

???????? C-363/05

JP Morgan Fleming Claverhouse Investment Trust plc

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The Association of Investment Trust Companies

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The Commissioners of HM Revenue and Customs

(?????? ?? VAT and Duties Tribunal, London,

???? ???? ??????? ?????????????????? ??????????)

«???? ??????? ??? — ?????? 13, B, ???????? ??, ?????? 6 — ???????? — ???????? ??????? — ?????? — ?????? ??? ???? — ?????? — ?????? — ?????? — ?????? — ?????? — ?????? — ?????? — ?????? — ??????»

????????? ???? ????????????

1. ??????????? ??????? — ?????????? ??? ?????????? — ????? ?????? ?????? —
????? ??????? ??? ?????????????? ??? — ?????????? ?????????????? ??? ??? ??? ????
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(?????? 77/388 ??? ??????????, ????? 13, B, ??????? ??, ?????? 6)

2. ??????????? ??????? — ?????????? ??? ?????????? — ????? ?????? ?????? —
????? ??????? ??? ?????????????? ??? — ?????????? ?????????????? ??? ??? ??? ????
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(?????? 77/388 ??? ??????????, ?????? 13, B, ???????? ??, ?????? 6)

3. ?????????? ?????? — ?????????? ??? ?????????? — ????? ?????? ?????? —
????? ?????? ??? ?????????? ????? — ?????????? ?????????? ??? ??? ???
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(?????? 77/388 ?? ??????????, ??? 13. B. ??????? ??, ?????? 6)

1. ?????? 13, ?, ??????? ??, ?????? 6, ??? ????? ?????? 77/388, ??? ??????????????
??? ?????????? ??? ?????? ??????, ??? ?????????? ?? ??? ????? ?????? ?????? ??????, ??? ??
????? ??? ? ??? «????????? ??????» ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ???
????? ?????????? ?????????? ?????????? ?????????? ?????????? ?????? ?? ??????
????????? ?????????? (Investment Trust Companies).

???? ??????? ?? 13, ?, ??????? ??, ?????? 6, ??? ????? ??????? ??????? ?? ??
????? ??????????? ?? ???? ??? ????? ?????????????? ?????? ? ?????????? ??????????
?????????? ?? ?????????????? ?????? ??? ???? ? ?????????? ?????????? ??????????
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??????, ?????? ???, ?????????? ?? ??? ????? ?????? ?????? ?????????????? ?????? ??

? ?????????? ? ??? ???? ???? ? ?? ???? ???? ?????????? ?? ???? ?????????? ????????????, ???
????? ??? ???? ???? ? ?? ???? ?????????? ???, ?????????? ?????? ??? ???? ?????????? ???
????? ??????. ????????, ?? ?????????? ?????? ?????? ?????? ?????? ?????? ???
????????? ?????? ?????? ?????? ??? ?? ?????? ?????, ?? ?????? ?????, ?? ?????? ???
????? ??? ?????? ?????? ??? ?????? ?????? ?? ?????? 13, ?, ?????? ?,
????? 6, ??? ??? ?????? ??????, ??? ?? ?????? ?????? ?????? ?????? ?????? ??????
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? ?????????? ??? ?????? ?????? ??? ?????? 85/611, ??? ??? ?????????? ??? ????????????,
????????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ?????? ??????????
????????? ?????? ?? ?????? ?????? (?????), ??? ?????????? ?????? ??? ??? ??????
2005/1, ??? ?????? ?? ?????????? ??? ?????? ?????? ?????????? ?????? ??? ??? ???
????? 13, ?, ????????, ???, ?????? 6, ??? ??? ?????? ?????? ?????? ??? «????????? ??????».
??? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? 85/611 ?????????? ??? ???
????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??????
????????? ?????? ??????, ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?
????? 85/611, ??? ?????????? ??? ?????? 1, ?????????? 3, ?????????? ?????? ???
????????? ?????? ?????? ?????? ?????? 1985.

(???. ?????? 29-32, 37, ??????. 1)

2. ?? ??? 13, ?, ????????, ???, ?????? 6, ??? ??? ?????? ?????? 77/388, ??? ???????????,
??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? «????????? ??????» ???
??? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ???
????????? ??? ?????? 85/611, ??? ??? ?????? ??? ?????? ??? ?????? ???, ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? (?????), ??? ?????? ?????? ??? ?????? 2005/1.

(???. ?????? 54, ??????. 2)

3. ?? ??? 13, ?, ????????, ???, ?????? 6, ??? ??? ?????? ?????? 77/388, ??? ???????????,
??? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ???
????? ?????? ???, ??? ??? ?????? ??? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? ?????? ???.

? ?????? 13, ?, ????????, ???, ?????? 6, ??? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?? ?????? ??? ?????? ??? ??, ?????? ??? ?????? ?????? ?????? ??? ?????? ???

(???. ??????? 59-60, 62, ????????. 3)

?????? ?? ?????????? (????? ????)

?? 28?? ??????? 2007 (*)

«???? ??????? ?? – ??? 13, B, ??????? ??, ?????? 6 – ??????? – ??????? ??????? – ?????? – ??????? ?? ???? – ??????? – ??????? ?? ???? – ??????? – ??????? ?? ???? – ??????? ?? ????»

???? ??????? C?363/05,

??. ??????????? ?????? ??????? ?????????????? ?????????? ??????? ?? ?????? 234 ??, ?? ??????? ?? VAT and Duties Tribunal, London (?????? ???????) ?? ??????? ?? 19?? ??????????? 2005, ? ?????? ??????? ?? ??????????? ??? 26 ??????????? 2005, ??? ??????? ?? ???????????

