

SCHEDULE 5

AUDITORS

Statement by auditor ceasing to hold office

18.—(1) Where an auditor ceases for any reason to hold office, he must deposit at the head office of the company a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the shareholders or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.

(2) The statement must be deposited—

- (a) in the case of resignation, along with the notice of resignation;
- (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing auditors; and
- (c) in any other case, not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(3) If the statement is of circumstances which the auditor considers should be brought to the attention of the shareholders or creditors of the company, the company must, not later than 14 days after the deposit of the statement, either—

- (a) send a copy of the statement to each of the shareholders whose name appears on the register of shareholders (other than the designated person) and take such steps as FSA rules may require for the purpose of bringing the fact that the statement has been made to the attention of the holders of any bearer shares; or
- (b) apply to the court;

and, where an application is made under sub-paragraph (b), the company must notify the auditor.

(4) Unless the auditor receives notice of an application to the court before the end of the period of 21 days beginning with the day on which he deposited the statement, he must, not later than seven days after the end of that period, send a copy of the statement to the Authority.

(5) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—

- (a) it must direct that copies of the statement need not be sent out and that the steps required by FSA rules need not be taken; and
- (b) it may further order the company's costs on the application to be paid in whole or in part by the auditor notwithstanding that he is not a party to the application;

and the company must, not later than 14 days after the court's decision, take such steps in relation to a statement setting out the effect of the order as are required by sub-paragraph (3)(a) in relation to the statement deposited under sub-paragraph (1).

(6) If the court is not so satisfied, the company must, not later than 14 days after the court's decision, send to each of the shareholders a copy of the auditor's statement and notify the auditor of the court's decision.

(7) The auditor must, not later than 7 days after receiving such a notice, send a copy of the statement to the Authority.

(8) Where notice of appeal is filed not later than 14 days after the court's decision, any reference to that decision in sub-paragraphs (5) and (6) is to be construed as a reference to the final determination or withdrawal of that appeal, as the case may be.

19.—(1) If a person ceasing to hold office as auditor fails to comply with paragraph 18 he is guilty of an offence and liable—

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Statement by auditor ceasing to hold office. (See end of Document for details)

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(2) In proceedings for an offence under sub-paragraph (1), it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

20 Section 249(1) of the Act (disqualification of auditor for breach of trust scheme rules) applies to a failure by an auditor to comply with a duty imposed on him by FSA rules as it applies to a breach of trust scheme rules.

Status:

Point in time view as at 05/12/2005.

Changes to legislation:

There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001, Statement by auditor ceasing to hold office.