STATUTORY INSTRUMENTS

1988 No. 284

FINANCIAL SERVICES

The Authorised Unit Trust Scheme (Investment and Borrowing Powers) Regulations 1988

Made - - - -	*22nd February 1988*
Laid before Parliament	*22nd February 1988*
Coming into force -	*14th March 1988*

ARRANGEMENT OF REGULATIONS

PART I

General

1. Citation and Commencement
2. Interpretation

PART II

Valuation

3. Property included and assumptions to be made in valuing fund
4. Valuation of property

PART III

Breach of Investment Limits

5. Duties of manager and trustee to avoid breach of investment limits
6. Duties of manager and trustee in the event of inadvertent breach of investment limits
7. Duties of manager and trustee in the event of other breaches of investment limits

PART IV

Investment and Borrowing Powers

8. Hedging
9. Restriction of investment powers exercisable in relation to authorised unit trust schemes
10. Restriction of authorised securities schemes to investment in approved securities

11. Exceptions from regulations 9 and 10
12. Ability of authorised securities scheme to invest in open-ended collective investment schemes
13. Limitation on amount which may be invested under regulation 12
14. Limitation on investment in schemes managed by manager or associated company
15. Limitation on investment in instruments conferring rights to subscribe and investment in nil paid or partly paid securities
16. Limitation on acquisition of influential stake
17. Authorised securities schemes other than Government and other public securities funds: spread of investments
18. Exceptions from regulation 17
19. Acquisitions as a result of exercise of rights
20. Government and other public securities funds: spread of investments
21. Money market funds: limitation of ability to invest in transferable securities
22. Money market funds: general investment powers
23. Money market funds: spread of investments
24. Money market funds: limitation of ability to invest in long dated instruments
25. Application of regulations 15 and 16 to money market funds
26. Feeder funds: limitation to investment in units of single collective investment scheme
27. Funds of funds: limitation to investment in units of other collective investment schemes
28. Prohibition on fund of funds investing in another fund of funds
29. Funds of funds: spread of investments
30. Feeder funds and funds of funds: ability to hold cash and near cash
31. Borrowing
32. Underwriting and placings
33. Lending, guarantees and indemnities
34. Uncovered sales of property
35. Application of regulations to umbrella funds
36. Prohibition on a scheme of a particular kind becoming a scheme of another kind

SCHEDULES

1. Approved Markets
2. Approved Options and Futures Markets
3. Countries and Territories

The Secretary of State, in exercise of the powers conferred on him by section 81 of the Financial Services Act 1986(a), and all other powers enabling him in that behalf, hereby makes the following Regulations:–

(a) 1986 c.60.

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Authorised Unit Trust Scheme (Investment and Borrowing Powers) Regulations 1988 and shall come into force on 14th March 1988.

Interpretation

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

"the Act" means the Financial Services Act 1986;

"approved market" means the Official List of any member State and includes the principal or only market established under the rules of an investment exchange specified in Part I of Schedule 1 to these Regulations and also any market specified in Part II of that Schedule;

"approved options and futures market" means a market specified in Schedule 2 to these Regulations;

"approved securities" means–

(a) transferable securities which are traded on or under the rules of an approved market otherwise than by virtue of the specific permission of the market authority; and

(b) recently issued transferable securities,

but does not include any investment falling within paragraph 1 or 2 of Schedule 1 to the Act which can be transferred only with the consent of the body corporate which issued the investment or with the consent of any members or debenture holders of that body corporate;

"authorised institution" means an authorised institution within the meaning of the Banking Act 1987(a) and also includes any person who is authorised under the law of another member State to carry on a business which is a deposit-taking business for the purposes of that Act;

"authorised securities scheme" means a scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of transferable securities and which is not a feeder fund or a fund of funds;

"base currency", except in the case of a scheme which is treated as an authorised unit trust scheme by virtue of paragraph 9 of Schedule 15 to the Act and, subject to paragraph (2), means the currency specified in the trust deed as the base currency of the scheme and, in the case of a scheme which is treated as an authorised unit trust scheme by virtue of that paragraph for which there is no base currency, means the currency in which accounts relating to the scheme are prepared;

"business day", in relation to anything done or to be done in any part of the United Kingdom, means any day other than a Saturday, a Sunday or a bank holiday in that part of the United Kingdom and, in relation to anything done or to be done by reference to a market outside the United Kingdom, means any day on which that market is normally open for business;

"cash" includes foreign currency;

"close out", in relation to a transaction entered into for the scheme, means the entry, by the trustee, into a further transaction under which the obligation to deliver or receive which arises or may, at the option of the other party to the transaction, arise under the original transaction is offset by an equivalent and opposite obligation or right to receive or deliver;

"contract for differences" means a contract rights under which constitute an investment falling within paragraph 9 of Schedule 1 to the Act;

"feeder fund" means a scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in a single scheme or recognised scheme;

(a) 1987 c.22.

