



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER III

AUTHORISED UNIT TRUST SCHEMES

Applications for authorisation

242 Applications for authorisation of unit trust schemes

- (1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme must be made to the Authority by the manager and trustee, or proposed manager and trustee, of the scheme.
- (2) The manager and trustee (or proposed manager and trustee) must be different persons.
- (3) The application—
 - (a) must be made in such manner as the Authority may direct; and
 - (b) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.
- (4) At any time after receiving an application and before determining it, the Authority may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (5) Different directions may be given, and different requirements imposed, in relation to different applications.
- (6) The Authority may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

243 Authorisation orders

- (1) If, on an application under section 242 in respect of a unit trust scheme, the Authority—
 - (a) is satisfied that the scheme complies with the requirements set out in this section,
 - (b) is satisfied that the scheme complies with the requirements of the trust scheme rules, and
 - (c) has been provided with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,the Authority may make an order declaring the scheme to be an authorised unit trust scheme.
- (2) If the Authority makes an order under subsection (1), it must give written notice of the order to the applicant.
- (3) In this Chapter “authorisation order” means an order under subsection (1).
- (4) The manager and the trustee must be persons who are independent of each other.
- (5) The manager and the trustee must each—
 - (a) be a body corporate incorporated in the United Kingdom or another EEA State, and
 - (b) have a place of business in the United Kingdom,and the affairs of each must be administered in the country in which it is incorporated.
- (6) If the manager is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.
- (7) The manager and the trustee must each be an authorised person and the manager must have permission to act as manager and the trustee must have permission to act as trustee.
- (8) The name of the scheme must not be undesirable or misleading.
- (9) The purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price—
 - (a) related to the net value of the property to which the units relate; and
 - (b) determined in accordance with the scheme.
- (11) But a scheme is to be treated as complying with subsection (10) if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

244 Determination of applications

- (1) An application under section 242 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

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- (2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.
- (3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.

Applications refused

245 Procedure when refusing an application

- (1) If the Authority proposes to refuse an application made under section 242 it must give each of the applicants a warning notice.
- (2) If the Authority decides to refuse the application—
 - (a) it must give each of the applicants a decision notice; and
 - (b) either applicant may refer the matter to the Tribunal.

Certificates

246 Certificates

- (1) If the manager or trustee of a unit trust scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument so requests, the Authority may issue a certificate to the effect that the scheme complies with those conditions.
- (2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

Rules

247 Trust scheme rules

- (1) The Authority may make rules (“trust scheme rules”) as to—
 - (a) the constitution, management and operation of authorised unit trust schemes;
 - (b) the powers, duties, rights and liabilities of the manager and trustee of any such scheme;
 - (c) the rights and duties of the participants in any such scheme; and
 - (d) the winding up of any such scheme.
- (2) Trust scheme rules may, in particular, make provision—
 - (a) as to the issue and redemption of the units under the scheme;
 - (b) as to the expenses of the scheme and the means of meeting them;
 - (c) for the appointment, removal, powers and duties of an auditor for the scheme;
 - (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
 - (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;

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- (f) requiring the preparation of periodical reports with respect to the scheme and the provision of those reports to the participants and to the Authority; and
 - (g) with respect to the amendment of the scheme.
- (3) Trust scheme rules may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the deed.
- (4) But trust scheme rules are binding on the manager, trustee and participants independently of the contents of the trust deed and, in the case of the participants, have effect as if contained in it.
- (5) If—
- (a) a modification is made of the statutory provisions in force in Great Britain or Northern Ireland relating to companies,
 - (b) the modification relates to the rights and duties of persons who hold the beneficial title to any shares in a company without also holding the legal title, and
 - (c) it appears to the Treasury that, for the purpose of assimilating the law relating to authorised unit trust schemes to the law relating to companies as so modified, it is expedient to modify the rule-making powers conferred on the Authority by this section,
- the Treasury may by order make such modifications of those powers as they consider appropriate.

