

*Draft Regulations laid before Parliament under section 207(9) of the Companies Act 1989, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2001 No.**

**COMPANIES**

**The Uncertificated Securities Regulations 2001**

*Made* - - - - 2001

*Coming into force* - - 2001

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Whereas a draft of these Regulations has been approved by resolution of each House of Parliament

The Treasury, in exercise of the powers conferred by section 207 of the Companies Act 1989<sup>(a)</sup> and now vested in them<sup>(b)</sup>, and of all other powers enabling them in that behalf, hereby make the following Regulations:

## PART 1

### CITATION, COMMENCEMENT, AND INTERPRETATION

#### Citation and commencement

1. These Regulations may be cited as the Uncertificated Securities Regulations 2001 and shall come into force the day after the day on which they are made.

#### Purposes and basic definition

2.—(1) These Regulations enable title to units of a security to be evidenced otherwise than by a certificate and transferred otherwise than by a written instrument, and make provision for certain supplementary and incidental matters; and in these Regulations “relevant system” means a computer-based system, and procedures, which enable title to units of a security to be evidenced and transferred without a written instrument, and which facilitate supplementary and incidental matters.

(2) Where title to a unit of a security is evidenced otherwise than by a certificate by virtue of these Regulations, the transfer of title to such a unit of a security shall be subject to these Regulations.

#### Interpretation

3.—(1) In these Regulations—

“the 1985 Act” means the Companies Act 1985<sup>(c)</sup>;

“the 1986 Act” means the Financial Services Act 1986<sup>(d)</sup>;

“certificate” means any certificate, instrument or other document of, or evidencing, title to units of a security;

“company” means a company within the meaning of section 735(1) of the 1985 Act;

“dematerialised instruction” means an instruction sent or received by means of a relevant system;

“designated agency” has the meaning given by regulation 11(1);

“enactment” includes an enactment comprised in any subordinate legislation within the meaning of the Interpretation Act 1978<sup>(e)</sup>;

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(a) 1989 c.40, section 207 was amended by the Bank of England Act 1998, section 35.

(b) By the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

(c) 1985 c.6.

(d) 1986 c.60.

(e) 1978 c.30.

“generate”, in relation to an Operator-instruction, means to initiate the procedures by which an Operator-instruction comes to be sent;

“guidance”, in relation to an Operator, means guidance issued by him which is intended to have continuing effect and is issued in writing or other legible form, which if it were a rule, would come within the definition of a rule;

“instruction” includes any instruction, election, acceptance or any other message of any kind;

“interest in a security” means any legal or equitable interest or right in relation to a security, including–

- (a) an absolute or contingent right to acquire a security created, allotted or issued or to be created, allotted or issued; and
- (b) the interests or rights of a person for whom a security is held by a custodian or depositary;

“issue”, in relation to a new unit of a security, means to confer title to a new unit on a person;

“issuer-instruction” means a properly authenticated dematerialised instruction attributable to a participating issuer;

“issuer register of members” has the meaning given by regulation 20(1)(a);

“issuer register of securities”–

- (a) in relation to shares, means an issuer register of members; and
- (b) in relation to units of a security other than shares, means a register maintained by the issuer of persons holding the units;

“local authority security” means a security which, when held in certificated form, is transferable in accordance with regulation 7 of the 1974 Regulations and title to which must be registered in accordance with regulation 5 of those Regulations;

“officer”, in relation to an Operator or a participating issuer, includes–

- (a) where the Operator or the participating issuer is a company, such persons as are mentioned in section 744 of the 1985 Act;
- (b) where the Operator or the participating issuer is a partnership, a partner; or in the event that no partner is situated in the United Kingdom, a person in the United Kingdom who is acting on behalf of a partner; and
- (c) where the Operator or the participating issuer is neither a company nor a partnership, any member of its governing body; or in the event that no member of its governing body is situated in the United Kingdom, a person in the United Kingdom who is acting on behalf of any member of its governing body;

