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STATUTORY INSTRUMENTS

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**2011 No. 1613**

**The Undertakings for Collective Investment  
in Transferable Securities Regulations 2011**

**PART 3**

Amendments to secondary legislation

**Amendment of the Open-Ended Investment Companies Regulations 2001**

- 3.**—(1) The Open-Ended Investment Companies Regulations 2001<sup>(1)</sup> are amended as follows.
- (2) In regulation 14—
- (a) in paragraph (4) insert at the beginning “Subject to paragraph (4A)”;
  - (b) after paragraph (4) insert—  
“**(4A)** Where the application relates to an open-ended investment company which is a UCITS, it must be determined by the Authority before the end of two months beginning with the date on which it receives the application.”
- (3) In regulation 21—
- (a) in paragraph (1)(a), insert at the end “other than one to which regulation 22A applies”
  - (b) in paragraph (1)(c), insert at the end “other than a proposed merger to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2010 applies”;
- (4) After regulation 22, insert—

**“The Authority’s approval for conversion of a feeder UCITS**

**22A.**—(1) An open-ended investment company must give written notice to the Authority of any proposal to amend its instrument of incorporation to enable it to convert into a UCITS which is not a feeder UCITS.

- (2) Any notice given in respect of such a proposal must be accompanied by—
- (a) a certificate signed by a solicitor to the effect that the amendment will not affect the compliance of the instrument of incorporation with Schedule 2 to these Regulations and with such of the requirements of FSA rules as relate to the contents of that instrument; and
  - (b) the specified information.
- (3) Paragraph (4) applies where—
- (a) the notice given under subsection (1) relates to a proposal to amend the instrument of incorporation of an open-ended investment company which is a feeder UCITS

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<sup>(1)</sup> [S.I. 2001/1228](#). There have been amendments to this instrument but none is relevant.

- to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
- (b) the proceeds of the winding-up are to be paid to the company before the date on which it proposes to start investing in accordance with the new investment objectives and policy provided for in its amended instrument of incorporation.
- (4) Where this paragraph applies, the Authority may only approve the proposal subject to the conditions set out in section 283A(5) and (6) of the Act.
- (5) The Authority must, within fifteen working days from the date on which it received the notice under paragraph (1), give—
- (a) written notice that it approves the proposed amendments to the instrument of incorporation, or
- (b) a warning notice under regulation 22 that it proposes to refuse approval of the proposed amendments.
- (6) Effect is not to be given to any proposal of which notice has been given under subsection (1) unless the Authority, by written notice, has given its approval to the proposal.
- (7) If the Authority proposes to refuse approval of the proposal it must give separate warning notices to the company and to its depositary.
- (8) If, having given a warning notice to a person, the Authority decides to refuse approval—
- (a) it must give that person a decision notice; and
- (b) that person may refer the matter to the Tribunal.
- (9) In this regulation, “specified” means specified in—
- (a) rules made by the Authority to implement the UCITS directive, or
- (b) any directly applicable Community regulation or decision made under the UCITS directive.”
- (5) After regulation 29, insert—
- “Information

#### **Information for home state regulator**

**29A.**—(1) Paragraph (2) applies if, in accordance with rules made by the Authority to implement Article 66 of the UCITS directive, the Authority is informed by an open-ended investment company which is a master UCITS that a feeder UCITS which invests in shares of the master UCITS is an EEA UCITS.

(2) The Authority must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

#### **Information for feeder UCITS**

**29B.**—(1) The Authority must immediately inform any authorised open-ended investment company which is a feeder UCITS of an open-ended investment company or authorised unit trust scheme (the master UCITS) of—

- (a) any failure of which the Authority becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;
- (b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the Authority;

- (c) any information reported to the Authority pursuant to rules of the Authority made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, its operator, trustee, depository or auditor.
- (2) The Authority must immediately inform any authorised open-ended investment company which is a feeder UCITS of an EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—
  - (a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII on the UCITS directive;
  - (b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;
  - (c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, to one or more of its directors, its management company, trustee, depository or auditor.
- (3) Where the Authority has the information described in paragraph (1)(a), (b) or (c) in relation to an authorised open-ended investment company which is a master UCITS in relation to one or more feeder UCITS which are EEA UCITS, the Authority must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.”
- (6) After regulation 33, insert—

#### **“Winding up of a master UCITS**

**33A.**—(1) Paragraphs (2) and (3) apply if a master UCITS is wound up.

(2) If the Authority considers that an open-ended investment company which is a feeder UCITS of the master UCITS may be wound up under section 221 of the 1986 Act, the Authority must present a petition to the Court for the feeder UCITS to be wound up unless one of the conditions referred to in paragraph (4) is satisfied.

(3) If paragraph (2) does not apply, the Authority must require the directors of any open ended investment company which is a feeder UCITS of the master UCITS to submit a proposal under regulation 21 to wind up the affairs of the company unless one of the conditions referred to in paragraph (4) is satisfied.

(4) The conditions set out in paragraphs (2) and (3) are—

- (a) the Authority approves under section 283A of the Act the investment by the feeder UCITS of at least 85% of its assets in units of another UCITS or master UCITS; or
- (b) the Authority approves under regulation 22A an amendment of the instrument of incorporation of the company which would enable it to convert into a UCITS which is not a feeder UCITS.

#### **Merger or division of a master UCITS**

**33B.**—(1) Paragraph (2) applies if a master UCITS—

- (a) merges with another UCITS, or
- (b) is divided into two or more UCITS.

(2) The Authority must require the directors of any open-ended investment company which is a feeder UCITS of the master UCITS to prepare a proposal to wind up the affairs of the feeder UCITS under regulation 21 unless—

- (a) the Authority approves under section 283A of the Act the investment by the company of at least 85% of its assets in the units of—

- (i) the master UCITS which results from the merger;
    - (ii) one of the UCITS resulting from the division; or
    - (iii) another UCITS or master UCITS; or
  - (b) the Authority approves under regulation 22A an amendment of the instrument of incorporation of the company which would enable it to convert into a UCITS which is not a feeder UCITS.”
- (7) In regulation 70, insert at the end “other than mergers within the meaning of Article 2.1(p) of the UCITS directive”.
- (8) After regulation 83, insert—

**“Disclosure under the UCITS directive**

- 83A.**—(1) This regulation applies in relation to a disclosure made by a person who falls within paragraph (2) to comply with requirements set out in rules made by the Authority to implement Chapter VIII of the UCITS directive.
- (2) The following persons fall within this paragraph—
- (a) the auditor of an open-ended investment company that is a master UCITS;
  - (b) the depository of an open-ended investment company that is a master UCITS;
  - (c) the auditor of an open-ended investment company that is a feeder UCITS;
  - (d) the depository of an open-ended investment company that is a feeder UCITS; or
  - (e) a person acting on behalf of a person within paragraphs (a), (b), (c) or (d) above.
- (3) A disclosure to which this section applies is not to be taken as a contravention of any duty to which the person making the disclosure is subject.”
- (9) In Schedule 5, for paragraph 4(5), substitute—
- “(5) Subject to sub-paragraph (5A), no rules made under section 340 of the Act (appointment of auditors) apply in relation to open-ended investment companies.
- (5A) Rules may be made under section 340 of the Act in relation to open-ended investment companies for the purpose of implementing the UCITS directive or any commission directive made under the UCITS directive.”
- (10) In paragraph 1 of Schedule 6, insert at the end “other than one to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 applies”.