"fund of funds" means a scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in schemes or recognised schemes;

"future" means a contract rights under which constitute an investment falling within paragraph 8 of Schedule 1 to the Act;

"Government and other public securities" means investments falling within paragraph 3 of Schedule 1 to the Act which are–

(a) issued by or on behalf of the Government of the United Kingdom, of Northern Ireland or of a member State other than the United Kingdom or by or on behalf of a local authority in the United Kingdom or any other member State; or

(b) issued by or on behalf of the Government of any country or territory specified in Schedule 3 to these Regulations; or

(c) issued by or on behalf of an international organisation the members of which include the United Kingdom or another member State,

and includes investments which would fall within paragraph 3 of Schedule 1 to the Act if that paragraph extended to investments guaranteed by a local authority in any member State or by the Government of the United Kingdom, the Government of any other member State or of Northern Ireland or by the Government of any country or territory specified in Schedule 3 to these Regulations;

"Government and other public securities fund" means an authorised securities scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of either Government and other public securities or Government and other public securities and units in other collective investment schemes which are, or, if authorised, would be, Government and other public securities funds;

"hedging transaction" means a transaction of the kind described in regulation 8(2);

"initial margin" means cash or other property deposited in accordance with the rules of an approved options and futures market on entering into a margined contract;

"manager", in relation to a scheme, means the manager of the scheme;

"margin" means cash or other property paid, transferred or deposited under the terms of a margined contract;

"margined contract" means a contract rights under which constitute an investment falling within paragraph 7, 8 or 9 of Schedule 1 to the Act being a contract the terms of which are such that property of the scheme will or may be required to be paid, transferred or deposited as security for the performance of an obligation to deliver or receive property which will or may arise under the contract whether at the option of the trustee or of the other party to the contract or otherwise and includes an option purchased for the scheme under which the total amount of premium which may be payable for the option is not payable on purchase but may be demanded before expiry of the option;

"market dealing bid price", in relation to property of any description and a particular time, means the amount which would be received in consideration for the sale of the property on the assumption that–

(a) it was sold on the best terms available at that time on an approved market on which it is traded for transactions in property of that description in what, in the reasonable opinion of the manager, is a standard size; and

(b) there had been deducted from the consideration an amount equal to an estimated amount of such fiscal charges, commission and other sales charges as would be payable by the seller in connection with such a sale, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in connection with a transaction of the kind in question;

"money market fund" means a scheme the sole object of which is to enable participants to participate in or receive profits or income arising from the acquisition, holding, management or disposal of any one or more of the following, or of any one or more of the following and transferable securities–

(a) deposits;

(b) loans; and

(c) instruments creating or evidencing indebtedness which are not transferable securities;

"near cash" means money in a current account with an authorised institution or money in a deposit account with, or on short term loan to, such an institution which can be withdrawn immediately and without payment of a penalty exceeding more than seven days' interest calculated at ordinary commercial rates and also includes investments of a kind described in paragraphs 1 and 2 of Part II of the First Schedule to the Trustee Investments Act 1961(a) and equivalent investments issued or guaranteed by the Government of another member State or of a country or territory specified in Schedule 3 to these Regulations;

"option" means a right exercisable within a specified period of time, at the option of the holder of the right, to dispose of or acquire any property at a specified price;

"premium", in relation to an option, means the total amount which the purchaser of the option is, or may be, required to pay in consideration for the right to exercise the option;

"purchase", in relation to an option, means acquiring the right to exercise the option;

"recently issued transferable securities" means transferable securities–

(a) which were issued on terms that an application would be made to an exchange or market which, if accepted, would result in the securities becoming approved securities by virtue of paragraph (a) of the definition of "approved securities";

(b) with respect to which no application of the kind described in paragraph (a) of this definition has been refused; and

(c) with respect to which not more than twelve months has passed since the date of their issue;

"relevant pension scheme" means a scheme which is either–

(a) an appropriate scheme for the purposes of section 1(8) of the Social Security Act 1986(b); or

(b) an exempt approved scheme within the meaning of section 592(1) of the Income and Corporation Taxes Act 1988(c) to which the employer is not a contributor and which provides benefits additional to those provided by another exempt approved scheme to which he is a contributor; or

(c) a personal pension scheme approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988;

"relevant time", in relation to the valuation of any property for any purpose for which these Regulations require the property to be valued, means the time as at which the property falls to be valued for that purpose;

"scheme" means an authorised unit trust scheme;

"traded option" means an option which, under the terms of a permission relating to options on property of the same kind which has been in force for a period of at least six months, is traded or dealt in on an approved options and futures market;

"transferable security" means any investment falling within any of paragraphs 1 to 6 of Schedule 1 to the Act other than an investment title to which either cannot be transferred, or can be transferred only with the consent of a third party other than, in the case of an investment falling within paragraph 1 or 2 of that Schedule either the body corporate which issued the investment or any members or debenture holders of that body corporate;

"trustee", in relation to a scheme, means the trustee of the scheme;

"umbrella fund" means a scheme which provides for such pooling as is mentioned in section 75(3)(a) of the Act in relation to separate parts of the property and participants in which are entitled to exchange rights in one part for rights in another; and

---

(a) 1961 c.62.
(b) 1986 c.50.
(c) 1988 c.1.

"write", in relation to a option, means the granting of the option.

(2) In its application to an umbrella fund, the definition of the expression "base currency" shall apply as if the references in that definition to a scheme were references to each separate part of the property in relation to which the scheme provides for pooling.

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

(4) 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.

PART II
VALUATION

Property included and assumptions to be made in valuing fund

3.—(1) This regulation and regulation 4 apply with respect to the determination of the value of the property of a scheme for any purpose of these Regulations.

