

# REGULATORY IMPACT ASSESSMENT

## The Individual Savings Account (Amendment) Regulations 2003 and The Personal Equity Plan (Amendment) Regulations 2003

### PURPOSE AND INTENDED EFFECT OF MEASURE

#### (i) The objective

The *Individual Savings Account (Amendment) Regulations* amend the Individual Savings Account Regulations 1998 and the *Personal Equity Plan (Amendment) Regulations 2003* amend the Personal Equity Plan Regulations 1989. Both amendments add the newly created FSA Chapter 5 schemes to the list of 'qualifying investments' within the ISA and PEP regimes.

The Financial Services Authority's ['FSA'] are amending their Collective Investment Schemes Sourcebook ['CIS Sourcebook'] and rules to bring the administration of UK 'undertakings for collective investment in transferable securities' schemes ['UCITS schemes'] in line with the EU requirements under the UCITS Amending Directive (2001/108/EEC). These changes will be made by February 2004, but the FSA will require certain collective investment schemes ['CIS'] to be, or convert into, new UCITS schemes by then. All CIS that provide ISA and PEP investments must, or can, convert to a UCITS scheme. But, under the current ISA and PEP regulations, by doing so they are prevented from providing ISA or PEP investments.

These amending regulations aim to maintain the status quo, by allowing those CIS that are, or convert to, a new UCITS scheme to continue to provide ISA and PEP investments. They do so by following the FSA rules set out in Chapter 5 of the new CIS Sourcebook. However, they impose an additional rule, to replace the previous rules restricting investment, to exclude cash-like investments from the PEP or ISA stocks and shares component. Unlike the previous test, investments, which fail this rule, will continue to qualify but only as part of the cash component.

The regulations are not intended to extend the qualifying investment criteria, except where inevitable as a result of the FSA's more relaxed investment rules for such schemes. But should allow all CIS who currently provide ISA and PEP investments to continue doing so when or if they convert to a UCITS Scheme.

#### (ii) The background

The ISA, and in some respects the PEP, were designed by the Government to encourage people to start saving and to raise the level of savings by low to medium income families. To achieve this the ISA provides three separate components: cash, stocks and shares and insurance components. The PEP allows investment in stocks and shares. The effect of investing in the ISA is that savers pay no tax on the income or gains arising from authorised ISA or PEP investments.

To help achieve the Government's aim of encourage new saving the ISA cash component was more flexible than the previous TESSA account. To limit Exchequer cost a lower investment limit was then placed on the amount that could be put in to a ISA 'cash component' each year. This was intended to limit the extent to which

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those who already had cash savings would transfer those savings from taxed deposit accounts into a tax-free cash savings account.

To prevent investors circumventing this rule by buying 'safe' stocks and shares investments, that provided very 'cash like' returns, the ISA rules also tried to restrict such investments to the ISA cash component. So such schemes, where the capital is not put at risk and the likely return is very similar to a cash deposit account, are treated as cash savings.

The PEP and ISA 'stocks and shares' component were aimed at encouraging investors to move into more risk based investments, either directly buying stocks and shares or investing through certain authorised investment schemes, such as CIS authorised by the FSA. The majority of those investing through a 'stocks and shares' ISA do so through an authorised CIS.

Prior to the recent FSA changes, authorised CIS could only operate as one of seven distinct types of scheme, defined in the FSA's CIS Sourcebook, each scheme restricted the CIS to investing in a narrow range of investments. By linking the ISA and PEP regulations to certain schemes defined by the CIS Sourcebook, the Revenue aimed to limit the risks for investors and reduce the risk of 'cash-like' investments being held within a PEP or an ISA 'stocks and shares' component. So the regulations prescribe the specific schemes that could qualify for the PEP or ISA stocks and shares component:

- Selecting the CIS Sourcebook 'warrant', 'securities', and 'fund of fund' schemes, which are less risky and less likely to provide 'cash-like' investments; **and**
- imposing an additional test - the 50% test – to restrict CIS to holding no more than 50% of their underlying investments in short dated securities, to further reduce the opportunity to provide 'cash-like' investments.

The FSA changes to the CIS Sourcebook create a single new authorised scheme, for most CIS, the UCITS scheme, which will eventually replace the previous CIS Sourcebook definitions referred to in the ISA and PEP regulations. The FSA require new CIS and some existing CIS to convert to the new UCITS scheme by February 2004, others may convert later. But by converting they will no longer be able to provide PEP or ISA compatible investments.