JP Morgan Fleming Claverhouse Investment Trust plc,

The Association of Investment Trust Companies

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The Commissioners of HM Revenue and Customs,

??. ?????????? (????? ????),

?????????? ?? A. Rosas (??????), ??????? ????????, J. Klu?ka, U. Lõhmus, A. Ó Caoimh ?? P. Lindh, ????????,

?????? ??????????: J. Kokott

?????????: L. Hewlett, ????? ??????? ????????,

?????? ?? ?? ??????? ??????????? ?? ??????? ?? ?? ??' ??????????? ??????????? ?? 13?? ??????????? 2006,

?????????? ?? ?? ??????????? ?? ????????:

– ? JP Morgan Fleming Claverhouse Investment Trust plc, ??????????????? ?? K. P. E. Lasok, QC, ?? M. Angiolini, barrister, ??' ??????? ?? A. Khan, solicitor,

– ? ?????????? ?? ??????? ????????, ??????????????? ?? ?? C. Gibbs ?? R. Hill,

– ? ?????????? ??? ?????????? ??????????, ?????????????? ??? ??? R. Lyal ??? ??? M. Afonso,

???? ?????? ?? ?????? ?????????? ??? ??????? ??? ?????????? ??? ??? ?? ?????????? ??? 1?? ?????? 2007,

??????? ??? ????????

???????

1 ? ?????? ?????????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 13, ?, ????????, ??? 6, ??? ?????? ?????? 77/388/??? ??? ???????????, ??? 17?? ????? 1977, ????? ?????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ????? ?????? ?????? ?????? – ????? ?????? ?????? ?????????????? ?????: ?????????? ?????????? ?????? (?? ????. ????. 09/001, ?. 49, ??? ?: ??? ?????).

2 ? ?????? ??? ?????????? ??? ??????? ?????????? ??? ??????, ??? JP Morgan Fleming Claverhouse Investment Trust plc (???: Claverhouse) ??? The Association of Investment Trust Companies, ?????????????? ??? ??????? ?????, ???, ?????????, ??? Commissioners of HM Revenue and Customs (???: Commissioners), ?????????? ?? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????? ??? ?????? ????? ?????????????? ?????? (???: ITC). (Investment Trust Company, ??? ?: ITC).

?? ?????? ???????

? ?????????? ????????

3 ? ?????? ??? ?????? 13, ?, ????????, ???, ?????? 6, ??? ?????? ???????, ?? ?????? ??? ???????????, ??? ?????????????? ??? ?????????? ??? ?????? ??? ?????????????? ?? ??? ?????? ??? ?????? ?????????? ??? ?????????????? ??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ??? ???????????, ?????????? ??? ??????????:

«?? ?????????? ??? ?????????? ??????????, ??? ?????????? ??? ?? ?????? ???..»

4 ? ?????? 85/611/??? ??? ??????????, ??? 20?? ?????????? 1985, ??? ??? ?????????? ??? ???????????, ?????????????? ??? ?????????? ??? ?????????? ?????????? ??? ?????? ?? ??????????? ?????????? ?????????? ??? ?????????? ?? ?????? ?????? (?????) (?? L 375, ?. 3), ??? ?????????? ?????????? ??? ?????? ?????? ?? ??? ?????? 2001/108/?? ??? ??? ?????????? ?????????? ??? ??? ?????????? ??? ?????? 2002 (?? L 41, ?. 35), ???, ???????, ?? ??? ?????? 2005/1/?? ??? ?????????? ?????????????? ??? ??? ???????????, ??? ?????????? 2005 (?? L 79, ?. 9) (???: ?????? ?????), ??????????, ??? ?????? 1, ?? ??????:

«1. ?? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? (?????).

2. ??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??? ?????? ??? ?????? ??? ?????? 2, ?? ??? ?????? ??? ??????????:

– ??? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????? /??? ?? ??? ?????? ?????????????? ?????????? ??? ?????? ??? ?????????? ??? ?????? 19, ?????????? 1, ?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ?????????? ???

????? ??? ?????????? ??? ????????, ???

– ??? ?????? ?? ??????, ??? ?? ?????? ?? ?????????, ?????????????? ? ?????????????
????? ? ??????, ?? ?????????? ??? ?????????????? ??? ?????????????? ?????.. ????? ????
????????? ? ?????????? ?????????????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?? ???
????????? ?????? ? ?????????????? ??? ?????? ??? ?????????? ??? ??? ??? ??? ?????? ??? ?? ???
????????? ???.

3. ?? ?????????? ??? ?????? ??????, ??????? ?? ??? ???, ?? ?????? ?????????? ???
(????????? ?????????? ?????????????? ??? ?????? ?????????? ??????) ? trust (unit trust) ?
????????? ??? (?????? ??????????).»

5. ?????? ?? ?? 2, ?????????? 1, ??? ?????? ??????, ?? ?????????? ?????? ?? ?????????? ??????
????????? ?? ?????? ?????? (???: ???) ?????? ?????? ??? ?????? ?? ?????????? ??
????????? ?????????? ?????? ???.

6. ? ??? ?????????? ??? ?????? ??? ?????? ?????? ??? ?? ???:

«[?????????] ??? ? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???' ??? ??
????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? "?????" ???, ??
????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (???: ???) ?????? ??? ?????? ???
????? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??????)- ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ???, ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ??? [...].»

? ?????? ??????

7. ??? ?????? ??????, ?? ??? 13, ?, ?????? ??, ?????? 6, ??? ?????? ??????
????? ?? ?????? ?? ??? ??? ??? 1994 ??? ?? ?????? ?????????? ?????? (Value
Added Tax Act 1994, ??? ?: VATA 1994).

8. ?? ?????? 9 ??? 10 ??? ?????? 5 ??? ?????????? 9 ??? VATA 1994 ??????????,
?????????, ??? ??? ?? ?????? ?????? ?????????? ?????????? ?????????? (authorised
unit trust, ??? ?: AUT) ??? ?? ?????? ??? ?????? ?????? ?????? ?????? ??????????
????????? ?????? (?????? ????) (open-ended investment company, ??? ?:
OEIC).

