SCHEDULE 1

Regulation 5

DEPOSITARIES

Appointment

1. On the coming into effect of an authorisation order in respect of an open-ended investment company, the person named in the application under regulation 12 as depositary of the company is deemed to be appointed as its first depositary.

2. Subject to regulations 21 and 26, any subsequent appointment of the depositary of a company must be made by the directors of the company.

Retirement

3. The depositary of a company may not retire voluntarily except upon the appointment of a new depositary.

Rights

4. The depositary of a company is entitled—

(a) to receive all such notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to receive;

(b) to attend any general meeting of the company;

(c) to be heard at any general meeting which it attends on any part of the business of the meeting which concerns it as depositary;

(d) to convene a general meeting of the company when it sees fit;

(e) to require from the company's officers such information and explanations as it thinks necessary for the performance of its functions as depositary; and

(f) to have access, except in so far as they concern its appointment or removal, to any reports, statements or other papers which are to be considered at any meeting held by the directors of the company (when acting in their capacity as such), at any general meeting of the company or at any meeting of holders of shares of any particular class.

Statement by depositary ceasing to hold office

5.—(1) Where the depositary of a company ceases, for any reason other than by virtue of a court order made under regulation 26, to hold office, it may deposit at the head office of the company a statement of any circumstances connected with its ceasing to hold office which it considers should be brought to the attention of the shareholders or creditors of the company or, if it considers that there are no such circumstances, a statement that there are none.

(2) If the statement is of circumstances which the depositary 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 depositary.

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

(4) If the court is satisfied that the depositary 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 depositary notwithstanding that the depositary 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 (2)(a) in relation to the statement deposited under sub-paragraph (1).

(5) If the court is not so satisfied, the company must, not later than 14 days after the court's decision, take the steps required by sub-paragraph (2)(a) and notify the depositary of the court's decision.

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

(7) Where a notice of appeal is filed not later than 14 days after the court's decision, any reference to that decision in sub-paragraphs (4) and (5) is to be construed as a reference to the final determination or withdrawal of that appeal (as the case may be).

6.—(1) This paragraph applies where copies of a statement have been sent to shareholders under paragraph 5.

(2) The depositary who made the statement has, notwithstanding that it has ceased to hold office, the rights conferred by paragraph 4(a) to (c) in relation to the general meeting of the company next following the date on which the copies were sent out.

(3) The reference in paragraph 4(c) to business concerning the depositary as depositary is to be construed in relation to a depositary who has ceased to hold office as a reference to business concerning it as former depositary.

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

(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.

SCHEDULE 3

Regulation 49

REGISTER OF SHAREHOLDERS

General

1.—(1) Subject to sub-paragraph (2), every open-ended investment company must keep a register of persons who hold shares in the company.

(2) Except to the extent that the aggregate numbers of shares mentioned in paragraphs 5(1)(b) and 7 include bearer shares, nothing in this Schedule requires any entry to be made in the register in respect of bearer shares.

2.—(1) [F1]... The register of shareholders is prima facie evidence of any matters which are by these Regulations directed or authorised to be contained in it.

[F2](2) . . . . . .

Textual Amendments

F1 Words in Sch. 3 para. 2(1) omitted (26.11.2001) by virtue of The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), reg. 1, **Sch. 7 para. 24(c)**

F2 Sch. 3 para. 2(2) revoked (26.11.2001) by The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), regs. 1, **52(4)**

3. In the case of companies registered in England and Wales, no notice of any trust, express, implied or constructive, is to be entered on the company's register or be receivable by the company.

(2) A company must exercise all due diligence and take all reasonable steps to ensure that the information contained in the register is at all times complete and up to date.

Contents

5.—(1) The register of shareholders must contain an entry consisting of—

(a) the name of the designated person;

(b) a statement of the aggregate number of all shares in the company held by that person; [F3]...

[F3](c) . . . . . .

(2) In sub-paragraph (1), for the purposes of sub-paragraph (b), the designated person is to be taken as holding all shares in the company which are in issue and in respect of which no other person's name is entered on the register.

(3) The statements referred to in sub-paragraph (1)(b) and (c) must be up-dated at least once a day.

Textual Amendments

F3 Sch. 3 para. 5(1)(c) and word revoked (26.11.2001) by The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), regs. 1, **52(4)**

6.—(1) This paragraph does not apply to any issue or transfer of shares to the designated person.