All CIS that currently provide ISA and PEP investments are able to convert to the new UCITS schemes. So to maintain the status quo, so far as possible, and to protect ISA and PEP investors who hold investments through a CIS, when it becomes a UCITS scheme, we aim to extend the ISA and PEP regulations to include all UCITS schemes.

But the FSA's UCITS rules allow CIS to invest in a wider range of investments, including derivatives, and will cover a wider range of schemes, including some previously excluded from the ISA and PEP regimes. In addition the FSA will start allowing UCITS schemes to use the phrases 'guaranteed' and 'capital protected' when marketing schemes, this may significantly increase the number of CIS products that start to offer cash-like returns. These FSA changes increase the risk of 'cash-like' schemes being developed and sold as suitable for the PEP or ISA 'stocks and shares' component.

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To reduce the risk for the Exchequer we aim to replace the old CIS '50% test', which no longer fits with the more relaxed FSA UCITS investment rules, and replace it with a new 95% test. This new test will look at the return offered on that product, rather than the type of investment held, a summary of the test is set out in Annex A. with the aim of restricting 'cash-like' investment schemes to the ISA 'cash' component.

### (iii) Risk assessment

These regulations are addressing two key risks, that:

- a) **investors will be excluded from the ISA or PEP regime** once the CIS they invest in converts to a UCITS scheme. This risk arises because the regulations rely on FSA CIS Sourcebook definitions of CIS funds that will be replaced by the FSA with the new UCITS CIS Sourcebook rules.

**All CIS** currently allowed in to the ISA and PEP regimes will be affected by the FSA changes, over the period 2004 to 2007, affecting **over 5 million** investors holding **over £50 billion worth of investments**. Not including UCITS schemes will prevent such funds from remaining within the ISA and PEP regimes, with the consequent loss of tax relief for investors.

- b) **cost to the Exchequer increases unreasonably**, if nothing is done to prevent cash-like investments coming into the higher PEP or ISA 'stocks and shares' component investment limits.

FSA rules allow UCITS schemes to hold a wider range of investments, and allow CIS to offer 'guarantees' or 'capital protection', which increases the risk of 'cash-like' products being developed. These may attract risk averse investors with savings in taxed cash deposits accounts, who would not invest in the stocks and shares to transfer cash savings into these more secure investments.

There is a risk of up to **£600 billion** of savings currently held in taxed deposit accounts in the UK shifting to 'cash-like' investments within the ISA. This could result in a **loss of tax revenue** of up to **£500 million by 2010 to 2011**.

### 3. Options

#### Option 1: Do nothing

This would exclude units or shares in a CIS operating under Chapter 5 of FSA rules from access to the ISA or PEP.

This disadvantages all existing CIS, as investments must fall into one of the criteria defined in the ISA and PEP regulations to qualify for the ISA or PEP regime. For CIS investments this means falling within one of the specified FSA CIS Sourcebook criteria which will cease to exist. So all investors currently holding CIS investments in their ISA or PEP will cease to qualify for tax relief on those investments once the CIS converts to the FSA UCITS scheme.

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Any new CIS, created now, will have to decide whether to become a UCITS from inception to be authorised by the FSA. No UCITS scheme will be eligible for the ISA or PEP regimes under the regulations as they stand.

**Option 2: include all Chapter 5, FSA CIS Sourcebook, UCITS but introduce a separate ISA and PEP ‘investment criteria test’ to limit access to UCITS investing in particular types of cash like investment product to the ISA cash component.**

This option would allow all UCITS into the ISA and PEP regimes but involve imposing a separate investment test imposed by the Revenue, either by using ‘PEP and ISA investment criteria’ or requiring the CIS to satisfy one of a limited number of ‘ISA and PEP compatible investment objectives’. These rules would be in addition to that CIS satisfying the new FSA UCITS rules.

It would be difficult to define what are acceptable investment objectives. From examination of a large number of CIS objectives, it is also not always clear whether the product being sold is ‘cash-like’ or not. The simplest option would be to adopt the current ‘securities’, ‘warrant’ and ‘fund of fund’ schemes rules as new Revenue requirements, and retain the current 50% test to limit the ‘cash-like’ investments they can hold within those schemes.

