shares.

**3.** In the case of a company which is a participating issuer, nothing in this Schedule applies—

(a) to any transfer of a share in the company which is an uncertificated unit of a security; or

(b) in any of the circumstances set out in sub-paragraph (b) or (c) of regulation 27(2) of the Uncertificated Securities Regulations 1995 (conversion of securities into uncertificated form).

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### *Transfer of registered shares*

4.—(1) Where a transfer of shares is made by the person (if any) who is designated in the company's instrument of incorporation for the purposes of this paragraph, the company may not register the transfer unless such evidence as the company may require to prove that the transfer has taken place has been delivered to the company.

- (2) Where for any reason a person ceases to be designated for the purposes of this paragraph—
- (a) any shares held by that person which are not disposed of on or before his ceasing to be so designated are to be deemed to be the subject of a new transfer to him which takes effect immediately after he ceases to be so designated; and
  - (b) the company must make such adjustments to the register as are necessary to reflect his change of circumstances.

5.—(1) Except in the case of any transfer of shares referred to in paragraph 4, the company may not register any transfer unless the transfer documents relating to that transfer have been delivered to the company.

(2) No share certificate has to be delivered by virtue of sub-paragraph (1) in any case where shares are transferred by a nominee of a recognised investment exchange who is designated for the purposes of regulation 47(6) in the rules of the investment exchange in question.

(3) In these Regulations “transfer documents”, in relation to any transfer of registered shares, means—

- (a) a stock transfer within the meaning of the Stock Transfer Act 1963<sup>(17)</sup> which complies with the requirements of that Act as to the execution and contents of a stock transfer or such other instrument of transfer as is authorised by, and completed and executed in accordance with any requirements in, the company's instrument of incorporation;
- (b) except in a case falling within paragraph (3) or (4) of regulation 47, a share certificate relating to the shares in question;
- (c) in a case falling within paragraph (3) of regulation 47, such other evidence of title to those shares as is required by the instrument of incorporation of the company; and
- (d) such other evidence (if any) as the company may require to prove the right of the transferor to transfer the shares in question.

6. In the case of any transfer of shares which meets the requirements of paragraph 4 or 5, the company must—

- (a) register the transfer; and
- (b) where the name of the transferee is not already entered on the register, enter that name on the register.

7.—(1) A company may, before the end of the period of 21 days commencing with the date of receipt of the transfer documents relating to any transfer of shares, refuse to register the transfer if—

- (a) there exists a minimum requirement as to the number or value of shares that must be held by any shareholder of the company and the transfer would result in either the transferor or transferee holding less than the required minimum; or
- (b) the transfer would result in a contravention of any provision of the company's instrument of incorporation or would produce a result inconsistent with any provision of the company's prospectus.

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(17) 1963 c. 18.

(2) A company must give the transferee written notice of any refusal to register a transfer of shares.

(3) Nothing in these Regulations requires a company to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving the notice would result in a contravention of any provision of law (including any law that is for the time being in force in a country or territory outside the United Kingdom).

**8.**—(1) Where, in respect of any transfer of shares, the company certifies that it has received the transfer documents referred to in paragraph 5(3)(b) or (c) (as the case may be), that certification is to be taken as a representation by the company to any person acting on the faith of the certification that there has been produced to the company such evidence as on its face shows a prima facie title to the shares in the transferor named in the instrument of transfer.

(2) For the purposes of sub-paragraph (1), a certification is made by a company if the instrument of transfer—

(a) bears the words “certificate lodged” (or words to the like effect); and

(b) is signed by a person acting under authority (whether express or implied) given by the company to issue and sign such certifications.

(3) A certification under sub-paragraph (1) is not to be taken as a representation that the transferor has any title to the shares in question.

(4) Where a person acts on the faith of a false certification by a company which is made negligently or fraudulently, the company is liable to pay to that person any damages sustained by him.

#### *Transfer of bearer shares*

**9.** A transfer of title to any bearer share in a company is effected by the transfer from one person to another of the instrument mentioned in regulation 48 which relates to that share.