(2) For the purpose of determining the value of the property of a scheme–

(a) it shall be assumed that any units which the trustee is under an obligation to create or cancel have been created or cancelled, as the case may be, that the trustee has paid or, as the case may be, has received the consideration for those units and that all other things required to be done in consequence thereof were done;

(b) where the trustee has not done something in consequence of a creation or cancellation of units which he is required to do, it shall be assumed that that thing was done;

(c) subject to paragraph (3), where agreements are in existence for the unconditional sale or purchase of property on behalf of the scheme which have not been completed it shall be assumed that they were completed at that time and that everything required to be done in accordance with their terms was done;

(d) there shall be deducted from the property of the scheme–

(i) a reasonable estimate by the manager of the total amount of liabilities, including potential liabilities, in respect of tax on unrealised capital gains which have accrued to date and are payable out of the property of the scheme including the principal amount of any outstanding borrowings whenever repayable;

(ii) a reasonable estimate by the manager of the total amount of liabilities for tax on realised capital gains in respect of the most recently completed accounting period;

(iii) such sum in respect of tax on capital gains realised in the current accounting period as in the reasonable estimate of the manager will become payable;

(iv) a reasonable estimate by the manager of the total amount of any liabilities for taxation levied on income accrued before the relevant time;

(v) the amount of the manager's periodic charge, if any, and value added tax chargeable in respect of services supplied by the manager in consideration of that periodic charge accrued but remaining unpaid;

(vi) a reasonable estimate by the manager of the total amount of any other liabilities payable out of the property of the scheme with any tax thereon and any accrued interest on borrowings; and

(vii) the value, calculated in accordance with regulation 4(3), of all options written for the scheme;

(e) there shall be added to the property of the scheme–

(i) a reasonable estimate by the manager of the total amount of any claims for repayment of any taxation levied on capital (including capital gains) or on income accrued before the relevant time; and

(ii) a sum representing any interest or dividends accrued but not received or receivable; and

(f) in determining the value in the base currency of any property which would otherwise be valued in a currency other than the base currency, the value shall, unless the manager and the trustee agree that it is in the interests of participants and potential participants that a different rate should be used, in which case the value shall be converted at the rate agreed between them, be converted at a rate of exchange which represents the average of the highest and the lowest rates of exchange quoted, at the relevant time, for conversion of that currency into the base currency on the market on which the manager would normally deal if he wished to make such a conversion.

(3) For the purposes of paragraph (2)(c), an agreement shall not be regarded as one for the unconditional sale or purchase of property if either–

(a) it is a future or a contract for differences which is not yet due to be performed or which is due to be performed but which has been closed out; or

(b) it is an option written for the scheme which has not expired but which has not yet been exercised by the purchaser or which has been exercised but which has been closed out; or

(c) it is an option purchased for the scheme which has not expired but which has not yet been exercised.

Valuation of property

4.—(1) The value of the property of a scheme shall be calculated in accordance with the provisions of this regulation.

(2) Cash and amounts held on a current or deposit account shall be taken at their nominal value.

(3) The value of an option which is written for the scheme on property of any description shall be the total of the amount of premium which would be paid if an option of that kind on property of that description were purchased at the relevant time on the best terms then available on an approved options and futures market on which such options are traded and an estimated amount of such fiscal charges, commission and other charges as would be payable by the purchaser of such an option, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in connection with the transaction.

(4) The value of a margined contract, which is not a written option, shall be whichever is applicable of the following–

(i) in a case in which margin would be received for the account of the scheme if the contract were to be closed out at the relevant time, the amount of margin which would be receivable if the contract were closed out at that time on the best terms then available on an approved options and futures market on which contracts of that kind are traded less an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract; and

(ii) in a case in which margin would be payable out of the property of the scheme if the contract were to be closed out at the relevant time, a negative amount equal to the total of the amount of margin which would be payable if the contract were closed out at that time on the best terms then available on an approved options and futures market on which contracts of that kind are traded and an estimated amount of such fiscal charges, commission and other charges as would be payable if the contract being valued were then closed out, calculated on the basis that the commission and charges payable were the least that could reasonably be expected to be paid in order to close out the contract.

(5) All other property shall be valued–

(a) in the case of property which is an investment of any description other than a

unit in a collective investment scheme, at the market dealing bid price of that investment at the relevant time;

(b) in the case of property which is units in a collective investment scheme, at the amount which would be received if units of the kind in question were offered for redemption at the relevant time in what, in the reasonable opinion of the manager, is a standard size; and

(c) if there is no price of the property in question under sub-paragraph (a) or (b) above, at a reasonable estimate of the amount which would be received by a seller by way of consideration for an immediate transfer or assignment from him at arm's length less any fiscal charges, commission and other sales charges which would be payable by him.

PART III

BREACH OF INVESTMENT LIMITS

Duties of manager and trustee to avoid breach of investment limits

5.—(1) The manager shall take all reasonable steps and exercise all due diligence to avoid the property of the scheme being used or invested in contravention of whichever is applicable of regulations 8 to 16, 21, 22 or 24 to 30.

(2) Subject to the provisions of paragraph (4), the manager shall take all reasonable steps and exercise all due diligence to avoid the property of the scheme being invested in contravention of whichever is applicable of regulation 17, 18, 20 or 23.

(3) Subject to the provisions of paragraph (4), the trustee shall take all reasonable steps and exercise all due diligence to exercise such degree of supervision over the manager's operation of the scheme as is appropriate with a view to ensuring that the manager fulfils the duties imposed on him by paragraphs (1) and (2).

(4) The manager shall not be subject to the duty imposed by paragraph (2) and the trustee shall not be subject to the duty imposed by paragraph (3) insofar as it relates to the manager's duty under paragraph (2) during whichever is the shorter of the period of six months beginning with the first date after the scheme is authorised on which persons are invited to become participants in the scheme and the period beginning with that date and ending on the first date on which the value of the property of the scheme exceeds £1 million, but the trustee and the manager shall each take all reasonable steps and exercise all due diligence during whichever is shorter of those periods to ensure that the property of the scheme is invested with the aim of spreading risk and in a manner which is consistent with the manner in which the property must be invested at the end of the relevant period.