This would require all CIS providing PEP and ISA products to fulfil the wider FSA UCITS management and investment requirements whilst remaining within the more restrictive investment criteria of the old FSA schemes, to ensure they are deemed acceptable to the Revenue. This requires managers to carefully balance the need to satisfy the FSA rules, that include requirements to manage risk through wider investment when that is appropriate, against the need to ensure they did not breach the possible competing Revenue requirements not to hold unacceptable investments. Mistakes will invariably arise from misinterpretation of the rules.

Requiring providers to comply with two completely different sets of investment rules increases burdens and complexity and may prevent CIS from taking advantage of the more relaxed FSA UCITS rules. This added complexity will also increase the risk of products being mistakenly sold as suitable for the ISA ‘stocks and shares’ component or a PEP, putting savers at a disadvantage if they subsequently lose that ISA or PEP status.

**Option 3: include all Chapter 5, FSA CIS Sourcebook, UCITS but introduce an ‘expected risk to capital test’ - to limit schemes where the investor could expect 95% or more of the capital invested back within 5 years to the cash component of the ISA – the 95% rule.**

This would allow all UCITS schemes to qualify for the ISA and PEP regimes, regardless of their investment practices, subject to the 95% rule to decide whether the CIS was limited to the ‘cash ISA’.

This would allow UCITS schemes to apply the FSA UCITS rules including having access to the wider investment criteria, and all schemes would be compatible for the PEP or ISA. But managers would have to assess the likely risk to capital of the investment criteria they propose to follow for that UCITS

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scheme, to decide whether at the point the saver enters the scheme whether it qualifies for the 'stocks and shares' or 'cash' component. If the investment criteria changes in future then the manager would need to reassess the risk to capital of that new investment strategy for any new investors.

This leaves the CIS manager the freedom to invest in accordance with the new UCITS rules, but replaces the existing 50% test with a new one based on the element of risk attached to the individual's capital investment. As this test does restrict the underlying investments made by the CIS, it should fit within the new UCITS criteria. The FSA UCTIS scheme itself requires managers to understand the general investment risks, so the additional ISA and PEP should only be an extension of that FSA requirement, rather than an extra burden.

In most cases, where an investment limits the risk to capital to the extent that they can assure investors they are almost certain of getting 95% of their capital back within 5 years, this 'lack' of risk will be a key selling point. So most CIS managers should find identifying which criteria their scheme fits within relatively simple to administer. Complexity will occur for those CIS who are close to promising investors a guaranteed return on investment, or have arranged complex investment criteria to achieve such a return.

**Option 3 is the preferred option - it allows the CIS who currently provide ISA and PEP investments to continue doing within the new FSA UCITS environment, without limiting their ability to take advantage of the more relaxed FSA rules and imposing few additional burdens on CIS managers.**

### 4. Benefits

#### Option 1:

None, as this would remove the ability for ISA and PEP investors to use CIS funds

#### Option 2:

This brings the new UCITS scheme into the ISA and PEP regimes, so potentially allowing a wider range of CIS to participate in providing ISA or PEP products, although limiting some to the cash ISA, but the impact may be limited by any Revenue restrictions on qualifying types of investment which will not match the more relaxed FSA UCTIS rules.

#### Option 3:

This brings the new UCITS scheme into the ISA and PEP regimes, so allowing CIS that hold a wider range of investments in to both the ISA and PEP, although limiting some to the cash ISA, and potentially providing the opportunity for a greater range of CIS to participate in providing ISA or PEP products.

It would allow also UCITS schemes to keep additional investment criteria to a minimum so limiting burdens on business

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### **Business sectors affected**

The FSA UCITS reforms affect all CIS currently able to provide ISA and PEP investment, around 700 managers can provide ISA or PEP 'stocks and shares component' compatible products, these regulations will affect

- those of the 700 ISA and PEP managers who provide qualifying investments through CIS which then convert to a UCITS scheme
- all CIS that are or become a UCITS scheme that wish to provide ISA or PEP compatible products
- independent financial advisors

### **Issues of equity and fairness**

The impact of these regulations is neutral. Those CIS that are prevented by the FSA rules from becoming UCITS, are already prevented from qualifying for the ISA and PEP regimes under the ISA and PEP regulations as they stand, so they are not disadvantaged by these regulations. Those CIS who decide not to convert to the new FSA UCITS criteria will be excluded by these regulations.

