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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**The Open-Ended Investment Companies  
(Amendment) Regulations 2011**

**Amendment of the Principal Regulations**

- 3.—(1) The Principal Regulations are amended as follows.
- (2) In regulation 2(1) (interpretation) after the definition of “smaller denomination share” insert—
- ““sub-fund” means a separate part of the property of an umbrella company that is pooled separately;”
- (3) After regulation 10(1) (the Authority’s procedures) insert—

*“Umbrella companies*

**Segregated liability of sub-funds**

11A.—(1) In the case of an umbrella company, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge the liabilities of or claims against the umbrella company or any other person or body, or any other sub-fund, and shall not be available for any such purpose whether such liability or claim was incurred before, on or after the date this regulation first applies to such umbrella company.

(2) Any liability incurred on behalf of or attributable to any sub-fund of an umbrella company shall be discharged solely out of the assets of that sub-fund.

(3) Any provision, whether contained in an instrument of incorporation, agreement, contract or otherwise, shall be void to the extent that it is inconsistent with paragraph (1) or (2) and any application of, or agreement to apply, assets in contravention of either such paragraph shall be void.

(4) An umbrella company may allocate any assets or liabilities which —

- (a) it receives or incurs on behalf of its sub-funds or in order to enable the operation of the sub-funds; and
- (b) are not attributable to any particular sub-fund,

between its sub-funds in a manner which it considers is fair to shareholders.

(5) A sub-fund of an umbrella company is not a legal person separate from that umbrella company but the property of a sub-fund is subject to orders of the court as it would have been had the sub-fund been a separate legal person.

(6) Without prejudice to paragraphs (1) and (2) and save as provided in regulation 33C(7), an umbrella company may sue and be sued in respect of a particular sub-fund and may exercise the same rights of set-off in relation to that sub-fund as apply in respect of companies.

### **Cross sub-fund investment**

**11B.** Notwithstanding section 658 of the Companies Act 2006(2) and any rule of law which prohibits or restricts a company from acquiring its own shares, an umbrella company may, for the account of any of its sub-funds, and in accordance with FSA rules, acquire by subscription or transfer for consideration, shares of any class or classes, however described, representing other sub-funds of the same umbrella company.”.

(4) In regulation 21(1)(d) (the Authority’s approval for certain changes in respect of a company) after “company” insert “or a sub-fund of that company”.

(5) After regulation 33B (merger or division of a master UCITS) insert—

### **“Winding up of sub-funds**

**33C.**—(1) Save as provided in paragraphs (2) and (3), a sub-fund may be wound up as if it were an open-ended investment company in accordance with the provisions of regulations 31 to 33 provided that the appointment of the liquidator or any provisional liquidator and the powers and duties of the liquidator or any provisional liquidator shall be confined to the sub-fund which is being wound up and its affairs, business and property.

(2) Notwithstanding paragraph (1), sections 226 to 228 of the 1986 Act shall not apply where a sub-fund is wound up in accordance with the provisions of this regulation.

(3) The provisions of Part 5 of the 1986 Act with respect to staying, sisting or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of a sub-fund, where the application to stay, sist or restrain is presented by a creditor, to actions and proceedings against the umbrella company of that sub-fund, or any of the other sub-funds of that umbrella company, in respect of a liability of that sub-fund.

(4) Notwithstanding regulation 11A(5), a sub-fund shall be treated as if it were a separate legal person for the purposes of winding up.

(5) For the purposes of paragraph (1), in regulations 31 to 33—

- (a) a reference to an open-ended investment company is taken to be a reference to a sub-fund; and
- (b) a reference to a company, save in relation to the term “unregistered company”, is taken to be a reference to a sub-fund.

(6) For the purposes of paragraph (1), in the provisions of the 1986 Act to which reference is made in regulations 31 to 33—

- (a) references to an unregistered company and to a company are taken to be references to a sub-fund;
- (b) a reference to creditors is taken to be a reference to the creditors of a sub-fund; and
- (c) a reference to members is taken to be a reference to the holders of the shares in a sub-fund.

(7) Subject to paragraph (8), regulation 11A(6) shall not apply after the appointment of a liquidator or a provisional liquidator.

(8) Where an order has been made for the winding-up of a sub-fund, no action or proceedings shall be commenced or proceeded with against the umbrella company or the sub-fund in respect of any liability of the sub-fund, except by leave of the court and subject to such terms as the court may impose.”.

(6) In paragraph 2 of Schedule 2 (instrument of incorporation) after sub-paragraph (b) insert—

- “(ba) in the case of an umbrella company, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge the liabilities of or claims against the umbrella company or any other person or body, or any other sub-fund, and shall not be available for any such purpose;”.