248 Scheme particulars rules

- (1) The Authority may make rules (“scheme particulars rules”) requiring the manager of an authorised unit trust scheme—
- (a) to submit scheme particulars to the Authority; and
 - (b) to publish scheme particulars or make them available to the public on request.
- (2) “Scheme particulars” means particulars in such form, containing such information about the scheme and complying with such requirements, as are specified in scheme particulars rules.
- (3) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if there is a significant change affecting any matter—
- (a) which is contained in scheme particulars previously published or made available; and
 - (b) whose inclusion in those particulars was required by the rules.
- (4) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if—
- (a) a significant new matter arises; and
 - (b) the inclusion of information in respect of that matter would have been required in previous particulars if it had arisen when those particulars were prepared.
- (5) Scheme particulars rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any scheme particulars, of compensation to any qualifying person who has suffered loss as a result of—
- (a) any untrue or misleading statement in the particulars; or

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- (b) the omission from them of any matter required by the rules to be included.
- (6) “Qualifying person” means a person who—
 - (a) has become or agreed to become a participant in the scheme; or
 - (b) although not being a participant, has a beneficial interest in units in the scheme.
- (7) Scheme particulars rules do not affect any liability which any person may incur apart from the rules.

249 Disqualification of auditor for breach of trust scheme rules

- (1) If it appears to the Authority that an auditor has failed to comply with a duty imposed on him by trust scheme rules, it may disqualify him from being the auditor for any authorised unit trust scheme or authorised open-ended investment company.
- (2) Subsections (2) to (5) of section 345 have effect in relation to disqualification under subsection (1) as they have effect in relation to disqualification under subsection (1) of that section.

250 Modification or waiver of rules

- (1) In this section “rules” means—
 - (a) trust scheme rules; or
 - (b) scheme particulars rules.
- (2) The Authority may, on the application or with the consent of any person to whom any rules apply, direct that all or any of the rules—
 - (a) are not to apply to him as respects a particular scheme; or
 - (b) are to apply to him, as respects a particular scheme, with such modifications as may be specified in the direction.
- (3) The Authority may, on the application or with the consent of the manager and trustee of a particular scheme acting jointly, direct that all or any of the rules—
 - (a) are not to apply to the scheme; or
 - (b) are to apply to the scheme with such modifications as may be specified in the direction.
- (4) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 148(2) 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 subsection (2); and
 - (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted.
- (5) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 148(2) but with the following modifications—
 - (a) subsection (4)(a) is to be read as if the words “by the authorised person” were omitted;

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- (b) subsections (7)(b) and (11) are to be read as if references to the authorised person were references to each of the manager and the trustee of the scheme;
- (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word “commercial” were omitted;
- (d) subsection (8) is to be read as if the reference to the authorised person concerned were a reference to the scheme concerned and to its manager and trustee; and
- (e) subsection (9) is to be read as if the reference to the authorised person were a reference to the manager and trustee of the scheme acting jointly.

Alterations

251 Alteration of schemes and changes of manager or trustee

- (1) The manager of an authorised unit trust scheme must give written notice to the Authority of any proposal to alter the scheme or to replace its trustee.
- (2) Any notice given in respect of a proposal to alter the scheme involving a change in the trust deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules.
- (3) The trustee of an authorised unit trust scheme must give written notice to the Authority of any proposal to replace the manager of the scheme.
- (4) Effect is not to be given to any proposal of which notice has been given under subsection (1) or (3) unless—
 - (a) the Authority, by written notice, has given its approval to the proposal; or
 - (b) one month, beginning with the date on which the notice was given, has expired without the manager or trustee having received from the Authority a warning notice under section 252 in respect of the proposal.
- (5) The Authority must not approve a proposal to replace the manager or the trustee of an authorised unit trust scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 243(4) to (7).

252 Procedure when refusing approval of change of manager or trustee

- (1) If the Authority proposes to refuse approval of a proposal to replace the trustee or manager of an authorised unit trust scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 251(1) or (3).
- (2) If the Authority proposes to refuse approval of a proposal to alter an authorised unit trust scheme it must give separate warning notices to the manager and the trustee of the scheme.
- (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.