(2) Where a company issues a share to any person and the name of that person is not already entered on the register, the company must enter his name on the register.

(3) In respect of any person whose name is entered on the register in accordance with sub-paragraph (2) or paragraph 6 of Schedule 4 to these Regulations, the register must contain an entry consisting of—

(a) the address of the shareholder;

(b) the date on which the shareholder's name was entered on the register;

(c) a statement of the aggregate number of shares held by the shareholder, distinguishing each share by its number (if it has one) and, where the company has more than one class of shares, by its class; [F4]...

[F4](d) . . . . . .

Textual Amendments

F4 Sch. 3 para. 6(3)(d) and word revoked (26.11.2001) by The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), regs. 1, **52(4)**

7. The register of shareholders must contain a monthly statement of the aggregate number of all the bearer shares in issue except for any bearer shares in issue which, at the time when the statement is made, are held by the designated person.

8.—(1) This paragraph applies where the aggregate number of shares referred to in paragraphs 5 to 7 includes any shares to which attach rights expressed in two denominations.

(2) In respect of each class of shares to which are attached rights expressed in two denominations, the number of shares of that class held by any person referred to in paragraph 5 or 6, or the number of bearer shares of that class referred to in paragraph 7, is to be taken to be the total of—

$$N + \frac{n}{p}$$

(3)In sub-paragraph (2)—

(a) N is the relevant number of larger denomination shares of that class;

(b) n is the relevant number of smaller denomination shares of that class; and

(c) p is the number of smaller denomination shares of that class that are equivalent to one larger denomination share of that class.

(4) Nothing in these Regulations is to be taken as preventing the total arrived at under sub-paragraph (2) being expressed on the register as a single entry representing the result derived from the formula set out in that sub-paragraph.

Location

9. The register of shareholders of a company must be kept at its head office, except that—

(a) if the work of making it up is done at another office of the company, it may be kept there; and

(b) if the company arranges with some other person for the making up of the register to be undertaken on its behalf by that other person, it may be kept at the office of the other person at which the work is being done.

Index

10.—(1) Every company must keep an index of the names of the holders of its registered shares.

(2) The index must contain, in respect of each shareholder, a sufficient indication to enable the account of that shareholder in the register to be readily found.

(3) The index must be at all times kept at the same place as the register of shareholders.

(4) Not later than 14 days after the date on which any alteration is made to the register of shareholders, the company must make any necessary alteration in the index.

Inspection

11.—(1) Subject to regulation 50 and to FSA rules, the register of shareholders and the index of names must be open to the inspection of any shareholder (including any holder of bearer shares) without charge.

(2) Any shareholder may require a copy of the entries on the register relating to him and the company must cause any copy so required by a person to be sent to him free of charge.

(3) If an inspection required under this paragraph is refused, or if a copy so required is not sent, the court may by order compel an immediate inspection of the register and index, or direct that the copy required be sent to the person requiring it.

Agent's default

12.—(1) Sub-paragraphs (2) and (4) apply where, in accordance with paragraph 9(b), the register of shareholders is kept at the office of some person other than the company and by reason of any default of his the company fails to comply with any of the requirements of paragraph 10 or 11.

(2) In a case to which this sub-paragraph applies, the person at whose office the register of shareholders is kept is guilty of an offence if he knowingly or recklessly authorises or permits the default in question.

(3) A person guilty of an offence under sub-paragraph (2) is liable in respect of each default on summary conviction to a fine not exceeding level 1 on the standard scale.

(4) The power of the court under paragraph 11(3) extends to the making of orders directed to the person at whose office the register of shareholders is kept and to any officer or employee of his.

SCHEDULE 4

Regulation 52

SHARE TRANSFERS

General

1. The instrument of incorporation of a company may contain provison as to share transfers in respect of any matter for which provision is not made in these Regulations or FSA rules.

2. Where any shares are transferred to the company, the company must cancel those shares.

[F5]3. . . . . . .

Textual Amendments

F5 Sch. 4 para. 3 revoked (26.11.2001) by The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), regs. 1, **52(4)**

Transfer of registered shares

4.—(1) Where a transfer of shares is made by the person (if any) who is designated in the company's instrument of incorporation for the purposes of this paragraph, the company may not register the transfer unless such evidence as the company may require to prove that the transfer has taken place has been delivered to the company.

