APPENDIX D

RI 29 (NOVEMBER 1992) *INVESTMENT MANAGERS ACTING AS AGENTS FOR NON-RESIDENTS*

On 29th November 1991 the Revenue issued a statement of practice (SP 15/91) providing guidance on the tax treatment of investment managers and their overseas clients.

The Revenue have since been asked to elaborate on that part of the statement which relates to connected persons and the operation of the provisions of TMA 1970 s.78(5).

Under TMA 1970 s.78(2) subject to certain conditions, non-resident persons are protected from charge in the name of an agent who is an investment manager in respect of prescribed transactions. But by virtue of s.78(5) this protection is lost where the non-resident person and agent are connected with each other.

SP 15/91 para 8 describes how in particular circumstances the Revenue apply the provisions of s.78 to investment transactions by looking through an overseas affiliate of a UK investment manager to an overseas third party with the effect that s.78(5) is not applied.

SP 15/91 para 8(b)(ii) requires that it is not part of the overseas affiliate's trade to make money from these investments for itself.

The reference to "these investments" is to the investment portfolio under management. A manager's remuneration may be fixed as a performance fee linked to how well the managed fund performs. The Revenue see that as quite separate from the enjoyment of the profits from the investments so such an arrangement will not, on that account, fail to satisfy para 8(b)(ii).

The Revenue understand that overseas managers may on occasion hold units for themselves in a fund which they also act as investment managers. Since units in the fund will be distinct from the investments of the fund which are under management those units will not be "these investments" and the holding of such units by the overseas manager will have no direct relevance to the application of para 8(b)(ii).

SP15/91 para 8(b)(iii) requires that the relevant business does no more than pass through the hands of the overseas affiliate so that the UK manager is effectively acting in its affiliate's shoes and for the same reward.

In applying para 8(b)(iii) the Revenue are concerned not so much with whether the reward received by the UK manager for services is at a market rate but rather whether by reference to the arrangements as a whole it matches the reward received by the overseas affiliate from the non-resident third party for that business which is being passed through to the UK. Where not all the services contracted to be performed for the non-resident third party by the overseas manager are passed through to the UK, it is only that part of the investment management services which does pass through which is "relevant business" within para 8(b)(iii) and subject to the test in that paragraph.

As indicated in SP 15/91 the question of whether a non-resident person and investment manager are connected for the purposes of TMA 1970 s.78 is one which can only be determined on a review of the relationship which exists between them in fact as well as in law and the foregoing should be borne in mind in reading the above further guidance.