

**1989 No. 28**

**FINANCIAL SERVICES**

**The Financial Services Act 1986 (Single Property Schemes) (Exemption) Regulations 1989**

<i>Made</i>	- - -	<i>11th January 1989</i>
<i>Laid before Parliament</i>		<i>12th January 1989</i>
<i>Coming into force</i>	-	<i>2nd February 1989</i>

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#### SCHEDULE

##### Countries and Territories.

The Secretary of State, in exercise of the powers conferred on him by section 76(4) to (7) of the Financial Services Act 1986(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:-

##### Citation and commencement

1. These Regulations may be cited as the Financial Services Act 1986 (Single Property Schemes) (Exemption) Regulations 1989 and shall come into force on 2nd February 1989.

##### Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Financial Services Act 1986;

“corporate based scheme” means a scheme the purpose or effect of which is to enable persons taking part in the scheme to participate in or receive profits or income arising from the acquisition, holding, management or disposal of property of a kind described in section 76(6)(a) of the Act or sums paid out of such profits or income by being—

- (a) the holders of shares in a body corporate which has a leasehold interest or interests in the whole of the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme or which has a leasehold interest in a substantial part of that land and that building or those buildings and a freehold interest in the remainder; and
- (b) entitled, whether by virtue of being the holders of shares in the body corporate mentioned in sub-paragraph (a) above or by virtue of having an interest in the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme which is superior to that held by that body corporate, to receive sums which, after any deductions specified in the document constituting the scheme or otherwise agreed to be made by participants in accordance with the terms

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(a) 1986 c.60.

of the scheme, are equivalent to all rent paid by the body corporate mentioned in sub-paragraph (a) above in respect of its leasehold interest or interests in that land and building or group of buildings in proportion, in the case of each participant, to the number of shares that participant holds in the body corporate referred to in sub-paragraph (a) above;

“merger” means any arrangements under which one scheme is to be terminated and all its assets and liabilities acquired by another scheme in exchange for the issue of units in that other scheme to participants in the one, with or without any cash payment to participants;

“mortgage” includes a heritable security;

“operator”, in relation to a trust based scheme, means the person described in regulation 6(2)(b)(i) and, in relation to a corporate based scheme, means the body corporate in which shares are held;

“qualified valuer”, in relation to a freehold or leasehold interest in property of any particular kind in any particular area, means an independent person who is a fellow or professional associate of the Royal Institution of Chartered Surveyors or a fellow or associate of the Incorporated Society of Valuers and Auctioneers or a fellow or associate of the Rating and Valuation Association and who either—

(a) has knowledge of and experience in the valuation of that particular kind of property or of property in that particular area; or

(b) has knowledge of and experience in the valuation of freehold or leasehold interests in property and has taken advice from a valuer who he is satisfied has knowledge of and experience in the valuation of property of that particular kind or of property in that particular area,

and a person shall not be regarded as independent for the purposes of this definition unless—

(i) neither he, nor any of his partners (if any) or fellow directors (if any)—

(aa) is an officer or servant of the trustee or operator, in the case of a trust based scheme, or of the operator, in the case of a corporate based scheme, or of any body corporate in the same group as any of those persons; or

(bb) has a financial interest which it is reasonable to regard as significant in any of the persons referred to in sub-paragraph (aa) above; and

(ii) neither the trustee, in the case of a trust based scheme, nor the operator or any body corporate in the same group as either of them has a financial interest which it is reasonable to regard as significant in any firm in which the valuer is a partner or in any body corporate of which he is an officer or servant;

“scheme” means a collective investment scheme; and

“trust based scheme” means a scheme the purpose or effect of which is to enable persons taking part in the scheme, by becoming beneficiaries under a trust, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of property of a kind described in section 76(6)(a) of the Act or sums paid out of such profits or income.

(2) For the purposes of these Regulations, a trustee and operator shall not be regarded as independent of each other unless—

(a) neither of them is in the same group as the other;

(b) no director or other officer or servant of one of them is a director, officer or servant of the other;

(c) neither of them is a controller of the other; and

(d) neither of them nor any body corporate in the same group as either of them has a financial interest which it is reasonable to regard as significant in the other or in any body corporate in the same group as the other.

(3) In these Regulations, references to a freehold interest or to a leasehold interest include references to interests of equivalent tenure outside England and Wales.

(4) References in these Regulations to a numbered regulation shall be construed as references to the regulation bearing that number in these Regulations.

(5) References in any of these Regulations to a numbered paragraph shall, unless the reference is to a paragraph of a specified regulation, be construed as references to the paragraph bearing that number in the regulation in which it appears.

#### **Exemption from section 76(1) of Act**

3.—(1) The restrictions imposed by section 76(1) of the Act shall not apply to a scheme which has the characteristics mentioned in section 76(6) of the Act and which is not yet formally constituted if—

- (a) the operator is an authorised person and has given written notice to the Securities and Investments Board that the arrangements for its formal constitution are such that the operator reasonably believes that—
  - (i) when formally constituted, the scheme will satisfy the applicable provisions of regulations 4 to 39; and
  - (ii) in the case of a trust based scheme, the person whom it is proposed should be the trustee is a person who fulfils the conditions described in regulation 6(2)(a);
- (b) no notice given by the operator of the scheme has been received by the Securities and Investments Board stating that, in the opinion of the operator, the arrangements for the formal constitution of the scheme are no longer such that it is reasonable to believe that the scheme will, when formally constituted, satisfy the applicable provisions of regulations 4 to 39; and
- (c) the operator of the scheme is not subject to a prohibition of the kind described in section 65 of the Act which has been imposed on him for reasons related to a scheme of which he is, or was, the operator.

(2) The restrictions imposed by section 76(1) of the Act shall not apply to a scheme which has the characteristics mentioned in section 76(6) of the Act and which is formally constituted if—

- (a) the operator is an authorised person and has given written notice to the Securities and Investments Board that, when formally constituted—
  - (i) the scheme satisfied the applicable provisions of regulations 4 to 39; and
  - (ii) in the case of a trust based scheme, the trustee is a person who fulfilled the conditions described in regulation 6(2)(a);
- (b) no notice of the kind described in regulation 5 has been received by the Securities and Investments Board stating that, in the opinion of the solicitor giving the notice, a particular deletion, amendment or addition will have the effect that the scheme ceases to satisfy an applicable provision of regulations 5 to 39; and
- (c) the operator of the scheme is not subject to a prohibition of the kind described in section 65 of the Act which has been imposed on him for reasons related to a scheme of which he is, or was, the operator,

and those restrictions shall not, during the period of 21 days beginning with the date on which the scheme was formally constituted, in any event apply to a scheme which, immediately before that date, was a scheme to which those restrictions did not apply by virtue of the provisions of paragraph (1).