(2) Where for any reason a person ceases to be designated for the purposes of this paragraph—

(a) any shares held by that person which are not disposed of on or before his ceasing to be so designated are to be deemed to be the subject of a new transfer to him which takes effect immediately after he ceases to be so designated; and

(b) the company must make such adjustments to the register as are necessary to reflect his change of circumstances.

5.—(1) Except in the case of any transfer of shares referred to in paragraph 4, the company may not register any transfer unless the transfer documents relating to that transfer have been delivered to the company.

(2) No share certificate has to be delivered by virtue of sub-paragraph (1) in any case where shares are transferred by a nominee of a recognised investment exchange who is designated for the purposes of regulation 47(6) in the rules of the investment exchange in question.

(3) In these Regulations "transfer documents", in relation to any transfer of registered shares, means—

(a) a stock transfer within the meaning of the Stock Transfer Act 1963 [M1] which complies with the requirements of that Act as to the execution and contents of a stock transfer or such other instrument of transfer as is authorised by, and completed and executed in accordance with any requirements in, the company's instrument of incorporation;

(b) except in a case falling within paragraph (3) or (4) of regulation 47, a share certificate relating to the shares in question;

(c) in a case falling within paragraph (3) of regulation 47, such other evidence of title to those shares as is required by the instrument of incorporation of the company; and

(d) such other evidence (if any) as the company may require to prove the right of the transferor to transfer the shares in question.

Marginal Citations

M1 1963 c. 18.

6. In the case of any transfer of shares which meets the requirements of paragraph 4 or 5, the company must—

(a) register the transfer; and

(b) where the name of the transferee is not already entered on the register, enter that name on the register.

7.—(1) A company may, before the end of the period of 21 days commencing with the date of receipt of the transfer documents relating to any transfer of shares, refuse to register the transfer if—

(a) there exists a minimum requirement as to the number or value of shares that must be held by any shareholder of the company and the transfer would result in either the transferor or transferee holding less than the required minimum; or

(b) the transfer would result in a contravention of any provision of the company's instrument of incorporation or would produce a result inconsistent with any provision of the company's prospectus.

(2) A company must give the transferee written notice of any refusal to register a transfer of shares.

(3) Nothing in these Regulations requires a company to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving the notice would result in a contravention of any provision of law (including any law that is for the time being in force in a country or territory outside the United Kingdom).

8.—(1) Where, in respect of any transfer of shares, the company certifies that it has received the transfer documents referred to in paragraph 5(3)(b) or (c) (as the case may be), that certification is to be taken as a representation by the company to any person acting on the faith of the certification that there has been produced to the company such evidence as on its face shows a prima facie title to the shares in the transferor named in the instrument of transfer.

(2) For the purposes of sub-paragraph (1), a certification is made by a company if the instrument of transfer—

(a) bears the words "certificate lodged" (or words to the like effect); and

(b) is signed by a person acting under authority (whether express or implied) given by the company to issue and sign such certifications.

(3) A certification under sub-paragraph (1) is not to be taken as a representation that the transferor has any title to the shares in question.

(4) Where a person acts on the faith of a false certification by a company which is made negligently or fraudulently, the company is liable to pay to that person any damages sustained by him.

Transfer of bearer shares

9. A transfer of title to any bearer share in a company is effected by the transfer from one person to another of the instrument mentioned in regulation 48 which relates to that share.

10. Where the holder of bearer shares proposes to transfer to another person a number of shares which is less than the number specified in the instrument relating to those shares, he may only do so if he surrenders the instrument to the company and obtains a new instrument specifying the number of shares to be transferred.

Miscellaneous

11. Nothing in the preceding provisions of this Schedule prejudices any power of the company to register as shareholder any person to whom the right to any shares in the company has been transmitted by operation of law.

12. A transfer of registered shares that are held by a deceased person at the time of his death which is made by his personal representative is as valid as if the personal representative had been the holder of the shares at the time of the execution of the instrument of transfer.

13. On the death of any one of the joint holders of any shares, the survivor is to be the only person recognised by the company as having any title to or any interest in those shares.

SCHEDULE 5

Regulation 69

AUDITORS

Eligibility

1. No person is eligible for appointment as auditor of an open-ended investment company unless he is **[**[F6]eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006**]**.