## **5. Costs**

### **(i) Exchequer effects and distributional impacts**

#### **Option 1:**

Excluding UCITS schemes from the ISA and PEP regimes will remove the advantage CIS have over other products. CIS will be prevented from competing in the ISA and PEP regimes, losing up to £50 billion of existing business from savers if they decide to shift to more tax advantageous products

This could result in potential Exchequer yield, by withdrawing relief from those funds held by CIS, although this will be reduced as those investing in CIS funds shift their savings to other types of more tax-advantaged products.

#### **Option 2 and 3:**

Both these options aim to maintain the status quo, allowing all existing providers to continue offering ISA and PEP investments.

There should be no shift in behaviour from investors, even those currently holding CIS funds. Restricting 'cash-like' CIS schemes to the 'cash component' of the ISA will have negligible impact as such investors are already likely to be investing in the cash component.

A cost to the Exchequer only arises if the additional rules to exclude cash-like products from the 'stocks and shares component' of the ISA or the PEP are not put in place. As this would introduce the risk of existing taxed savings, currently excluded from the ISA regime by the low cash component investment limits, being transferred to 'cash-like' ISA 'stocks and shares' investments. This could cost the Exchequer up to £500 million by 2010-11.

### **(ii) Implementation and compliance costs of the ISA and PEP regulations**

The costs of converting to the FSA UCITS scheme are not part of this assessment. However in many cases the requirements on CIS to convert can involve dealing with

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members and staff to explain the impacts of converting to the new FSA UCITS schemes. In many cases the costs of explaining the impacts of ISA and PEP regulations may fall within this wider cost.

For all options there will be **one-off costs** for CIS to amend internal instructions, provide advice to new investors on the impact of changes and marketing materials on the structure of new products. Even the 'do nothing' option will impose burdens on CIS, as to comply with FSA requirements on best advice they should contact investors to inform them of the loss of ISA and PEP status.

Although each option affect CIS additional **ongoing costs** slightly differently:

### Option 1:

No additional costs for CIS subject to existing rules, until they converted to the new FSA UCITS rules. At which point units or shares in the CIS would cease to be eligible for the ISA or PEP, so no ongoing administrative costs but costs to the provider of losing the opportunity to market ISA and PEP investments.

### Option 2:

This option creates additional complexity. CIS managers will be required to identify whether their UCITS scheme can qualify under the separate ISA and PEP investment criteria as well as ensuring they continue to comply with the 'cash-like' test on those investments ie the 50% test.

This is likely to increase complexity. The UCITS scheme has to satisfy both investment criteria before they can market their scheme as ISA and PEP compatible. Where the UCITS scheme wishes to change investments, to limit exposure to market changes etc, the UCITS manager will need to assess whether the scheme remains within the stricter ISA and PEP investment criteria. There will be ongoing administrative costs to monitor investment practices to ensure the scheme continuously complies with both criteria and costs in notifying investors if scheme fails to satisfy the stricter ISA and PEP requirements.

This is likely to require more intervention by both to ensure investment practices comply with both tests and in advising savers of the impacts of changes. For these reasons the cost, although minimal, will almost certainly be more than for options 1 and 3.

### Option 3:

In all but a small number of cases, there will be no additional ongoing costs.

Currently all CIS are required to either satisfy FSA investment criteria and an additional 'cash-like' or suitability of investment test to comply with ISA and PEP requirements. The impact of conversion is that CIS will have to comply with the new UCITS rules and a different suitability test - the 95% test.

Providers believed that the 95% test should, in the vast majority of cases be no more complicated to administer than the existing test.

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In a few marginal cases the 95% test may be more complex to operate. Such as where CIS have more complex investment structures aimed at providing some form of guaranteed return. Very similar issues are faced CIS currently where they hold a high level of short-dated securities. Providers believed that provided the Revenue set out clear guidance for handling such cases this should not impose any more burdens than currently imposed. **The Revenue will be providing guidance shortly after publication of the regulations.**

### **(ii) Other costs**

Introducing Option 2 or Option 3 will create one-off costs for the Revenue. Option 2 also creates additional annual administration and audit cost to administer the Revenue imposed investment criteria. All costs are negligible.