**10.** Where the holder of bearer shares proposes to transfer to another person a number of shares which is less than the number specified in the instrument relating to those shares, he may only do so if he surrenders the instrument to the company and obtains a new instrument specifying the number of shares to be transferred.

#### *Miscellaneous*

**11.** Nothing in the preceding provisions of this Schedule prejudices any power of the company to register as shareholder any person to whom the right to any shares in the company has been transmitted by operation of law.

**12.** A transfer of registered shares that are held by a deceased person at the time of his death which is made by his personal representative is as valid as if the personal representative had been the holder of the shares at the time of the execution of the instrument of transfer.

**13.** On the death of any one of the joint holders of any shares, the survivor is to be the only person recognised by the company as having any title to or any interest in those shares.

## SCHEDULE 5

Regulation 69

## AUDITORS

*Eligibility*

1. No person is eligible for appointment as auditor of an open-ended investment company unless he is also eligible under section 25 of the Companies Act 1989<sup>(18)</sup> for appointment as a company auditor.

2.—(1) A person is ineligible for appointment as auditor of an open-ended investment company if he is—

- (a) an officer or employee of the company; or
- (b) a partner or employee of such a person, or a partnership of which such a person is a partner.

(2) For the purposes of sub-paragraph (1), an auditor of a company is not to be regarded as an officer or employee of the company.

(3) The power of the Secretary of State to make regulations under section 27 of the Companies Act 1989 (ineligibility on ground of lack of independence) in relation to the appointment of company auditors is to be exercisable in relation to the appointment of auditors of open-ended investment companies—

- (a) for like purposes; and
- (b) subject to the same conditions.

3.—(1) No person is to act as auditor of a company if he is ineligible for appointment to the office.

(2) If during his term of office an auditor of a company becomes ineligible for appointment to the office, he must thereupon vacate office and give notice in writing to the company concerned that he has vacated it by reason of ineligibility.

(3) A person who acts as auditor of a company in contravention of sub-paragraph (1) or fails to give notice of vacating his office as required by sub-paragraph (2) is guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(4) In the case of continued contravention he is liable on a second or subsequent summary conviction (instead of the fine mentioned in sub-paragraph (3)(b)) to a fine not exceeding £100 in respect of each day on which the contravention is continued.

(5) In proceedings against a person for an offence under this paragraph it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment.

*Appointment*

4.—(1) Every company must appoint an auditor or auditors in accordance with this paragraph.

(2) A company must, at each general meeting at which the company's annual report is laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which an annual report is laid.

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<sup>(18)</sup> 1989 c. 40.

(3) The first auditors of a company may be appointed by the directors of the company at any time before the first general meeting of the company at which an annual report is laid; and auditors so appointed are to hold office until the conclusion of that meeting.

(4) Where no appointment is made under sub-paragraph (3), the first auditors of any company may be appointed by the company in general meeting.

(5) No rules made under section 340 of the Act (appointment of auditors) apply in relation to open-ended investment companies.

5. If, in any case, no auditors are appointed as required in paragraph 4, the Authority may appoint a person to fill the vacancy.

6.—(1) The directors of a company, or the company in general meeting, may fill a casual vacancy in the office of auditor.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

7.—(1) Sub-paragraphs (2) to (5) apply to the appointment, as auditor of a company, of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any country or territory in which a partnership is not a legal person; and sub-paragraphs (3) to (5) apply to the appointment as such an auditor of a partnership constituted under the law of Scotland, or under the law of any country or territory in which an partnership is a legal person.

(2) The appointment is, unless the contrary intention appears, an appointment of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment is to be treated as extending to—

- (a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and
- (b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.

(4) For this purpose a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person is to be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and no person succeeds to the appointment under sub-paragraph (3), the appointment may with the consent of the company be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company to be treated as comprising the appointment.

### *Rights*

8.—(1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company; and
- (b) is misleading, false or deceptive in a material particular.

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- (3) A person guilty of an offence under sub-paragraph (2) is liable—
- (a) on conviction on indictment, to imprisonment not exceeding a term of two years or to a fine or to both;
  - (b) on summary conviction, to imprisonment not exceeding a term of three months or to a fine not exceeding the statutory maximum or to both.