Textual Amendments

F6 Words in Sch. 5 para. 1 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 28(2)** (with arts. 6, 11, 12)

2.—(1) A person is ineligible for appointment as auditor of an open-ended investment company if he is—

(a) an officer or employee of the company; or

(b) a partner or employee of such a person, or a partnership of which such a person is a partner.

(2) For the purposes of sub-paragraph (1), an auditor of a company is not to be regarded as an officer or employee of the company.

[[F7](3) A person is also ineligible for appointment if there exists between that person, or any associate of that person, and the company a connection of any such description as may be specified by regulations made by the Secretary of State under section 1214(4) of the Companies Act 2006.

(4) In sub-paragraph (3) "associate" has the same meaning as in Part 42 of that Act (see section 1260 of that Act).

(5) The power of the Secretary of State to make regulations under section 1214(4) of that Act for the purposes of subsection (1) of that section in relation to statutory auditors is exercisable, subject to the same conditions, for the purposes of sub-paragraph (3) above in relation to auditors of open-ended investment companies.**]**

Textual Amendments

F7 Sch. 5 para. 2(3)-(5) substituted for Sch. 5para. 2(3) (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 28(3)** (with arts. 6, 11, 12)

3.—(1) No person is to act as auditor of a company if he is ineligible for appointment to the office.

(2) If during his term of office an auditor of a company becomes ineligible for appointment to the office, he must thereupon vacate office and give notice in writing to the company concerned that he has vacated it by reason of ineligibility.

(3) A person who acts as auditor of a company in contravention of sub-paragraph (1) or fails to give notice of vacating his office as required by sub-paragraph (2) is guilty of an offence and liable—

(a) on conviction on indictment, to a fine;

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

(4) In the case of continued contravention he is liable on a second or subsequent summary conviction (instead of the fine mentioned in sub-paragraph (3)(b)) to a fine not exceeding £100 in respect of each day on which the contravention is continued.

(5) In proceedings against a person for an offence under this paragraph it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment.

Appointment

4.—(1) Every company must appoint an auditor or auditors in accordance with this paragraph.

(2) **[**F8Subject to sub-paragraphs (6) and (7), a company**]** must, at each general meeting at which the company's annual report is laid, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next general meeting at which an annual report is laid.

(3) **[**F9Subject to sub-paragraph (6), the first**]** auditors of a company may be appointed by the directors of the company at any time before the first general meeting of the company at which an annual report is laid; and auditors so appointed are to hold office until the conclusion of that meeting.

(4) Where no appointment is made under sub-paragraph (3), the first auditors of any company may be appointed by the company in general meeting.

(5) No rules made under section 340 of the Act (appointment of auditors) apply in relation to open-ended investment companies.

[F10(6) On the date on which the holding of an annual general meeting is dispensed with in accordance with regulation 37A, any auditor or auditors appointed in accordance with sub-paragraph (2) or (3) ceases to hold office and the directors must forthwith re-appoint the auditor or auditors or appoint a new auditor or auditors.**]**

[F11(7) The directors of any company which does not hold annual general meetings must appoint the auditor or auditors.**]**

Textual Amendments

F8 Words in Sch. 5 para. 4(2) substituted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(9)(a)**

F9 Words in Sch. 5 para. 4(3) substituted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(9)(b)**

F10 Sch. 5 para. 4(6) inserted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(9)(c)**

F11 Sch. 5 para. 4(7) inserted (6.4.2005) by The Open-Ended Investment Companies (Amendment) Regulations 2005 (S.I. 2005/923), regs. 1, **2(9)(d)**

5. If, in any case, no auditors are appointed as required in paragraph 4, the Authority may appoint a person to fill the vacancy.

6.—(1) The directors of a company, or the company in general meeting, may fill a casual vacancy in the office of auditor.

(2) While such a vacancy continues, any surviving or continuing auditor or auditors may continue to act.

7.—(1) Sub-paragraphs (2) to (5) apply to the appointment, as auditor of a company, of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any country or territory in which a partnership is not a legal person; and sub-paragraphs (3) to (5) apply to the appointment as such an auditor of a partnership constituted under the law of Scotland, or under the law of any country or territory in which an partnership is a legal person.