(5) In the application of paragraph (4) to a scheme which is treated as an authorised unit trust scheme by virtue of paragraph 9 of Schedule 15 to the Act, references to the date on which persons are invited to become participants in the scheme shall be construed as references to the date upon which it became authorised under section 17 of the Prevention of Fraud (Investments) Act 1958(**a**) or, as the case may be, under section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940(**b**).

Duties of manager and trustee in the event of inadvertent breach of investment limits

6.—(1) If the property of a scheme is, for reasons beyond the control of the manager or trustee, at any time invested in contravention of these Regulations, or, if the property of an authorised securities scheme is, by virtue of circumstances of the kind described in regulation 16(2) or 19, invested otherwise than in accordance with regulation 16(1) or, as the case may be, regulation 17 or 18, the manager shall take such steps as are necessary to ensure that sufficient of the property of the scheme is sold so that the property is invested in a manner which complies with these Regulations, or, as the case may be, with that regulation, as soon as is reasonably practicable having regard to the interests of

(**a**) 1958 c.45.
(**b**) 1940 c.9 (N.I.).

participants in the scheme and, in any event, within the period of six months beginning with the date upon which the manager becomes aware that the property was invested in contravention of these Regulations or, as the case may be, otherwise than in accordance with regulation 16(1), 17 or 18.

(2) Forthwith upon the trustee becoming aware that circumstances of a kind described in paragraph (1) have arisen, he shall take such steps as are necessary to ensure that the manager fulfils the duty imposed on him by that paragraph.

Duties of manager and trustee in the event of other breaches of investment limits

7.—(1) If, at any time, the property of a scheme is invested in contravention of these Regulations otherwise than in a case to which regulation 5(4) applies or by virtue of circumstances of the kind described in regulation 6, the manager shall, forthwith upon becoming aware of the contravention, take such steps as are necessary to ensure that the property of the scheme is invested in a manner which complies with these Regulations.

(2) Forthwith upon the trustee becoming aware that circumstances of the kind described in paragraph (1) have arisen, he shall take such steps as are necessary to ensure that the manager fulfils the duty imposed on him by that paragraph.

PART IV

INVESTMENT AND BORROWING POWERS

Hedging

8.—(1) Subject to the provisions of paragraphs (2) to (10) and notwithstanding any other provision of these Regulations, the property of a scheme may be used in hedging transactions.

(2) No transaction shall be regarded as a hedging transaction for the purposes of this regulation unless–

(a) the transaction is one which may reasonably be regarded as economically appropriate to the reduction or elimination of risk arising in the management of the scheme by virtue of fluctuations in the price of investments comprised in the property of the scheme or by reason of fluctuations in interest or exchange rates;

(b) any instrument used in the transaction is one which, by virtue of the relationship between fluctuations in its price and fluctuations in the price of the property or any part of the property of the scheme or fluctuations in interest or exchange rates, may reasonably be regarded as an instrument which may appropriately be used in order to reduce or eliminate risk arising with respect to the property or the relevant part of it from such fluctuations; and

(c) the purpose of the transaction is the reduction or elimination of risk and not speculation, and, for these purposes, a transaction shall not be regarded as one for the reduction or elimination of risk if, having regard to other hedging transactions which have been entered into in relation to the property or any part of it, it is unreasonable to consider that risk continues to arise of a kind for which the instrument may appropriately be used.

(3) No hedging transaction shall be entered into at any time at which the total value, calculated in accordance with these Regulations, of all cash and other property paid, transferred or deposited by way of premium or initial margin which may reasonably be regarded as attributable to any obligation or right then arising under a hedging transaction which is not closed out would, if added to the amount of any premium or initial margin payable in respect of the proposed transaction, exceed 10% in value of the property of the scheme.

(4) Except in the case of an instrument which is utilised to hedge against fluctuations in exchange rates, no instrument shall be utilised by virtue of this regulation unless it is either a traded option or an instrument other than a traded option being an instrument which is traded on or under the rules of an approved options and futures market and which is an instrument relating to property with respect to which, or to an index or other

factor by reference to which, instruments of that kind have been so traded for a period of at least six months.

(5) Subject to paragraph (6), no hedging transaction under which an obligation to receive or deliver property does arise or may arise at the option of some person other than the trustee, acting in his capacity as such, shall be entered into unless the transaction is covered and, for the purposes of this paragraph, a transaction shall be regarded as covered only if–

(a) in the case of a transaction under which an obligation to deliver property does or may arise, the property of the scheme includes either–

(i) property sufficient to enable that obligation together with any other similar obligation incurred in relation to the scheme with respect to property of the same kind to be discharged; or

(ii) rights to acquire property sufficient to enable that obligation and any other similar obligation incurred in relation to the scheme with respect to property of the same kind to be discharged; and

(b) in the case of a transaction under which an obligation to receive property does or may arise, the property of the scheme includes either–

(i) cash or near cash, which is not otherwise taken into account for the purposes of paragraph (7) or for the purposes of regulation 15 or 32(1)(c), sufficient to enable that obligation and all similar obligations incurred in relation to the scheme to be discharged; or

(ii) rights to dispose of the property should the obligation to acquire it arise.

(6) For the purposes of paragraph (5), the property of a scheme shall be regarded as including property sufficient to enable the discharge of an obligation arising under a hedging transaction which is a contract for differences if the property includes property or rights to acquire property, which, by virtue of the correlation between that property and the property, index or other factor by reference to which any amount payable under the hedging transaction is to be calculated, may reasonably be considered to be sufficient to enable the obligation to be discharged.