**9.**—(1) The auditors of a company are entitled—

- (a) to receive all such notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to receive;
- (b) to attend any general meeting of the company; and
- (c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(2) The right to attend and be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

#### *Remuneration*

**10.**—(1) The remuneration of auditors of a company who are appointed by the company in general meeting must be fixed by the company in general meeting or in such manner as the company in general meeting may decide.

(2) The remuneration of auditors who are appointed by the directors or the Authority must, as the case may be, be fixed by the directors or the Authority (and be payable by the company even where it is fixed by the Authority).

**11.**—(1) Subject to sub-paragraph (2), the power of the Secretary of State to make regulations under section 390B of the 1985 Act<sup>(19)</sup> (remuneration of auditors or their associates for non-audit work) in relation to company auditors is to be exercisable in relation to auditors of open-ended investment companies—

- (a) for like purposes; and
- (b) subject to the same conditions.

(2) For the purposes of the exercise of the power to make regulations under section 390B of the 1985 Act, as extended by sub-paragraph (1), the reference in section 390B(3) to a note to a company's accounts is to be taken to be a reference to the annual report of an open-ended investment company.

#### *Removal*

**12.**—(1) A company may by resolution remove an auditor from office notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company must, not later than 14 days after the holding of the meeting, notify the Authority of the passing of the resolution.

(3) Nothing in this paragraph is to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

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<sup>(19)</sup> Section 390B was inserted into the 1985 Act by section 121 of the Companies Act 1989 (c. 40).

### *Rights on removal or non-reappointment*

**13.—(1)** A resolution at a general meeting of a company—

- (a) removing an auditor before the expiration of his period of office; or
- (b) appointing as auditor a person other than the retiring auditor;

is not effective unless notice of the intention to move it has been given to the open-ended investment company at least 28 days before the meeting at which it is moved.

(2) On receipt of notice of such an intended resolution, the company must forthwith send a copy to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or, as the case may be, the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to the shareholders of the company.

(4) The company must (unless the representations are received by the company too late for it to do so)—

- (a) in any notice of the resolution given to the shareholders of the company, state the fact of the representations having been made;
- (b) send a copy of the representations to each of the shareholders whose name appears on the register of shareholders (other than the designated person) and to whom notice of the meeting is or has been sent;
- (c) take such steps as FSA rules may require for the purpose of bringing the fact that the representations have been made to the attention of the holders of any bearer shares; and
- (d) at the request of any holder of bearer shares, provide a copy of the representations.

(5) If a copy of any such representations is not sent out as required because they were received too late or because of the company's default or if, for either of those reasons, any steps required by sub-paragraph (4)(c) or (d) are not taken, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out, the steps required by sub-paragraph (4)(c) or (d) need not be taken and the representations need not be read out at the meeting if, on the application of the company or any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the company on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

**14.—(1)** An auditor who has been removed from office has, notwithstanding his removal, the rights conferred by paragraph 9 in relation to any general meeting of the company at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his removal.

(2) The reference in paragraph 9 to business concerning the auditors as auditors is to be construed in relation to an auditor who has been removed from office as a reference to business concerning him as former auditor.

### *Resignation*

**15.—(1)** An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's head office.

(2) Such a notice is not effective unless it is accompanied by the statement required by paragraph 18.

*Status: This is the original version (as it was originally made).*

(3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(4) The company must, not later than 14 days after the deposit of a notice of resignation, send a copy of the notice to the Authority.

**16.—**(1) This paragraph applies where a notice of resignation of an auditor is accompanied by a statement of circumstances which he considers ought to be brought to the attention of the shareholders or creditors of the company.

(2) An auditor may deposit with the notice a signed requisition that a general meeting of the company be convened forthwith for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The company must, not later than 21 days after the date of the deposit of a requisition under this paragraph, proceed to convene a meeting for a day not later than 28 days after the date on which the notice convening the meeting is given.

(4) The auditor may request the company to circulate a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation to each of the shareholders of the company whose name appears on the register of shareholders (other than the designated person)

- (a) before the meeting convened on his requisition; or
- (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation;

and to take such steps as FSA rules may require for the purpose of bringing the fact that the statement has been made to the attention of the holders of any bearer shares.

