



Financial Services Authority

The Financial Services  
(Open-Ended Investment  
Companies) (Amendment)  
Regulations 1999

**Rulebook  
Amendments and Additions  
Release 192**

# Financial Services Authority

## **Amendments and Additions**

### **Release 192**

Financial Services Authority made by order on 21 January 1999 the Financial Services (Open-Ended Investment Companies) (Amendment) Regulations 1999.

A copy of the instrument amending Chapter III of Volume 3 of the Rulebook is attached.

These regulations which will come into effect on 1 February 1999 are made following proposals by the Financial Services Authority set out in Consultation Paper 14 (September 1998).

### **Filing instructions**

This instrument should be filed in Chapter III of Volume 3 of the rulebook, after Release 189.

Financial Services Authority  
26 January 1999

# The Financial Services (Open-Ended Investment Companies) (Amendment) Regulations 1999

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The Financial Services Authority, in exercise of the powers contained in regulation 6 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996, hereby makes the following regulations:

**1.01 Citation and commencement**

These regulations, 'the Financial Services (Open-Ended Investment Companies) (Amendment) Regulations 1999', are made on 21 January 1999 and shall come into operation on 1 February 1999.

**1.02 Purpose**

The purpose of this instrument is to amend the Financial Services (Open-Ended Investment Companies) Regulations 1997.

**1.03 Interpretation**

In these regulations 'the principal regulations' means the Financial Services (Open-Ended Investment Companies) Regulations 1997, and a reference in the Schedule hereto to a regulation or other provision is a reference to that regulation or provision in the principal regulations.

**1.04 Miscellaneous amendments**

The amendments to the principal regulations in the Schedule hereto shall have effect.

## Schedule

1. In the paragraph preceding the heading 'Part 1 Introduction' after '(ECA Regulations)' insert 'and the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997 ('NI Regulations)'
2. In the Explanation to Part 1 -
  - a. after 'are made under the ECA Regulations' insert 'and the NI Regulations', and
  - b. after 'Great Britain' insert 'or Northern Ireland'.
3. Insert at the end of regulation 1.03 'and under regulation 6 of the NI Regulations which relate only to companies which have their respective head offices situated in Northern Ireland'.
4. In regulation 4.15.1 -
  - a. after 'the ACD is obliged' insert '(1)', and
  - b. substitute for 'and' in the third line -

',unless the ACD has not received payment on account of an amount estimated by it to be sufficient to meet the price of the shares, and (2) the ACD'.
5. In sub-paragraph b.(iii) of regulation 4.15.3 insert 'stamp duty or' before 'stamp duty reserve tax'.
6. In regulation 4.15.4 insert a full stop after 'whether or not the ACD has received the same from the investor' and delete all the subsequent words.
7. In sub-paragraph d. of regulation 4.18.1 insert 'stamp duty or' before 'stamp duty reserve tax'.
8. In regulation 5.17 -
  - a. in paragraph 1 after 'rights to vote' insert '(whether or not on substantially all matters)' and after 'that body' delete 'or scheme';
  - b. in sub-paragraph 1a. for 'the aggregate number of any such securities of that body' substitute 'the aggregate of any such securities';
  - c. in paragraph 2 for '20% or more of the votes cast at a general meeting of that body' substitute '20% or more of the voting rights in that body', and
  - d. substitute for paragraph 3 -

'A company must not hold -

    - a. transferable securities (other than debt securities) which do not carry a right to vote on any matter at a general meeting of the body corporate that issued them and represent more than 10% of those securities issued by that body corporate;
    - b. more than 10% of the debt securities issued by any single issuing body, or
    - c. more than 10% of the units of a collective investment scheme.'
9. Substitute for the first paragraph of the Explanation to Section F of Part 5 -

**Explanation.** *This Section should be regarded as an extension to Section E above (efficient portfolio management). Its purpose is to allow companies to employ the technique known as stocklending subject to the conditions contained within this Section. The specific method of stocklending permitted is in fact not a transaction which is a loan in the normal sense, but rather an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers securities to the borrower otherwise than by way of sale and the borrower is to transfer those securities, or securities of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing collateral to the 'lender' to cover him against the risk that the future transfer back of the securities may not be satisfactorily completed.'*

10. For regulation 5.31 substitute -

**'5.31 Permitted stocklending**

- 1 The company, or the depositary at the request of the company, may enter into a stocklending arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if -
  - a. all the terms of the agreement under which securities are to be reacquired by the depositary for the account of the company are in a form which is acceptable to the depositary and in accordance with good market practice;
  - b. the counterparty is an authorised person or a person included in the list maintained for the purposes of section 43 of the Act (listed money market institutions), and
  - c. collateral is obtained to secure the obligation of the counterparty under the terms referred to in paragraph a. and the collateral is -
    - (i) acceptable to the depositary;
    - (ii) adequate within regulation 5.32.1, and
    - (iii) sufficiently immediate within regulation 5.32.2.
- 2 The counterparty for the purpose of paragraph 1 is the person who is obliged pursuant to the agreement referred to in paragraph 1a. to transfer to the depositary the securities transferred by the depositary under the stocklending arrangement or securities of the same kind.'

11. In the first sentence of the Explanation to regulation 5.32 for 'transaction' substitute 'arrangement' and for 'sold' substitute 'transferred'.

