

Chapter 19

Non-FSMA powers

19.7 The Open-Ended Investment Companies Regulations 2001

- 19.7.1** The *OEIC Regulations* set out requirements relating to the way in which collective investment may be carried on by open-ended investment companies. Under the *OEIC Regulations*, the *FCA* has the power, amongst other things, to:
- revoke an open-ended investment company's authorisation in several situations, including where the firm breaches relevant requirements or provides us with false or misleading information (regulation 23);
 - give, vary and revoke certain directions, including that the affairs of the company be wound up (regulations 25 and 28);
 - apply to court for an order that a depositary or director of a company be removed and replaced (regulation 26);
 - appoint one or more competent persons to investigate and report on the affairs of the company and specified others (regulation 30).
- 19.7.2** Factors that the *FCA* may take into account when it decides whether to use one or more of these powers include, but are not limited to, factors which are broadly similar to those in ■ EG 14.1.1 in the context of *AUTs* or *ACs*. However, the relevant conduct will be that of the *ICVC*, the *director* or *directors* of the *ICVC* and its *depositary*. Another difference is that the *FCA* is also able to take disciplinary action against the *ICVC* itself since the *ICVC* will be an *authorised person*. When choosing which powers to use, the *FCA* will adopt an approach which is broadly similar to that described in ■ EG 14.2 to 14.5.
- 19.7.3** The *FCA* will give a company a *warning notice* if it proposes to revoke the company's authorisation and a *decision notice* if the decision to revoke the company's authorisation is subsequently taken. The decisions to give a *warning notice* or a *decision notice* will be taken by the *RDC* following the procedures set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3. A person who receives a decision notice under the *OEIC Regulations* may refer the matter to the *Tribunal*.
- 19.7.4** Under the *OEIC Regulations*, the *FCA* may also use its disqualification powers against auditors who fail to comply with a duty imposed on them under *FCA rules*. The procedure which the *FCA* will follow when exercising its disqualification powers is set out in ■ EG 15.