(2) The appointment is, unless the contrary intention appears, an appointment of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment is to be treated as extending to—

(a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and

(b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.

(4) For this purpose a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person is to be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and no person succeeds to the appointment under sub-paragraph (3), the appointment may with the consent of the company be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the company to be treated as comprising the appointment.

Rights

8.—(1) The auditors of a company have a right of access at all times to the company's books, accounts and vouchers and are entitled to require from the company's officers such information and explanations as they think necessary for the performance of their duties as auditors.

(2) An officer of a company commits an offence if he knowingly or recklessly makes to the company's auditors a statement (whether written or oral) which—

(a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the company; and

(b) is misleading, false or deceptive in a material particular.

(3) A person guilty of an offence under sub-paragraph (2) is liable—

(a) on conviction on indictment, to imprisonment not exceeding a term of two years or to a fine or to both;

(b) on summary conviction, to imprisonment not exceeding a term of three months or to a fine not exceeding the statutory maximum or to both.

9.—(1) The auditors of a company are entitled—

(a) to receive all such notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to receive;

(b) to attend any general meeting of the company; and

(c) to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(2) The right to attend and be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

Remuneration

10.—(1) The remuneration of auditors of a company who are appointed by the company in general meeting must be fixed by the company in general meeting or in such manner as the company in general meeting may decide.

(2) The remuneration of auditors who are appointed by the directors or the Authority must, as the case may be, be fixed by the directors or the Authority (and be payable by the company even where it is fixed by the Authority).

11.—(1) Subject to sub-paragraph (2), the power of the Secretary of State to make regulations under **[**F12section 494 of the Companies Act 2006**]** (remuneration of auditors or their associates for non-audit work) in relation to company auditors is to be exercisable in relation to auditors of open-ended investment companies—

(a) for like purposes; and

(b) subject to the same conditions.

(2) For the purposes of the exercise of the power to make regulations under **[**F13section 494 of the Companies Act 2006**]**, as extended by sub-paragraph (1), the reference in **[**F14section 494(4)**]** to a note to a company's accounts is to be taken to be a reference to the annual report of an open-ended investment company.

Textual Amendments

F12 Words in Sch. 5 para. 11(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 222(a)** (with arts. 6, 11, 12)

F13 Words in Sch. 5 para. 11(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 222(b)(i)** (with arts. 6, 11, 12)

F14 Words in Sch. 5 para. 11(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 222(b)(ii)** (with arts. 6, 11, 12)

Removal

12.—(1) A company may by resolution remove an auditor from office notwithstanding anything in any agreement between it and him.

(2) Where a resolution removing an auditor is passed at a general meeting of a company, the company must, not later than 14 days after the holding of the meeting, notify the Authority of the passing of the resolution.

(3) Nothing in this paragraph is to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

Rights on removal or non-reappointment

13.—(1) A resolution at a general meeting of a company—

(a) removing an auditor before the expiration of his period of office; or

(b) appointing as auditor a person other than the retiring auditor;

is not effective unless notice of the intention to move it has been given to the open-ended investment company at least 28 days before the meeting at which it is moved.

(2) On receipt of notice of such an intended resolution, the company must forthwith send a copy to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.

(3) The auditor proposed to be removed or, as the case may be, the retiring auditor may make with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to the shareholders of the company.

(4) The company must (unless the representations are received by the company too late for it to do so)—

(a) in any notice of the resolution given to the shareholders of the company, state the fact of the representations having been made;

(b) send a copy of the representations to each of the shareholders whose name appears on the register of shareholders (other than the designated person) and to whom notice of the meeting is or has been sent;

(c) take such steps as FSA rules may require for the purpose of bringing the fact that the representations have been made to the attention of the holders of any bearer shares; and

(d) at the request of any holder of bearer shares, provide a copy of the representations.

(5) If a copy of any such representations is not sent out as required because they were received too late or because of the company's default or if, for either of those reasons, any steps required by sub-paragraph (4)(c) or (d) are not taken, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out, the steps required by sub-paragraph (4)(c) or (d) need not be taken and the representations need not be read out at the meeting if, on the application of the company or any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the company on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

14.—(1) An auditor who has been removed from office has, notwithstanding his removal, the rights conferred by paragraph 9 in relation to any general meeting of the company at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his removal.

