

## SCHEDULE 8

Regulation 75

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

##### PRIMARY LEGISLATION

###### *Trustee Investments Act 1961 (c. 62)*

1. In Part III of Schedule 1 to the Trustee Investments Act 1961 (wider-range investments), after paragraph 2 there shall be inserted the following paragraph—

“2A. In any shares in an investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.”

###### *Stock Transfer Act 1963 (c. 18)*

2. In section 1(4) of the Stock Transfer Act 1963 (registered securities to which section 1 applies), after paragraph (e) there shall be inserted the following paragraph—

“(f) shares issued by an investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.”

###### *Data Protection Act 1984 (c. 35)*

3. Section 30 of the Data Protection Act 1984 (exemption for regulation of financial services etc) shall have effect as if the reference in subsection (2) to any enactment included these Regulations.

###### *Companies Act 1985 (c. 6)*

4. In section 26 of the 1985 Act (prohibition on registration of certain names)—

(a) in subsection (1) after paragraph (b) there shall be inserted the following paragraph—

“(bb) which includes, at any place in the name, the expression “investment company with variable capital” or its Welsh equivalent (“cwmni buddsoddi â chyfalaf newidiol”);”;

(b) in subsection (3)(b) the word “and” after “(“anghyfyngedig”)” shall be omitted and at the end there shall be inserted

“and

“investment company with variable capital” or its Welsh equivalent (“cwmni buddsoddi â chyfalaf newidiol”);”.

5. In section 199(2A)(1) of the 1985 Act (interests to be disregarded in determining whether a person holds a material interest in shares), after paragraph (b) there shall be inserted the following paragraph—

“(bb) an interest belonging to an investment company with variable capital;”.

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(1) Subsection (2A) of section 199 of the 1985 Act was inserted by the Disclosure of Interests in Shares (Amendment) Regulations 1993 (S.I. 1993/1819).

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6. In section 209(1)(h) of the 1985 Act(2) (interests to be disregarded for purposes of obligation to disclose interests in shares) the word “or” at the end of sub-paragraph (i) shall be omitted and, after sub-paragraph (ii), there shall be inserted

“or

(iii) by virtue of his being a depository, within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996, of an investment company with variable capital.”.

7. In section 220(1) of the 1985 Act(3) (definitions for Part VI of the Act), after the definition of “designated agency” there shall be inserted the following definition—

““investment company with variable capital” has the same meaning as in the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996;”.

8. In section 716(2) of the 1985 Act(4) (exemptions from prohibition on formation of any company, association or partnership with more than 20 members), after paragraph (d) there shall be inserted the following paragraph—

“(e) of an investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.”.

9. In section 718(2) of the 1985 Act (exemptions from application of Act to unregistered companies), after paragraph (c) there shall be inserted the following paragraph—

“(d) any investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.”.

#### *Company Directors Disqualification Act 1986 (c. 46)*

10. In Schedule 1 to the Company Directors Disqualification Act 1986(5) (matters for determining unfitness of directors), after paragraph 5 there shall be inserted the following paragraph—

“5A. In the application of this Part of this Schedule in relation to any person who is a director of an investment company with variable capital, any reference to a provision of the Companies Act shall be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 or of any regulations made under regulation 6 of those Regulations (SIB regulations).”.

#### *Financial Services Act 1986 (c. 60)*

11. After section 24 of the 1986 Act (operators and trustees of recognised schemes) there shall be inserted the following section—

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- (2) Section 209 of the 1985 Act was substituted by the Disclosure of Interests in Shares (Amendment) Regulations 1993 (S.I. 1993/1819).
  - (3) Subsection (1) of section 220 of the 1985 Act was substituted by the Disclosure of Interests in Shares (Amendment) Regulations 1993 (S.I. 1993/1819).
  - (4) Paragraph (d) of section 716(2) of the 1985 Act was inserted by section 145 of, and paragraph 15 of Schedule 19 to, the Companies Act 1989 (c. 40).
  - (5) Paragraph 5 of Schedule 1 was substituted by section 23 of, and paragraph 35 of Schedule 10 to, the Companies Act 1989 (c. 40).

*“Investment companies with variable capital*

**Investment companies with variable capital**

**24A.** An investment company with variable capital is an authorised person as respects—

- (a) investment business which consists in operating the collective investment scheme constituted by the company; and
- (b) any investment business which is carried on by the company in connection with or for the purposes of operating that scheme.”.

**12.** In section 47A(4) of the 1986 Act(6) (disciplinary action which may be taken in respect of failure to comply with statements of principle) the word “or” at the end of paragraph (c) shall be omitted and after paragraph (d) there shall be inserted

“or

- (e) the giving of a direction under regulation 18 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 (directions) or the making of an application for an order under regulation 20 of those Regulations (application to court to remove director or depository);”.

**13.** In section 72 of the 1986 Act (winding up orders), at the end of subsection (5) (petition to wind up members of recognised self-regulating organisation) there shall be inserted the following subsection—

“(6) Subsection (5) above does not apply to the presentation of a petition under subsection (1) above for the winding up of an investment company with variable capital.”.

**14.** In section 76(1) of the 1986 Act (restrictions on promotion of collective investment schemes), after the words “authorised unit trust scheme” there shall be inserted the words “or an investment company with variable capital”.