“Operator” means a person approved by the Treasury under these Regulations as Operator of a relevant system;

“Operator-instruction” means a properly authenticated dematerialised instruction attributable to an Operator;

“Operator register of corporate securities” has the meaning given by regulation 22(1);

“Operator register of members” has the meaning given by regulation 20(1)(b);

“Operator register of public sector securities” has the meaning given by regulation 21(1);

“Operator register of securities”–

- (a) in relation to shares, means an Operator register of members;
- (b) in relation to units of a security other than shares, means an Operator register of corporate securities, an Operator register of public sector securities or, as the case may be, a register maintained by an Operator by virtue of regulation 22(3);

“Operator-system” means those facilities and procedures which are part of the relevant system, which are maintained and operated by or for an Operator, by which he generates Operator-instructions and

receives dematerialised instructions from system-participants and by which persons change the form in which units of a participating security are held;

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(a);

“participating issuer” means (subject to paragraph (3)) a person who has issued a security which is a participating security;

“participating security” means a security title to units of which is permitted by an Operator to be transferred by means of a relevant system;

“public sector securities” means UK Government securities and local authority securities together with any securities issued by a government of a country or territory outside the United Kingdom in respect of which securities the Bank of England maintains a register of the holders thereof;

“record of public sector securities” has the meaning given by regulation 21(2)(a);

“record of securities” means any of a record of uncertificated corporate securities, a record of uncertificated shares and a record of public sector securities;

“record of uncertificated corporate securities” has the meaning given by regulation 22(2)(a);

“record of uncertificated shares” has the meaning given by regulation 20(2)(a);

“register of members” means either or both of an issuer register of members and an Operator register of members;

“register of securities” means either or both of an issuer register of securities and an Operator register of securities;

“the 1965 Regulations” means the Government Stock Regulations 1965(b);

“the 1974 Regulations” means the Local Authority (Stocks and Bonds) Regulations 1974(c); and “local authority” has the same meaning as it has in those Regulations;

“the 1995 Regulations” means the Uncertificated Securities Regulations 1995(d);

“relevant system” has the meaning given by regulation 2(1); and “relevant system” includes an Operator-system;

“rules”, in relation to an Operator, means rules made or conditions imposed by him with respect to the provision of the relevant system;

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the 1986 Act, rights under a depositary receipt within the meaning of paragraph 4 of Schedule 2 to the Criminal Justice Act 1993(e), and other securities of any description, and interests in a security;

“settlement”, in relation to a transfer of uncertificated units of a security between two system-members by means of a relevant system, means the delivery of those units to the transferee, and the creation of any associated obligation to make payments, in accordance with the rules and practices of the Operator; and “settle” shall be construed accordingly;

“settlement bank”, in relation to a relevant system, means a person who has contracted to make payments in connection with transfers of title to uncertificated units of a security by means of that system;

“share” means share (or stock) in the share capital of a company;

“system-member”, in relation to a relevant system, means a person who is permitted by an Operator to transfer by means of that system title to uncertificated units of a security held by him, and shall include, where relevant, two or more persons who are jointly so permitted;

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(a) S.I. 1986/1032 (N.I.6).

(b) S.I. 1965/1420; amended by S.I. 1981/1004; S.I. 1982/670; S.I. 1985/1146; S.I. 1990/2253; S.I. 1997/1709; S.I. 1998/1749; S.I. 1999/1410 and S.I. 2000/1681.

(c) S.I. 1974/519; amended by S.I. 1983/529; S.I. 1985/1148; S.I. 1986/345; S.I. 1990/419; S.I. 1991/2000; S.I. 1999/1409 and S.I. 2000/1680.

(d) S.I. 1995/3272; amended by S.I. 1996/2827; S.I. 1997/251; S.I. 1999/506; S.I. 2000/311; S.I. 2000/1682 and S.I. 2000/2952.

