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## STATUTORY INSTRUMENTS

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# 2001 No. 1228

## The Open-Ended Investment Companies Regulations 2001

### 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;
- (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 depositary 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 depositary**

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 depositary").

(2) Nothing in paragraph (1)—

- (a) applies to any scheme property designated for the purposes of this regulation by FSA rules;
- (b) prevents a depositary 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.

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*Status: Point in time view as at 01/10/2009.*

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(3) Schedule 1 to these Regulations makes provision with respect to depositaries 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 depositary 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 depository 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.

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- (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 [F1section 1169(2) of the Companies Act 2006, other than a transaction to which subsection (3) of that section applies].

#### **Textual Amendments**

**F1** Words in reg. 13(5) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 221** (with arts. 6, 11, 12)

#### **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
- (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.

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## 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 <sup>F2</sup>... 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).

### Textual Amendments

**F2** Words in [reg. 15\(6\)](#) omitted (13.2.2004) by virtue of [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), [regs. 1\(1\), 8](#)

## 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 [<sup>F3</sup>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.

### Textual Amendments

**F3** Words in [reg. 17\(1\)](#) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), [regs. 1\(1\), 13\(7\)\(b\)](#)

## 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<sup>M1</sup>;

(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;

(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");

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- “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 chyfalaf 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.

#### **Marginal Citations**

- M1** 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.

#### **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<sup>M2</sup> 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.

#### **Marginal Citations**

- M2** Amended by S.I. 1992/3179 and by the [Limited Liability Partnerships Act 2000 \(c. 12\)](#), [Schedule](#), para. 1.

#### *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 depository 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 depository 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 depository, 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 depository.
- (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 [<sup>F4</sup>written] notice.

#### Textual Amendments

- F4** Word in [reg. 22\(5\)](#) substituted (6.4.2005) by [The Open-Ended Investment Companies \(Amendment\) Regulations 2005 \(S.I. 2005/923\)](#), [regs. 1, 2\(2\)](#)

### 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 depository—
    - (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;

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- (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 depository, 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 depository 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 depository (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—

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- (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

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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<sup>M3</sup> 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—

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- (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.

#### **Marginal Citations**

**M3** Section 124A was inserted by the [Companies Act 1989 \(c. 40\)](#), [section 60\(3\)](#).

#### **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.

- (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>M4</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.

#### Marginal Citations

- M4** 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 \(c. 22\)](#).

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