9. ?? ?????? ??? AUT ??? ??? OEIC ??? ?????? ?????????? ? VATA 1994 ??????????
??? ??? ??? 2000 ??? ?????????????? ?????? ??? ?????? (Financial Services
and Markets Act 2000), ? ?????? ?????? ?????? ??? ?????? ??? ?????? ?????? ???
????? ??? ?????? ??? ??????.

10. ??? ?? ?????????? ?????????? ??? ?? ITC ?????????? ?????????? ?????? ?? ??
????????? ??? ?????? 842 ??? ?????? ??? 1988 ??? ?? ?????? ?????????? ??? ?? ??? ??
????????? (Income and Corporation Taxes Act 1988). ?? ?????? ??? ?????????? ??? ??
????? ?????? ??? ?????? ??? ?????? ??? ?????? ???, ?? ITC, ?? ?????????? ?????????? ??? ??
????? ??? ??? ??????.

? ?????? ??? ?????? ??? ?????? ??? ?? ?????????? ??????

11. ? Claverhouse ??? ITC ? ???, ??? ?? ?????????? ??? ?????????? ??? ??,

?????????? ????? ?????????????? ?????????? ??????, ??? JP Morgan Fleming Asset Management (UK) Limited.

12 ? Claverhouse ?????????? ??? ?? ???? ???? ?????????? ?????????????? ??? ?? ????
???????????, ??????? ?? Commissioners ?????????? ?? ?????????? ?? ?????? ??????????
????????????? ?? ITC ?? ?????? ?????????? ?????????????? ?? ??? ?? ?. ???????, ?
Claverhouse ??????? ?? ???? ?? ?????? ??? 31 ?????????? 2003 ??????? ??? 2,7
????????????? ?? ?????? ?????????? (GBP) ?? ??? ?? ?????????? ?? ??????????.

13 ?????????? ???? , ? Claverhouse ??? ? The Association of Investment Trust Companies,
????? ?????????????? ?????? ?????? ITC ??? ?????????????????? ??? ?????? ???
????????? ?????????? , ?????????? ??? ??? Commissioners ?????? ??? ??????????
?????????????.

14 ??? ??? ?????? ?????? ??? ?????????????? ?????????? ??? ?? AUT, ??? ?????? ?? ????? trust,
??? ?? OEIC, ??? ?????? ?????????????? ????, ?????????? ??? ?????????????? ????????????, ???
?????? ? ??????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ??????????
????????? ??? ??????????. ????????????, ?? AUT ??? ?? OEIC ?????????? ??????????
????????????? ?????????????? ?????????? (? ?????????? ?????????? ?????????? ??????), ??
?????? ?????????????? ?? ?????????? ?? ?????????? ??? ?????? ??? ?????? ?????????? ??? ??????????
?? ?? ???????. ????????, ?? ITC, ??? ?????? ?????????? ????, ?????????? ??????????
????????? ?????????? (? ?????????? ?????????? ?????????? ????). ?? ITC ?????????? ???
????????? ??????????, ?? ?????? ?????????? ??? ?????? ?????????? ?????????? ?????????? ??????????
?? ?????????? ????. ? ?????????? ??? ?????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????????? ???
???? ?????????? ??? ?????? ?????????? ?????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ???
???? ?????????? ??? ?????? ?????????? ?????????? ????, ??? ? ??? ?????????? ??? ?????? ???

15 ?? ??????? ??????????? ?????????????? ???, ???????? ??? AUT ??? ??? OEIC, ?? ITC
??? ??????????? ?? ??????? ??? ?? Financial Services Authority (?????????? ??? ??
?????????????????? ???????) ??????? ??? ????? ??? 2000 ??? ??
?????????????????? ??????? ??? ??????. ??????, ??? ??? ?? ??????????? ???
?????????????? ???????, ?? ITC ?????????? ??? ??????????? ??? Financial Services
Authority ??? ??? ??????? ??? ?? Listing Authority (????????? ??? ??????? ???
?????????????? ???).

16 ?? ?????? ??????????? ??????????, ???????, ??? ? ??????????? ??? AUT ??? ?? OEIC
?????? ?? ??????????? ?? ??????? ??????????, ??? ?? ITC ?????????? ??????????
?????????? ????? ?? ??????????????? ??? ???????????.. ???????, ?? 90% ?? ITC ?????????? ??
?????????? ??? ??????????? ?? ??????????? ??????????? ???????????.

17 ??????, ??? ???. ????????. ????? ?????????? ????? ?????????? ?????????? ???, ??? ????????. ??????????, ??
OEIC, ??? ?????? ?? ????????. ????? ?????????? ????? ?????????? ??? ?? ?????? ?????????? ?????????? ??????????????
????????????? ?????????? ??? ?? ?????? ??? ?????? ??? ?????? ?????? ??? ?????????? ?????? ??? ?????????????? ??
????????????? ??? ?? ?????????? ?????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ???, ??
????????????? ??? ?? ?????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?? ?????????? ??? ??
?????????????, ??? ?? ????????. ?????????? ?????????? ?????????? ?????????? ?????? ?? ITC ???
?????????????.

18 ???? ???? ?????????? ??????, ?? VAT and Duties Tribunal, London, ?????????? ??
?????????? ?? ?????????? ?? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
?????????:

«1) ?????????? ? ????? “????????? ??????????” ??? ?????? 13, ?, ?????????? ?, ?????? 6, ??? ?????? ??????? ????? ?????????????? ?????????? ?????????? ?????????? ?????????? ?????? ?? ITC;

2) ?? ?????????? ??????????? ?????????? ?? ??????, ? ?????? ??? ?????? 13, ?,
????????? ??, ?????? 6 [??? ????, ??????] “???? ?????????? ??? ?? ?????? ???”;

?) ?????????? ??? ????? ???? ?? ??????? ??? ????????? “????????? ??????” ????? ???
????????????? ??? ????? ?????????? ??? ????? ?????????? ??? ?????????? ?????????? ??? ???
????????????? ??? ??? ??????????, ?