(2) The reference in paragraph 9 to business concerning the auditors as auditors is to be construed in relation to an auditor who has been removed from office as a reference to business concerning him as former auditor.

Resignation

15.—(1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's head office.

(2) Such a notice is not effective unless it is accompanied by the statement required by paragraph 18.

(3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

(4) The company must, not later than 14 days after the deposit of a notice of resignation, send a copy of the notice to the Authority.

16.—(1) This paragraph applies where a notice of resignation of an auditor is accompanied by a statement of circumstances which he considers ought to be brought to the attention of the shareholders or creditors of the company.

(2) An auditor may deposit with the notice a signed requisition that a general meeting of the company be convened forthwith for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The company must, not later than 21 days after the date of the deposit of a requisition under this paragraph, proceed to convene a meeting for a day not later than 28 days after the date on which the notice convening the meeting is given.

(4) The auditor may request the company to circulate a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation to each of the shareholders of the company whose name appears on the register of shareholders (other than the designated person) —

(a) before the meeting convened on his requisition; or

(b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation;

and to 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.

(5) The company must (unless the statement is received by it too late for it to do so)—

(a) in any notice or advertisement of the meeting given or made to shareholders of the company, state the fact of the statement having been made;

(b) send a copy of the statement to every shareholder of the company to whom notice of the meeting is or has been sent; and

(c) at the request of any holder of bearer shares, provide a copy of the statement.

(6) If a copy of the statement is not sent out or provided as required because it was received too late or because of the company's default the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(7) Copies of a statement need not be sent out or provided and the statement need not be read out at the meeting if, on the application of the company or any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the company on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

17.—(1) An auditor who has resigned has, notwithstanding his removal, the rights conferred by paragraph 9 in relation to any such general meeting of the company as is mentioned in paragraph 16(4)(a) or (b).

(2) The reference in paragraph 9 to business concerning the auditors as auditors is to be construed in relation to an auditor who has resigned as a reference to business concerning him as former auditor.

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—

(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.

SCHEDULE 6

Regulation 70

MERGERS AND DIVISIONS

1. This Schedule applies to any reconstruction or amalgamation involving an open-ended investment company which takes the form of a scheme described in paragraph 4.

2. An open-ended investment company may apply to the court under **[**F15section 896 or 899 of the Companies Act 2006**]** (power of company to compromise with creditors and members) **[**F16in respect of**]** a scheme falling within any of sub-paragraphs (a) to (c) of paragraph 4(1) where—

(a) the scheme in question involves a compromise or arrangement with its shareholders or creditors or any class of its shareholders or creditors; and

(b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—

(i) shares in the transferee company receivable by shareholders of the transferor company; or

(ii) where there is more than one transferor company and any one or more of them is a public company, shares in the transferee company receivable by shareholders or members of the transferor companies (as the case may be);

in each case with or without any cash payment to shareholders.

Textual Amendments

F15 Words in Sch. 6 para. 2 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(2)(a)** (with arts. 6, 11, 12)

F16 Words in Sch. 6 para. 2 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(2)(b)** (with arts. 6, 11, 12)

3. A public company may apply to the court under **[**[F17]section 896 or 899 of the Companies Act 2006**][**[F18]**in respect of]** a scheme falling within sub-paragraph (b) or (c) of paragraph 4(1) where—

(a) the scheme in question involves a compromise or arrangement with its members or creditors or any class of its members or creditors; and

(b) the consideration for the transfer or each of the transfers envisaged by the scheme is to be—

(i) shares in the transferee company receivable by members of the transferor company; or

(ii) where there is more than one transferor company and any one or more of them is an open-ended investment company, shares in the transferee company receivable by shareholders or members of the transferor companies (as the case may be),

in each case with or without any cash payment to shareholders.

Textual Amendments

F17 Words in Sch. 6 para. 3 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(3)(a)(i)** (with arts. 6, 11, 12)

F18 Words in Sch. 6 para. 3 substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(3)(a)(ii)** (with arts. 6, 11, 12)

4.—(1) The schemes falling within this paragraph are—

(a) any scheme under which the undertaking, property and liabilities of an open-ended investment company are to be transferred to another such company, other than one formed for the purpose of, or in connection with the scheme;

(b) any scheme under which the undertaking, property and liabilities of two or more bodies corporate, each of which is either—

(i) an open-ended investment company; or

(ii) a public company,

are to be transferred to an open-ended investment company formed for the purpose of, or in connection with, the scheme;

(c) any scheme under which the undertaking, property and liabilities of an open-ended investment company or a public company are to be divided among and transferred to two or more open-ended investment companies whether or not formed for the purpose of, or in connection with, the scheme.