(7) No option shall be purchased unless the property of the scheme includes cash or near cash which is not taken into account for the purpose of paragraph (5)(b)(i) or for the purposes of regulation 15 or 32(1)(c) and which is sufficient to enable the payment of that premium and all other premia then payable including, in the case of an option which is a margined contract purchased for the scheme, the amount of any premium which will become payable unless the option is sold.

(8) No hedging transaction under which an obligation to receive property does or may arise shall be entered into unless the obligation could be discharged at the time the transaction is effected without contravening any provision of these Regulations.

(9) No instrument relating to currency shall be utilised in order to hedge against fluctuations in exchange rates unless the instrument relates to the base currency or to a currency in which the property or any part of it is then denominated.

(10) None of the provisions of paragraphs (2) to (9) shall prevent an instrument being utilised in order to close out a hedging transaction.

(11) If, at any time after a hedging transaction has been entered into, circumstances arise which have the effect that, having disregarded all obligations and rights arising under hedging transactions which have been closed out, the transaction could not then be entered into except in contravention of any provision of this regulation, the manager shall forthwith upon becoming aware of that fact take such steps as are necessary to ensure that the provisions of this regulation are complied with either by closing out the transaction or by providing cover for it or otherwise and the trustee shall, forthwith upon becoming aware of the contravention, take such steps as are necessary to ensure that the manager fulfils that duty.

(12) In the application of this regulation to a money market fund, paragraph (2)(a) shall have effect as if the reference in that paragraph to investments included reference to such cash, deposits, loans or bills of exchange as are comprised in the property of the fund.

Restriction of investment powers exercisable in relation to authorised unit trust schemes

9.—(1) Subject to the provisions of these Regulations, the property of a scheme which is not a money market fund shall consist of transferable securities.

(2) Units in a collective investment scheme which has the characteristics described in section 78(6) of the Act or which is treated as having those characteristics by virtue of that provision may not be acquired for a scheme which is neither a Government and other public securities fund nor a money market fund, unless the manager is under a duty to pay into the property of the scheme–

(a) before the close of business on the fourth business day next after the agreement to buy the units, the maximum amount of any preliminary charge which may be made by the issuer of the units or, if the manager knows the price at which units in the relevant scheme would have been created at the relevant time, the difference between that price and the price he paid for the units if that price is greater than the creation price; and

(b) before the close of business on the fourth business day next after the agreement to sell the units, the amount of any charge which is made by the issuer on redemption of units.

(3) The property of a scheme, other than cash or near cash or property held for the purpose of hedging transactions, shall not consist only of units in a single scheme or recognised scheme unless the first scheme is a relevant pension scheme.

(4) Paragraph (2) shall apply in the case of the manager of a scheme which is either a Government and other public securities fund or a money market fund as if the periods specified in paragraph (2)(a) and (b) were periods ending with the close of business on the business day next after the agreement to buy or, as the case may be, to sell the units in question.

Restriction of authorised securities schemes to investment in approved securities

10. Subject to regulation 8, and except as provided in regulation 11 or 12, the property of an authorised securities scheme shall consist of approved securities.

Exceptions from regulations 9 and 10

11. Notwithstanding the provisions of regulations 9 and 10–

(a) up to 10% in value of the property of an authorised securities scheme may consist of transferable securities which are not approved securities; and

(b) the property of an authorised securities scheme may include cash and items of near cash which are not transferable securities provided that the holding of such cash or near cash may reasonably be regarded as necessary in order to enable units to be redeemed or for the efficient management of the scheme in accordance with its object or for other purposes which may reasonably be regarded as ancillary to the object of the scheme.

Ability of authorised securities scheme to invest in open-ended collective investment schemes

12. The property of an authorised securities scheme shall not include units in a collective investment scheme which has the characteristics described in section 78(6) of the Act or is treated as having those characteristics by virtue of that provision unless the scheme is either–

(a) another authorised securities scheme; or

(b) a recognised scheme which has the characteristics described in sub-paragraph (c)(i) to (iii) of this paragraph; or

(c) a collective investment scheme constituted in a country or territory outside the United Kingdom units in which are approved securities, and–

(i) the sole object of which is to invest funds raised from the public in transferable securities;

(ii) which operates on the principle of risk-spreading; and

(iii) the terms of which restrict investment in units in other collective

investment schemes to investment in units in schemes of a kind described in this regulation and prohibit more than 5% in value of the property of the scheme consisting of such units.

Limitation on amount which may be invested under regulation 12

13. Subject to regulation 14, not more than 5% in value of the property of an authorised securities scheme shall consist of units in collective investment schemes of the kind described in regulation 12.

Limitation on investment in schemes managed by manager or associated company

14. None of the property of an authorised securities scheme shall consist of units in another collective investment scheme which is managed or operated by the manager of the former scheme or by another company in the same group as the manager or which is managed or operated by any person who is a controller of the manager or of whom the manager is a controller unless–

(a) the deed or other instrument constituting the latter scheme states that its object is investment in a particular geographic area or economic sector; and

(b) both the deed constituting the former scheme and its scheme particulars clearly state that property of the scheme may be invested in such units.