(e) 1993 c.36.

“system-member instruction” means a properly authenticated dematerialised instruction attributable to a system-member;

“system-participant”, in relation to a relevant system, means a person who is permitted by an Operator to send and receive properly authenticated dematerialised instructions; and “sponsoring system-participant” means a system-participant who is permitted by an Operator to send properly authenticated dematerialised instructions attributable to another person and to receive properly authenticated dematerialised instructions on another person’s behalf;

“system-user”, in relation to a relevant system, means a person who as regards that system is a participating issuer, system-member, system-participant or settlement bank;

“UK Government security” means a security issued by Her Majesty’s Government in the United Kingdom or by a Northern Ireland department;

“uncertificated”, in relation to a unit of a security, means that title to the unit is recorded on the relevant Operator register of securities, and may, by virtue of these Regulations, be transferred by means of a relevant system; and “certificated”, in relation to a unit of a security, means that the unit is not an uncertificated unit;

“unit”, in relation to a security, means the smallest possible transferable unit of the security (for example a single share);

and other expressions have the meanings given to them by the 1985 Act.

(2) For the purposes of these Regulations–

- (a) a dematerialised instruction is properly authenticated if it complies with the specifications referred to in paragraph 5(1)(b) of Schedule 1;
- (b) a dematerialised instruction which complies with the specifications referred to in paragraph 5(1)(c) of Schedule 1 is properly authenticated if those specifications have been approved by the Operator; and
- (c) a dematerialised instruction is attributable to a person if it is expressed to have been sent by that person, or if it is expressed to have been sent on behalf of that person, in accordance with the specifications of the Operator referred to in paragraph 5(1)(d) of Schedule 1; and a dematerialised instruction may be attributable to more than one person.

(3) In respect of a participating security which is a public sector security, references in these Regulations to the participating issuer shall be taken to be references–

- (a) in the case of a local authority security–
  - (i) to the relevant local authority; or
  - (ii) if the local authority has appointed another person to act as registrar for the purpose of the 1974 Regulations in respect of that security, to the person so appointed; and
- (b) in the case of any other public sector security, to the Bank of England.

## PART 2

### THE OPERATOR

#### APPROVAL AND COMPLIANCE

##### **Applications for approval**

4.—(1) A person may apply to the Treasury for their approval of him as Operator of a relevant system.

(2) Any such application–

- (a) shall be made in such manner as the Treasury may direct; and
- (b) shall be accompanied by such information as the Treasury may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the Treasury may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under paragraphs (2) and (3) may differ as between different applications.

(5) Any information to be furnished to the Treasury under this regulation shall, if they so require, be in such form or verified in such manner as they may specify.

(6) Every application shall be accompanied by a copy of any rules and guidance to be issued by the applicant.

### **Grant and refusal of approval**

5.—(1) If, on an application made under regulation 4, it appears to the Treasury that the requirements of Schedule 1 are satisfied with respect to the application, they may—

- (a) subject to the payment of any fee charged by virtue of regulation 6(1); and
- (b) subject to the provisions of Schedule 2,

approve the applicant as Operator of a relevant system.

(2) An approval under this regulation shall be by instrument in writing and shall state the date on which it takes effect.

(3) Schedule 1 (which imposes requirements which must appear to the Treasury to be satisfied with respect to an Operator, the relevant system and his rules and practices) shall have effect.

(4) Where the Treasury refuse an application for approval they shall give the applicant a written notice to that effect stating the reasons for the refusal.

(5) Provided that it had not been withdrawn before these Regulations came into force, an approval granted to a person under regulation 5 of the 1995 Regulations shall be treated as having been granted under this regulation.

### **Fees**

6.—(1) The Treasury may charge a fee to a person seeking approval as Operator of a relevant system.

(2) The Treasury may charge an Operator a periodical fee.