(2) Nothing in this Schedule is to be taken as enabling the court to sanction a scheme under which the whole or any part of the undertaking, property or liabilities of an open-ended investment company may be transferred to any person other than another such company.

[[F19]**5.** An application made by virtue of paragraph 2 or 3 shall be treated as one to which Part 27 of the Companies Act 2006 applies (mergers and divisions of public companies), and the provisions of that Part and Part 26 of that Act have effect accordingly, subject to paragraph 6.**]**

Textual Amendments

F19 Sch. 6 para. 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. 223(4)** (with arts. 6, 11, 12)

6.—(1) **[**[F20]The provisions of the Companies Act 2006**]** referred to in paragraph 5 have effect with such modifications as are necessary or appropriate for the purposes of this Schedule.

(2) In particular, any reference in those provisions to **[**[F21]a merger by absorption, a merger by formation of a new company or a division**]** is to be taken to be a reference to a scheme falling within sub-paragraph (a), (b) or (c) of paragraph 4(1).

(3) Without prejudice to the generality of sub-paragraph (1), the following references in those provisions have effect as follows, unless the context otherwise requires—

(a) any reference to a scheme is to be taken to be a reference to a scheme falling within any of sub-paragraphs (a) to (c) of paragraph 4(1);

(b) any reference to a company is to be taken to be a reference to an open-ended investment company;

(c) any reference to members is to be taken to be a reference to shareholders of an open-ended investment company;

(d) any reference to the registered office of a company is to be taken to be a reference to the head office of an open-ended investment company;

(e) any reference to the memorandum and articles of a company is to be taken to be a reference to the instrument of incorporation of an open-ended investment company;

(f) any reference to a report under section 103 [M2] of the 1985 Act (non-cash consideration to be valued before allotment) is to be taken to be a reference to any report with respect to the valuation of any non-cash consideration given for shares in an open-ended investment company which may be required by FSA rules;

(g) any reference to annual accounts is to be taken to be a reference to the accounts contained in the annual report of an open-ended investment company;

[F22](h) . . . . . .

(i) any reference to the requirements of **[**[F23]the Companies Act 2006**]** as to balance sheets forming part of a company's annual accounts is to be taken to be a reference to any requirements arising by virtue of FSA rules as to balance sheets drawn up for the purposes of the accounts contained in the annual report of an open-ended investment company;

(j) any reference to paid up capital is to be taken to be a reference to the share capital of an open-ended investment company.

Textual Amendments

F20 Words in Sch. 6 para. 6(1) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(a)** (with arts. 6, 11, 12)

F21 Words in Sch. 6 para. 6(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(b)** (with arts. 6, 11, 12)

F22 Sch. 6 para. 6(3)(h) omitted (6.4.2008) by virtue of The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(c)(i)** (with arts. 6, 11, 12)

F23 Words in Sch. 6 para. 6(3)(i) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 223(5)(c)(ii)** (with arts. 6, 11, 12)

Marginal Citations

M2 Amended by the 1986 Act, section 439(1), Schedule 13, Part I.

SCHEDULE 7

Regulation 84

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

PRIMARY LEGISLATION

Trustee Investments Act 1961 (c. 62)

1. For paragraph 2A of Part III of Schedule 1 to the Trustee Investments Act 1961 [M3] (wider-range investments), substitute—

"(2A) In any shares in an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.".

Marginal Citations

M3 Paragraph 2A of Part III of Schedule 1 to the 1961 Act was inserted by the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (S.I 1996/2827).

Stock Transfer Act 1963 (c. 18)

2. For section 1(4)(f) of the Stock Transfer Act 1963 [M4] (registered securities to which section 1 applies), substitute—

"(f) shares issued by an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.".

Marginal Citations

M4 Paragraph (f) of section 1(4) of the 1963 Act was inserted by S.I. 1996/2827.

Companies Act 1985 (c. 6)

3.—(1) Section 26 of the Companies Act 1985 ("the 1985 Act") (prohibition on registration of certain names) is amended as follows.