There are no wider cost impacts, as the aim of the regulations is to ensure that certain types of CIS can continue to fall within the ISA and PEP regime.

### **6. Consultation with small business: the Small Firms' Impact Test**

CIS providers and ISA and PEP managers do not fall within the definition of a small business, although a number of independent financial advisors (IFAs), who may advise on such products, will be.

The burden of identifying whether units or shares of a CIS falls within the new ISA and PEP rules will, as it does under the current rules, fall to the ISA and PEP manager, who relies in turn on information provided by the CIS. An ISA or PEP manager who is not satisfied that the CIS is eligible for the 'stocks and shares component' of an ISA or a PEP will not allow the CIS units or shares to be held by investors. The CIS will therefore be responsible for ensuring that the information they provide is sufficient to inform investors, IFAs, and in particular ISA and PEP managers whether it is eligible for the ISA or PEP, and if so for which component, as they do now for those organisations.

Existing CIS that are eligible for the ISA or PEP and which convert to operate under the new FSA Chapter 5 rules should continue to be eligible for the same component of an ISA as before, or for a PEP, provided they do not change their main investment policy. So other than familiarising themselves with any new products, which they currently have to do in any case, no additional burden should fall on IFAs from the ISA and PEP changes.

### **7. Competition Assessment**

The changes proposed, under option 3, will allow all existing CIS that convert to a UCITS scheme under the new FSA UCITS rules to remain in the ISA and PEP regime when they convert.

The FSA UCITS and retail non-UCITS proposals will require all CIS to restructure how they operate, but all CIS that currently qualify for the ISA and PEP regimes will be able to convert to a UCITS scheme.

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On the basis of the ‘competition filter’ tests, the ISA and PEP regulations impose no greater burden on any particular sector who satisfies those separate FSA requirements, and will affect all those providing or aiming to provide CIS with in the UCITS rules equally.

### **8. Enforcement and sanctions**

The Revenue currently audits whether ISA and PEP managers satisfy the requirements imposed on them by regulations, this will continue. These audits are based on risk assessment against 16 ‘audit objectives’ to target areas of potential risk. These risk criteria are regularly reviewed to ensure they are still compatible with the audit requirements.

The “qualifying investments” rule is designed to ensure that the ISA ‘stocks and shares component’ and the PEP contains only qualifying investments, and thereby no cash-like products. The Revenue can ask PEP and ISA managers to provide a detailed listing of all Investments held in a scheme, any investment that does not appear to qualify is referred back to the manager to justify eligibility. If the Revenue is still not satisfied the manager is instructed to remove the investment from the ISA or PEP.

### **9. Monitoring and review**

Quarterly statistics on take up and annual statistics on the level of funds held in different investment products, are already provided for the ISA and PEP regime. These will inform the ongoing assessment of the impact of these changes has had on investment preferences or take-up of Chapter 5 CIS compared to the existing CIS.

We intend to continue informal discussion with key representative bodies on the impacts of the changes, and suitability of the new test.

### **10. Consultation**

#### **(i) Within government**

Before making these regulations we have consulted with HM Treasury, Cabinet Office and sent copies to the Small Business Service.

#### **(ii) Public consultation**

The Financial Secretary announced the proposal to introduce a 95% return of capital test in May 2003, and providers and representative bodies have been informally involved in the fine-tuning of this test since then. These discussions, which included discussions with the Investment Managers Association, the PEP and ISA Managers Association, and with individual IFAs, were used to inform development of initial draft regulations.

Around 14 weeks after the initial announcement, once draft regulations had been developed, officials in the Revenue entered into informal discussions on the detail within those draft regulations. Those discussions were held with all the key representative bodies, the FSA and those individual providers who had expressed a wish to be closely involved with developments arising from the Ministerial

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announcement. As a result of those subsequent discussions the draft regulations have been refined and form the basis of these regulations laid today.

### 11. Summary and recommendation

On balance we recommend the most advantageous option, both for providers and the policy aim of the ISA and PEP regimes - option 3. The regulations reflect this.

Option 3 extends the ISA and PEP regimes to the new class of CIS created by the FSA, whilst still protecting the Exchequer by restricting access to the higher 'stocks and shares component' investment limits to those products that have similar risks and characteristics to general investments in shares. By following the FSA proposals, as closely as possible, it also minimises the additional ongoing burdens on business.

