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STATUTORY INSTRUMENTS

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**2001 No. 1228**

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

**PART II**

**FORMATION, SUPERVISION AND CONTROL**

*General*

**Open-ended investment company**

**3.—**(1) If the Authority makes an authorisation order then, immediately upon the coming into effect of the order, the body to which the authorisation order relates is to be incorporated as an open-ended investment company (notwithstanding that, at the point of its incorporation by virtue of this paragraph, the body will not have any shareholders or property).

(2) The name of an open-ended investment company is the name mentioned in the authorisation order made in respect of the company or, if it changes its name in accordance with these Regulations and FSA rules, its new name.

**Registration by the Authority**

**4.—**(1) Upon making an authorisation order under regulation 14, the Authority must forthwith register—

- (a) the instrument of incorporation of the company;
- (b) a statement of the address of the company's head office;
- (c) a statement, with respect to each person named in the application for authorisation as director of the company, of the particulars set out in regulation 13; and
- (d) a statement of the corporate name and registered or principal office of the person named in the application for authorisation as the depositary of the company.

(2) In this regulation any reference to the instrument of incorporation of a company is a reference to the instrument of incorporation supplied for the purposes of regulation 14(1)(c).

**Safekeeping of scheme property by depositary**

**5.—**(1) Subject to paragraph (2), all the scheme property of an open-ended investment company must be entrusted for safekeeping to a person appointed for the purpose ("a depositary").

(2) Nothing in paragraph (1)—

- (a) applies to any scheme property designated for the purposes of this regulation by FSA rules;
- (b) prevents a depositary from—
  - (i) entrusting to a third party all or some of the assets in its safekeeping; or
  - (ii) in a case falling within sub-paragraph (i), authorising the third party to entrust all or some of those assets to other specified persons.

(3) Schedule 1 to these Regulations makes provision with respect to depositaries of open-ended investment companies.

### **FSA rules**

6.—(1) The Authority’s powers to make rules under section 247 (trust scheme rules) and section 248 (scheme particulars rules) of the Act in relation to authorised unit trust schemes are, subject to the provisions of these Regulations, exercisable in relation to open-ended investment companies—

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

(2) In these Regulations any document which a person is required to submit and publish by virtue of rules made by the Authority under paragraph (1) for like purposes to those in section 248 of the Act is referred to as a prospectus.

### **Modification or waiver of FSA rules**

7.—(1) The Authority may, on the application or with the consent of any person to whom any FSA rules apply, direct that all or any of the FSA rules—

- (a) are not to apply to him as respects a particular open-ended investment company; or
- (b) are to apply to him as respects such a company with such modifications as may be specified in the direction.

(2) The Authority may, on the application or with the consent of an open-ended investment company and its depositary acting jointly, direct that all or any of the FSA rules—

- (a) are not to apply to the company; or
- (b) are to apply to the company with such modifications as may be specified in the direction.

(3) Section 148(3) to (9) and (11) of the Act (modification or waiver of rules) have effect in relation to a direction under paragraph (1) as they have effect in relation to a direction under section 148(2) of the Act but with the following modifications—

- (a) subsection (4)(a) is to be read as if the words “by the authorised person” were omitted;
- (b) any reference to the authorised person (except in subsection (4)(a)) is to be read as a reference to the person mentioned in paragraph (1); and
- (c) subsection (7)(b) is to be read, in relation to a shareholder, as if the word “commercial” were omitted.

(4) Section 148(3) to (9) and (11) of the Act have effect in relation to a direction under paragraph (2) as they have effect in relation to a direction under section 148(2) of the Act but with the following modifications—

- (a) subsection (4)(a) is to be read as if the words “by the authorised person” were omitted;
- (b) subsections (7)(b), (8) and (11) are to be read as if the reference to the authorised person were a reference to each of the company and its depositary;
- (c) subsection (7)(b) is to be read, in relation to a shareholder, as if the word “commercial” were omitted; and
- (d) subsection (9) is to be read as if the reference to the authorised person were a reference to the company and its depositary acting jointly.

### **Notices: general**

8. Subject to the provisions of these Regulations—

- (a) section 387 of the Act (warning notices) applies to a warning notice given under any provision of these Regulations in the same way as it applies to a warning notice given under any provision of the Act;
- (b) section 388 of the Act (decision notices) applies to a decision notice given under any provision of these Regulations in the same way as it applies to a decision notice given under any provision of the Act;
- (c) section 389 of the Act (notices of discontinuance) applies to the discontinuance of the action proposed in a warning notice or the action to which a decision notice relates given under any provision of these Regulations in the same way as it applies to a warning notice or decision notice given under any provision of the Act;
- (d) section 390 of the Act (final notices) applies to a decision notice given under any provision of these Regulations in the same way as it applies to a decision notice given under any provision of the Act.

### **Publication**

9. Section 391 of the Act (publication) applies to the notices mentioned in regulation 8 in the same way as it applies to any such notice given under any provision of the Act.

### **The Authority's procedures**

10. Section 395 of the Act (the Authority's procedures) applies to the procedure relating to the Authority's functions in relation to supervisory notices, warning notices and decision notices given under any provision of these Regulations.

### **The Tribunal**

11. Section 133 of the Act (proceedings: general provision) applies to any reference to the Tribunal under these Regulations as it applies to any reference to the Tribunal under the Act.