(3) Any fee chargeable by the Treasury under this regulation shall not exceed an amount which reasonably represents the amount of costs incurred—

- (a) in the case of a fee charged to a person seeking approval, in determining whether approval ought to be granted; and
- (b) in the case of a periodical fee, in satisfying themselves that the Operator and the relevant system in question continue to meet the requirements of Schedule 1 to these Regulations and that the Operator is complying with any obligations to which he is subject by virtue of them.

(4) For the purposes of paragraph (3), the costs incurred by the Treasury shall be determined on the basis that they include such proportion of the following matters as are properly attributable to the performance of the relevant function—

- (a) expenditure on staff, equipment, premises, facilities, research and development;
- (b) the allocation, over a period of years, whether before or after the coming into force of these Regulations, of any initial expenditure incurred wholly and exclusively to perform the function or to prepare for its performance;
- (c) any notional interest incurred on any capital expended on or in connection with the performance of the function or in preparing for its performance and, in a case in which any function is exercisable by a designated agency, any actual interest payable on any sums borrowed which have been so expended; and

- (d) any other matter which, in accordance with generally accepted accounting principles, may properly be taken account of in ascertaining the costs properly attributable to the performance of the function.
- (5) For the purposes of paragraph (4)(c)–
  - (a) “notional interest” means any interest which that person might reasonably have been expected to have been liable to pay had the sums expended been borrowed at arm’s length; and
  - (b) “actual interest” means the actual interest paid on sums borrowed in a transaction at arm’s length and, where a sum has been borrowed otherwise than in such a transaction, means whichever is the lesser of the interest actually paid and the interest that might reasonably have been expected to be paid had the transaction been at arm’s length.
- (6) Any fee received by the Treasury under this regulation shall be paid into the Consolidated Fund.
- (7) Any fee received by a designated agency under this regulation may be retained by it.

## SUPERVISION

### **Withdrawal of approval**

7.—(1) If at any time it appears to the Treasury that any requirement of Schedule 1 is not satisfied in relation to an Operator, or that an Operator has failed to comply with any obligation to which he is subject by virtue of these Regulations, they may, by written instrument, subject to paragraph (2), withdraw approval from that Operator.

(2) Subsections (2) to (9) of section 11 of the 1986 Act shall apply in relation to the withdrawal of approval from an Operator under paragraph (1) as they apply in relation to the revocation of a recognition order under subsection (1) of that section; and in those subsections as they so apply–

- (a) any reference to a recognised organisation shall be taken to be a reference to an Operator; and
- (b) any reference to members of a recognised organisation shall be taken to be a reference to system-users.

### **Compliance orders and directions**

8.—(1) If at any time it appears to the Treasury that any requirement of Schedule 1 is not satisfied in relation to an Operator, or that an Operator has failed to comply with any obligation to which he is subject by virtue of these Regulations, they may–

- (a) make an application to the court; or
- (b) subject to paragraph (3), give to the Operator such directions as they think fit for securing that the relevant requirement is satisfied or obligation complied with.

(2) If on any application by the Treasury under paragraph (1)(a) the court is satisfied that the requirement is not satisfied or, as the case may be, that the Operator has failed to comply with the obligation in question, it may order the Operator to take such steps as the court directs for securing that the requirement is satisfied or that the obligation is complied with.

(3) Before giving a direction under paragraph (1)(b) the Treasury shall–

- (a) if circumstances permit, consult the Operator and afford him an opportunity to make representations; and
- (b) so far as is practicable to estimate it, have regard to the cost to the Operator of complying with any term of any direction and to the costs to other persons resulting from the Operator’s compliance.

(4) The jurisdiction conferred by paragraph (2) shall be exercised by the High Court and the Court of Session.