Option	Total cost per annum	Total benefit per annum												
1 – no change	Loss of ISA & PEP investment of up to £50 billion funds	None												
2 – investment criteria test	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"><u>Providers</u></td> <td style="width: 50%; text-align: center;"><b>negligible</b></td> </tr> <tr> <td>One-off</td> <td style="text-align: center;"><b>negligible</b></td> </tr> <tr> <td>ongoing</td> <td></td> </tr> <tr> <td><u>Revenue</u></td> <td></td> </tr> <tr> <td>One-off</td> <td style="text-align: center;"><b>negligible</b></td> </tr> <tr> <td>ongoing</td> <td style="text-align: center;"><b>negligible</b></td> </tr> </table>	<u>Providers</u>	<b>negligible</b>	One-off	<b>negligible</b>	ongoing		<u>Revenue</u>		One-off	<b>negligible</b>	ongoing	<b>negligible</b>	Retaining ISA & PEP investment of up to £50 billion funds
<u>Providers</u>	<b>negligible</b>													
One-off	<b>negligible</b>													
ongoing														
<u>Revenue</u>														
One-off	<b>negligible</b>													
ongoing	<b>negligible</b>													
3 – expected return of 95% capital test	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"><u>Providers</u></td> <td style="width: 50%; text-align: center;"><b>negligible</b></td> </tr> <tr> <td>One-off</td> <td style="text-align: center;"><b>£nil</b></td> </tr> <tr> <td>ongoing</td> <td></td> </tr> <tr> <td><u>Revenue</u></td> <td></td> </tr> <tr> <td>One-off</td> <td style="text-align: center;"><b>negligible</b></td> </tr> <tr> <td>ongoing</td> <td style="text-align: center;"><b>£nil</b></td> </tr> </table>	<u>Providers</u>	<b>negligible</b>	One-off	<b>£nil</b>	ongoing		<u>Revenue</u>		One-off	<b>negligible</b>	ongoing	<b>£nil</b>	Retaining ISA & PEP investment of up to £50 billion funds
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One-off	<b>negligible</b>													
ongoing	<b>£nil</b>													

### 12. Declaration

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

Signed:



Dated:

16.10.03

**Ruth Kelly  
Financial Secretary to the Treasury  
HM Treasury**

## REGULATORY IMPACT ASSESSMENT

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### Annex A - Qualifying investments tests

Under the proposed amendments units or shares in a CIS must satisfy certain tests to qualify for a PEP or ISA

- The CIS must operate in accordance with FSA requirements, and
- if they are CIS operating under Chapter 5A of the FSA rules, they must be a certain type of scheme (see current structure below)
- If the units or shares are cash-like they can only be held in the cash component of an ISA

#### CIS operating under Chapter 5A

The CIS must operate as one of the schemes authorised by the FSA, this may fall into one of seven categories set out in the FSA CIS Sourcebook:

- a securities scheme
- a warrant scheme
- money market scheme
- futures and options scheme
- geared futures and options scheme
- properties scheme , and
- fund of funds scheme

Of these types of scheme only investments in a CIS that operates under the **securities scheme**, the **warrant scheme** and certain **fund of funds** schemes can qualify for the stocks and shares component of an ISA or for the PEP, providing the CIS units or shares pass the 95% test (i.e. are not cash-like – see below). Investments in a CIS operating as a **money market scheme** or certain **fund of funds schemes** can qualify for the cash component of an ISA

#### CIS operating under Chapter 5

All CIS operating under Chapter 5 will be eligible for the ISA, and those that pass the 95% test will be eligible for the PEP.

Of those eligible for the ISA, those that pass the 95% test (i.e. their units or shares are not cash-like) will be eligible for the stocks and shares component, the remainder will be eligible for the cash component.

#### The Interim

Between now and 2007, CIS operating under Chapter 5 of the FSA rules will be required to convert to operate under Chapter 5. We are aware that the FSA is consulting on further changes to their rules which may affect this.

#### The 95% test

Where the risk to capital is such that within 5 years of the date the investment was first held the investment was **not** exposed, or exposed to a significant extent, to the risk of loss from fluctuations that could mean that the value of the investment could drop below 95% of the capital investment original made it is treated as 'cash-like'.