**15.** In section 83(2) of the 1986 Act (activities in which manager of authorised unit trust scheme may engage)—

(a) after paragraph (a) there shall be inserted—

“(aa) acting as a director of an investment company with variable capital;”;

(b) in paragraph (b), after the words “mentioned in paragraph (a)” there shall be inserted the words “or (aa)”.

**16.** In section 87 of the 1986 Act (schemes authorised in designated countries or territories)—

(a) at the beginning of subsection (2) there shall be inserted “Subject to subsection (2A) below,”; and

(b) at the end of subsection (2) there shall be inserted the following subsection—

“(2A) Nothing in subsection (2) above shall require the comparison set out in that subsection to be made where—

- (a) the class of collective investment schemes to be specified in an order includes schemes having characteristics corresponding to those of an investment company with variable capital; and
- (b) having regard to the characteristics of such schemes, it appears more appropriate to consider whether investors in the United Kingdom are afforded protection at least equivalent to that provided for them by the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996;

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(6) Section 47A was inserted into the 1986 Act by section 192 of the Companies Act 1989 (c. 40).

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and, to the extent that the requirements of paragraph (b) above are met, the relevant comparison shall be between the protection afforded to investors in the United Kingdom by the law under which collective investment schemes of the class to be specified in the order are authorised and supervised in the country or territory concerned and the protection provided for such investors by the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.”.

**17.** In section 102 of the 1986 Act (register of authorised persons etc)—

(a) in subsection (2), after paragraph (b) there shall be inserted the following paragraph—

“(bb) in the case of an investment company with variable capital which is an authorised person by virtue of section 24A above, the name of the company, the address of the company’s head office and the names and addresses of the directors and depositary of the company;”;

(b) in subsection (6), for the words “or (b)” there shall be substituted the words “, (b) or (bb)”.

**18.** In section 104(1) of the 1986 Act (power to call for information) after “24,” there shall be inserted “24A,”.

**19.** In section 108(1) of the 1986 Act (power to require second audit), after the words “by virtue of section” there shall be inserted “24A,”.

**20.** In section 205A of the 1986 Act(7) (supplementary provisions with respect to subordinate legislation)—

(a) in subsection (1) for “The following provisions” there shall be substituted “Subsections (2) to (4) below”; and

(b) after subsection (1) there shall be inserted the following subsection

“(1A) Subsections (2) to (4) below also apply to any power to make regulations by virtue of regulation 6 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 in the event that that power becomes exercisable by the Treasury by virtue of an order under section 115 above.”.

**21.** In section 206(1) of the 1986 Act(8) (publication of information and advice), after paragraph (b) there shall be inserted the following paragraphs—

“(bb) the operation of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 and any regulations made by virtue of regulation 6 of those Regulations;

(cc) any matters relating to the functions to which regulation 73 of those Regulations relates;”.

**22.** In section 207(1) of the 1986 Act (interpretation) after the definition of “investment agreement” there shall be inserted the following definition—

““investment company with variable capital” and, in relation to such a company, “depositary” have the same meaning as in the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996;”.

**23.** In Schedule 8 to the 1986 Act(9) (principles applicable to designated agency’s legislative provisions), at the end of paragraph 1(1) there shall be inserted the words “and the provisions

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(7) Section 205A of the 1986 Act was inserted by section 206(1) of, and paragraph 18 of Schedule 23 to, the Companies Act 1980; subsection (1) was amended by paragraph 8 of Schedule 4 to the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

(8) Section 206 of the 1986 Act was amended by section 206 of, and paragraph 19 of Schedule 23 to, the Companies Act 1989 (c. 40).

(9) Paragraph 1 was substituted by section 206(1) of, and paragraph 23 of Schedule 23 to, the Companies Act 1989.

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of regulations made under regulation 6 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996”.

**24.** In paragraph 7 of Schedule 9 to the 1986 Act (designated agencies; status and exercise of transferred functions), after “this Act” there shall be inserted “or, as the case may be, the provision of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.”.

### **Pension Schemes Act 1993 (c. 48)**

**25.** In section 38(6) (permitted forms for appropriate schemes), after paragraph (c) there shall be inserted the following paragraph—

“(d) an investment company with variable capital within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.”.

## **PART II**

### **SUBORDINATE LEGISLATION**

#### *The Data Protection (Regulation of Financial Services etc) (Subject Access Exemption) Order 1987 (S.I.1987/1905)*

**26.** Schedule 1 to the Data Protection (Regulation of Financial Services etc) (Subject Access Exemption) Order 1987(**10**) (functions designated for purposes of section 30 of Data Protection Act 1984) shall have effect as if at the end there were inserted the following entry—

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“Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996	Functions of the Securities and Investments Board under Regulations”
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#### *The Uncertificated Securities Regulations 1995 (S.I. 1995/3272)*

**27.** In regulation 3(1) of the Uncertificated Securities Regulations 1995 (interpretation) in the definition of “unit of security”, after the words “(for example a single share)” there shall be inserted

“and, in the case of any share—

- (a) which is issued by an investment company with variable capital (within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996) which is a participating issuer; and
- (b) to which are attached rights expressed in two denominations;

it includes any smaller denomination share and any larger denomination share (within the meaning, in the case of each such share, of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996)”.

**28.** In regulation 19 of those Regulations (entries on registers), after paragraph (8) there shall be inserted the following paragraph—

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(10) There are amendments that are not relevant to these Regulations.

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“(9) This regulation shall not apply to a participating issuer which is an investment company with variable capital (within the meaning of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996).”.