Limitation on investment in instruments conferring rights to subscribe and investment in nil paid or partly paid securities

15.—(1) The property of an authorised securities scheme shall not include any investments falling within paragraph 4 of Schedule 1 to the Act unless–

(a) if the value of all such instruments as are included in the property of the scheme exceeds 5% of the value of that property, the cost of acquiring the investments to which all such instruments relate could be met in full out of cash or near cash comprised in the property of the scheme which is not taken into account for the purpose of paragraph (2) or for the purposes of regulation 8(5)(b)(i), 8(7) or 32(1)(c) or out of sums which could be borrowed without contravening regulation 31(2)(b); and

(b) the right to subscribe conferred by the instrument could be exercised without contravening any provision of these Regulations.

(2) The property of an authorised securities scheme shall not include any transferable security if, to the knowledge of the manager, a call is to be made within three months for any sum unpaid on that security unless that call and any other calls for sums unpaid on transferable securities comprised in the property which, to the knowledge of the manager, are to be made within three months, could be met in full out of cash or near cash which is not taken into account for the purposes of paragraph (1) or for the purposes of regulation 8(5)(b)(i), 8(7) or 32(1)(c) or out of sums which could be borrowed without contravening regulation 31(2)(b).

Limitation on acquisition of influential stake

16.—(1) Subject to the provisions of paragraph (2), the property of an authorised securities scheme shall not include–

(a) shares in a body corporate which carry more than 10% of the rights to vote in all circumstances at general meetings of the body corporate; or

(b) more than 10% of–

(i) any other shares in a body corporate other than an open-ended investment company; or

(ii) any investment, other than a Government and other public security, which falls within paragraph 2 of Schedule 1 to the Act and is issed by the same issuer;

(iii) the units in any collective investment scheme.

(2) The provisions of sub-paragraphs (a) and (b)(ii) and (iii) of paragraph (1) shall not have effect in any case in which it was not possible, at the time the transferable securities were acquired, to ascertain whether the acquisition would contravene those provisions.

Authorised securities schemes other than Government and other public securities funds: spread of investments

17. Except as provided in regulation 18 and subject to the provisions of regulation 19, not more than 5% in value of the property of an authorised securities scheme which is not a Government and other public securities fund shall consist of transferable securities issued by the same issuer.

Exceptions from regulation 17

18. Notwithstanding the provisions of regulation 17–

(a) up to 10% in value of the property of an authorised securities scheme which is not a Government and other public securities fund may consist of transferable securities other than Government and other public securities issued by the same issuer provided that the total value of such transferable securities included in the property of the scheme does not exceed 40% in value of the property of the scheme; and

(b) up to 35% in value of the property of an authorised securities scheme which is not a Government and other public securities fund may be invested in Government and other public securities issued by the same issuer.

Acquisitions as a result of exercise of rights

19. The provisions of regulations 17 and 18 shall not apply in any case in which any of the limits prescribed by those regulations is exceeded as a result of the exercise of rights arising in respect of investments comprised in the property of the scheme.

Government and other public securities funds: spread of investments

20.—(1) The property of a Government and other public securities fund shall comprise Government and other public securities of at least six different issues.

(2) Not more than 30% in value of the property of a Government and other public securities fund shall consist of Government and other public securities of the same issue.

(3) For the purposes of this regulation and for those of regulation 23, Government and other public securities shall be regarded as being of a different issue if, notwithstanding that they are issued by the same person, they are issued on different terms whether as to repayment dates, interest rates, the identity of the guarantor, if any, or otherwise.

Money market funds: limitation of ability to invest in transferable securities

21. Not more than 80% in value of the property of a money market fund shall consist of transferable securities.

Money market funds: general investment powers

22. Subject to the provisions of regulation 8, none of the property of a money market fund shall include anything other than the following–

(a) cash or deposits with or loans to an authorised institution, a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986(a) or a local authority, but only such deposits or loans which are repayable within a period of six months or which are made on terms on which the trustee or manager may demand repayment within that period unconditionally and without payment of a penalty exceeding more than seven days' interest calculated at normal commercial rates;

(b) Government and other public securities which are redeemable at the option of the holder within a period of two years or which will be redeemed by the issuer within that period;

(c) bills of exchange issued by an authorised institution which are repayable within a period of twelve months;

(d) investments falling within paragraph 2 of Schedule 1 to the Act which are issued

---

(a) 1986 c.53.

by an authorised institution or a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986 otherwise than by way of creating or acknowledging indebtedness arising on the making of a deposit or loan of the kind described in sub-paragraph (a) above, are not subordinated and are repayable within the period of twelve months; and

(e) other investments falling within paragraph 2 of Schedule 1 to the Act which are not subordinated, are traded on or dealt in under the rules of an approved market otherwise than by virtue of the specific permission of the market authority and which are repayable within the period of twelve months.

Money market funds; spread of investments

23.—(1) Subject to the provisions of paragraph (2)–

(a) not more than 5% in value of the property of a money market fund shall consist of instruments which are not Government and other public securities and are issued by the same issuer;

(b) not more than 10% in value of a money market fund shall be kept on deposit with or be on loan to the same person, and, for the purposes of this sub-paragraph, the trustee, each person in the same group as the trustee, any controller of the trustee and any person of whom the trustee is a controller shall all be treated as one person as shall the manager, each person in the same group as the manager, any controller of his and any person of whom he is a controller;

(c) up to 80% in value of the property of a money market fund may consist of Government and other public securities provided that, if more than 35% in value of the property of the fund consists of such securities, the property must include Government and other public securities of at least five different issues; and

(d) not more than 30% in value of a money market fund shall consist of Government and other public securities of the same issue.