#### **Requirements as to interests to be held when scheme formally constituted**

4.—(1) The interest or interests which the operator, in the case of a corporate based scheme, or which the trustee, in the case of a trust based scheme, has in the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme must have been stated to have a current open market value of at least £5 million in a report made by a qualified valuer within the period of 6 months preceding the giving of any notice of a kind described in regulation 3(1)(a) or 3(2)(a) with respect to the scheme and prepared, in the case of a corporate based scheme, on the assumption that no rent is, or is to be, payable by the operator in respect of any leasehold interest.

(2) In the case of a corporate based scheme, the leasehold interest, or, if there is more than one, each leasehold interest which is not a leasehold interest in property which may reasonably be regarded as ancillary, which the operator has in the property subject to the scheme must fulfil the conditions described in paragraph (4).

(3) In the case of a trust based scheme, if the trustee has a leasehold interest in the whole or a substantial part of the property subject to the scheme, that interest, or, if there is more than one, each of those interests which is not an interest in property which may reasonably be regarded as ancillary, must fulfil the conditions described in paragraph (4).

(4) A leasehold interest fulfils the conditions described in this paragraph if—

- (a) it has an unexpired term of not less than 110 years; or
- (b) it is such that the operator, or, as the case may be, the trustee has the right unconditionally to renew the interest or interests for a term or terms which, together with the term or terms unexpired, amounts, in the case of each interest, to a term of not less than 110 years.

(5) Either—

- (a) at least 50% of the area available for letting in the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme (including any part of any such building which is being, or is to be, refurbished) must be subject to lettings for unexpired periods of not less than 5 years; or
- (b) the following conditions are fulfilled—
  - (i) at least 50% of the area available for letting in the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme (including any part of any such building which is being, or is to be, refurbished) is subject to lettings for unexpired periods of not less than 12 months;
  - (ii) there is an intention to carry out refurbishment or other works in respect of the whole or part of the relevant building or the group of adjacent or contiguous buildings;
  - (iii) where planning consents are necessary before the refurbishment or other works may be carried out, valid consents are held;
  - (iv) there are detailed specifications for the refurbishment or other works; and
  - (v) a qualified valuer has made a report giving his opinion as to—
    - (aa) the current open market value of the building or group of adjacent or contiguous buildings;
    - (bb) what the cost of the proposed refurbishment or other works will be; and
    - (cc) what the current open market value of the building or group of adjacent or contiguous buildings would be if the refurbishment or other works had been completed and the building or buildings let at full open market rental value at the time he made his report.

(6) For the purposes of paragraph (5), an area shall be regarded as subject to a letting if the only conditions precedent to its being let are conditions as to title.

(7) The amount of rental income payable in each year, or, if the scheme is not yet formally constituted, the amount of rental income which will, when the scheme is formally constituted, be payable in each year to the trustee, in the case of a trust based scheme, or to the operator, in the case of a corporate based scheme, must be sufficient to meet what, in the opinion of the operator, formed on the basis of such projections as to future expenditure as he may reasonably be expected to make, is likely to be the annual expenditure in respect of the scheme including expenditure in respect of the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme and also including payment of interest on, and repayment of, sums borrowed but excluding expenditure that is to be met out of sums borrowed.

#### **Ability to alter terms of scheme**

5. The terms of a scheme must provide that no term may be deleted or amended and that no new term may be added unless—

- (a) in any case in which the deletion, amendment or addition would have the effect that the terms of the scheme ceased to satisfy any applicable provision of this regulation or of regulations 6 to 39, it has been approved, at a meeting of participants convened in accordance with the terms of the scheme at which votes may be cast in person or by proxy, by a majority representing 51% in number of units in the scheme; and
- (b) a solicitor has given written notice to the Securities and Investments Board stating whether, in his opinion, the deletion, amendment or addition will have the effect that the documents constituting the scheme cease to satisfy any applicable provision of this regulation or of regulations 6 to 39.

**Requirements as to form of scheme**

- 6.—(1) A scheme must be either a trust based scheme or a corporate based scheme.
- (2) If a scheme is a trust based scheme—
- (a) the trustee must be a body corporate incorporated in the United Kingdom or another member State, the affairs of which are administered in the country in which it is incorporated and which has a place of business in the United Kingdom and is independent of the operator; and
  - (b) the terms of the scheme must provide—
    - (i) for there to be an authorised person (“the operator”) who is responsible for the management of the scheme;
    - (ii) that no person may be the operator of the scheme except a body corporate incorporated in the United Kingdom or another member State, the affairs of which are administered in the country in which it is incorporated and which has a place of business in the United Kingdom;
    - (iii) for units in the scheme to be issued by the operator;
    - (iv) for any certificates evidencing title to units to be issued in the name of and solely by the operator;
    - (v) for all units to be issued fully paid;
    - (vi) for the trustee to hold the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme on trust for sale, or, in Scotland, on trust, for participants in proportion to their respective entitlements as determined by the number of units in respect of which they are registered; and
    - (vii) that the trustee has power to postpone the sale of the property subject to the scheme except in a case in which the sale of the property has been directed as mentioned in regulation 11(1)(a) or approved as mentioned in regulation 12(1).
- (3) If a scheme is a corporate based scheme the terms of the scheme provide that—
- (a) the operator must be a body corporate—
    - (i) incorporated, with limited liability, in the United Kingdom or another member State, the affairs of which are administered in the country in which it is incorporated and which has a place of business in the United Kingdom;
    - (ii) the main objects of which are to hold a leasehold interest in the whole or a substantial part of the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme and to manage that property or to arrange for it to be managed on its behalf; and
    - (iii) the documents constituting which provide that all shares in it must be issued fully paid; and
  - (b) all participants of a kind described in paragraph (4) must be entitled to elect at least such number of directors of the body corporate as bears the same proportion, in relation to the total number of directors, as the number of shares held by those participants bears to the total issued share capital of the body corporate.
- (4) A participant falls within this paragraph if he has no freehold interest in the

property subject to the scheme and has no leasehold interest in that property which is superior to any interest held by the operator.

