
STATUTORY INSTRUMENTS

2001 No. 1228

The Open-Ended Investment Companies Regulations 2001

PART III

CORPORATE CODE

Organs

Invalidity of certain transactions involving directors

- 44.**—(1) This regulation applies where—
- (a) an open-ended investment company enters into a transaction to which the parties include a director of the company or any person who is an associate of such a director; and
 - (b) in connection with the transaction, the directors of the company (whether or not acting as a board) exceed any limitation on their powers under the company's constitution.
- (2) The transaction is voidable at the instance of the company.
- (3) Whether or not the transaction is avoided, any such party to the transaction as is mentioned in paragraph (1)(a), and any director of the company who authorised the transaction, is liable—
- (a) to account to the company for any gain which he has made directly or indirectly by the transaction; and
 - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) Nothing in paragraphs (1) to (3) is to be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called into question or any liability to the company may arise.
- (5) The transaction ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible;
 - (b) the company is indemnified for any loss or damage resulting from the transaction;
 - (c) rights which are acquired, bona fide for value and without actual notice of the directors concerned having exceeded their powers, by a person who is not a party to the transaction would be affected by the avoidance; or
 - (d) the transaction is ratified by resolution of the company in general meeting.
- (6) A person other than a director of the company is not liable under paragraph (3) if he shows that at the time the transaction was entered into he did not know that the directors concerned were exceeding their powers.
- (7) This regulation does not affect the operation of regulation 39 in relation to any party to the transaction not within paragraph (1)(a); but where a transaction is voidable by virtue of this regulation and valid by virtue of that regulation in favour of such a person, the court may, on the

application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms as appear to the court to be just.

(8) For the purposes of this regulation—

- (a) “associate”, in relation to any person who is a director of the company, means that person’s spouse, [^{F1}civil partner,] child or stepchild (if under 18), employee, partner or any body corporate of which that person is a director; and if that person is a body corporate, any subsidiary undertaking or director of that body corporate (including any director or employee of such subsidiary undertaking);
- (b) “transaction” includes any act; and
- (c) the reference in paragraph (1)(b) to any limitation on directors’ powers under the company’s constitution includes any limitation deriving from these Regulations, from [^{F2}FCA rules] or from a resolution of the company in general meeting or of a meeting of any class of shareholders.

Textual Amendments

- F1** Words in reg. 44(8)(a) inserted (5.12.2005) by [The Civil Partnership Act 2004 \(Amendments to Subordinate Legislation\) Order 2005 \(S.I. 2005/2114\)](#), art. 1, **Sch. 16 para. 5**
- F2** 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)**

Changes to legislation:

There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Section 44.