2004 No. 266

SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS, ENGLAND AND WALES

The Common Investment Scheme 2004

Made - - - - -	*2nd February 2004*
Laid before Parliament	*6th February 2004*
Coming into force - -	*27th February 2004*

The Lord Chancellor, in exercise of the powers conferred upon him by section 42 of the Administration of Justice Act 1982(**a**) hereby makes the following Scheme:

Citation and commencement

1. This Scheme may be cited as the Common Investment Scheme 2004, and comes into force on 27th February 2004.

Interpretation

2.—(1) In this Scheme—

"accounting date" means 28th February and 31st August in each year;

"the Act" means the Administration of Justice Act 1982;

"the Board" means the Lord Chancellor's Strategic Investment Board;

"dividend date" means 10th April and 12th October in each year;

"fund" means the Capital Fund referred to in paragraph 3;

"unit" means a share in the fund;

"valuation day" means a day appointed by the investment manager in accordance with paragraph 3 of Schedule 2 for the valuation of the fund.

(2) Where in any year an accounting date or a dividend date falls on a Saturday, Sunday, bank holiday or Good Friday, the accounting date or dividend date is taken to be the next business day.

The Capital Fund

3. There shall continue to be a fund, known as the Capital Fund, for the purpose of the investment of money to be invested in common investment funds in accordance with section 42 of the Act.

Investment manager

4. An investment manager appointed by the Lord Chancellor shall manage and control the fund.

(**a**) 1982 c. 53.

Powers and duties of the investment manager

5.—(1) Without prejudice to the generality of the duty of the investment manager to manage and control the fund, the investment manager has the powers and duties set out in Schedule 1 in respect of the fund.

(2) The investment manager shall administer the fund with the objective of securing long-term growth in income and capital.

(3) The investment manager shall determine an investment strategy designed to achieve the objective mentioned in sub-paragraph (2), and may from time to time revise the investment strategy for the same purpose.

(4) Before determining or revising an investment strategy, the investment manager shall consult the Board and the Lord Chancellor.

(5) The investment manager shall ensure that he or his representative attends all meetings of the Board to which he is invited, and supplies to the Board all information it reasonably requires.

Schedule 2

6. Schedule 2 has effect in relation to the fund.

Revocation

7. The Common Investment Scheme 1991(**a**), The Common Investment (Amendment) Scheme 1999(**b**), The Common Investment (Closure of High Yield Fund) Scheme 2003(**c**) and The Common Investment (Closure of High Yield Fund) (Amendment) Scheme 2003(**d**) are revoked.

Signed by authority of the Lord Chancellor.

Christopher Leslie
Parliamentary Under-Secretary of State
Department for Constitutional Affairs

Dated 2nd February 2004

(**a**) SI 1991/1209, amended by SI 1999/551 and SI 2003/778.
(**b**) SI 1999/551.
(**c**) SI 2003/778, amended by SI 2003/1027.
(**d**) SI 2003/1027.

SCHEDULE 1 Paragraph 5

POWERS AND DUTIES OF THE INVESTMENT MANAGER IN RESPECT OF THE FUND

1. The investment manager has the following powers—

(a) to purchase and sell investments on behalf of the fund;

(b) subject to the fund's investment strategy, to vary, at such times and in such manner as he may think fit, the way in which the fund is invested;

(c) to exercise, in relation to any land comprised in the fund, any powers which he could exercise if he were beneficially entitled to the land in question;

(d) to borrow money in any currency and on the security of any property comprised in the fund or otherwise as he thinks fit for the following purposes—

(i) to manage or improve any property;

(ii) to pay for any allotment of stock or securities in any company to which he may be entitled in respect of any investment held in the fund;

(iii) to discharge any liability that falls properly to be discharged out of any such property; and

(iv) to pay any expenses relating to any such property;

(e) to determine, without regard to any rule of law specific to trust funds, whether any fees or expenses required to be paid out of the fund shall be defrayed out of capital or out of income or shall be apportioned, and, if so, in what proportions, between capital and income; and

(f) to take such action as he considers appropriate in relation to any situation (such as, but not limited to, takeover bids, schemes of arrangement, variation of rights, exercising voting rights, bonds and rights issues and underwriting offers) relating to any property or investment comprised in the fund.