#### **Ability to call on participants for contributions**

7.—(1) The terms of a corporate based scheme must not contain any provision enabling participants to be required to contribute any sum to meet any liabilities incurred in respect of the scheme by the operator.

(2) Except as provided in paragraph (3), the terms of a trust based scheme must prohibit the trustee or the operator from requiring participants to contribute any sum to meet any liabilities which the trustee or operator has incurred in respect of the scheme.

(3) The provisions of paragraph (2) shall not prevent the terms of a trust based scheme conferring—

- (a) on the trustee a right to be indemnified in full out of the property subject to the scheme for all liabilities reasonably incurred by him in his capacity as trustee of the scheme; and
- (b) on the operator a right, which may be expressed to be subject to the exercise by the trustee of any right of the kind described in sub-paragraph (a) above, to be indemnified in full out of the property subject to the scheme for any liabilities reasonably incurred by him in his capacity as operator of the scheme.

#### **Requirements as to land and buildings**

8.—(1) The terms of a scheme must provide that the building or group of adjacent or contiguous buildings forming part of the property of the scheme must be situated in the United Kingdom or another member State or in a country or territory specified in the Schedule to these Regulations.

(2) In the case of a trust based scheme, the terms of the scheme must provide that the trustee must have a freehold or leasehold interest or interests in, or freehold and leasehold interest in, the whole, or substantially the whole, of the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme.

(3) In the case of a corporate based scheme, the terms of the scheme must provide that the operator must have a leasehold interest or interests in the whole, or substantially the whole, of the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme.

#### **Requirements as to distribution of income**

9.—(1) The terms of the scheme must provide that so much of the income of the scheme as is not reserved or expended as mentioned in paragraph (2) must not, without the consent of participants obtained in accordance with regulation 22(1)(b), be capable of being accumulated from year to year and each participant must, in the absence of such consent, be entitled to receive a sum which bears the same proportion to the sum calculated in accordance with paragraph (2) as:—

- (a) in the case of a corporate based scheme, the number of shares in the operator held by the relevant participant bears to the number of shares comprised in the operator's issued share capital; and
- (b) in the case of a trust based scheme, the number of units held by the relevant participant on any date specified for this purpose in the trust deed bears to the total number of units in the scheme which are in issue on that date.

(2) The sum calculated in accordance with this paragraph is an amount representing the entire income received in respect of the property subject to the scheme by the trustee, in the case of a trust based scheme, or by the operator, in the case of a corporate based scheme, since the end of the period in respect of which income was last distributed, less any sum which has been reasonably reserved or expended for the purposes of or in connection with efficient estate management or has otherwise been reasonably reserved or expended for the purposes of or in connection with the proper management of the scheme in accordance with its objects.

#### **Corporate based schemes: requirements as to winding-up**

10. The terms of a corporate based scheme must ensure that a majority representing at least 51% in number of the units in the scheme may, at a meeting of participants convened in accordance with the terms of the scheme at which votes may be cast in person or by proxy, require that the scheme be wound-up in the event of the disposal of the whole or substantially the whole of the property subject to the scheme.

#### **Trust based schemes: requirements as to termination**

11.—(1) The terms of a trust based scheme must require that the scheme will be terminated if, but only if,—

- (a) the trustee is directed either—
  - (i) to dispose of the whole or substantially the whole of the property subject to the scheme; or
  - (ii) to terminate the scheme, by a majority representing 75% in number of the units in the scheme at a meeting of participants, convened in accordance with the provisions of the trust deed, or, if such a meeting is adjourned, the trustee is directed to do so at the adjourned meeting by a majority representing 75% in number of the units held by the participants present and voting at that adjourned meeting; or
- (b) the whole, or substantially the whole, of the property subject to the scheme is acquired compulsorily; or
- (c) three months have elapsed since either the trustee notified the operator that the trustee wished to retire or since the trustee became obliged to retire by virtue of those terms of the scheme described in regulation 13(b)(i) and, in either case, the operator has been unable to find a person of the kind described in regulation 6(2)(a) who is ready and willing to act as trustee of the scheme; or
- (d) three months have elapsed since—
  - (i) the operator notified the trustee that the operator wished to retire; or
  - (ii) the retirement of the operator was approved or required in the manner described in regulation 13(d)(i) or (ii); or
  - (iii) the trustee became aware that an event of a kind described in regulation 13(e) or (f) had occurred; or
  - (iv) the trustee or the operator became aware that each had ceased to be independent of the other,

and, in a case within sub-paragraphs (i) to (iii) above, the trustee has been unable to find a person of the kind described in regulation 6(2)(b)(i) and (ii) who is ready and willing to act as operator of the scheme and who is independent of the trustee or, in a case within sub-paragraph (iv) above, the operator has been unable to find a person of the kind described in regulation 6(2)(a) who is ready and willing to act as trustee of the scheme.

(2) For the purposes of paragraph (1), consent given by participants to the grant of any mortgage, charge or other interest shall not be taken to be a direction of the kind described in that paragraph.

(3) The terms of a trust based scheme must contain provisions which are applicable in the event of the termination of the scheme, otherwise than in connection with the merger of the scheme with another scheme, and which—

- (a) oblige the trustee to sell, as soon as is reasonably practicable in the interests of participants, the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme and such, if any, of any other property subject to the scheme as is not invested in the manner for which the terms of the scheme must make provision by virtue of sub-paragraph (b) of this paragraph;
- (b) specify the manner in which so much, if any, of the proceeds of sale of the property subject to the scheme as are not distributed to participants immediately upon sale are to be invested pending further or final distribution and oblige the trustee so to invest the relevant proceeds;
- (c) oblige the trustee, forthwith upon completing the sale of the property required



to be sold by virtue of the provisions mentioned in sub-paragraph (a) of this paragraph, to realise such, if any, of the property subject to the scheme as is invested pending further or final distribution;

- (d) oblige the trustee, forthwith upon completing the realisation mentioned in sub-paragraph (c) of this paragraph and after deducting such sum, if any, as is payable for, or is set aside as provision for, all liabilities (whether actual or contingent) properly payable out of the property subject to the scheme including the actual or contingent costs of termination, to distribute to participants, in proportion to their respective entitlements, all property subject to the scheme; and
- (e) except in a case within paragraph (1)(d)(i) to (iii), oblige the trustee to act in accordance with the operator's directions when discharging the obligations imposed by virtue of the provisions mentioned in sub-paragraphs (a) to (d) of this paragraph.

