

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 section 425 of the 1985 Act⁽¹⁾ (power of company to compromise with creditors and members) for an order sanctioning 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.

3. A public company may apply to the court under section 425 of the 1985 Act for an order sanctioning 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.

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.

(1) Section 425 was amended by section 109(1) of, and paragraph 11 of Schedule 6 to, the Insolvency Act 1985 (c. 65).

Status: This is the original version (as it was originally made).

(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.

5. For the purposes of this Schedule, sections 425 to 427 of the 1985 Act are, subject to paragraph 6, to have effect in respect of any application made by virtue of paragraph 2 or 3 as they have effect in respect of applications falling within section 427A(1) of that Act (that is to say, subject to the provisions of section 427A of, and Schedule 15B to, that Act (mergers and divisions of public companies))(2).

6.—(1) All the provisions of the 1985 Act 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 a Case 1 Scheme, a Case 2 Scheme or a Case 3 Scheme 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(3) 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;
- (h) any reference to a directors' report, in relation to a company's annual accounts, is to be taken to be a reference to any report of the directors of an open-ended investment company that is contained in the company's annual report;
- (i) any reference to the requirements of the 1985 Act 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.

(2) Section 427A of, and Schedule 15B to, the 1985 Act were inserted by the Companies (Mergers and Divisions) Regulations 1987 (S.I. 1987/1991).

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