
STATUTORY INSTRUMENTS

1996 No. 2827

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

PART II

FORMATION, SUPERVISION AND CONTROL

Intervention

Directions

18.—(1) SIB may give a direction under this regulation in relation to an investment company with variable capital if it appears to it—

- (a) that any of the requirements for the making of an authorisation order in respect of the company are no longer satisfied;
- (b) that the exercise of the power conferred by this paragraph is desirable in the interests of shareholders, or potential shareholders, of the company; or
- (c) without prejudice to sub-paragraph (b) above, that the company, any of its directors or its depositary—
 - (i) has contravened any relevant provision;
 - (ii) in purported compliance with any such provision, has furnished SIB with false, inaccurate or misleading information; or
 - (iii) has contravened any prohibition or requirement imposed under a provision falling within paragraph (9)(a), (c) or (e) below.

(2) A direction under this regulation may—

- (a) require the company to cease the issue or redemption, or both the issue and redemption, of shares or any class of shares in the company on a date specified in the direction until such further date as is specified in that or another direction;
- (b) in the case of a director of the company who is the person designated in the company's instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations, require that director to cease transfers to or from, or both to and from, his own holding of shares, or of any class of shares, in the company on a date specified in the direction until such further date as is specified in that or another direction;
- (c) in the case of an umbrella company, require that investments made in respect of one or more parts of the scheme property which are pooled separately be realised and, following the discharge of such liabilities of the company as are attributable to the relevant part or parts of the scheme property, that the resulting funds be distributed to shareholders in accordance with SIB regulations;

- (d) require any director of the company, by such date as is specified in the direction or if no date is specified as soon as practicable, to present a petition to the court to wind up the company;
- (e) require that the affairs of the company be wound up otherwise than by the court.

(3) Subject to paragraph (4) below, the revocation of an authorisation order in respect of a company shall not affect the operation of any direction under this regulation which is then in force; and a direction under this regulation may be given in relation to a company in the case of which an authorisation order has been revoked if a direction under this regulation was already in force at the time of revocation.

(4) Where a winding up order has been made by the court, no direction under this regulation shall have effect in relation to the company concerned.

(5) For the purposes of paragraph (1)(b) above, SIB may take into account—

- (a) any matter relating to the company or its depositary;
- (b) any matter relating to any director or controller of the depositary of the company;
- (c) any matter relating to any person employed by or associated, for the purposes of the business of the company, with the company or its depositary; or
- (d) any matter relating to—
 - (i) any director of the company; or
 - (ii) any person who would be such a person as is mentioned in any of sub-paragraphs (a) to (d) of paragraph (2) of regulation 9 above if that paragraph applied in respect of a director of the company as it applies in respect of a proposed director.

(6) Sections 60 (public statement as to person's misconduct), 61 (injunctions and restitution orders) and 62 (actions for damages) of the 1986 Act shall have effect in relation to a contravention of a direction under this regulation as they have effect in relation to any such contravention as is mentioned in those sections.

(7) SIB may, either of its own motion or on the application of the company or its depositary, withdraw or vary a direction given under this regulation if it appears to SIB that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

(8) This regulation confers the same powers in relation to a shadow director of an investment company with variable capital as it confers in relation to a director of such a company.

(9) In paragraph (1)(c) above, "relevant provision" means any provision of—

- (a) the 1986 Act;
- (b) any rules or regulations made under that Act;
- (c) these Regulations;
- (d) SIB regulations; and
- (e) any rules of a recognised self-regulating organisation of which an investment company with variable capital, or any director or depositary or such a company, is a member.