#### **Requirements concerning disposal of property**

12.—(1) Subject to the provisions of paragraphs (2) and (3), the terms of a scheme must require that neither the trustee, in the case of a trust based scheme, nor the operator, in the case of a corporate based scheme, may dispose of any of the land or of the building or of any of the group of adjacent or contiguous buildings forming part of the property subject to the scheme or of any interest which he has in that land or that building or group of buildings without first obtaining the approval of a majority representing at least 75% in number of the units in the scheme held by participants present and voting at a meeting convened in accordance with the terms of the scheme.

(2) Paragraph (1) does not apply where the disposal—

- (a) arises because the scheme is being wound-up or terminated; or
- (b) occurs as a result of the grant or exercise of a mortgage or charge over the property; or
- (c) arises by reason of compulsory acquisition; or
- (d) is of property which may reasonably be regarded as ancillary to other property subject to the scheme; or
- (e) will not, in the reasonable opinion of the operator, involve the receipt of a sum which is 15% or more of the value of all units in the scheme in issue calculated on the basis that the value of each unit is the price quoted, at the close of business on the most recent business day before the contract for the disposal of the property was entered into, on a recognised investment exchange on which units in the scheme are traded as the lowest price at which units could be bought in what, in the reasonable opinion of the operator, is a standard number.

(3) The terms of a scheme must provide that—

- (a) no vote may be taken on a question of the kind described in paragraph (1) in any case in which the proposed purchaser is a body corporate unless the chairman of the meeting has received, from the proposed purchaser, a written notice verified in such manner, if any, as is specified in the terms of the scheme, identifying all those participants who are in the same group as the proposed purchaser and all those participants who are directors of the proposed purchaser or of a body corporate in the same group as the proposed purchaser; and
- (b) no participant may vote on a question of a kind described in paragraph (1) if he is the proposed purchaser or has been identified in a notice given to the chairman of the meeting by the proposed purchaser.

#### **Trust based schemes: retirement or replacement of trustee or operator**

13. The terms of a trust based scheme must provide that—

- (a) except when the trustee is obliged to retire by virtue of those terms of the scheme described in sub-paragraph (b) below, the trustee may not retire unless he is to be replaced by a person of the kind described in regulation 6(2)(a);
- (b) if—
  - (i) the trustee's retirement is approved or required by a majority representing

75% in number of the units held by the participants present and voting at a meeting called for that purpose in accordance with the provisions of the trust deed; or

- (ii) he ceases to be independent of the operator, he must, as soon as is reasonably practicable, retire and be replaced by a person of the kind described in regulation 6(2)(a) who has been selected by the operator;
- (c) except when the operator becomes obliged to retire by virtue of those terms of the scheme described in sub-paragraph (d), (e) or (f) below, the operator may not retire unless he is to be replaced by a person of the kind described in regulation 6(2)(b)(i) and (ii) approved by the trustee;
- (d) the operator must retire if either—
  - (i) the operator's retirement is approved or required by a majority representing 75% in number of the units held by the participants present and voting in person or by proxy at a meeting called for that purpose in accordance with the provisions of the trust deed; or
  - (ii) the trustee has given the operator notice in writing that his retirement is required by reason of his having seriously defaulted in an obligation imposed on him under the trust deed;
- (e) the operator must retire if he has ceased to be an authorised person; and
- (f) the operator must retire if he has become subject to a prohibition of the kind described in regulation 3(1)(c).

**Pre-emption rights: trust based schemes**

**14.—(1)** Subject to the provisions of paragraph (5), the terms of a trust based scheme must provide that—

- (a) no units in the scheme may, after units are first issued following participation in the scheme first being promoted otherwise than in accordance with the provisions of section 76(2) of the Act or otherwise than in accordance with the provisions of regulations made under section 76(3), be issued for a consideration which consists wholly of cash unless each participant whose name appears on the register of participants at such date as may be specified in the document offering the units for issue, being a date which falls within the period of four weeks immediately preceding the date of the offer, has been offered the opportunity to acquire, on the same or more favourable terms, a proportion of the units to be issued which is as nearly as practicable equal to the proportion in value held by him of units in the scheme;
- (b) no further units shall be issued unless either—
  - (i) a period of at least three weeks has elapsed during which the offer referred to in sub-paragraph (a) above has been open for acceptance; or
  - (ii) the operator has, during that period, received notice of the acceptance or refusal of the offer by every person to whom it was made; and
- (c) any offer which is made in the circumstances described in sub-paragraph (a) above is made in the manner described in this regulation.

(2) Subject to the provisions of paragraph (3), the terms of a trust based scheme must provide that an offer made by virtue of the provisions described in paragraph (1) should be in writing and, except where units are held jointly by two or more participants in which case it may be to one of those participants, should be made to a participant either personally or by sending it by prepaid post to any address in the United Kingdom shown in the register in relation to that participant or, if no such address is shown, to any address in the United Kingdom notified by him to the operator as the address for the giving of notice to him.

(3) In a case in which the operator is aware that the estate of a participant has been sequestrated or that a participant has died or has become or been adjudged bankrupt, the terms of the scheme may provide that the offer may be made—

- (a) by sending it by prepaid post addressed to the persons claiming to be entitled to the units in consequence of the sequestration, death or bankruptcy by name, or by the title of representatives of the deceased, or trustee or assignee of the

bankrupt, or by any like description, at the address in the United Kingdom supplied for the purpose by those so claiming; or

- (b) until such an address has been so supplied, by giving notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

(4) In the case of a participant who has not notified the operator of an address in the United Kingdom for the service of notices on him, the terms of the scheme may provide that the offer may be made by causing it, or a notice specifying where a copy of it may be obtained or inspected, to be published in the London, Edinburgh and Belfast Gazettes.

(5) The terms of a trust based scheme may enable a majority representing at least 75% in number of the units held by participants present and voting at a meeting convened in accordance with the provisions of the trust deed to authorise the operator, either conditionally or subject to such conditions, modifications or limitations as may be specified in the authority and either generally or in relation to a particular issue, to issue units pursuant to that authority as if the scheme did not include terms of the kind described in paragraph (1)(a).