## **Injunctions and restitution orders**

**9.**—(1) If on the application of the Treasury the court is satisfied that—

- (a) there is a reasonable likelihood that any person will contravene any provision of the rules of an Operator to which that person is subject and which regulate the carrying on by him of investment business within the meaning of the 1986 Act;
- (b) any person has contravened any such rule, and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) any person has contravened any such rule, and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

(2) Subsections (2) to (9) of section 61 of the 1986 Act shall apply in relation to the application of the Treasury for an injunction or, in Scotland, an interdict under paragraph (1) as they have effect in relation to the application of the Secretary of State for an injunction or, in Scotland, an interdict under subsection (1) of that section; and in those subsections as they so apply—

- (a) the reference to a recognised clearing house shall be taken to be a reference to an Operator;
- (b) the reference in subsection (2) to such rules as are mentioned in subsection (1)(a)(iv) shall be taken to be a reference to the rules mentioned in paragraph (1)(a);
- (c) the reference to such steps as are mentioned in subsection (1) shall be taken to be a reference to such steps as are mentioned in paragraph (1);
- (d) the reference in subsection (3)(a) to profits having accrued to any person as a result of his contravention of any provision or condition mentioned in subsection (1)(a) shall be taken to be a reference to profits having accrued to any person as a result of his contravention of any rule mentioned in paragraph (1)(a); and
- (e) the references to subsection (3) shall be taken to be references to that subsection as it so applies.

## **Provision of information by Operators**

**10.**—(1) The Treasury may, in writing, require an Operator to give them such information as they may specify.

(2) The Treasury may, in writing, require an Operator to furnish them at such times or in respect of such periods as they may specify with such information relating to that Operator as is so specified.

(3) Where an Operator amends, revokes or adds to his rules or guidance he shall within seven days give written notice to the Treasury of the amendment, revocation or addition.

(4) The notices and information required to be given or furnished under the foregoing provisions of this regulation shall be such as the Treasury reasonably require for the exercise of their functions under these Regulations.

(5) The Treasury may require information to be given by a specified time, in a specified form and to be verified in a specified manner.

## **Delegation of Treasury functions**

**11.**—(1) If it appears to the Treasury that there is a body corporate—

- (a) to which functions have been transferred under section 114 of the 1986 Act; and
- (b) which is able and willing to discharge all or any of the functions conferred by this Part of these Regulations,

they may, subject to paragraphs (2) and (3), by instrument in writing delegate all or any of those functions to that body; and a body to which functions are so delegated is referred to in these Regulations as a “designated agency”.

(2) The functions conferred on the Treasury by regulation 12 may not be delegated.

(3) A designated agency shall send to the Treasury a copy of any guidance issued by virtue of these Regulations and any requirements imposed by it on the Operator by virtue of regulation 10, and give them written notice of any amendment or revocation of or addition to any such guidance or requirements.

(4) A designated agency shall-

- (a) send to the Treasury a copy of any guidance issued by it which is intended to have continuing effect and is issued in writing or other legible form; and
- (b) give them written notice of any amendment, revocation or addition to guidance issued by it,

but notice need not be given of the revocation of guidance other than is mentioned in subparagraph (a) or of any amendment or addition which does not result in or consist of such guidance as is there mentioned.

(5) The Treasury shall not delegate any function to a designated agency unless they are satisfied that-

- (a) any guidance issued by it in the exercise of its functions under these Regulations;
- (b) requirements imposed by it on the Operator by virtue of regulation 10;
- (c) any guidance proposed to be issued by it in the exercise of its functions under these Regulations; or
- (d) any requirements it proposes to impose on the Operator by virtue of regulation 10,

do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, or if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(6) The powers conferred by paragraph (7) shall be exercisable by the Treasury if at any time it appears to them that-

- (a) any guidance issued by the designated agency in the exercise of its functions under these Regulations;
- (b) requirements imposed by the designated agency on the Operator by virtue of regulation 10; or
- (c) any practices of a designated agency followed in the exercise of its functions under these Regulations,

have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that the effect is greater than is necessary for the protection of investors.