(2) For paragraph (bb) of sub-section (1) [M5], substitute—

"(bb) which includes, at any place in the name, the expressions "investment company with variable capital" or "open-ended investment company" or their Welsh equivalents ("cwmni buddsoddi â chyfalaf newidiol" and "cwmni buddsoddiant penagored" respectively);".

(3) In subsection (3)(b), omit the word "and" after "cyhoeddus"); and at the end insert

"and "open-ended investment company" or its Welsh equivalent ("cwmni buddsoddiant penagored");".

Marginal Citations

M5 Subsection (1)(bb) was inserted by S.I. 1996/2827.

4.—(1) Section 199(2A) of the 1985 Act (interests to be disregarded in determining whether a person holds a material interest in shares) is amended as follows.

(2) In paragraph (bb) [M6], for "investment company with variable capital" substitute " open-ended investment company ".

(3) In paragraph (d), for "(a), (b) or (c)" substitute " (a), (b), (bb) or (c) ".

Marginal Citations

M6 Paragraph (bb) of section 199(2A) of the 1985 Act was inserted by S.I. 1996/2827.

5. In section 209(1)(h) of the 1985 Act (interests to be disregarded for purposes of obligation to disclose interests in shares) for sub-paragraph (iii) [M7] substitute—

"(iii) by virtue of his being a depositary, within the meaning of the Open-Ended Investment Companies Regulations 2001, of an open-ended investment company.".

Marginal Citations

M7 Sub-paragraph (iii) of section 209(1)(h) of the 1985 Act was inserted by S.I. 1996/2827.

6. In section 220(1) of the 1985 Act (definitions for Part VI) omit the definition of "investment company with variable capital"[M8] and insert after the definition of "material interest"—

""open-ended investment company" has the same meaning as in the Open-Ended Investment Companies Regulations 2001;".

Marginal Citations

M8 This definition was inserted by S.I. 1996/2827.

7. In section 716(2) of the 1985 Act (exemptions from prohibition on formation of any company, association or partnership with more than 20 members), for paragraph (e) [M9] substitute—

"(e) of an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.".

Marginal Citations

M9 Paragraph (e) of section 716(2) of the 1985 Act was inserted by S.I. 1996/2827.

8. In section 718(2) of the 1985 Act (exemptions from application of Act to unregistered companies), for paragraph (d) [M10] substitute—

"(d) any open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.".

Marginal Citations

M10 Paragraph (d) of section 718(2) of the 1985 Act was inserted by S.I. 1996/2827.

Company Directors Disqualification Act 1986 (c. 46)

9. In Schedule 1 to the Company Directors Disqualification Act 1986 (matters for determining unfitness of directors), for paragraph 5A [M11] substitute—

"**5A.** In the application of this Part of this Schedule in relation to any person who is a director of an open-ended investment company, any reference to a provision of the Companies Act is to be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies Regulations 2001 or of any rules made under regulation 6 of those Regulations (Financial Services Authority rules).".

Marginal Citations

M11 Paragraph 5A of Schedule 1 was inserted by S.I. 1996/2827.

Pension Schemes Act 1993 (c. 48)

10. In section 38(6) (permitted forms for appropriate schemes), for paragraph (d) [M12] substitute—

"(d) an open-ended investment company within the meaning of the Open-Ended Investment Companies Regulations 2001.".

Marginal Citations

M12 Paragraph (d) of section 38(6) was inserted by S.I. 1996/2827.

Limited Liability Partnerships Act 2000 (c. 12)

11. In paragraph 8(2) of the Schedule to the Limited Liability Partnerships Act 2000 (similarity of names), omit the word "and" after "public limited company", and insert at the end—

""open-ended investment company", and".

PART II

SUBORDINATE LEGISLATION

The Uncertificated Securities Regulations 1995 (S.I. 1995/3272)

[F24]12. . . . . . .

Textual Amendments

F24 Sch. 7 para. 12 revoked (26.11.2001) by The Uncertificated Securities Regulations 2001 (S.I. 2001/3755), regs. 1, **52(4)**

Status:
Point in time view as at 06/04/2008.

Changes to legislation:
There are currently no known outstanding effects for the The Open-Ended Investment Companies Regulations 2001.