#### **Pre-emption rights: corporate based schemes**

15. The provisions of regulation 14 shall apply in relation to a corporate based scheme where the operator is not subject to the provisions of sections 89 to 96 of the Companies Act 1985(a) or articles 99 to 106 of the Companies (Northern Ireland) Order 1986(b) as if references to units were references to shares in the operator.

#### **Trust based schemes: valuation of non-cash consideration**

16.—(1) Except as provided in paragraphs (2) and (3), the terms of a trust based scheme must prohibit the issue of units in the scheme otherwise than for cash unless—

- (a) the consideration for the units has been valued in accordance with regulation 17;
- (b) a report with respect to its valuation has been made to the operator by a person appointed by him in accordance with that regulation during the period of six months immediately preceding the issue of the units; and
- (c) a copy of the report has been sent to the potential participant.

(2) Paragraph (1) shall not apply with respect to the issue of units in connection with a proposed merger of the scheme with another scheme.

(3) Paragraph (1) shall not apply with respect to an issue of units as consideration, or partly as consideration, for the acquisition of the first property subject to the scheme.

#### **Valuation and report**

17.—(1) The terms of a trust based scheme must provide that any valuation and report made in the circumstances described in regulation 16 must comply with the requirements specified in paragraphs (3) and (4) and be made—

- (a) in the case of consideration which is a freehold or leasehold interest in any building, by a qualified valuer; and
- (b) in any other case, by an independent person who is qualified at the time of the report to be appointed auditor of a company which is not an unquoted company within the meaning of section 389(2)(a) of the Companies Act 1985 or the corresponding Northern Ireland enactment.

(2) A person shall not be regarded as independent for the purposes of paragraph (1)(b) if he is an officer or servant of the trustee or operator or is a partner of or in the employment of an officer or servant of either of those persons, and, for these purposes, an auditor of a company shall not be regarded as an officer or servant of it.

- (3) A report complies with the requirements of this paragraph if it—

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(a) 1985 c.6.  
(b) S.I. 1986/1032 (N.I.6).

- (a) states the price at which the units which are to be wholly or partly paid for by the consideration in question are to be issued;
  - (b) contains a description of the consideration, the method used to value it and the date of the valuation; and
  - (c) states the extent to which the price at which the units are to be issued is to be treated as paid up—
    - (i) by the consideration; and
    - (ii) in cash.
- (4) A report complies with the requirements of this paragraph if it contains or is accompanied by a note by the valuer that—
- (a) it appears to him that there has been no material change in the value of the consideration in question since the valuation; and
  - (b) on the basis of the valuation, the value of the consideration, together with any cash by which the price to be paid for the units on issue of the units is to be paid up, is not less than the price to be paid for the units.

**Application of regulations 16 and 17 to corporate based schemes**

18. The provisions of regulations 16 and 17 shall apply in relation to a corporate based scheme which is not subject to the provisions of section 103 of the Companies Act 1985 or the corresponding Northern Ireland enactment taking the references in regulation 17(2) to the trustee or operator to be references to the operator.

**Requirements as to borrowing: corporate based schemes**

19.—(1) Subject to the provisions of regulation 21, the terms of a corporate based scheme must fulfil the conditions specified in either paragraph (2) or (3).

(2) The conditions specified in this paragraph are that the terms of a corporate based scheme must—

- (a) provide that no sum may be borrowed which is repayable out of the property subject to the scheme unless that sum is reasonably required for the purposes of paying for the refurbishment, repair, extension or redevelopment of the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme or any part of any such building or buildings or otherwise in connection with the efficient management of that building or those buildings or is borrowed in order to repay any sum so borrowed; and
- (b) limit the total amount of all sums borrowed and not repaid to an amount which, except where sums are borrowed to finance work which may reasonably be regarded as being essential to carry out as a matter of urgency in order to protect the fabric of the building or the group of adjacent or contiguous buildings forming part of the property subject to the scheme or to protect the land forming part of that property, is not greater, at the time of borrowing, than three times the annual rental payable to the operator by the occupants of the building or the group of adjacent or contiguous buildings at that time.

(3) The conditions specified in this paragraph are that the terms of a corporate based scheme must be such that—

- (a) the total amount which may be borrowed through loans repayable out of the property subject to the scheme is limited so that, except in a case in which the sum is borrowed in order to repay other sums borrowed, it may not exceed 75%, or such lesser percentage as may be specified in the documents constituting the scheme, of the amount which is stated in what, at the time a sum is borrowed, is the most recent report made to the operator by a qualified valuer to be the amount which, in the opinion of the valuer, represents what would be the current open market value of the interest or interests which the operator has in the land and the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme if no rent were payable by the operator in respect of that interest or such of those interests in respect of which rent is payable; and
- (b) any document required to be published by virtue of regulations made under

section 76(4) to (7) of the Act which contain provisions of the kind described in section 76(7) specifies the limit then specified in the documents constituting the scheme as the limit on the amounts which may be borrowed through loans repayable out of the property subject to the scheme.

#### **Requirements as to borrowing: trust based schemes**

20.—(1) The terms of a trust based scheme must provide that no sum may be borrowed which is repayable out of the property subject to the scheme unless that sum is reasonably required for the purposes of paying for the refurbishment, repair, extension or redevelopment of the property or any part of it or otherwise in connection with the efficient management of the property.

(2) Subject to the provisions of regulation 21, the terms of a trust based scheme must limit the amount of all sums borrowed and not repaid to the amount specified in regulation 19(2)(b) except where sums are borrowed in order to finance work of the kind described in that provision.

#### **Qualification of regulations 19 and 20**

21.—(1) Notwithstanding the provisions of regulation 19(2), in the case of a corporate based scheme, or regulation 20(2), in the case of a trust based scheme, the terms of a scheme may provide that sums which could not otherwise be borrowed except in contravention of whichever is applicable of those provisions may be borrowed if—

- (a) subject to the provisions of paragraph (2), the borrowing is approved by a majority representing at least 75% in number of the units held by participants present and voting at a meeting convened in accordance with the terms of the scheme by a notice which informed participants of the period during which the sum to be borrowed is to be repaid and of the effect which repayment is likely to have on the income to which participants would otherwise be entitled;
- (b) the sums borrowed are to be repaid within a reasonable period having regard to the purpose for which the sums are borrowed and, in any event, in a case in which sums are borrowed for the purpose of carrying out works involving the refurbishment, repair, extension or redevelopment of the whole or a substantial part of the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme, within the period of 24 months beginning with whichever is later of the date on which—
  - (i) any work which is being carried out is certified as being practically completed in accordance with the building contract by the architect or other person specified in the contract as the person responsible for giving such a certificate; and
  - (ii) it is reasonable to regard all material covenants on the part of the employer or contractor under the building contract as having been substantially fulfilled,and, in any other case, within the period of 15 months beginning with the date on which the sum, or, if the sum was borrowed in instalments, the first instalment, was borrowed; and
- (c) the sums borrowed do not exceed either—
  - (i) one third of what, in the reasonable opinion of the operator; or
  - (ii) two thirds of what, in the opinion of a qualified valuer,will be the value of the property subject to the scheme upon fulfilment of the purpose for which the sums were borrowed.