- (5) The company must (unless the statement is received by it too late for it to do so)—
- (a) in any notice or advertisement of the meeting given or made to shareholders of the company, state the fact of the statement having been made;
  - (b) send a copy of the statement to every shareholder of the company to whom notice of the meeting is or has been sent; and
  - (c) at the request of any holder of bearer shares, provide a copy of the statement.

(6) If a copy of the statement is not sent out or provided as required because it was received too late or because of the company's default the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out or provided and the statement need not be read out at the meeting if, on the application of the company or any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the company on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

**17.—**(1) An auditor who has resigned has, notwithstanding his removal, the rights conferred by paragraph 9 in relation to any such general meeting of the company as is mentioned in paragraph 16(4)(a) or (b).

(2) The reference in paragraph 9 to business concerning the auditors as auditors is to be construed in relation to an auditor who has resigned as a reference to business concerning him as former auditor.



*Statement by auditor ceasing to hold office*

**18.**—(1) Where an auditor ceases for any reason to hold office, he must deposit at the head office of the company a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the shareholders or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) The statement must be deposited—

- (a) in the case of resignation, along with the notice of resignation;
- (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing auditors; and
- (c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditor considers should be brought to the attention of the shareholders or creditors of the company, the company must, not later than 14 days after the deposit of the statement, either—

- (a) send a copy of the statement to each of the shareholders whose name appears on the register of shareholders (other than the designated person) and take such steps as FSA rules may require for the purpose of bringing the fact that the statement has been made to the attention of the holders of any bearer shares; or
- (b) apply to the court;

and, where an application is made under sub-paragraph (b), the company must notify the auditor.

(4) Unless the auditor receives notice of an application to the court before the end of the period of 21 days beginning with the day on which he deposited the statement, he must, not later than seven days after the end of that period, send a copy of the statement to the Authority.

(5) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—

- (a) it must direct that copies of the statement need not be sent out and that the steps required by FSA rules need not be taken; and
- (b) it may further order the company's costs on the application to be paid in whole or in part by the auditor notwithstanding that he is not a party to the application;

and the company must, not later than 14 days after the court's decision, take such steps in relation to a statement setting out the effect of the order as are required by sub-paragraph (3)(a) in relation to the statement deposited under sub-paragraph (1).

(6) If the court is not so satisfied, the company must, not later than 14 days after the court's decision, send to each of the shareholders a copy of the auditor's statement and notify the auditor of the court's decision.

(7) The auditor must, not later than 7 days after receiving such a notice, send a copy of the statement to the Authority.

(8) Where notice of appeal is filed not later than 14 days after the court's decision, any reference to that decision in sub-paragraphs (5) and (6) is to be construed as a reference to the final determination or withdrawal of that appeal, as the case may be.

**19.**—(1) If a person ceasing to hold office as auditor fails to comply with paragraph 18 he is guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

*Status: This is the original version (as it was originally made).*

(2) In proceedings for an offence under sub-paragraph (1), it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

**20** Section 249(1) of the Act (disqualification of auditor for breach of trust scheme rules) applies to a failure by an auditor to comply with a duty imposed on him by FSA rules as it applies to a breach of trust scheme rules.

## SCHEDULE 6

Regulation 70

### MERGERS AND DIVISIONS

**1.** This Schedule applies to any reconstruction or amalgamation involving an open-ended investment company which takes the form of a scheme described in paragraph 4.

**2.** An open-ended investment company may apply to the court under section 425 of the 1985 Act<sup>(20)</sup> (power of company to compromise with creditors and members) for an order sanctioning a scheme falling within any of sub-paragraphs (a) to (c) of paragraph 4(1) where—

- (a) the scheme in question involves a compromise or arrangement with its shareholders or creditors or any class of its shareholders or creditors; and
- (b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—
  - (i) shares in the transferee company receivable by shareholders of the transferor company; or
  - (ii) where there is more than one transferor company and any one or more of them is a public company, shares in the transferee company receivable by shareholders or members of the transferor companies (as the case may be);

in each case with or without any cash payment to shareholders.

