This Draft Statutory Instrument has been printed in substitution of the Draft Statutory Instrument of the same title, which was laid on 25th November 2008, and is being issued free of charge to all known recipients of that Draft Statutory Instrument.
Draft Regulations laid before Parliament under section 429(2) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

FINANCIAL SERVICES AND MARKETS

The Open-Ended Investment Companies (Amendment) Regulations 2009

Made - - - -	*2009*
Coming into force - -	*2009*

A draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 429(2) of the Financial Services and Markets Act 2000(**1**);

The Treasury make the following Regulations in exercise of the powers conferred on them by section 262(1)(a), (2)(e) and (3)(f) and section 428(3) of that Act:

Citation and commencement

1. These Regulations may be cited as the Open-Ended Investment Companies (Amendment) Regulations 2009 and come into force on the day after the day on which they are made.

Amendment of the Open-Ended Investment Companies Regulations 2001

2.—(1) The Open-Ended Investment Companies Regulations 2001(**2**) are amended as follows.

(2) In regulation 1(3) (extent), after "Subject to Regulation 20(2)(b)" insert "and paragraphs 4A and 4B of Schedule 4".

(3) In regulation 2(1) (interpretation)—

(a) after the definition of "the designated person", insert—

> ""electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000(**3**);";

(**1**) 2000 c. 8.
(**2**) S.I. 2001/1228, to which there are amendments not relevant to these Regulations.
(**3**) 2000 c. 7. The definition of "electronic communication" in section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(b) in the definition of "transfer documents", after "paragraph 5(3)" insert "and (3A)".

(4) In Schedule 4 (share transfers)—

(a) after paragraph 4 insert—

"**4A.**—(1) Subject to sub-paragraph (2), section 136 of the Law of Property Act 1925(**4**) (which provides for certain assignments in writing to be effectual in law) applies to an absolute assignment (not purporting to be by way of charge only) of shares by means of electronic communication with the following modifications—

(a) the reference in subsection (1) to writing under the hand of the assignor refers to an electronic communication made by the assignor or by his agent authorised in writing, and

(b) the reference in that subsection to express notice in writing refers to express notice by electronic communication to the company.

(2) Sub-paragraph (1) is of no effect in a particular case if the company refuses to register the transfer of shares which would, apart from this sub-paragraph, be made by the assignment in that case.

(3) Sub-paragraph (1) shall not affect any transfer or assignment which, apart from that sub-paragraph, would be effectual in law.

(4) This paragraph extends to England and Wales only.

4B.—(1) Subject to sub-paragraph (3), section 1(2)(a)(ii) of the Requirements of Writing (Scotland) Act 1995(**5**) (which requires certain gratuitous unilateral obligations to be in writing) shall not apply (if it would otherwise do so) to any gratuitous unilateral obligation relating to shares where—

(a) the obligation is created by means of electronic communication;

(b) the electronic communication is made by the debtor in the obligation;

(c) such evidence (if any) as the company may require to prove the right of the person referred to in paragraph (b) to create the obligation is provided to it.

(2) Where section 1(2)(a)(ii) of that Act does not apply by virtue of sub-paragraph (1), the obligation shall not be considered an obligation mentioned in subsection (2)(a) of that section for the purposes of subsection (3).

(3) Sub-paragraph (1) is of no effect in a particular case if the company refuses to register the transfer of shares which would, apart from this sub-paragraph, by made by the obligation in that case.

(4) This paragraph extends to Scotland only.

4C.—(1) Where a transfer of shares is made by means of electronic communication, the company must take reasonable steps to ensure that any electronic communication purporting to be made by the transferor is in fact made by the transferor.

(2) Failure to take reasonable steps shall not make the transfer void or otherwise affect its validity.";

(b) in paragraph 5(3), after "transfer of registered shares" insert "except a transfer made by means of electronic communication";

(c) after paragraph 5(3), insert—

(**4**) 1925 c. 20.
(**5**) 1995 c. 7.