(2) Regulation 12(3) shall apply for the purposes of paragraph (1) in the same way as it applies for the purposes of regulation 12(1) but taking the reference to the proposed purchaser to be references to the person from whom it is proposed to borrow the money.

#### **Matters requiring approval by meeting of participants**

22.—(1) In addition to any other matter for which the approval of a meeting of participants is required by any provision of these Regulations—

- (a) the terms of a corporate based scheme must provide that the approval of a

majority representing at least 51% in number of the units in the scheme held by participants given in a meeting of participants convened in accordance with the terms of the scheme is required if the documents constituting the scheme are to be amended so as to vary the terms of the scheme which relate to the matters mentioned in regulation 19; and

- (b) subject to the provisions of paragraphs (2) and (3), the terms of a scheme must provide that approval, given in a meeting of participants convened in accordance with the terms of the scheme, of a majority in number of the units held by participants present and voting in person or by proxy is required for—
- (i) any acquisition of any freehold or leasehold interest in any further land or building as part of the property subject to the scheme;
  - (ii) the expenditure of any capital sum in connection with the grant or purchase of any lease or other rights over the land or the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme;
  - (iii) the expenditure of any capital sum on the redevelopment, extension, refurbishment or repair of the building or group of adjacent or contiguous buildings forming part of the property subject to the scheme except any such expenditure as is necessary in order to finance work of the kind described in regulation 19(2)(b);
  - (iv) except where one class of units is being converted into units of another class, any issue of units additional to those issued in pursuance of an offer made at the time participation in the scheme was first promoted otherwise than in accordance with the provisions of section 76(2) of the Act or otherwise than in accordance with the provisions of regulations made under section 76(3);
  - (v) the accumulation of any income of the scheme except where income is accumulated for the purpose of reserving an amount as mentioned in regulation 9(2); and
  - (vi) the removal of any person appointed to audit the accounts of the scheme.

(2) The provisions of paragraph (1)(b) shall not have effect in relation to any proposed transaction, or related series of proposed transactions, of a kind falling within any of subparagraphs (i) to (iv) of paragraph (1)(b) which, in the reasonable opinion of the operator, would not involve the receipt or expenditure of a sum, which, in a case falling within paragraph (1)(b)(iv), is 5% or more, or, in any other case, is 15% or more, of the value of all units in the scheme in issue, calculated on the basis that the value of each unit is the price quoted, at the close of business on the most recent business day before whichever is relevant of the day on which the contract for the acquisition or, as the case may be, the expenditure was entered into or the day on which the decision to issue the units was taken, on a recognised investment exchange on which units in the scheme are traded as the lowest price at which units could be bought in what, in the reasonable opinion of the operator, is a standard number.

(3) Regulation 12(3) shall apply for the purposes of paragraph (1)(b)(i) and (ii) as it applies for the purposes of regulation 12(1) but taking the reference to the proposed purchaser to be—

- (a) in the case of paragraph (1)(b)(i) a reference to the person from whom it is proposed to acquire the interest; and
- (b) in the case of paragraph (1)(b)(ii) a reference to the person to whom or from whom it is proposed to grant or, as the case may be, purchase the lease or other rights.

(4) Regulation 12(3)(b) shall apply for the purposes of paragraph (1)(b)(vi) as it applies for the purposes of regulation 12(1) but taking the reference to the proposed purchaser to be a reference to the person who it is proposed should be removed.

#### **Application of regulations 24 to 36 in case of corporate based schemes**

23. The provisions of regulations 24 to 36 do not apply to a corporate based scheme the operator of which is a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.

## **Convening of meetings**

**24.** The terms of a scheme must provide that—

- (a) the trustee or operator, in the case of a trust based scheme, and the operator, in the case of a corporate based scheme, must—
  - (i) be able to convene meetings of all participants at such time and place as may be thought fit; and
  - (ii) be under an obligation, at the request in writing of participants holding not less than one-tenth (or any proportion less than one-tenth specified for this purpose in the documents constituting the scheme) in value of the units in issue, to convene a meeting of all participants at such time and place as may be thought fit;
- (b) at least two weeks written notice must be required to be given of every meeting;
- (c) the notice given must specify the time and place of the meeting and the general nature of the business to be transacted; and
- (d) the accidental omission to give notice to or the non-receipt of notice by any participant must not invalidate the proceedings at any meeting.

## **Quorum**

**25.** The terms of a scheme must provide that—

- (a) the quorum at any meeting of participants (whether or not an adjourned meeting) must be two persons entitled to vote upon the business to be transacted each being a participant or a proxy for a participant or a duly authorised representative of a body corporate which is a participant;
- (b) it must not be possible for any business to be transacted at any meeting unless the requisite quorum is present at the commencement of business;
- (c) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting must stand adjourned to such day and time not being less than three weeks thereafter and to such place as may be appointed by the chairman; and
- (d) notice of any adjourned meeting of participants must be given in the same manner as for an original meeting.

## **Chairman**

**26.—(1)** The terms of a scheme must provide that—

- (a) in the case of a corporate based scheme—
  - (i) the chairman, if any, of the board of directors of the operator; or
  - (ii) if there is no such chairman or if he is absent, a director of the operator nominated by the other directors of the operator; or
  - (iii) if neither the chairman nor the director nominated under sub-paragraph (ii) above is present within 15 minutes after the time appointed for holding the meeting and willing to act, a director elected by the directors present at the meeting, or, if only one director is present, that director, presides as chairman at every meeting of participants; and
- (b) subject to the provisions of paragraph (2), in the case of a trust based scheme, an officer of or other person appointed by the trustee of the scheme presides as chairman at every meeting of participants.