**3.** A public company may apply to the court under section 425 of the 1985 Act for an order sanctioning a scheme falling within sub-paragraph (b) or (c) of paragraph 4(1) where—

- (a) the scheme in question involves a compromise or arrangement with its members or creditors or any class of its members or creditors; and
- (b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—
  - (i) shares in the transferee company receivable by members of the transferor company; or
  - (ii) where there is more than one transferor company and any one or more of them is an open-ended investment company, shares in the transferee company receivable by shareholders or members of the transferor companies (as the case may be),

in each case with or without any cash payment to shareholders.

**4.—(1)** The schemes falling within this paragraph are—

- (a) any scheme under which the undertaking, property and liabilities of an open-ended investment company are to be transferred to another such company, other than one formed for the purpose of, or in connection with the scheme;
- (b) any scheme under which the undertaking, property and liabilities of two or more bodies corporate, each of which is either—
  - (i) an open-ended investment company; or

<sup>(20)</sup> Section 425 was amended by section 109(1) of, and paragraph 11 of Schedule 6 to, the Insolvency Act 1985 (c. 65).

(ii) a public company,

are to be transferred to an open-ended investment company formed for the purpose of, or in connection with, the scheme;

(c) any scheme under which the undertaking, property and liabilities of an open-ended investment company or a public company are to be divided among and transferred to two or more open-ended investment companies whether or not formed for the purpose of, or in connection with, the scheme.

(2) Nothing in this Schedule is to be taken as enabling the court to sanction a scheme under which the whole or any part of the undertaking, property or liabilities of an open-ended investment company may be transferred to any person other than another such company.

5. For the purposes of this Schedule, sections 425 to 427 of the 1985 Act are, subject to paragraph 6, to have effect in respect of any application made by virtue of paragraph 2 or 3 as they have effect in respect of applications falling within section 427A(1) of that Act (that is to say, subject to the provisions of section 427A of, and Schedule 15B to, that Act (mergers and divisions of public companies))(21).

6.—(1) All the provisions of the 1985 Act referred to in paragraph 5 have effect with such modifications as are necessary or appropriate for the purposes of this Schedule.

(2) In particular, any reference in those provisions to a Case 1 Scheme, a Case 2 Scheme or a Case 3 Scheme is to be taken to be a reference to a scheme falling within sub-paragraph (a), (b) or (c) of paragraph 4(1).

(3) Without prejudice to the generality of sub-paragraph (1), the following references in those provisions have effect as follows, unless the context otherwise requires—

- (a) any reference to a scheme is to be taken to be a reference to a scheme falling within any of sub-paragraphs (a) to (c) of paragraph 4(1);
- (b) any reference to a company is to be taken to be a reference to an open-ended investment company;
- (c) any reference to members is to be taken to be a reference to shareholders of an open-ended investment company;
- (d) any reference to the registered office of a company is to be taken to be a reference to the head office of an open-ended investment company;
- (e) any reference to the memorandum and articles of a company is to be taken to be a reference to the instrument of incorporation of an open-ended investment company;
- (f) any reference to a report under section 103(22) of the 1985 Act (non-cash consideration to be valued before allotment) is to be taken to be a reference to any report with respect to the valuation of any non-cash consideration given for shares in an open-ended investment company which may be required by FSA rules;
- (g) any reference to annual accounts is to be taken to be a reference to the accounts contained in the annual report of an open-ended investment company;
- (h) any reference to a directors' report, in relation to a company's annual accounts, is to be taken to be a reference to any report of the directors of an open-ended investment company that is contained in the company's annual report;
- (i) any reference to the requirements of the 1985 Act as to balance sheets forming part of a company's annual accounts is to be taken to be a reference to any requirements arising

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(21) Section 427A of, and Schedule 15B to, the 1985 Act were inserted by the Companies (Mergers and Divisions) Regulations 1987 (S.I. 1987/1991).

(22) Amended by the 1986 Act, section 439(1), Schedule 13, Part I.

*Status: This is the original version (as it was originally made).*

- by virtue of FSA rules as to balance sheets drawn up for the purposes of the accounts contained in the annual report of an open-ended investment company;
- (j) any reference to paid up capital is to be taken to be a reference to the share capital of an open-ended investment company.