(7) The powers exercisable under this paragraph are-

- (a) to resume all or any of the functions delegated to the designated agency by the written instrument referred to in paragraph (1); or
- (b) to direct the designated agency to take specified steps for the purpose of securing that the guidance, requirements or practices in question do not have the effect mentioned in paragraph (6).

(8) The Treasury may by written instrument-

- (a) at the request or with the consent of a designated agency; or
- (b) if at any time it appears to them that a designated agency is unable or unwilling to discharge all or any of the functions delegated to it,

resume all or any of the functions delegated to the agency under paragraph (1).

(9) Section 187(3) of the 1986 Act shall apply in relation to anything done or omitted to be done in the discharge or purported discharge of functions delegated under paragraph (1) as it applies in relation to anything done or omitted to be done in the discharge or purported discharge of functions exercisable by virtue of a delegation order made by virtue of section 114 of the 1986 Act.

(10) In this regulation-

- (a) any reference to guidance issued to an Operator by a designated agency is a reference to any guidance issued or any recommendation made by the designated agency in writing, or other legible form, which is intended to have continuing effect, and is issued or made to an Operator; and
- (b) references to the practices of a designated agency are references to the practices of the designated agency in its capacity as such.

### **International obligations**

**12.**—(1) If it appears to the Treasury—

- (a) that any action proposed to be taken by an Operator or designated agency would be incompatible with Community obligations or any other international obligations of the United Kingdom; or
- (b) that any action which an Operator or designated agency has power to take is required for the purpose of implementing any such obligation,

they may direct the Operator or the designated agency not to take or, as the case may be, to take the action in question.

(2) A direction under this regulation may include such supplementary or incidental requirements as the Treasury think necessary or expedient.

(3) Where the function of granting under regulation 5, or withdrawing under regulation 7, an Operator's approval is exercisable by a designated agency, any direction under paragraph (1) in respect of that Operator shall be a direction requiring the agency to give the Operator such a direction as is specified in the direction by the Treasury.

(4) Any direction under this regulation is enforceable on application of the person who gave it, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

### **Prevention of restrictive practices**

**13.** Schedule 2 (which reproduces, with necessary modifications, the provisions of sections 119, 120 and 122 to 125 and 128 of the 1986 Act) shall have effect.

## **PART 3**

### **PARTICIPATING SECURITIES**

#### **PARTICIPATION BY ISSUERS**

### **Participation in respect of shares**

**14.** Where an Operator permits title to shares of a class in relation to which regulation 15 applies, or in relation to which a directors' resolution passed in accordance with regulation 16 is effective, to be transferred by means of a relevant system, title to shares of that class which are recorded on an Operator register of members may be transferred by means of that relevant system.

**15.**—(1) This regulation applies to a class of shares if a company's articles of association in all respects are consistent with—

- (a) the holding of shares in that class in uncertificated form;
- (b) the transfer of title to shares in that class by means of a relevant system; and
- (c) these Regulations.

(2) A company may permit the holding of shares in a class to which this regulation applies in uncertificated form, and the transfer of title to any such shares by means of a relevant system.

**16.**—(1) This regulation applies to a class of shares if a company's articles of association in any respect are inconsistent with—

- (a) the holding of shares in that class in uncertificated form;
- (b) the transfer of title to shares in that class by means of a relevant system; or
- (c) any provision of these Regulations.

(2) A company may resolve, subject to paragraph (6)(a), by resolution of its directors (in this Part referred to as a 'directors' resolution') that title to shares of a class issued or to be issued by it may be transferred by means of a relevant system.

(3) Upon a directors' resolution becoming effective in accordance with its terms, and for as long as it is in force, the articles of association in relation to the class of shares which were the subject of the directors' resolution shall not apply to any uncertificated shares of that class to the extent that they are inconsistent with—

- (a) the holding of shares of that class in uncertificated form;
- (b) the transfer of title to shares of that class by means of a relevant system; and
- (c) any provision of these Regulations.