**(2)** Paragraph (1)(b) shall not have effect where either—

- (a) the officer of or other person appointed by the trustee to preside as chairman is not present within 15 minutes of the time appointed for holding the meeting; or
- (b) the business to be transacted at the meeting consists of or includes any proposal that the trustee should retire as trustee of the scheme,

and, in any such case, the terms of the scheme must provide that a participant chosen by the participants present in person or by proxy or through their duly authorised representatives presides as chairman at the meeting.

## **Adjournment**

27. The terms of a scheme must provide that the chairman of a meeting of participants may, with the consent of the meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but that no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

## **Votes at meetings**

28. The terms of a scheme must provide that—

- (a) at any meeting of participants any resolution put to the vote at the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or by one or more participants present in person or by proxy and holding or representing one-twentieth (or any proportion less than one-twentieth specified for this purpose in the documents constituting the scheme) of the number of units for the time being in issue;
- (b) unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost must be conclusive;
- (c) if a poll is duly demanded it must be taken in such manner as the chairman may direct and the result of a poll shall be taken to be the resolution of the meeting at which the poll was demanded;
- (d) a poll demanded if a chairman falls to be elected by participants or on a question of adjournment must be taken forthwith and a poll demanded on any other question must be taken at such time and place as the chairman directs;
- (e) the demand for a poll must not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll had been demanded;
- (f) on a show of hands every participant who is entitled to vote on the resolution in question and who is present whether (being an individual) in person or (being a corporation) by a duly authorised representative not being himself a participant entitled to vote must have one vote;
- (g) on a poll votes must be capable of being given in person or by proxy;
- (h) on a poll every participant who is entitled to vote on the resolution in question and who is present in person or by proxy must have one vote for every unit in respect of which he is registered in the register of participants;
- (i) a corporation being a participant must be able by resolution of its directors or other governing body to authorise such person as it thinks fit to act as its representative at any meeting of participants and the person so authorised must be entitled to exercise the same powers on behalf of the corporation which he represents as the corporation could exercise if it were an individual participant; and
- (j) in the case of joint participants the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint participants and for this purpose seniority shall be determined by the order in which the names stand in the register of participants.

## **Proxies**

29. The terms of a scheme must—

- (a) require the instrument appointing a proxy to be in writing and executed by or on behalf of the appointor;
- (b) require the instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority to be deposited at such place as may be directed in the notice convening the meeting or if no such place is appointed then at the registered office or principal place of business in the United Kingdom of the trustee, in the case of a trust based scheme, or of the operator, in the case of a corporate based



scheme, within such period as may be specified in the documents constituting the scheme before the time appointed for holding the meeting or adjourned meeting (or, in the case of a poll, before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy must not be treated as valid;

- (c) specify that no instrument for appointing a proxy is valid after the expiration of twelve months from the date named in it as the date of its execution;
- (d) specify that a person appointed to act as a proxy need not be a participant;
- (e) require an instrument of proxy to be in the usual common form or in any other form approved by the trustee, in the case of a trust based scheme, or by the operator, in the case of a corporate based scheme; and
- (f) specify that a vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the units in respect of which the proxy is given provided that no notice of such death, insanity, revocation or transfer has been received by the trustee, in the case of a trust based scheme, or by the operator, in the case of a corporate based scheme, at the place appointed for the deposit of proxies before the commencement of the meeting or adjourned meeting at which the proxy is used.

### **Minutes**

30. The terms of a scheme must provide that minutes of all resolutions and proceedings at every meeting of participants be made and duly entered in books to be from time to time provided for that purpose and that any such minute if purporting to be signed by the chairman of the meeting be conclusive evidence of the matters stated in it and until the contrary is proved that every such meeting in respect of the proceedings of which minutes have been made be taken to have been duly held and convened and all resolutions passed thereat to have been duly passed.

### **Audit**

31.—(1) The terms of a scheme must require that the directors of the operator, in the case of a corporate based scheme, and the operator with the approval of the trustee, in the case of a trust based scheme, at the outset and upon any vacancy, appoint as an auditor for the scheme any person who meets the conditions described in paragraph (2).

(2) A person meets the conditions described in this paragraph if—

- (a) he is qualified, under section 389 of the Companies Act 1985 or the corresponding Northern Ireland enactment, for appointment as auditor of a company which is not an unquoted company within the meaning of that section or that enactment; and
- (b) he is not a person who would, by virtue of any provision of section 389(6) or (7) of the Companies Act 1985 or the corresponding Northern Ireland enactment, be disqualified for appointment as auditor of the operator, in the case of a corporate based scheme, or of the trustee or the operator in the case of a trust based scheme.

(3) The terms of a scheme must provide for the audit fees of the auditor to be determined by the operator, in the case of a corporate based scheme, and by the operator with the approval of the trustee, in the case of a trust based scheme.

(4) The terms of a scheme must provide that the operator is responsible for ensuring that the accounts referred to in regulation 32 are audited by the person appointed as auditor for the scheme.

### **Reports and accounts**

32.—(1) The terms of a scheme must require the operator to prepare and make available to participants a report and accounts in relation to each annual accounting period of the scheme.

(2) Subject to paragraphs (3) and (4), the terms of a scheme must provide that each successive period of twelve months is an annual accounting period.

(3) The terms of a scheme must provide that the first annual accounting period shall—

(a) begin on the day on which the scheme is formally constituted; and

(b) end either—

(i) on such day in the calendar year in which the first annual accounting period begins as is specified in the terms of the scheme as the day on which each annual accounting period is to end; or

(ii) if that day is less than six months after the beginning of the first annual accounting period and the operator after consulting the auditor so determines, on the first anniversary of that day.

(4) The terms of a scheme must provide that, if the scheme is terminated, the final annual accounting period shall end on the day on which the final distribution is made to participants.

(5) The terms of a scheme may enable the operator to choose that any particular annual accounting period shall end on a day which is not more than seven days after and not more than seven days before the day on which that accounting period would otherwise have ended.

### **Register of participants**

33.—(1) The terms of a scheme must provide for a register of participants to be established and maintained in a legible form or in a manner capable of being reproduced in a legible form.

