
STATUTORY INSTRUMENTS

2001 No. 1228

The Open-Ended Investment Companies Regulations 2001

PART II

FORMATION, SUPERVISION AND CONTROL

Authorisation

Applications for authorisation

12.—^{F1}(A1) An application for an authorisation order in respect of a body may be made to the Authority for—

- (a) an order declaring the body to be an open-ended investment company;
- (b) an order declaring the body to be a money market fund.]

(1) Any application for an authorisation order ^{F2}...—

- (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.

Textual Amendments

- F1** Reg. 12(A1) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **3(3)(a)**
- F2** Words in reg. 12(1) omitted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by virtue of [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **3(3)(b)**

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 [^{F3}or firm that is a legal person under the law by which it is governed], 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

[^{F4}(iii) in the case of a married person, the name by which that person 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 [^{F5}the United Kingdom].

(5) In paragraph (3) the reference to a significant transaction is, in relation to a company within the meaning of [^{F6}section 1 of the 2006 Act], a reference to a significant accounting transaction within the meaning of [^{F7}section 1169(2) [^{F6}of that Act], other than a transaction to which subsection (3) of that section applies].

Textual Amendments

- F3** Words in reg. 13(1)(b) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 4(a)** (with Sch. 3)
- F4** Reg. 13(4)(b)(iii) substituted (E.W.) (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential Provisions\) Order 2014 \(S.I. 2014/107\)](#), art. 1(2), Sch. 1 para. 31 (which amendment was extended to N.I. (13.1.2020) by [S.I. 2019/1514](#), regs. 1(2), **149(a)(iii)** (with regs. 6-9); and reg. 13(4)(b)(iii) substituted (S.) (16.12.2014) by [The Marriage and Civil Partnership \(Scotland\) Act 2014 and Civil Partnership Act 2004 \(Consequential Provisions and Modifications\) Order 2014 \(S.I. 2014/3229\)](#), art. 1(2), **Sch. 6 para. 22**
- F5** Words in reg. 13(4)(c) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 4(b)** (with Sch. 3)
- F6** Words in reg. 13(5) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), art. 1(2), **Sch. 2 para. 4(c)** (with Sch. 3)
- F7** 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 [^{F8}FCA 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 [^{F8}FCA 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.

[^{F9}(1A) Where an application is made under regulation 12(A1)(b) the Authority may make an authorisation order in respect of a body as a money market fund if conditions A and B are met.

- (a) Condition A is that the Authority is satisfied that the body will be able to comply with the requirements imposed on a money market fund under the MMF Regulation.
- (b) Condition B is that—
 - (i) the body is an open-ended investment company; or
 - (ii) the body is the subject of an application under regulation 12(A1)(a) and the requirements in regulation 15 are met in relation to that application.]

(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;

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- (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) ^{F10}Subject to paragraph (4A)] 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.
- ^{F11}(4A) Where the application relates to an open-ended investment company which is a UCITS, it must be determined by the Authority before the end of two months beginning with the date on which it receives the 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.

Textual Amendments

- F8** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**
- F9** [Reg. 14\(1A\)](#) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), **3(4)**
- F10** Words in reg. 14(4) inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **3(2)(a)**
- F11** [Reg. 14\(4A\)](#) inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **3(2)(b)**

Requirements for authorisation

- 15.**—(1) The requirements referred to in regulation 14(1)(a) ^{F12}and 14(1A)(b)] are as follows.
- (2) The company and its instrument of incorporation must comply with the requirements of these regulations and ^{F8}FCA rules].
- (3) The head office of the company must be situated ^{F13}in England and Wales (or Wales), in Scotland or in Northern Ireland].
- (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.
- ^{F14}(6) If the company has only one director, that director must be a body corporate which is an authorised person and which has a Part 4A permission to carry on the regulated activity of managing a UCITS or, as the case may be, managing an AIF.]
- (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 [^{F15}that is a UCITS or, as the case may be, of an open-ended investment company that is an AIF]; 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 [^{F8}FCA 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

- F8** Words in Regulations substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 41(2)**
- F12** Words in [reg. 15\(1\)](#) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), [regs. 1\(2\)](#), **3(5)**
- F13** Words in [reg. 15\(3\)](#) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), [art. 1\(2\)](#), **Sch. 2 para. 5** (with [Sch. 3](#))
- F14** [Reg. 15\(6\)](#) substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), **Sch. 2 para. 10(2)(a)**
- F15** Words in [reg. 15\(8\)\(e\)](#) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), [reg. 1](#), **Sch. 2 para. 10(2)(b)**

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 [^{F16}Upper Tribunal].

Textual Amendments

- F16** Words in [reg. 16\(2\)\(b\)](#) substituted (6.4.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(2\)\(f\)](#), **Sch. 3 para. 19**

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Certificates

17.—(1) If an open-ended investment company which complies with the conditions necessary to enable it to enjoy the rights conferred by [^{F17}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

F17 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)**

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