
STATUTORY INSTRUMENTS

2001 No. 1228

The Open-Ended Investment Companies Regulations 2001

PART II

FORMATION, SUPERVISION AND CONTROL

Authorisation

Applications for authorisation

12.—(1) Any application for an authorisation order in respect of a proposed open-ended investment company—

- (a) must be made in such manner as the Authority may direct;
- (b) must state with respect to each person proposed in the application as a director of the company the particulars set out in regulation 13;
- (c) must state the corporate name and registered or principal office of the person proposed in the application as depositary of the company; and
- (d) must contain or be accompanied by such other information as the Authority may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it the Authority may require the applicant to furnish additional information.

(3) Different directions may be given and different requirements imposed in relation to different applications.

(4) Any information to be furnished to the Authority under this regulation must be in such form or verified in such manner as it may specify.

(5) A person commits an offence if—

- (a) for the purposes of or in connection with any application under this regulation; or
- (b) in purported compliance with any requirement imposed on him by or under this regulation;

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

(6) A person guilty of an offence under paragraph (5) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

Particulars of directors

13.—(1) Subject to paragraph (2), an application for an authorisation order must contain the following particulars with respect to each person proposed as a director of the company—

- (a) in the case of an individual, his present name, any former name, his usual residential address, his nationality, his business occupation (if any), particulars of any other directorships held by him or which have been held by him and his date of birth;
 - (b) in the case of a body corporate of Scottish firm, its corporate or firm name and the address of its registered or principal office.
- (2) The application need not contain particulars of a directorship—
- (a) which has not been held by a director at any time during the 5 years preceding the date on which the application is delivered to the Authority;
 - (b) which is held by a director in a body corporate which is dormant and, if he also held that directorship for any period during those 5 years, which was dormant for the whole of that period; or
 - (c) which was held by a director for any period during those 5 years in a body corporate which was dormant for the whole of that period.
- (3) For the purposes of paragraph (2), a body corporate is dormant during a period in which no significant transaction occurs; and it ceases to be dormant on the occurrence of such a transaction.
- (4) In paragraph (1)(a)—
- (a) name means a person's Christian name (or other forename) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them;
 - (b) the reference to a former name does not include—
 - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title;
 - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more; or
 - (iii) in the case of a married woman, the name by which she was known previous to the marriage; and
 - (c) the reference to directorships is a reference to directorships in any body corporate whether or not incorporated in Great Britain.
- (5) In paragraph (3) the reference to a significant transaction is, in relation to a company within the meaning of section 735(1) of the 1985 Act, a reference to a significant accounting transaction within the meaning of section 249AA(5)(1) of that Act.

Authorisation

14.—(1) Where an application is duly made under regulation 12, the Authority may make an authorisation order in respect of an open-ended investment company if—

- (a) it is satisfied that the company will, on the coming into effect of the authorisation order, comply with the requirements in regulation 15;
- (b) it is satisfied that the company will, at that time, comply with the requirements of FSA rules;
- (c) it has been provided with a copy of the proposed company's instrument of incorporation and a certificate signed by a solicitor to the effect that the instrument of incorporation complies with Schedule 2 to these Regulations and with such of the requirements of FSA rules as relate to the contents of that instrument of incorporation; and

(1) Section 249AA was inserted by the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000 ([S.I. 2000/1430](#)).

- (d) it has received a notification under regulation 18(3) from the appropriate registrar.
- (2) If the Authority makes an order under paragraph (1), it must give written notice of the order to the applicant.
- (3) In determining whether the requirement referred to in regulation 15(5) is satisfied in respect of any proposed director of a company, the Authority may take into account—
 - (a) any matter relating to any person who is or will be employed by or associated with the proposed director, for the purposes of the business of the company;
 - (b) if the proposed director is a body corporate, any matter relating to any director or controller of the body, to any other body corporate in the same group or to any director or controller of any such other body corporate;
 - (c) if the proposed director is a partnership, any matter relating to any of the partners; and
 - (d) if the proposed director is an unincorporated association, any matter relating to any member of the governing body of the association or any officer or controller of the association.
- (4) An application must be determined by the Authority before the end of the period of six months beginning with the date on which it receives a completed application.
- (5) The Authority may determine an incomplete application if it considers it appropriate to do so and, if it does so, it must determine the application within the period of twelve months beginning with the date on which it first receives the application.
- (6) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.
- (7) An authorisation order must specify the date on which it is to come into effect.
- (8) Schedule 2 to these Regulations makes provision with respect to the contents, alteration and binding nature of the instrument of incorporation of an open-ended investment company.

Requirements for authorisation

- 15.**—(1) The requirements referred to in regulation 14(1)(a) are as follows.
- (2) The company and its instrument of incorporation must comply with the requirements of these regulations and FSA rules.
 - (3) The head office of the company must be situated in England and Wales, Wales or Scotland.
 - (4) The company must have at least one director.
 - (5) The directors of the company must be fit and proper persons to act as such.
 - (6) If the company has only one director, that director must be a body corporate which is an authorised person and which has permission under Part IV of the Act to act as sole director of an open-ended investment company.
 - (7) If the company has two or more directors, the combination of their experience and expertise must be such as is appropriate for the purposes of carrying on the business of the company.
 - (8) The person appointed as the depositary of the company—
 - (a) must be a body corporate incorporated in the United Kingdom or another EEA State;
 - (b) must have a place of business in the United Kingdom;
 - (c) must have its affairs administered in the country in which it is incorporated;
 - (d) must be an authorised person;
 - (e) must have permission under Part IV of the Act to act as the depositary of an open-ended investment company; and

- (f) must be independent of the company and of the persons appointed as directors of the company.
- (9) The name of the company must not be undesirable or misleading.
- (10) The aims of the company must be reasonably capable of being achieved.
- (11) The company must meet one or both of the following requirements—
 - (a) shareholders are entitled to have their shares redeemed or repurchased upon request at a price related to the net value of the scheme property and determined in accordance with the company's instrument of incorporation and FSA rules; or
 - (b) shareholders are entitled to sell their shares on an investment exchange at a price not significantly different from that mentioned in sub-paragraph (a).

Representations against refusal of authorisation

- 16.**—(1) If the Authority proposes to refuse an application made under regulation 12, it must give the applicant a warning notice.
- (2) If the Authority decides to refuse the application—
 - (a) it must give the applicant a decision notice; and
 - (b) the applicant may refer the matter to the Tribunal.

Certificates

- 17.**—(1) If an open-ended investment company which complies with the conditions necessary to enable it to enjoy the rights conferred by the UCITS Directive so requests, the Authority may issue a certificate to the effect that the company complies with those conditions.
- (2) Such a certificate may be issued on the making of an authorisation order in respect of the company or at any subsequent time.