(2) In the case of a corporate based scheme, the terms of the scheme must ensure that the register is or will be kept by the operator and, in the case of a trust based scheme, they must ensure that the register is or will be kept by the operator or by some other person (who may be the trustee) acting under the supervision of the operator.

(3) Subject to the provisions of paragraph (4), the terms of a scheme must require that there be entered in the register of participants—

(a) the name and address of each participant in the scheme;

(b) the number of units held by each participant; and

(c) the date on which each participant was registered in the register in respect of the units standing in his name.

(4) The terms of a scheme may provide that, in a case in which a unit is held jointly by more than four persons, no entry need be made on the register with respect to more than four of the joint participants.

(5) The terms of a scheme shall prohibit, or shall have the effect that there will be a prohibition on—

(a) notice of any express, implied or constructive trust being entered in the register of participants; and

(b) the trustee or operator, in the case of a trust based scheme, or the operator, in the case of a corporate based scheme, taking notice of any equities or other interests affecting the title of any participant to units.

### **Transfer of units by act of parties**

34.—(1) Subject to paragraph (2), the terms of a scheme must provide that every participant is entitled to transfer units held by him and in respect of which he is entered in the register either—

(a) in the case of units purchased on or under the rules of a recognised investment exchange, by any form of transfer which is commonly used for the transfer of investments listed or dealt in on the relevant exchange; or

(b) in any other case, in any usual or common form or in such other form as may from time to time be approved by the operator.

(2) The terms of a scheme may provide that the operator is not under any duty to

accept a transfer if the terms of the scheme contain a limitation upon the categories of persons who may be participants and the transferee is not within one of those categories.

(3) The terms of a scheme must provide that—

- (a) every instrument of transfer of units must, except in a case in which any enactment or any rule of a recognised investment exchange requires otherwise, be signed by or on behalf of the participant transferring the units (or, in the case of a body corporate, be sealed by that body or signed by one of its officers) and that the transferor shall be taken to remain the participant in respect of the units transferred until the name of the transferee has been entered in the register; and
- (b) every instrument must, if required, be duly stamped and accompanied by any necessary declarations or other documents that may be required under any enactment and by such evidence as may be required to prove the title of the transferor or his right to transfer the units or, in the case of a body corporate, the authority of the signatory on its behalf.

#### **Change of name or address of participant**

35. The terms of a scheme must require the operator—

- (a) upon receipt of notice in writing of a change of name or change of address of any participant;
- (b) upon being satisfied as to the change of name or address; and
- (c) on compliance with such formalities, including, in the case of change of name, the surrender of any certificate previously issued to such participant,

to alter the register, or to ensure that it is altered, accordingly and, if appropriate, issue a new certificate to the participant or to cause such a certificate to be issued.

#### **Inspection of register and copies of entries**

36.—(1) The terms of a scheme must require the operator to make the register available, or to ensure that it is made available, for inspection in the United Kingdom free of charge by the trustee (if any) of the scheme and by or on behalf of a participant, at all times during ordinary office hours except that the terms of the scheme may permit the register to be closed at such time or times not exceeding in the whole 30 days in each year as the operator may from time to time determine.

(2) The terms of a scheme must require the operator—

- (a) to supply the trustee (if any) free of charge with a copy in printed form of the entries in the register relating to any participant; and
- (b) to supply a participant or his authorised representative upon payment of any reasonable charge with a printed copy of the entries on the register relating to that participant.

#### **List of participants**

37. The terms of a trust based scheme and those of a corporate based scheme the operator of which is not subject to those provisions of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 which concern the ability of persons to obtain copies of the operator's register of members must contain provision entitling a participant to obtain from the operator on payment of any reasonable charge within the period of two weeks following the participant making a written request to the operator, a list of all persons who were participants in the scheme on a date specified in the request (which may not be a date more than two weeks before the request for the list is made).

#### **Trust based schemes: position of trustees and operators**

38. The deed constituting a trust based scheme must contain a statement of—

- (a) the duties and powers of the operator to manage and deal with the property subject to the scheme;
- (b) the powers of the trustee to require that the operator furnish him with information and the duties of the operator to comply with such requirements;
- (c) the duties of the trustee relating to the custody of the documents of title to the property subject to the scheme; and

- (d) any right of the trustee or operator to be indemnified out of the property subject to the scheme for liabilities reasonably incurred in the course of acting as trustee or operator as the case may be.

**Trust based schemes: position of participants**

39. The terms of a trust based scheme must contain provision that the terms of the deed formally constituting the scheme are binding on the trustee and operator and on each participant as if the participant had been a party to the deed.

11th January 1989

*Francis Maude*  
Parliamentary Under Secretary of State,  
Department of Trade and Industry

**SCHEDULE**

Regulation 8

**COUNTRIES AND TERRITORIES**

Australia  
Austria  
Canada  
Finland  
Japan  
New Zealand  
Norway  
Sweden  
Switzerland  
United States of America

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations make provision for exempting single property schemes (that is to say, schemes which have the characteristics described in section 76(6) of the Financial Services Act 1986 ("the Act") and which satisfy the requirements specified in the regulations) from the restrictions on promotion of collective investment schemes imposed by section 76(1) of the Act.

A scheme which is not yet formally constituted will be exempt from those restrictions if—

- (a) the operator of the scheme is an authorised person who is not subject to a restriction imposed under section 65 of the Act for reasons related to a collective investment scheme of which he is or was the operator and who has given written notice to the Securities and Investments Board to the effect described in regulation 3(1)(a); and
- (b) the Securities and Investments Board has not received a notice from the operator to the effect described in regulation 3(1)(b).

A scheme which is formally constituted will be exempt from the restrictions imposed by section 76(1) of the Act for the period of 21 days beginning with the date on which it was formally constituted if, immediately before that date, it was exempted from those

restrictions. A scheme which is formally constituted will also be exempt from the relevant restrictions if-

- (a) the operator is an authorised person who is not subject to a prohibition of the kind described above and who has given notice to the Securities and Investments Board to the effect described in regulation 3(2)(a); and
- (b) the Securities and Investments Board has not received notice from a solicitor to the effect described in regulation 3(2)(b).

Regulations 4 to 39 of the regulations specify certain requirements relating to the scheme as to the satisfaction of which the operator must express an opinion in a notice served under regulation 3(1) or 3(2). Amongst these requirements are requirements as to the nature of the property held by the scheme, the form of the scheme, the borrowing powers exercisable in relation to it and the rights of participants.