

SCHEDULES

SCHEDULE 11

DEEP GAIN SECURITIES

Qualifying indexed securities

- 2 (1) For the purposes of paragraph 1 above a qualifying indexed security is a security which fulfils each of the conditions set out below.
- (2) The first condition is that—
- (a) the security is denominated in sterling and under the terms of issue the amount payable on redemption is determined by reference to the movement of the retail prices index,
 - (b) the security is denominated in a currency other than sterling and under the terms of issue the amount payable on redemption is determined by reference to any similar general index of prices which is published by the government, or by an agent of the government, of the territory in whose currency the security is denominated, or
 - (c) the security was issued before 9th June 1989 and was quoted in the official list of a recognised stock exchange on 8th June 1989, and under the terms of issue the amount payable on redemption is determined by reference to the movement of a published index of prices of shares quoted in the official list of a recognised stock exchange.
- (3) The second condition is that the terms of issue make no provision for conversion into, or redemption in, a currency other than that in which the security is denominated on issue.
- (4) The third condition is that under the terms of issue—
- (a) interest is payable on the security,
 - (b) not more than one year can elapse between the day of issue and the first day on which interest becomes payable, or between any day on which interest becomes payable and the next day on which it becomes payable,
 - (c) the interest payable is determined by reference to a rate which is not less than a reasonable commercial rate (judged by reference to the date of issue and by reference to securities of a similar nature to the one in question), and
 - (d) the interest payable is also determined by reference to the movement of the index by reference to which the amount payable on redemption is determined.
- (5) The fourth condition is that where that index is applied to determine the amount payable on redemption or to determine interest it must, under the terms of issue, be applied precisely and without restriction.
- (6) The fifth condition is that—

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- (a) the security is expressed to be issued for a definite period stated on the face of the security, and
 - (b) the period so stated commences with the day of issue and is five years or more.
- (7) The sixth condition is that the terms of issue contain no provision enabling the person who holds the security for the time being to require any of the following before the expiry of a period which commences with the day of issue and which is five years or more—
- (a) the security to be repurchased by the person who issued it;
 - (b) the security to be purchased by a person other than the person who issued it;
 - (c) the security to be converted into another kind of security;
 - (d) the security to be redeemed in circumstances other than any of the qualifying circumstances (set out in sub-paragraph (13) below).
- (8) The seventh condition is that, where the issue is handled by an agent for the person making the issue or by an underwriter, the terms on which the agent or underwriter offers the security—
- (a) contain no provision for the security to be repurchased by the person who issued it, converted into another kind of security, or redeemed, before the expiry of a period which commences with the day of issue and which is five years or more, and
 - (b) contain no provision enabling the person who holds the security for the time being to require the security to be purchased, by a person other than the person who issued it, before the expiry of a period which commences with the day of issue and which is five years or more.
- (9) For the purposes of sub-paragraph (5) above “redemption” does not include any redemption which may be made before maturity only at the option of the person who issued the security (and no other person).
- (10) In a case where the amount payable on redemption, or the amount of interest, is under the terms of issue determined by reference to the movement of the index for a period (a notional period) in place of a later actual period (a process commonly known as lagging) the fourth condition shall be treated as fulfilled if the following rules are fulfilled—
- (a) under the terms of issue the notional period must start not more than eight months before the actual period starts and must end not more than eight months before the actual period ends, and
 - (b) where the index is applied for the notional period it must, under the terms of issue, be applied precisely and without restriction.
- (11) In a case where the terms of issue contain provision for the amount payable on redemption to be not less than an amount stated in the terms, the provision shall not prevent the fourth condition being fulfilled if—
- (a) the security was issued before 9th June 1989, and
 - (b) the amount stated does not constitute a deep gain (within the meaning given by paragraph 1(9) above).
- (12) In a case where—
- (a) the terms of issue contain provision for the amount payable on redemption in any of the qualifying circumstances (set out in sub-paragraph (13) below) to be not less than an amount stated in the terms, and

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- (b) the security was issued before 9th June 1989,
the provision shall not prevent the fourth condition being fulfilled.
- (13) For the purposes of sub-paragraphs (7) and (12) above the following are qualifying circumstances—
- (a) there is a fundamental change in the rules governing the index and the change would be detrimental to the interests of the person who holds the security for the time being;
 - (b) the index ceases to be published without being replaced by a comparable index;
 - (c) the person who issued the security fails to comply with the duties imposed on him by the terms of issue;
 - (d) the security was issued by a company before 9th June 1989 and a person gains control of the company in pursuance of the acceptance of an offer made by that person to acquire shares in the company.
- (14) In a case where an issue is handled by an agent for the person making the issue, or by an underwriter, for the purposes of sub-paragraphs (2) to (5) and (10) above the terms of issue shall be taken to include any terms on which the agent or underwriter offers the security.
- (15) For the purposes of this paragraph the amount payable on redemption does not include any amount payable by way of interest.
- (16) For the purposes of this paragraph “control” (in relation to a company) shall be construed in accordance with section 840 of the Taxes Act 1988.