## SCHEDULE 7

Regulation 84

### MINOR AND CONSEQUENTIAL AMENDMENTS

## PART I

### PRIMARY LEGISLATION

#### *Trustee Investments Act 1961 (c. 62)*

1. For paragraph 2A of Part III of Schedule 1 to the Trustee Investments Act 1961(23) (wider-range investments), substitute—

“(2A) In any shares in an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.”.

#### *Stock Transfer Act 1963 (c. 18)*

2. For section 1(4)(f) of the Stock Transfer Act 1963(24) (registered securities to which section 1 applies), substitute—

“(f) shares issued by an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.”.

#### *Companies Act 1985 (c. 6)*

- 3.—(1) Section 26 of the Companies Act 1985 (“the 1985 Act”) (prohibition on registration of certain names) is amended as follows.

- (2) For paragraph (bb) of sub-section (1)(25), substitute—

“(bb) which includes, at any place in the name, the expressions “investment company with variable capital” or “open-ended investment company” or their Welsh equivalents (“cwmni buddsoddi â chyfalaf newidiol” and “cwmni buddsoddiant penagored” respectively);”.

- (3) In subsection (3)(b), omit the word “and” after “cyhoeddus”); and at the end insert “and “open-ended investment company” or its Welsh equivalent (“cwmni buddsoddiant penagored”);”.

- 4.—(1) Section 199(2A) of the 1985 Act (interests to be disregarded in determining whether a person holds a material interest in shares) is amended as follows.

(23) Paragraph 2A of Part III of Schedule 1 to the 1961 Act was inserted by the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (S.I. 1996/2827).

(24) Paragraph (f) of section 1(4) of the 1963 Act was inserted by S.I. 1996/2827.

(25) Subsection (1)(bb) was inserted by S.I. 1996/2827.

(2) In paragraph (bb)(26), for “investment company with variable capital” substitute “open-ended investment company”.

(3) In paragraph (d), for “(a), (b) or (c)” substitute “(a), (b), (bb) or (c)”.

5. In section 209(1)(h) of the 1985 Act (interests to be disregarded for purposes of obligation to disclose interests in shares) for sub-paragraph (iii)(27) substitute—

“(iii) by virtue of his being a depositary, within the meaning of the Open-Ended Investment Companies Regulations 2001, of an open-ended investment company.”.

6. In section 220(1) of the 1985 Act (definitions for Part VI) omit the definition of “investment company with variable capital”(28) and insert after the definition of “material interest”—

““open-ended investment company” has the same meaning as in the Open-Ended Investment Companies Regulations 2001;”.

7. In section 716(2) of the 1985 Act (exemptions from prohibition on formation of any company, association or partnership with more than 20 members), for paragraph (e)(29) substitute—

“(e) of an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.”.

8. In section 718(2) of the 1985 Act (exemptions from application of Act to unregistered companies), for paragraph (d)(30) substitute—

“(d) any open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.”.

#### *Company Directors Disqualification Act 1986 (c. 46)*

9. In Schedule 1 to the Company Directors Disqualification Act 1986 (matters for determining unfitness of directors), for paragraph 5A(31) substitute—

“5A. In the application of this Part of this Schedule in relation to any person who is a director of an open-ended investment company, any reference to a provision of the Companies Act is to be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies Regulations 2001 or of any rules made under regulation 6 of those Regulations (Financial Services Authority rules).”.

#### *Pension Schemes Act 1993 (c. 48)*

10. In section 38(6) (permitted forms for appropriate schemes), for paragraph (d)(32) substitute—

“(d) an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.”.

#### *Limited Liability Partnerships Act 2000 (c. 12)*

11. In paragraph 8(2) of the Schedule to the Limited Liability Partnerships Act 2000 (similarity of names), omit the word “and” after “public limited company”, and insert at the end—

““open-ended investment company”, and”.

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(26) Paragraph (bb) of section 199(2A) of the 1985 Act was inserted by S.I. 1996/2827.

(27) Sub-paragraph (iii) of section 209(1)(h) of the 1985 Act was inserted by S.I. 1996/2827.

