
STATUTORY INSTRUMENTS

2001 No. 1228

The Open-Ended Investment Companies Regulations 2001

PART II

FORMATION, SUPERVISION AND CONTROL

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.