2. The investment manager shall—

(a) keep proper books of account with respect to—

(i) the income and expenditure of the fund;

(ii) the assets and liabilities of the fund;

(iii) the expenses sanctioned by the Treasury under section 42(11) of the Act; and

(iv) the allotment and realisation of units;

(b) send to each unit holder, as soon as reasonably practicable after each accounting date, a manager's report made up to that accounting date containing information relating to such matters as the Lord Chancellor may specify;

(c) prepare dividend counterfoils for the fund for issue to each unit holder, in respect of each account held to the credit of that unit holder, such counterfoils to be sent to each unit holder within two weeks of each dividend date;

(d) attend to the completion of all the sales and purchases on behalf of the fund and arrange for the transfer of all investments acquired on behalf of the fund into the name of the investment manager or such nominee on his behalf as may be agreed between him and the Lord Chancellor;

(e) arrange for the collection of all dividends, income and other distributions made in respect of any investments of the fund;

(f) manage any cash balances to the best advantage of the fund;

(g) supervise all bank accounts and foreign exchange transactions relating to the fund;

(h) arrange for the publication of the prices of units, in such manner as he reasonably considers appropriate;

(i) prepare, and submit to the Inland Revenue within the required time, tax returns and repayment claims, and reclaim overpaid tax from overseas tax authorities; and

(j) pay out of the fund such fees as he is required to collect under section 42(12) of the Act.

3. On appointment, the investment manager shall take such steps as are necessary to bring the money, securities and other assets of the fund, and any dividends, income and other distributions relating thereto, under his management and control.

4. Where the appointment of an investment manager ceases he shall—

(a) without delay complete all transactions in progress at that time;

(b) without delay surrender to his successor or to such person as the Lord Chancellor may determine all money, securities and other assets of the fund in his care and any dividends, income and other distributions relating thereto; and

(c) until such completion or surrender has taken place comply with any provision and carry out any duty to which he would have been subject as an investment manager.

SCHEDULE 2

Paragraph 6

PROVISIONS APPLICABLE TO THE FUND

1.—(1) The fund shall continue to be treated as being divided into units.

(2) The investment manager may make provision as to the apportionment of costs and charges and any other administrative provisions relating to the units.

2. No document of title shall be issued in respect of any unit.

3. On such days as the investment manager may appoint, not being fewer than 24 in each calendar year during the whole of which the fund is operating, the fund shall be valued in accordance with the relevant provisions of this Schedule and the value of the fund and the prices of units on each of those days shall be determined by the investment manager in accordance with those provisions.

4.—(1) The provisions of this paragraph have effect for the purpose of valuing the fund.

(2) The value of any security quoted on a stock exchange shall be ascertained by reference to the most recent published price available on that exchange; and the value of a security quoted on more than one stock exchange shall be ascertained by reference to the most recent published price available on the exchange considered by the investment manager to be most appropriate.

(3) The value of any investment in an authorised collective investment scheme not quoted on any stock exchange shall be ascertained as if that investment had been made by an authorised unit trust scheme within the meaning of section 237 of the Financial Services and Markets Act 2000(**a**).

(4) The value of assets, other than those to be valued in accordance with sub-paragraphs (2) or (3), shall be such as may be determined by the investment manager, who may, for the purpose of making such a determination, obtain and accept a valuation by a professional valuer, accountant, or other person considered by him to be duly qualified in that respect.

5. The investment manager may determine, without regard to any rule of law specific to trust funds, whether any special dividend, bonus issue of shares, cash or other property received by him in respect of property comprised in the fund is to be treated as income or as capital, or is to be apportioned (and if so in what proportions) between income and capital.

6.—(1) On each accounting date the investment manager shall—

(a) determine the total amount liable to distribution as income of the fund, and

(b) express that amount in terms of a dividend payable in respect of each unit held at that date.