12. In sub-paragraph d. of regulation 5.32.1 -

- a. in sub-paragraph a. for 'exceeds in value, at the time of the transfer to the depositary,' substitute 'is at least equal in value, at the time of the transfer to the depositary, to';
- b. for the semi-colon at the end of sub-paragraph d.(v) substitute ', or', and
- c. substitute for sub-paragraphs d.(vi) and d.(vii) -  
'(vi) securities transferred in CREST or through the CGO system by a DBV.'

13. In regulation 5.32.3 for 'exceeds' substitute 'is at least equal to'.
14. In regulation 5.35.3 -
- a. for 'that the borrowing is on a temporary basis', substitute 'that any borrowing is on a temporary basis and that borrowings are not persistent';
  - b. in sub-paragraph a. for 'may have regard' substitute 'shall have regard', and
  - c. at the beginning of sub-paragraph b., insert 'without prejudice to paragraph a.'.
15. Substitute for regulation 5.40 -

**'5.40 Guarantees and indemnities**

- 1 Subject to paragraph 2, a company shall not provide any guarantee or indemnity in respect of the obligation of any person and none of the scheme property may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any person.
- 2 Paragraph 1 does not apply to -
  - a. an indemnity falling within the provisions of regulation 56(3) of the ECA regulations;
  - b. subject to regulation 56 of the ECA regulations, an indemnity given to the depositary against any liability incurred by it as a consequence of its safe keeping of any of the scheme property or incurred by it as a consequence of the safe keeping of any of the deposited property by anyone retained by it to assist it to perform its function of the safekeeping of the scheme property;
  - c. any indemnity or guarantee given for margin requirements where the company is using derivatives or forward transactions pursuant to Part 5 of these regulations, or
  - d. an indemnity given to a person winding up a scheme if the indemnity is given for the purposes of arrangements whereby the whole or part of the property of that scheme becomes the first property of the company and the holders of units in that scheme become the first shareholders in the company.'.

16. After regulation 6.05 insert the following new regulation-

**'6.05A Duty to inform the FSA**

- 1 The depositary shall inform the FSA immediately upon becoming aware of any circumstance as a result of which the depositary is not satisfied that -
  - a. the company is managed as described in regulation 6.05.1a., and
  - b. decisions about the constituents of the scheme property do not cause an infringement of Part 5 of these regulations,unless the depositary is satisfied that the circumstance in question is not, and is not likely to become, materially significant.
- 2 Without prejudice to paragraph 1, if the depositary becomes aware of a circumstance which it needs to investigate in order to ascertain whether its duty to inform under paragraph 1 arises and it has not satisfied itself within 90 days of becoming aware of that circumstance that its duty under paragraph 1 has not

arisen, then immediately upon the expiration of the 90 days the depositary shall inform the FSA Board of that circumstance.

- 3 The depositary shall not retire voluntarily unless, prior to that retirement, it has ensured that the new depositary has been informed of any circumstance of which the retiring depositary has informed the FSA in accordance with paragraph 1 or paragraph 2 or which is being investigated for the purpose of paragraph 2.’

17. In regulation 6.06.1 for ‘subject to regulation 6.10’ substitute ‘without prejudice to regulation 6.10’.
18. In regulation 6.10.5 for ‘may not retain the services of anyone to assist it’ substitute ‘may not retain the services of a nominee or anyone else to assist it’.
19. Substitute for regulation 6.09.5 -
- ‘5 a. Paragraph 6 applies to a transaction (‘subsequent transaction’) deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an investment (‘original investment’) of the company, which subsequent transaction, but for this regulation, would constitute a breach of Part 5, provided that, at the time of the acquisition of the original investment, it was reasonable for the ACD, on the assumption that any right attached to the original investment when it was acquired would be exercised, to expect that a breach would not be caused by the subsequent transaction.
- b. In this paragraph 5 the exercise of a right shall be deemed to include the taking effect of a right without any action by or on behalf of the depositary or the company.’
20. In regulation 7.13 insert ‘stamp duty or’ before ‘stamp duty reserve tax’ in each place where the latter words appear.
21. In Schedule 3 -
- a. after the definition of ‘cash’ insert -
- ‘ **‘CGO system’** means the computer based system operated by the Central Gilts Office of the Bank of England to facilitate the transfer of securities, without the need for a written instrument;’;
- b. delete the definition of ‘currency’;
- c. after the definition of ‘dealing period’ insert -
- ‘ **‘debt securities’** means -
- a. any investment falling within paragraph 2 or 3 of Schedule 1 to the Act, or
- b. any investment falling within paragraph 5 of Schedule 1 to the Act which confers a right related to an investment within paragraph a. above;’;
- d. substitute for the definition of ‘delivery by value’ -
- ‘ **‘delivery by value’** or **‘DBV’** means a transaction type, described as ‘delivery by value’, used to deliver and receive securities within CREST or through the CGO system, as the case may be;’;
- e. After the definition of ‘forward price’ insert -
- ‘ **‘FSA’** means the Financial Services Authority;’;

- f. after the definition of 'net accumulation share' insert -  
' **'NI Regulations'** means the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997;';
- g. delete the definition of 'TALISMAN system';
- h. after the definition of 'valuation point' insert -  
' **'voting rights'** means a right to vote at general meetings of a body corporate on all, or substantially all matters;';