Exclusion clauses

253 Avoidance of exclusion clauses

Any provision of the trust deed of an authorised unit trust scheme is void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

Ending of authorisation

254 Revocation of authorisation order otherwise than by consent

- (1) An authorisation order may be revoked by an order made by the Authority if it appears to the Authority that—
 - (a) one or more of the requirements for the making of the order are no longer satisfied;
 - (b) the manager or trustee of the scheme concerned has contravened a requirement imposed on him by or under this Act;
 - (c) the manager or trustee of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
 - (d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or
 - (e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.
- (2) For the purposes of subsection (1)(e), the Authority may take into account any matter relating to—
 - (a) the scheme;
 - (b) the manager or trustee;
 - (c) any person employed by or associated with the manager or trustee in connection with the scheme;
 - (d) any director of the manager or trustee;
 - (e) any person exercising influence over the manager or trustee;
 - (f) any body corporate in the same group as the manager or trustee;
 - (g) any director of any such body corporate;
 - (h) any person exercising influence over any such body corporate.

255 Procedure

- (1) If the Authority proposes to make an order under section 254 revoking an authorisation order (“a revoking order”), it must give separate warning notices to the manager and the trustee of the scheme.
- (2) If the Authority decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

256 Requests for revocation of authorisation order

- (1) An authorisation order may be revoked by an order made by the Authority at the request of the manager or trustee of the scheme concerned.
- (2) If the Authority makes an order under subsection (1), it must give written notice of the order to the manager and trustee of the scheme concerned.
- (3) The Authority may refuse a request to make an order under this section if it considers that—
 - (a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or
 - (b) revocation would not be in the interests of the participants or would be incompatible with a Community obligation.
- (4) If the Authority proposes to refuse a request under this section, it must give separate warning notices to the manager and the trustee of the scheme.
- (5) If the Authority decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Powers of intervention

257 Directions

- (1) The Authority may give a direction under this section if it appears to the Authority that—
 - (a) one or more of the requirements for the making of an authorisation order are no longer satisfied;
 - (b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act;
 - (c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
 - (d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.
- (2) A direction under this section may—
 - (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;
 - (b) require the manager and trustee of the scheme to wind it up.
- (3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.
- (4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.
- (5) If a person contravenes a direction under this section, section 150 applies to the contravention as it applies to a contravention mentioned in that section.

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- (6) The Authority may, either on its own initiative or on the application of the manager or trustee of the scheme concerned, revoke or vary a direction given under this section 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.

258 Applications to the court

- (1) If the Authority could give a direction under section 257, it may also apply to the court for an order—
- (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
 - (b) replacing the person or persons removed with a suitable person or persons nominated by the Authority.
- (2) The Authority may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 243(4) to (7) would be complied with.
- (3) If it appears to the Authority that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
- (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
 - (b) appointing an authorised person to wind up the scheme.
- (4) On an application under this section the court may make such order as it thinks fit.
- (5) The court may, on the application of the Authority, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).
- (6) The Authority must give written notice of the making of an application under this section to the manager and trustee of the scheme concerned.
- (7) The jurisdiction conferred by this section may be exercised by—
- (a) the High Court;
 - (b) in Scotland, the Court of Session.

259 Procedure on giving directions under section 257 and varying them on Authority's own initiative

- (1) A direction takes effect—
- (a) immediately, if the notice given under subsection (3) states that that is the case;
 - (b) on such date as may be specified in the notice; or
 - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction 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

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section 257, 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 section 257, or gives such a direction with immediate effect, it must give separate written notice to the manager and the trustee of the scheme concerned.
- (4) The notice must—
 - (a) give details of the direction;
 - (b) inform the person to whom it is given of when the direction takes effect;
 - (c) state the 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 section 257(2)(a), the notice must state that the requirement has effect until—
 - (a) a specified date; or
 - (b) a further direction.
- (6) If the direction imposes a requirement under section 257(2)(b), the scheme must be wound up—
 - (a) by a date specified in the notice; or
 - (b) if no date is specified, as soon as practicable.
- (7) The 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 notice to the manager and the trustee of the scheme concerned.
- (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 notice to the manager and the trustee of the scheme concerned.
- (10) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.
- (11) A notice under subsection (9)(b) must comply with subsection (4).
- (12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

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- (13) This section 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 subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

260 Procedure: refusal to revoke or vary direction

- (1) If on an application under section 257(6) 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.

261 Procedure: revocation of direction and grant of request for variation

- (1) If the Authority decides on its own initiative to revoke a direction under section 257 it must give separate written notices of its decision to the manager and trustee of the scheme.
- (2) If on an application under section 257(6) for a direction to be revoked or varied the Authority decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.
- (3) A notice under this section must specify the date on which the decision takes effect.
- (4) The Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.