

---

STATUTORY INSTRUMENTS

---

**2001 No. 1228**

**The Open-Ended Investment Companies Regulations 2001**

**PART II**

**FORMATION, SUPERVISION AND CONTROL**

*Powers of intervention*

**Directions**

**25.**—(1) The Authority may give a direction under this regulation if it appears to the Authority that—

- (a) one or more requirements for the making of an authorisation order are no longer satisfied;
  - (b) the company, any of its directors or its depository—
    - (i) has contravened or is likely to contravene any relevant provision; or
    - (ii) has, in purported compliance with any such provision, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or
  - (c) it is desirable to give a direction in order to protect the interests of shareholders or potential shareholders in the company.
- (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;
  - (b) in the case of a director of the company who is the designated person, 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;
  - (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 FSA rules;
  - (d) require any director of the company to present a petition to the court to wind up the company; or
  - (e) require that the affairs of the company be wound up otherwise than by the court.
- (3) Subject to paragraph (4), if the authorisation order is revoked, the revocation does 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a direction under this regulation may be given in relation to a company in the case of which an authorisation order has been revoked if a direction under this regulation was already in force at the time of revocation.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 is to have effect in relation to the company concerned.

(5) For the purposes of paragraph (1)(c), the Authority may take into account any matter relating to any of the persons mentioned in regulation 23(2).

(6) If a person contravenes a direction under this regulation, section 150 (actions for damages) applies to the contravention as it applies to a contravention mentioned in that section.

(7) The Authority may, on its own initiative or on the application of the company or its depositary, revoke or vary a direction given under this regulation if it appears to the Authority—

- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
- (b) in the case of variation, that the direction should take effect or continue in force in a different form.

### **Applications to the court**

**26.**—(1) This regulation applies if the Authority could give a direction under regulation 25 in relation to an open-ended investment company.

(2) The Authority may apply to the court for an order removing the depositary or any director of the company and replacing any such person with a person or persons nominated by the Authority.

(3) The Authority may nominate a person for the purposes of paragraph (2) only if it is satisfied that, if the order were made, the requirements of paragraphs (4) to (7) or, as the case may be, of paragraph (8) of regulation 15 would be met.

(4) If it appears to the Authority that there is no person whom it may nominate for the purposes of paragraph (2), it may apply to the court for an order removing the director in question or the depositary (or both) and appointing an authorised person to wind up the company.

(5) On an application under this regulation the court may make such order as it thinks fit.

(6) The court may, on the application of the Authority, rescind any such order as is mentioned in paragraph (4) and substitute such an order as is mentioned in paragraph (2).

(7) The Authority must—

- (a) give written notice of the making of an application under this section to—
  - (i) the company;
  - (ii) its depositary; and
  - (iii) where the application seeks the removal of any director of the company, that director; and
- (b) take such steps as it considers appropriate for bringing the making of the application to the attention of the shareholders of the company.

### **Procedure on giving directions under regulation 25 and varying them on Authority's own initiative**

**27.**—(1) A direction takes effect—

- (a) immediately, if the notice given under paragraph (3) states that that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under regulation 25, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under regulation 25, or gives such a direction with immediate effect, it must give separate written notices to the company and its depositary.

(4) The notice must—

- (a) give details of the direction;
- (b) inform the person to whom it is given of when the direction takes effect;
- (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;
- (d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
- (e) inform him of his right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under regulation 25(2)(a) or (b), the notice must state that the requirement has effect until—

- (a) a specified date; or
- (b) a further direction.

(6) If the direction imposes a requirement under regulation 25(2)(d) or (e), the petition must be presented (or, as the case may be, the company must be wound up)—

- (a) by a date specified in the notice; or
- (b) if no date is specified, as soon as possible.

(7) The Authority may extend the period allowed under the notice for making representations.

(8) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

- (a) to give the direction in the way proposed, or
- (b) if it has been given, not to revoke the direction,

it must give separate written notices to the company and its depositary.

(9) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

- (a) not to give the direction in the way proposed,
- (b) to give the direction in a way other than that proposed, or
- (c) to revoke a direction which has effect,

it must give separate written notices to the company and its depositary.

(10) A notice given under paragraph (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(11) A notice under paragraph (9)(b) must comply with paragraph (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This regulation applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of the Act.

(15) Section 395 of the Act (the Authority's procedures) has effect as if subsection (13) included a reference to a notice given in accordance with paragraph (3), (8) or (9)(b).

**Procedure: refusal to revoke or vary direction**

**28.**—(1) If on an application under regulation 25(7) for a direction to be revoked or varied the Authority proposes—

- (a) to vary the direction otherwise than in accordance with the application, or
- (b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the Authority decides to refuse to revoke or vary the direction—

- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

**Procedure: revocation of direction and grant of request for variation**

**29.**—(1) If the Authority decides on its own initiative to revoke a direction under regulation 25 it must give separate written notices of its decision to the company and its depository.

(2) If on an application made under regulation 25(7) for a direction to be revoked or varied, the Authority decides to revoke or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this regulation must specify the date on which the decision takes effect.

(4) The Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.