?) ?????????? ??? ?? ?????? ??? ??????????? ?? ?????????????????? ??? ?????????????? ??? ?????? ???
????????????? ??? ?? ?????? ??? ?????? ??? “????????? ??????????” ??? ??
????????? ??? ?????? ?? ?????? ??? ?????? ??? ??????????????;

3) ?? ?? ??????? ?? ?? ??????? ??????? ?? ?? ??????? ?? ?? ??????? ?? ?? ??????? ??
?????????? ?? ?? “????????? ??????” ?????????? ?? ?? ???????, ?? ?? ????? ?? ?? ?? ??
????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ??
?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ?????????? ?? ?? ??????????;

4) ???? ? ? ?????? 13, ?, ????????, ?, ?????? 6, ????? ??????????;»

???? ???? ?????????????????? ??????????????

????????????????? ???? ??????????????

19 ???? ?????? ??????????, ?? ?????????????? ??? ????? 13 ??? ????? ?????? ?????????? ??????????
????????? ?????????? ??????? ?? ?????? ??? ?????????? ?????? ??? ?????? ?? ?????? ??????????
?????? ?? ?????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??
?? ??? ?????? ??? ??? (??., ??? ?? ?????? ???, ?????????? ??? 3?? ?????? 2005, C-
428/02, Fonden Marselisborg Lystbådehavn, ?????? 2005, ?. ?-1527, ????? 27- ??? 26??
????? 2005, C?498/03, Kingscrest Associates ??? Montecello, ?????? 2005, ?. I?4427, ?????
22- ??? 1?? ?????????? 2005, C-394/04 ??? C-395/04, ?????, ?????? 2005, ?. I?10373, ?????
15- ??? 4?? ????? 2006, C-169/04, Abbey National, ?????? 2006, ?. ?-4027, ????? 38, ??? ???
14?? ?????????? 2006, C?401/05, VDP Dental Laboratory, ? ????? ??? ????? ??????????
????? ??? ??????, ??? 26).

20 ???????, ? ?????????? ?????????? ??????? ?? ?????????? ??? ?????? ??? ?????? ?? ?????? ??
????????? ?????????? ??? ?????? ?????????????? (??., ??? ?? ?????? ????, ??????? ?? 28??
?????? 1996, C?468/93, Gemeente Emmen, ??????? 1996, ?. I?1721, ????? 25, ???
????????????? ?????? Abbey National, ????? 39).

21 ????? ?????????? ????, ??? ?????? ???? ?????????????? ?? ??????? ??? ?????????? ??????
????? ??? ?????????? ???? ?????? (??., ??? ?? ?????? ???, ?????? ??? 27?? ??????)
2006, C?443/04 ??? C?444/04, Solleveld ??? van den Hout-van Eijnsbergen, ?????? 2006, ?. I-
3617, ????? 29), ??????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????????????? ?
????????? ???????.

22 ???????, ??? ?? ?????????? ??? ????? ?? ?????????? ???, ??? ?? ?????? ??? ????? ?????????? ??
????????? ??? ????? ?? ?????? ????? ??????????????, ??? ??????? ?? ?????? ??? ?????? ?????? ???
????? ?????? ? ?????? ?? ?????? ??? ?? ?????????? ??? ?????? ?????? ??? ?????? ??? ?? ??????
????????? ?? ?????? ???, ??? ?? ??? ?? ??? ?????????? ?????????????? (??., ?? ??
????? ???, ?????????? ?????? Gemeente Emmen, ??? 25, ??? ?????? ??? 12?
????????? 2006, C?246/04, Turn- und Sportunion Waldburg, ?????? 2006, ?. I?589, ????

31).

??? ??? ?????? ??????????

23 ?? ?? ?????? ??????? ???, ?? ?????? ??????????? ?????? ?? ? ?????? ?? «????????? ?????????» ???. ?????? 13, ?, ??????? ??, ?????? 6, ??? ????? ?????? ??????? ???.
????????? ?????????? ?????????? ?????????? ?? ITC.

24 ?????????? ??? ???? ?????????????????? ??? ??? ?????????????? ??? ?????????????? ??????????????, ??
????????????????? ??? ??????? ?????? ??? ? ?????????? ??? ?????????? ?????????????? ??????????????
????????????? ??? ? ??? «????????? ??????» ?????????? ??? ??? ?????????????? ??????????????
????????? ?????????? ??? ?? ITC.

25 ???????, ?????? ?? ??????????? ??? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ??????
?????? ??, ??????? ??, «????????? ??????».

26 ?? ?? ?????? 53 ??? ?????????????? ?????????? Abbey National, ?? ?????????? ??????
??? ?? ?????? 13, B, ??????? ??, ?????? 6, ??? ????? ?????? ?????? ?? ?????? ??????
????????????? ??? ??????? ????? ??????. ??? ??????????, ??? ?????? ?????????? ??? ?? ???
????????? ?????????? ??? ?? ?????????? ?????????? ?????????? ??? ?????? ??????????
????? ? ?????? trust ??? ?? ?????? ??? ?????? ?????????? ??????.

27 ????? ????????, ?? ? ?????? ?????? ??? ?????? ?????????????? ??? ??? ?????? ?????????? ???
?????? ?? «????????? ??????????» ??? ?? ??? 13, ?, ??? ?????? ??, ??? ????? 6, ??? ??????
?? ?????????? ??? ?????? ?????? ?????? ?????? ? ?????????? ? ?????????????? ??? ?????.

