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STATUTORY INSTRUMENTS

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**1996 No. 2827**

**The Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996**

**PART II**

**FORMATION, SUPERVISION AND CONTROL**

*Investigations*

**Investigations: functions of Secretary of State and SIB**

**21.** In regulations 22 to 24 below, “relevant authority” means the Secretary of State or SIB and, in relation to any investigation carried out by an inspector, means the person who appointed the inspector in question.

**Investigations: powers and duties of inspectors**

**22.—**(1) A relevant authority may appoint one or more competent inspectors to investigate and report on the affairs of, or of any director or depositary of, an investment company with variable capital if it appears to the authority that it is in the interests of shareholders of the company to do so or that the matter is of public concern.

(2) An inspector appointed under paragraph (1) above 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 (as the case may be) of the directors, depositary, trustee or operator of,—

- (a) an investment company with variable capital the directors of which include any of the directors of the company whose affairs are being investigated by virtue of that paragraph;
- (b) an investment company with variable capital the directors of which include any of the directors of the depositary whose affairs are being investigated by virtue of that paragraph;
- (c) an investment company with variable capital 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 investment company with variable capital 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 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 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) Sections 434 and 436 of the 1985 Act<sup>(1)</sup> (production of documents and evidence to inspectors) shall apply in relation to an inspector appointed under this regulation as they apply to an inspector appointed under section 431 of that Act but with the modifications specified in paragraph (4) below.
- (4) In the provisions applied by paragraph (3) above—
- (a) for any reference to a company there shall be substituted a reference to the company, director or depositary under investigation by virtue of paragraph (1) above;
  - (b) any reference to an officer of the company shall include a reference to—
    - (i) any director of the company or depositary under investigation by virtue of paragraph (1) above; or
    - (ii) where the director under investigation by virtue of that paragraph is a body corporate, any director of that body;
  - (c) for any reference to any other body corporate whose affairs are investigated under section 433(1) of the 1985 Act there shall be substituted a reference to any other investment company with variable capital or collective investment scheme under investigation by virtue of paragraph (2) above; and
  - (d) any reference to an officer of such a body corporate shall include a reference to the depositary and directors of an investment company with variable capital or the trustee and operator of a collective investment scheme.
- (5) This regulation and regulations 23 and 24 below confer the same powers in relation to a shadow director of an investment company with variable capital as they confer in relation to a director of such a company.

### **Investigations: disclosure**

**23.**—(1) A person shall not under regulation 22 above be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.

(2) Nothing in regulation 22 above requires a person (except as mentioned in paragraph (3) below) to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (b) the making of the requirement was authorised by the relevant authority.

(3) Paragraph (2) above does not apply where the person owing the obligation of confidence or to whom it is owed is—

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(1) Sections 434 and 436 were amended by section 56 of the Companies Act 1989 (c. 40).

- (a) an investment company with variable capital, director or depositary under investigation by virtue of paragraph (1) of regulation 22 above; or
- (b) an investment company with variable capital, or any other person, under investigation by virtue of paragraph (2) of that regulation.

### **Investigations: supplementary**

24.—(1) Where a person claims a lien on a document its production under regulation 22 above shall be without prejudice to the lien.

(2) An inspector appointed under regulation 22 above may, and if directed by the relevant authority shall, make interim reports to the authority and on the conclusion of his investigation shall make a final report to the authority.

(3) If it appears to the relevant authority that matters have come to light in the course of an inspector's investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, the relevant authority may direct the inspector to take no further steps in the investigation or to take only such steps as are specified in the direction.

(4) Where an investigation is the subject of a direction under paragraph (3) above, the inspector shall make a final report to the relevant authority only where it directs him to do so.

(5) Each final report shall be written or printed as the relevant authority may direct and the authority may, if it thinks fit—

- (a) furnish a copy, on request and on payment of the prescribed fee—
  - (i) to any director or shareholder, or to the depositary, of a company under investigation by virtue of paragraph (1) of regulation 22 above;
  - (ii) where a director under investigation by virtue of that paragraph is a body corporate, to any director of that body;
  - (iii) to any director of a depositary under investigation by virtue of that paragraph; or
  - (iv) to any other person whose conduct is referred to in the report; and
- (b) cause the report to be published.

(6) A person who is convicted on a prosecution instituted as a result of an investigation under regulation 22 above may, in the same proceedings, be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

(7) For the purposes of paragraph (6) above, there shall be treated as expenses of the investigation, in particular, such reasonable sums as the relevant authority may determine in respect of general staff costs and overheads.

(8) The powers in section 205(2) of the 1986 Act (general power to make regulations), as they apply in relation to fees to be prescribed for the purposes of section 94(9) of that Act (investigations in respect of authorised unit trusts etc), shall be exercisable in relation to fees to be prescribed for the purposes of paragraph (5)(a) above—

- (a) for like purposes; and
- (b) subject to the same conditions.

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(2) Section 205 was substituted by section 206(1) of, and paragraph 18 of Schedule 23 to, the Companies Act 1989 (c. 40) and amended by the Transfer of Functions (Financial Services) Order 1992 (S.I.1992/1315).