(2) On the dividend date immediately following each accounting date, the investment manager shall pay to each unit holder, by reference to each account held to the credit of that holder, the dividend amount determined in accordance with this paragraph multiplied by the number of such units held in that account.

(3) For the purposes of sub-paragraph (1), all the income of the fund is liable to distribution, except to the extent to which—

(a) the investment manager has determined, under paragraph 1(e) of Schedule 1, that any fees or expenses are to be defrayed out of income; and

(b) any payment which may be conveniently made out of income is required by or under any enactment, by any rule of law or by the order of a court.

(4) The investment manager shall deem such amount as he considers appropriate of the first dividend payable after the purchase of a unit to have accrued in the buying price.

7.—(1) The provisions of this paragraph have effect for the purpose of valuing units.

(2) On any valuation day, all units in issue are of equal value.

(3) In this paragraph, the "adjusted fund value" on a valuation day is an amount equal to the value of the fund on that day, plus any income accrued since the last accounting date, minus any accrued liabilities chargeable against the fund.

(4) For the purposes of sub-paragraph (3), income is to be treated as accruing daily.

(5) The value of a unit is an amount equal to the adjusted fund value divided by the number of units into which the fund is treated as being divided on the valuation day in question.

(6) The buying or selling price of a unit on a valuation day shall be the value of the unit on that day increased or reduced respectively, as the investment manager considers appropriate, to allow for the costs of the creation or realisation of units.

(**a**) 2000 c. 8.

8. If at any time the value of units appears to the investment manager to be too high to admit of monies being conveniently invested in the fund, he may divide every unit in such manner as he may, having consulted the Board and the Lord Chancellor, think fit.

9.—(1) The provisions of this paragraph have effect for the purpose of regulating the allotment of units to, and their realisation by, unit holders.

(2) On any valuation day,

(a) any person authorised to purchase and hold units may inform the investment manager of the number of units he wishes to purchase and the account or accounts to which he wishes them to be credited;

(b) any person holding units may inform the investment manager of the number of units he wishes to realise and the account or accounts from which he wishes them to be debited; and

(c) the investment manager shall—

(i) determine prices at which units are to be purchased and realised, and

(ii) inform any persons who are entitled to apply, and have applied, to purchase or realise units of the relevant price which has been determined.

(3) The Accountant General shall if necessary revise, in the light of the buying and selling prices of which he is informed under sub-paragraph (2)(c)(ii), the number of units he wishes to purchase or realise, and if he does so must notify the investment manager accordingly.

(4) If, on any valuation day, the number of units to be purchased exceeds the number of units to be realised, the number of units into which the fund is treated as being divided and the total number of units deemed to be allotted to all the unit holders shall be increased by the difference.

(5) If, on any valuation day, the number of units to be realised exceeds the number of units to be purchased, the number of units into which the fund is treated as being divided and the total number of those units deemed to be allotted to all the unit holders shall be reduced by the difference.

(6) As soon as reasonably possible after a valuation day the investment manager shall inform each relevant unit holder of the cost of his purchases and the proceeds of his realisations of units on that day, and each unit holder shall pay to the investment manager and, as the case may be, the investment manager shall pay to each unit holder, the amount or amounts found due from him.

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme replaces the Common Investment Scheme 1991. The 1991 Scheme had maintained three common investment funds (known as the "Capital", "High Yield" and "Gross Income" funds); the Gross Income Fund was merged into the High Yield Fund by the Common Investment (Amendment) Scheme 1999, and the High Yield fund was in turn merged into the Capital Fund by the Common Investment (Closure of High Yield Fund) Scheme 2003. The new Scheme consolidates these alterations, continues the general framework of its predecessor and maintains the single Capital Fund. The common investment funds continue as before as a means of providing for the investment of certain funds held in court and other funds. The main changes reflect the first authorisation under section 42(5)(b) of the Administration of Justice Act 1982 of persons other than the Accountant General and the Accountant General of Northern Ireland to hold unit shares in the common investment fund.

Schedule 1 updates the powers and duties of the investment manager. Schedule 2 makes more extensive provision as to the methods by which the fund is to be operated.

STATUTORY INSTRUMENTS

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