29 ???? ?????????? ??? ??????? 13, ?, ?????????? ??, ??????? 6, ??? ?????? ???????? ???????? ??
 ???? ?????? ?????????????? ??? ??? ??? ? ?????????? ?????????? ?????????? ??????????
 ????????????? ?????????? ??? ??? ? ?????????? ?????????? ?????????? ?????????? ??????????
 ????????? ?? ?????????? ??? ??? ??? ?????????? ?????????? ?????????? ?????????? ??????????
 ????????? ???, ?????????? ?? ?????? ?????? ?????? ??? ??? ?????????? ? ??? ?????? ?????? ??? ? ????
 ????????? ?? ?????????? ?????????? ?????????? ???, ??? ?????? ??? ?????????? ??? ???,
 ????????? ??? ?????????? ??? ?????? ?????? ??? ??? ?????????? ??? (??., ??? ?? ?????? ???, ??????????
 ??? 16?? ?????????? 2004, C?382/02, Cimber Air, ??????? 2004, ?. I?8379, ??????? 23 ???
 24, ??? ??? 8?? ?????????? 2005, C-280/04, Jyske Finans, ??????? 2005, ?. ?-10683, ?????
 39, ??? ??? ?????????? ?????? Abbey National, ?????? 56).

30 ????????, ??? ?????????? ? ?????? ?????????????? ??? ?????? 21 ??? ?????????? ???,
?? ?????????? ?????????? ?????????? ?????????? ??? ?????????????? ??? ?????? ?????????? ??????
???? ?? ??????????, ?? ?????? ????, ?? ?????????? ?????? ??? ?????????? ?????????? ???
????? ?????????? ?? ????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ??????, ??? ??? ??
????????? ?????????? ?????????????? ??????????.

31 ??????? ?? ?????????????? ?? ?? ??????? ???????, ? ?????????? ??
????????? ?? ??????? ????? ?? ?????? ?? ?????????? ?? ?????? ??????? ??????????????
????????? ?? ????? ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ????? ?????? ?????? ??
«????????? ??????».

32 ??? ?? ?????????????? ?? ??????? ?? ?????? ?? ?????? ?? ??????? ?????????? ??
?????? ?? ??????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ??
????????? ?? ???????, ??????, ??? ?????????? ?? ?????? ?? ?????????? ?? ?????? ??
????????? ??, ??? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????????? ?? ?????? ??
????? ?? ?????????? ?? ?????? ?? 1, ?????????? 3, ?????????? ?????? ?? ?????? ??
????????? ?????? ?? ?????? ?? 1985 (?. ?????????? ?? ?????? Abbey
National, ??? 55).

33 ??????, ?? ?? ??????? ?? ?????? 1, ?????????? 3, ??? ??????? ?????? ?? ???????
??????, ???, ?????? ??, ??? ???????, ?? ???????, ?? ???????, ??? ??????? ??
??????????, ??? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ??, ?????????? ?? «????????? ??????», ??? ?????? ?????????? ??
??? ?????? 13, ?, ??????? ??, ?????? 6, ??? ?????? ???????, ??? ?? ?????????? ??
????????? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?????????? ?? ?????? ?? trust ? ?????????? ??, ??? ?? ?????????? ??
????? ?????????? ?????????? ?? ?????? ??, ?????? ?????? ??, ?????? ?????? ??
????????? ?????? (?. ?????????? ?? ?????? Abbey National, ??? 55).

34 ?????, ??? ?????? ?? ?????????? ?? ??? ? ?????????? ?? ?????? ?????? ?????? ?
????? ??? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ??
??????, ?????? ?? ?????????? ??, ??? ?????????? ?? ? ???????, ?? ??????????
????????? ?????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????????? ?? ??
????????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??, ??? ?? ??
????????? ?? ?????? ?? ?????? ?? ?????????? ?? ??? ?? ?????????? ?? ?????? ??
????????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ??, ??? ?????????? ??
????????? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??
????????? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ??.

35 ??? ?? ?????? ?? ??????? ?? ?????????? ?? ?? ??????? ?????????? ??
????????? ??? ? ITC, ?? ?????? ?? ?????????? ?? ??????? ?? ?????????? ??
??? ??????, ??????? ?? ?????????? ?? ?????? ?? ?????? 13, ?, ??????? ??, ?????? 6, ???
????? ?????? ?? «????????? ??????».

36 ? ??????? ?? ?????? ?? ??????? ?? ??????? ?? ?????? ?? ?????????? ??
????????? ?? ??????? ?? ??????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ???????, ??? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????? ?? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ITC
?????, ??????? ?? ?????? ?? OEIC, ?????????? ?? ?????????? ?? ?????????? ??
????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????? ??
????????? ?? ITC ? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
??????????. ?? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? ??, ??? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????? ?? OEIC, ? ?????? ?? ?????? ?? ?????????? ?? ?????? ?? ?????? ??
?????????.

37 ??????, ??? ?????? ?? ?????? ?? ??????? ?? ??????? ?? ?? ?????? 13, ?, ??????? ??,

? ?????? 6, ??? ?????? ??????? ???? ???? ?????? ??? ???? «????????? ?????????» ???
????????????? ? ??????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????????
????????? ?????????? ??? ITC.

??? ??? ??????? ??? ??? ?????? ??????????

38 ?? ?? ??????? ??? ?? ?????? ??????? ???, ?? ?????? ?????????? ????, ???' ??????,
????? ??? ? ?????? ??? ?????? «????? ??????? ??? ?? ?????? ???» ??? ?????? 13, ?,
????????? ?, ?????? 6, ??? ?????? ??????.