(2) Notwithstanding the provisions of paragraph (1)(b), up to 20% in value of the property of a money market fund may be kept on deposit with or on loan to–

(a) any one building society; or

(b) any one authorised institution provided that the authorised institution is not in the same group as the manager or trustee and is not a controller of either of them or a person of whom either of them is a controller and provided also that the amount so deposited or lent does not exceed 10% of the relevant institution's issued capital and reserves as shown in its last published accounts.

Money market funds: limitation of ability to invest in long dated instruments

24. A least 50% in value of the property of a money market fund shall consist of instruments, deposits or loans which are redeemable or repayable within two weeks or which are capable of being transferred without the consent of a third party.

Application of regulations 15 and 16 to money market funds

25. The provisions of regulation 15, and those of regulation 16(1)(b)(ii) and 16(2) insofar as that regulation relates to regulation 16(1)(b)(ii), shall apply in relation to a money market fund in the same way as they apply in relation to an authorised securities scheme.

Feeder funds: limitation to investment in units of single collective investment scheme

26. Subject to regulations 8 and 30, the property of a feeder fund shall consist of units in a single scheme or recognised scheme.

Funds of funds: limitation to investment in units of other collective investment schemes

27. Subject to regulations 8 and 30, the property of a fund of funds shall consist of units in schemes or recognised schemes.

Prohibition on fund of funds investing in another fund of funds

28.—(1) None of the property of a fund of funds shall include units in another fund of funds or units in a recognised scheme which would, if authorised, be a fund of funds.

(2) None of the property of a fund of funds shall include units in any separate part of the property of an umbrella fund if that separate part of the property would, if authorised, be a fund of funds.

Funds of funds: spread of investments

29. Not more than 20% in value of the property of a fund of funds shall comprise units in a single scheme or recognised scheme.

Feeder funds and funds of funds: ability to hold cash and near cash

30. Notwithstanding the provisions of regulations 26 and 27, the property of a feeder fund and of a fund of funds may include cash and money in a current or deposit account which is near cash provided that the holding of such cash or near cash may reasonably be regarded as necessary in order to enable units to be redeemed or for the efficient management of the scheme in accordance with its object or for other purposes which may reasonably be regarded as ancillary to the object of the scheme.

Borrowing

31.—(1) The manager shall take all reasonable steps and exercise all due diligence to ensure that the trustee does not borrow sums of money repayable out of the property of the scheme except in accordance with the provisions of this regulation.

(2) No sum shall be borrowed if, on the date it is proposed to borrow the sum, that sum together with all other sums borrowed and not repaid at that date would–

(a) amount in aggregate to a sum greater than the total of all sums which are to become part of the property of the scheme within one calendar month of that date; and

(b) if they were immediately repayable, require more than 10% in value of the property of the scheme to be utilised for the purposes of repayment.

(3) If, at any time, the total of sums borrowed which are repayable out of the property of the scheme is such that either of the conditions described in paragraph (2)(a) or (b) is fulfilled the manager shall, as soon as is reasonably practicable having regard to the interests of participants, take such steps as are necessary to ensure that the total of the sums borrowed is reduced so that it does not give rise to circumstances of the kind described in this paragraph.

(4) The foregoing provisions of this regulation do not apply to any arrangement which may be made without contravening regulation 8, being an arrangement under which currency other than the base currency is borrowed and an amount of base currency at least equal to the amount of currency borrowed is placed, and continues to be kept, on deposit by the borrower with the lender, his agent or any other person designated by the lender for that purpose provided that if the amount of base currency kept on deposit ceases to be at least equal to the amount of currency borrowed the manager shall, as soon as is reasonably practicable in the interests of participants, take such steps as are necessary to ensure that sufficient base currency is placed on deposit as will secure that the total amount deposited is at least equal to the amount of currency borrowed.

(5) The trustee shall take all reasonable steps and exercise all due diligence to exercise such degree of supervision over the manager's operation of the scheme as is appropriate with a view to ensuring that the manager fulfils the duties imposed on him by paragraphs (3) and (4).

(6) Nothing in this regulation shall be construed as preventing the trustee from borrowing monies in accordance with this regulation, on the best commercial terms available, for the account of the fund either from himself, acting otherwise than in his capacity as trustee, or from any person in the same group as himself or from any controller of his or from any person of whom he is a controller.

Underwriting and placings

32.—(1) The manager shall not, in his capacity as manager, enter into agreements or understandings of a kind to which this regulation applies unless–

(a) in the case of an underwriting or sub-underwriting agreement, the trustee could discharge any obligation he may be called upon to perform in pursuance of the agreement without there being a contravention of whichever is applicable of regulations 8 to 29;

(b) in the case of any other agreement or understanding, the transferable securities could be acquired without there being any such contravention; and

(c) in any case other than a case in which the cost of acquiring any transferable securities that the trustee may or will be called upon to acquire in pursuance of any such agreement or understanding is to be met by the issue of units in the scheme, that cost could be met in full out of cash or near cash comprised in the property of the scheme and which is not taken into account for the purposes of regulation 8(5)(b)(i), 8(7) or 15 or out of sums which could be borrowed without contravening regulation 31(2)(b).

(2) This regulation applies to any underwriting or sub-underwriting agreement and to any agreement or understanding that transferable securities will be issued to or acquired by the trustee acting in his capacity as such.

(3) The manager shall take all reasonable steps and exercise all due diligence to ensure that the conditions specified in paragraph (1)(a) to (c) continue to be fulfilled at all times during which the trustee may or will be called upon to acquire transferable securities in pursuance of any agreement or understanding to which this regulation applies.

