

SCHEDULE 2

Regulation 14

INSTRUMENT OF INCORPORATION

1. The instrument of incorporation of an open-ended investment company must—
 - (a) contain the statements set out in paragraph 2; and
 - (b) contain provision made in accordance with paragraphs 3 and 4.
2. The statements referred to in paragraph 1(a) are—
 - (a) the head office of the company is situated in England and Wales, Wales or Scotland (as the case may be);
 - (b) the company is an open-ended investment company with variable share capital;
 - (c) the shareholders are not liable for the debts of the company;
 - (d) the scheme property is entrusted to a depositary for safekeeping (subject to any exceptions permitted by FSA rules); and
 - (e) charges or expenses of the company may be taken out of the scheme property.
- 3.—(1) The instrument of incorporation must contain provision as to the following matters—
 - (a) the object of the company;
 - (b) any matter relating to the procedure for the appointment, retirement and removal of any director of the company for which provision is not made in these Regulations or FSA rules; and
 - (c) the currency in which the accounts of the company are to be prepared.

(2) The provision referred to in sub-paragraph (1)(a) as to the object of an open-ended investment company must state clearly the kind of property in which the company is to invest and must state that the object of the company is to invest in property of that kind with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of that property.
- 4.—(1) The instrument of incorporation must also contain provision as to the following matters—
 - (a) the name of the company;
 - (b) the category, as specified in FSA rules, to which the company belongs;
 - (c) the maximum and minimum sizes of the company's capital;
 - (d) in the case of an umbrella company, the investment objectives applicable to each part of the scheme property that is pooled separately;
 - (e) the classes of shares that the company may issue indicating, in the case of an umbrella company, which class or classes of shares may be issued in respect of each part of the scheme property that is pooled separately;
 - (f) the rights attaching to shares of each class (including any provision for the expression in two denominations of such rights);
 - (g) if the company is to be able to issue bearer shares, a statement to that effect together with details of any limitations on the classes of the company's shares which are to include bearer shares;
 - (h) in the case of a company which is a participating issuer, a statement to that effect together with an indication of any class of shares in the company which is a class of participating securities;
 - (i) if the company is to dispense with the requirements of regulation 46, the details of any substituted procedures for evidencing title to the company's shares; and

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(j) the form, custody and use of the company's common seal (if any).

(2) For the purposes of sub-paragraph (1)(c), the size at any time of a company's capital is to be taken to be the value at that time, as determined in accordance with FSA rules, of the scheme property of the company less the liabilities of the company.

5.—(1) Once an authorisation order has been made in respect of a company, no amendment may be made to the statements contained in the company's instrument of incorporation which are required by paragraph 2.

(2) Subject to sub-paragraph (1) and to any restriction imposed by FSA rules, a company may amend any provision which is contained in its instrument of incorporation.

(3) No amendment to a provision which is contained in a company's instrument of incorporation by virtue of paragraph 3 may be made unless it has been approved by the shareholders of the company in general meeting.

6.—(1) The provisions of a company's instrument of incorporation are binding on the officers and depositary of the company and on each of its shareholders; and all such persons (but no others) are to be taken to have notice of the provisions of the instrument.

(2) A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company.