39 ?? ?????????? ??? ?????? ?????? ??? ? ?????? ?????? ?????? ??? ?? ?????? ???
????????? ??? ?????? ?? ??????????, ?????? ??? ?????? ??? ?????????? ??? ??????????
?????????, ?????? ??? ?????????????? ??? ?????? «????????? ?????????». ???
??? ??????, ?????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? ??? ??????
????? ??? ?????? ?? ?????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ?? ?????? 13, ?,
????????? ?, ?????? 6, ??? ?????? ??????. ? ?????????? ?????? ??? ?????? ??????
?????????, ?? ?? ??????, ??? ??? ?? ?????????? ??? ?????? ??? ?????? ??? ????. ? ??????????
????????? ??? ? ?????????? ??? ?????????? ?????? ?????? ??? ?????? ?????? ???
????????? ??? ?????? ??????.

40 ? ?????????? ??? ??????? ?????????? ???????????, ??? ??? ?????? ???, ??? ???
?????? ??????? ??? ??? ?? ?????? 13, ?, ?????? ??, ?????? 6, ??? ?????? ??????
?????? ??? «????????? ???????» ?????? ?????????? ?? ?????????? ?? ??? ??????????
??? ?????? «????? ??????? ??? ?? ?????? ???» ?????? ?? ??? ?????? ??? ?????? ???
????????????? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ???
????? ??? ?????? ??? ??????????????.

41 ?????? ?????? ?? ?????????? ??? ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ???
????????? ??? ?????? ??? «????????? ??????» ?????? ??? ?????????? ?? ??????????
????????? ??? ?????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ??? ??????????
????????? ??? ?? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????. ???????, ??? ?? ?????? 21 ??? ?????? ?????? ?????????? ?????????? ??? ? ??? «?????????
?????????» ?????? ?? ?????????? ?? ?????? ??? ?????????? ?????????? ??? ?????????? ???
????? ???.

42 ???, ? ??????? ?????? ??? ?? ?????? ??? ?????? ?????????? ??? ?????? ??? ?? ??????????
??? ?????????? ?????????? ??? ?????? ?????? ?????????? ??? ?????? ??? ?????????? ???
????????? ??? ?????? ?????? «????????? ??????» ??? ?????? 13, ?,
????????? ?, ?????? 6, ??? ?????? ??????, ?????? ??? ?????? ?????? ??? ?????? ?????? ??????????
????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ?????????? ???.

43 ??????, ?? ?????? 13, ?, ?????? ??, ?????? 6, ??? ?????? ?????? ?????????? ???
????? ??? ?????? ??? ?????? ?? ??????????, ??? ?????? ?????? ??? ??????, ??? ??????????
????????? ??? ?????????? ??? ?????? 22 ??? ?????? ?????? ?????????, ?? ?????? ??? ??????
??? ?????? ??? ?????????? ??? ?????? ?????? ??? ?????????? ??? ?????? ??? ??????????
????????? ??? ??? ?????? ?????????? ?? ?????? ???.

44 ??????, ?????? ?? ?????????? ??? ?????? ?????? ?????????? ?? ??? ?????? ??? ??????????
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 13, ?, ?????? ??, ?????? 6, ???
????? ?????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?? ?????????? ???
????????? ?' ??? ?????? ?????? ?????????? ?? ?????? ?????? ?????????? ??? ?????? ???
????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

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45 ???????, ?????? ?? ???????????, ??????, ??? ?????? ?? ?????????? ?? ??????? ??
?????????? ?? ?? ??????????? ?????????? ?????????, ??? ?????? ?????????? ?? ?????? 13, B,
????????? ??, ?????? 6, ??? ?????? ??????, ?????, ?????? ?????, ?? ?????????? ???
????????? ?? ?????????? ?? ?????????? ?? ?????? ?????????? ?????????, ?????????? ?? ??????
?????? ?? ????????. ???????, ? ?????? ?????? ?? ?????? ?????????? ?? ?????????? ?? ??????
?????? ?? ?????? ?????????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ?? ??????
????????? ?? ?????? ?? ?????????? ?? ?????? ?????????? ?????????????? ?? ?????? ??????????
????????? ?????? (????????????? ?? ?????? Abbey National, ??? 62).

46 ???????, ?????????????? ?? ?????? ?? ?????? ?? ?????????? ?????????????? ?? ??? ?? ??????
????????? ?? ?????? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ?????????? ??, ??? ?? ??? ??
????????? ?? ??, ?????????????? ?? ?????????? ?? ?????? ??????. ???, ? ??? ?? ???
?? ??????? ?? ?????????? ?? ?????????? ?????????? ??????. ???????, ??? ?????? ??????????
????????? ?? ?? ?????? ?? ?????? ?????? ?????????? ?????????? ?????????, ?? ??????? ??,
????????? ?????? ?????????, ?? ?????? ?? ?????? ?????? ?????????? ?????????? ?? ??? ?? ??? ??
(??., ?????? ??, ?????? ?? 23?? ??????? 2003, C?109/02, ??????? ??
?????????, ??????? 2003, ?. I?12691, ??? 20- ?? 17?? ?????????? 2005, C?453/02 ??
C?462/02, Linneweber ??? ???????, ??????? 2005, ?. I?1131, ??? 24- ??????????
?????? Kingscrest Associates ??? Montecello, ??? 54- ??????? ?? 8?? ??????? 2006,
C?106/05, L.u.p., ??????? 2006, ?. I?5123, ??? 32- ?????????? ?????? Turn- und
Sportunion Waldburg, ??? 33, ????? ?? Solleveld ??? van den Hout-van Eijnsbergen, ???
39).