(4) The trustee shall take all reasonable steps and exercise all due diligence to exercise such degree of supervision over the manager's operation of the scheme as is appropriate with a view to ensuring that the manager fulfils the duty imposed on him by paragraph (3).

Lending, guarantees and indemnities

33.—(1) Subject to the provisions of paragraph (2), none of the property of a scheme may be lent or used to discharge any obligation arising under a guarantee or indemnity given by the trustee or manager with respect to the obligations of any third party.

(2) For the purposes of paragraph (1), neither the consideration payable for any instrument creating or evidencing indebtedness which, by virtue of any provision of these regulations, may properly be included within the property of a scheme, nor the placing of money on deposit or in a current account, nor the transfer of title to any property of the scheme on terms that involve title being transferred back at some future date shall be regarded as lending.

Uncovered sales of property

34. Neither the trustee nor the manager acting in their capacities as such shall enter into any agreement to dispose of property which is not a hedging transaction unless the property of the scheme includes either–

(a) property sufficient to enable that obligation together with any other similar obligation incurred in relation to the scheme to be discharged; or

(b) rights to acquire property sufficient to enable that obligation together with any similar obligation incurred in relation to the scheme to be discharged.

Application of regulations to umbrella funds

35.—(1) In the application to an umbrella fund of regulations 8 to 15, 17 to 24, 26 to 34 and regulation 25 insofar as it relates to the application of regulation 15 to an umbrella fund, references to the property of the scheme shall be construed as references to each separate part of the property and those regulations shall apply to such funds as if each separate part of the property were the property of a single scheme.

(2) Regulation 16 shall apply to an umbrella fund which is so constituted that any separate part of the property would be an authorised securities scheme or a money

market fund if that part of the property were the property of a single scheme as if all such separate parts of the property constituted one authorised securities scheme.

Prohibition on a scheme of a particular kind becoming a scheme of another kind

36. The object of a scheme which is an authorised securities scheme, a feeder fund, a fund of funds or a money market fund shall not be altered so as to have the effect that the scheme ceases to be a scheme of that particular kind.

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

22nd February 1988

SCHEDULE 1

Regulation 2

APPROVED MARKETS

PART I

1. Any Stock Exchange in Austria, Japan, New Zealand, Norway, Sweden or Switzerland which is a Stock Exchange withing the meaning of the law of the country concerned relating to Stock Exchanges.

2. The Helsinki Stock Exchange, the Johannesburg Stock Exchange, the Kuala Lumpur Stock Exchange, the Singapore Stock Exchange and the Australian Stock Exchange Limited.

3. Any Stock Exchange prescribed for the purposes of the Canadian Income Tax Act.

4. Any Stock Exchange in Hong Kong which is recognised under the laws of Hong Kong.

5. Any exchange registered with the Securities and Exchange Commission of the United States as a national Stock Exchange.

6. The Over-the-Counter Market in the United States of America regulated by the National Association of Securities Dealers Inc.

PART II

1. The Unlisted Securities Market of the International Stock Exchange of the United Kingdom and Ireland Limited.

2. The "Second Marché" of any Stock Exchange set up in France in accordance with the French legislation.

3. The Tokyo Over-the-Counter Market supervised by the Securities Dealers Association of Japan.

SCHEDULE 2

Regulation 2

APPROVED OPTIONS AND FUTURES MARKETS

American Stock Exchange Inc, New York

Australian Financial Futures Market, Melbourne

The Australian Stock Exchange Limited

Chicago Board of Trade

Chicago Board Options Exchange Inc
Chicago Mercantile Exchange (including the International Monetary Market)
Commodity Exchange Inc, New York
European Options Exchange, Amsterdam
Financial Instruments Exchange, New York
Hong Kong Futures Exchange Limited
International Futures Exchange (Bermuda) Limited (INTEX), Bermuda
The International Stock Exchange of the United Kingdom and Ireland Limited
Kansas City Board of Trade
The London International Financial Futures Exchange Limited
Marché à terme d'instruments financiers (MATIF), Paris
Mid-American Commodity Exchange, Chicago
The Montreal Exchange
New York Futures Exchange Inc
New York Mercantile Exchange
New York Stock Exchange
New Zealand Futures Exchange Limited, Auckland
Options and Futures Exchange, Stockholm
Optionsmarked, Stockholm
Osaka Securities Exchange
Pacific Stock Exchange, San Francisco
Philadelphia Stock Exchange
Singapore International Monetary Exchange
Sydney Futures Exchange Limited
Tokyo Stock Exchange
Toronto Futures Exchange
The Toronto Stock Exchange
Vancouver Stock Exchange

SCHEDULE 3

Regulation 2

COUNTRIES AND TERRITORIES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the investment and borrowing powers exercisable in relation to an authorised unit trust scheme. The regulations make provisions for several different categories of scheme only one of which, a money market fund, may invest in property which is not transferable securities within the meaning of the regulations. The regulations impose limits on the proportion of a scheme which may be invested in property of particular kinds, but enable cash and near cash to be held for the purposes described in regulation 11(1)(a) and also enable property of the scheme to be utilised in transactions designed to reduce risk arising in the management of the scheme.

The regulations also limit the extent to which sums may be borrowed which are repayable out of the property of the scheme, the extent to which the manager of a scheme may, in his capacity as manager, enter into underwriting and sub-underwriting agreements and the circumstances in which the trustee or manager may agree to dispose of property of the scheme. Regulation 33 prohibits certain property of the scheme being lent or used to discharge obligations arising under guarantees or indemnities.

The regulations impose duties on managers and trustees concerning observance of their provisions.