

SCHEDULE 2

Regulation 5

DEPOSITARIES

Appointment

1. On the coming into effect of an authorisation order in respect of an investment company with variable capital, the person named in the application under regulation 7 above as depositary of the company shall be deemed to be appointed as its first depositary.

2. Subject to regulations 15 and 20 above, any subsequent appointment of the depositary of a company shall be made by the directors of the company.

Retirement

3. The depositary of a company may not retire voluntarily except upon the appointment of a new depositary.

Rights

4.—(1) The depositary of a company is entitled—

- (a) to receive all such notices of, and other communications relating to, any general meeting of the company as a shareholder of the company is entitled to receive;
- (b) to attend any general meeting of the company;
- (c) to be heard at any general meeting which it attends on any part of the business of the meeting which concerns it as depositary;
- (d) to convene a general meeting of the company when it sees fit;
- (e) to require from the company's officers such information and explanations as it thinks necessary for the performance of its functions as depositary; and
- (f) to have access, except in so far as they concern its appointment or removal, to any reports, statements or other papers which are to be considered at any meeting held by the directors of the company (when acting in their capacity as such), at any general meeting of the company or at any meeting of holders of shares of any particular class.

(2) Sub-paragraph (1)(e) above applies to a shadow director of an investment company with variable capital as it applies to an officer of such a company.

Statement by depositary ceasing to hold office

5.—(1) Where the depositary of a company ceases, for any reason other than by virtue of a court order made under regulation 20 above, to hold office, it may deposit at the head office of the company a statement of any circumstances connected with its ceasing to hold office which it considers should be brought to the attention of the shareholders or creditors of the company or, if it considers that there are no such circumstances, a statement that there are none.

(2) If the statement is of circumstances which the depositary considers should be brought to the attention of the shareholders or creditors of the company, the company shall not later than 14 days after the deposit of the statement either—

- (a) send a copy of the statement to each of the shareholders whose name appears on the register of shareholders (other than the person who is designated in the company's instrument of incorporation for the purposes of paragraph 4 of Schedule 5 to these Regulations) and take such steps as SIB regulations may require for the purpose of bringing the fact that the statement has been made to the attention of the holders of any bearer shares; or

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(b) apply to the court;

and, where an application is made under paragraph (b) above, the company shall notify the depositary.

(3) Unless the depositary receives notice of an application to the court before the end of the period of 21 days beginning with the day on which it deposited the statement, it shall not later than seven days after the end of that period send a copy of the statement to each of the registrar of companies and SIB.

(4) If the court is satisfied that the depositary is using the statement to secure needless publicity for defamatory matter—

(a) it shall direct that copies of the statement need not be sent out and that the steps required by SIB regulations need not be taken; and

(b) it may further order the company's costs on the application to be paid in whole or in part by the depositary notwithstanding that the depositary is not a party to the application;

and the company shall not later than 14 days after the court's decision take such steps in relation to a statement setting out the effect of the order as are required by sub-paragraph (2)(a) above in relation to the statement deposited under sub-paragraph (1) above.

(5) If the court is not so satisfied, the company shall not later than 14 days after the court's decision take the steps required by sub-paragraph (2)(a) above and notify the depositary of the court's decision.

(6) The depositary shall not later than seven days after receiving such a notice send a copy of the statement to each of the registrar of companies and SIB.

(7) Where a notice of appeal is filed not later than 14 days after the court's decision, any reference to that decision in sub-paragraphs (4) and (5) above shall be construed as a reference to the final determination or withdrawal of that appeal, as the case may be.

6.—(1) This paragraph applies where copies of a statement have been sent to shareholders under paragraph 5 above.

(2) The depositary who made the statement has, notwithstanding that it has ceased to hold office, the rights conferred by paragraph 4(1)(a) to (c) above in relation to the general meeting of the company next following the date on which the copies were sent out.

(3) The reference in paragraph 4(1)(c) above to business concerning the depositary as depositary shall be construed in relation to a depositary who has ceased to hold office as a reference to business concerning it as former depositary.