47 ? ??? ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? ?? ??? ?? ?????????? ??
????????? ?? ?????????? ?? ?????????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?????????? ??
????????? (??., ??? ?? ?????? ??, ?????? ?? 3?? 2001, C?481/98, ???????
?? ???????, ??????? 2001, ?. I?3369, ??? 22). ?? ?? ??????, ?????????? ??????????
????????? ?????????? ?? ?????? ?????????? ?????? ?????? ?????????? ?????? ?? ??? ?? ???
????????? ??? ?????????? ?? ?????? ??? (??., ??? ?? ?????? ??, ??????? ?? 29??
?????? 2001, C?404/99, ??????? ?? ??????, ??????? 2001, ?. I?2667, ??????? 45 ??
47). ??????, ?????? ?????? ?? ??? ?????? ?????? ?????????? ?????????? ??????
?????????.

48 ?? ?? ??????? ?? ??????? ?? ?? ?????? ?? ?????? ?? ??????? ?? ??????? ?? ?? ??????? ??
?? ?????????? ?? ?????????? ?? ?????????? ?? ??????? ?? ??????? ?? ?? ?????????? ??
????????? ?? ?? 13, ?, ??????? ??, ?????? 6, ??? ?????? ?????? ?????????? ?? ?????????? ??
????? ?? ?????????? ?? ?????? ?? ?????? ?? ?????? ?????????? ?????????????? ??, ??? ?????? ??
?? ?????????? ?? ?????? ?????????? ?? ?????? ?????????? ?????? ?????????? ?? ?? ?????????? ??
????????? ?????????? ?? ?????????? ?? ?????? ?????? ?? ?????? ?? ?? ?? ?????? ??????????
????????? ?????????? ?? ?????????? ?? ?????? ?????????? ?? ?????????? ?? ?? ?????? ?????????? ??
?? ??.

49 ?????????? ?? ?? ?????? ?????????? ?? ?????????? ?? ?????? ?????? ?? ?????????? ??
????????? ??????? ?????????? ?? ?????? ?????? ?? ?? ?????? ?????? ?? ?????? 13, ?, ?????????? ??,
????? 6, ??? ?????? ?????? ?? ?? ?????? ?? ?????????? ?????????????? ??, ?? ???????
?? ?????????? ?? ?????????? ?? ?????? ?????? ??????.

50 ??????, ?????? ??????? ?? ?????????? ?? ?????? ?? ?????????? ?????????? ??
????????????? ?????? ?? ?????? ?? ?????????? ?????????? ?? ?????????? ?? ?? ?????????? ??
?????????. ???, ?????????? ??, ?? ?????? ?????????, ? ?????????? ?? AUT ??? OEIC,

???? ?????????? ?????????? ?????????? ?????????? ?????? ?????? ?????????? ?????? ?????? ??????
?????, ??????? ?????????? ??????? ??? ?? ???? ?????? ?????????? ??????, ?????? ?? ??????, ??
ITC ??? ?????????? ?????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??????
?????, ?? AUT, OEIC ??? ITC, ??? ?????????? ?? ?????? ?????????? ?????? ?????? ?????? ??????
????? ?????????? ?????????? ?????????? ?? ?????? ?????? ?????????? ?????? ?????? ?? ??????
????????? ?????? ??? ?? ITC, ??? ??? ?? AUT ??? ?? OEIC, ?????? ?? ?????? ??? ?????? ??
?? ?????? ??? ?????????? ?????????? ?????????? ?????????? ?????????? ?? ?????? ?????? ?????? ??
????????? ?? ?????????? ?? ?????? ?????????? ?????? ?? ?????? ?????????? ?? ?????? ??? ?????? ??
????????? ?????? ??????.

51 ???????, ?? ?? ?????????? ??? ?????? ?????????? ?? ?????? ?????? ?????? ?????????? ?????? ??
????????? ??? ITC ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ITC ??????????
????????? ?????????? ?????????? ?? ?? AUT ??? ?? OEIC ??? ?????????? ?????? ?????? ???
«????????? ?????????»?. ??? ?? ?????? ??????, ?? ?????????? ?????????? ??? ITC ??? ??
????????? ??? ?????? ?????? ?????? ?? ?????? 13, ?, ?????? ??, ?????? 6, ??? ??
????? ??? ?????? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??
??? ?? ?????? ??? ?????????? ??????.

52 ??? ?????????? ?? ???????, ?? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??
????????? ?? ??????? ? ?????????? ??? ?? ?????? 13, ?, ?????? ??, ?????? 6, ???
????? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
????? ??? ??? ?????? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ??? ?????? ???
??? ??????????.

53 ?????? ?? ?????????? ??? ? ?????????? ??? ?????? ?????????? ?????, ??? ?? ??????
?????, ?? «????????? ??????» ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??????
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? «????????? ??????» ??? ?????? 13, ?,
????? ??, ?????? 6, ??? ?????? ?????? ??? ?? ?????? ??? ?????? ?????? ??? ?? ?????? ???
????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????????? ??????.

54 ?????? ?? ?????? ??? ?????? ??????, ??? ?????? ??? ?? ?????? ?????? ?????? ?????? ??
????????? ??? ?? ?????? 13, ?, ?????? ??, ?????? 6, ??? ?????? ?????? ??? ?? ?????? ???
??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? «????????? ??????» ???
??? ?????? ??? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ???, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????? ??? ?????? ??? ? ?????? ?????? ?????? ??? ?? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???
?????.

?? ?? ?????? ??????

55 ?? ?? ?????? ?????? ???, ?? ?????? ?????????? ?????? ?? ?? ?????? 13, ?, ????????
??, ?????? 6, ??? ?????? ?????? ??? ?????? ??????.

56 ?? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??
????????? ????. ?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???
????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???
????????? ??? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???