(28) This definition was inserted by S.I. 1996/2827.

(29) Paragraph (e) of section 716(2) of the 1985 Act was inserted by S.I. 1996/2827.

(30) Paragraph (d) of section 718(2) of the 1985 Act was inserted by S.I. 1996/2827.

(31) Paragraph 5A of Schedule 1 was inserted by S.I. 1996/2827.

(32) Paragraph (d) of section 38(6) was inserted by S.I. 1996/2827.

## PART II

### SUBORDINATE LEGISLATION

#### *The Uncertificated Securities Regulations 1995 (S.I. 1995/3272)*

**12.**—(1) The Uncertificated Securities Regulations 1995 are amended as follows.

(2) In regulation 3(1) (interpretation)—

(a) for “the 1986 Act”, substitute “the Financial Services and Markets Act 2000”;

(b) in the definition of “unit of security”—

(i) for “investment company with variable capital” substitute “open-ended investment company”;

(ii) for the references to the “Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996” substitute “the Open-Ended Investment Companies Regulations 2001”.

(3) In regulation 19(9) (entries on registers), for “investment company with variable capital (within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996)” substitute “open-ended investment company (within the meaning of the Open-Ended Investment Companies Regulations 2001)”.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under section 262 of the Financial Services and Markets Act 2000. They make provision for facilitating the carrying on of collective investment by means of open-ended investment companies and regulate such companies.

Part I of the Regulations deals with matters of citation, commencement, extent and interpretation of terms used in the Regulations.

Part II deals with the formation, supervision and control of an open-ended investment company and the registration of certain details with the Financial Services Authority (“the FSA”). Regulation 5 and Schedule 1 are concerned with the custody of the company’s property and with the company’s depositary, who is the person to whom the company’s property is entrusted. Regulation 6 allows the FSA to make rules in relation to open-ended investment companies.

Regulations 12 to 17 relate to the authorisation by the FSA of an open-ended investment company. The FSA must be satisfied that the company will, if formed and authorised, meet the requirements in regulation 15. There is provision for representations to be made against any refusal to authorise a company.

Regulations 18 to 20 concern the name used by an open-ended investment company. Regulations 21 and 22 contain provisions requiring a company to seek prior approval from the FSA for certain changes, including changes to its instrument of incorporation.

Regulations 23 to 29 confer powers on the FSA to intervene in the affairs of a company once it has been authorised. The FSA may revoke an authorisation, give directions and make applications to

the court. Regulation 30 confers power on the Secretary of State and the FSA to appoint inspectors to investigate the affairs of an open-ended investment company and regulations 31 to 33 contain provisions as to winding up and dissolution of such companies.

Part III sets out the corporate framework within which an open-ended investment company will operate, as supplemented by rules made by the FSA under regulation 6. Regulations 34 to 36 concern directors and the inspection of their service contracts. Regulation 37 makes provision for general meetings and regulations 38 to 44 concern the capacity of a company and the validity of certain transactions involving its directors. Regulations 45 to 52 contain provisions about the nature of the shares which a company may issue, share certificates, share transfers and the maintenance, closure and rectification of a register of shareholders which must be kept in accordance with Schedule 3. Regulations 53 to 65 concern the operation of an open-ended investment company, including details which must be included in correspondence (regulations 54 and 55), the execution and authentication of documents (regulations 57 to 60), liability and exemptions from liability (regulations 61 to 62), fraudulent trading (regulation 64) and the powers which a company has to make provision for its employees on the cessation or transfer of business (regulation 65). Regulations 66 to 69 and Schedule 5 deal with accounts and auditors. Regulation 70 and Schedule 6 concern the merger and division of open-ended investment companies.

Part IV deals with the FSA's registration functions in relation to open-ended investment companies. The FSA must keep a register of such companies and must allocate registered numbers to them (regulations 71 and 72). The FSA's records are open to inspection (regulation 75) and it must publish, in the relevant Gazette, notice of the issue or receipt by it of certain documents (regulation 78).

Part V contains miscellaneous provisions, including provisions about offences and minor and consequential amendments to primary and secondary legislation. Regulation 85 revokes the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 and makes various consequential provisions.