????? ??? ?? ??????? ?? ???????? ?????????????? ?? ??? ????? ?????? ??? ?????????????? ??????????????
?? ?????????????? ??? ?? ?????????????? ????? ?????????????? ???/? ??? ????? ???
????????????? ?? ?? ?????????????? ??? ?????????????? ?? ?? ??? ????? ??????. ? ??????????
????????????? ??? ????? ??? ?????? ??? ?????????? ??? ?????? ?????? ?????????? ?????????? ???
????? 13, ?, ????????, ??, ?????? 6, ??? ?????? ??????, ??? ?????? ??? ?? ??? ??? ??
????????????? ?????????? ??? ?????? ?????? ?????? ???, ?????? ??? ?????? ?????? ??????????????.

57 ? ?????????? ??? ?????????? ??????????, ?????????, ?????? ??? ?? ??? 13, ?,
???????, ??, ?????? 6, ??? ?????? ??????? ??? ?????? ?????? ?????????????? ??????? ??????????
????????? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?? ??? ?? ?????? ???.

58 ???????, ??? ?????? ?????????? ?????????? ???, ?? ???? ??? ?????????????? ??? ??
????????? ??? ?????? ?????????? ???????, ??? ?????? ?????????????? ?????????????? ???
????????? ????, ????, ?? ??? ?????? ??????? ???, ?????? ?????????????? ?????????? ???
????????? ????, ????, ??? ?????? ?????? ?????????? ?? ?????????? ??? ?? ??????, ? ?????? ????
????? ??? ?????? ?? ?????????????? ?????????? ??? ?? ?????? ?????????? ??? ??????????
????? ??? ?????? (??.. ?????????? ??? 19?? ?????????? 1982, 8/81, Becker, ?????? 1982,
?. 53, ??? 25- ??? 10?? ?????????? 2002, C-141/00, Kügler, ?????? 2002, ?. ?-6833,
????? 51, ??? ?? 20?? ?????? 2003, C-465/00, C-138/01 ??? C-139/01, Österreichischer
Rundfunk ?.., ?????? 2003, ?. I-4989, ??? 98, ?????? ??? ?????????????? ??????
Linneweber ??? ???????, ??? 33).

59 ??? ?????? ?? ?????????? ??? ?????? 13, ?, ????????, ??, ?????? 6, ??? ??????
???????, ?????????? ??? ?? ?????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ???
????????? ??? ?? ?????????? ??? ?????????? ??? ?????????? ?????? ?? ?????????? ??? ??
???.

60 ?? ?????? ??? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ?????????? ???
????? ??? ?????? ??? ?????? ?? ?????? ?? ?????? ??? ?????????? ??? ?????????? ???, ??????? ??
????????????? ???, ? ?????? ??? ?????? ?????? ?????????? ?????????????? ??? ??????????
????? ??? ?????????? (??., ???' ???????, ?????? ??? 6?? ?????????? 2003, C-45/01,
Dornier, ?????? 2003, ?. ?-12911, ??? 81).

61 ??? ???????, ?? ?????? ??? ?? ?????? 13, ?, ????????, ??, ?????? 6, ??? ??????
?????? ?????? ??? ?????? ??? ?????????? ??? ???????, ?????????????? ??? ??????
?????? ??? ??? ?????? ??? ?????????? ??? ???????, ??? ?????????? ??? ??????????????
?? ?????????? ??? ?????????? ?? ?????? ??? (??., ???' ???????, ?????????? ??? ??????
Dornier, ??? 81), ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??????????
????????, ??? ?????????? ??? ?????? ?? ?????? ?? ?????? ??? ?????? ??? (??., ??? ?? ??? ??
???, ?????????? ??? ?????? Linneweber ??? ???????, ??? 36 ?? 37).

62 ???????, ??? ?????? ?????? ?????? ? ?????? ?? ?????? ??? ?? ??? 13, ?, ????????, ??,
????? 6, ??? ?????? ?????? ??? ?????? ?????? ??????????, ??? ??? ?????? ??? ?? ??????????
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63 ?????????? ??? ? ?????? ?????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????? ???
??? ?????????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ?????????? ???, ?' ???
????????? ?? ?????????? ??? ?????? ?????????? ??????. ?? ?????? ??? ?????? ??????????
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???? ???? ?????? ??????, ?? ?????????? (????? ?????) ?????????????:

1) ?? ?????? 13, ?, ??????? ??, ?????? 6, ??? ????? ?????? 77/388/??? ??
??????????, ??? 17?? ???? 1977, ??? ?????????????? ??? ?????????????? ??? ??????
?????, ??? ??????? ?? ??? ????? ?????? ?????? ?????? – ????? ?????? ??????
????????????? ????: ?????????? ?????????? ???, ??? ??? ?????? ??? ? ???
«?????? ??????» ??? ?????????? ? ?????? ??? ?????? ??? ??????
?????????? ?????????? ?????????? ?????????? ?????????? ??? ?? ???????
????????? ?????????? (Investment Trust Companies).

2) ?? ?????? 13, ?, ????????, ??, ?????? 6, ??? ?????? ??????? 77/388 ????

?????? ???. ???? ?????? ???. ???? ?????? ?????? ?????? ?????? ?????? ?????? ???

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«????????? ??????» ????. ????. ???? ?????? ???. ???? ?????????? ???. ???? ?????? ???

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????? ??????????, ??????????, ????. ?????? ???. ?????? ???. ?????? ???. ?????? ???.

????? 85/611/??? ????. ??????????, ????. 20?? ?????????? 1985, ????. ????. ??????????

???. ??????????, ?????????? ???. ?????? ?????? ?????? ?????? ???. ?????? ???.

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?????????, ????. 9?? ?. 2005.

3) ?? ?????? 13, ?, ????????, ??, ?????? 6, ??? ?????? ??????? 77/388 ??? ?????
??????????, ??? ??? ?????? ??? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ?? ??
?????????? ?????? ?????? ?????? ?????????? ??? ?? ??? ?????? ??? ?????? ??? ??????
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(???????????)

* ??????? ??????????????: ? ???????.