(4) Unless a company has given notice to every member of the company in accordance with its articles of association of its intention to pass a directors' resolution before the passing of such a resolution, it shall give such notice within 60 days of the passing of the resolution.

(5) Notice given by the company before the coming into force of these Regulations of its intention to pass a directors' resolution which, if it had been given after the coming into force of these Regulations would have satisfied the requirements of paragraph (4), shall be taken to satisfy the requirements of that paragraph.

(6) In respect of a class of shares, the members of a company may by ordinary resolution—

- (a) if a directors' resolution has not been passed, resolve that the directors of the company shall not pass a directors' resolution; or
- (b) if a directors' resolution has been passed but not yet come into effect in accordance with its terms, resolve that it shall not come into effect; or
- (c) if a directors' resolution has been passed and is effective in accordance with its terms but the class of shares has not yet been permitted by the Operator to be a participating security, resolve that the directors' resolution shall cease to have effect; or
- (d) if a directors' resolution has been passed and is effective in accordance with its terms and the class of shares has been permitted by the Operator to be a participating security, resolve that the directors shall take the necessary steps to ensure that title to shares of the class that was the subject of the directors' resolution shall cease to be transferable by means of a relevant system and that the directors' resolution shall cease to have effect;

and the directors shall be bound by the terms of any such ordinary resolution.

(7) Such sanctions as apply to a company and its officers in the event of a default in complying with section 376 of the 1985 Act shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (4).

(8) A company shall not permit the holding of shares in such a class as is referred to in paragraph (1) in uncertificated form, or the transfer of title to shares in such a class by means of a relevant system, unless in relation to that class of shares a directors' resolution is effective.

(9) This regulation shall not be taken to exclude the right of the members of a company to amend the articles of association of the company, in accordance with the articles, to allow the holding of any class of its shares in uncertificated form and the transfer of title to shares in such a class by means of a relevant system.

**17.—(1)** A class of shares in relation to which, immediately before the coming into force of these Regulations,—

- (a) regulation 15 of the 1995 Regulations applied; or
- (b) a directors' resolution passed in accordance with regulation 16 of the 1995 Regulations was effective,

shall be taken to be a class of shares in relation to which regulation 15 of these Regulations applies or, as the case may be, a directors' resolution passed in accordance with regulation 16 is effective.

(2) On the coming into force of these Regulations a company's articles of association in relation to any such class of shares shall cease to apply to any uncertificated shares of that class to the extent that they are inconsistent with these Regulations.

### **Interpretation of regulations 15, 16 and 17**

18. For the purposes of regulations 15, 16 and 17 any shares with respect to which share warrants to bearer are issued under section 188 of the 1985 Act shall be regarded as forming a separate class of shares.

### **Participation in respect of securities other than shares**

19.—(1) Subject to paragraph (2), where an Operator permits title to a security other than a share to be transferred by means of a relevant system, title to units of that security which are recorded on an Operator register of securities may be transferred by means of that relevant system.

(2) In relation to any security (other than a share), if the law under which it is constituted is not the law of England and Wales, Northern Ireland or Scotland, or if a current term of its issue is in any respect inconsistent with—

- (a) the holding of title to units of that security in uncertificated form;
- (b) the transfer of title to units of that security by means of a relevant system; or
- (c) subject to paragraph (3), these Regulations,

the issuer shall not permit the holding of units of that security in uncertificated form, or the transfer of title to units of that security by means of a relevant system.

(3) On the coming into force of these Regulations the current terms of issue of a relevant participating security shall cease to apply to uncertificated units of that security to the extent that they are inconsistent with these Regulations.

(4) For the purposes of this regulation—

- (a) a relevant participating security is a participating security (other than a share) the terms of issue of which, immediately before the coming into force of these Regulations, were in all respects consistent with the 1995 Regulations; and
- (b) the terms of issue of a security shall be taken to include the terms prescribed by the issuer on which units of the security are held and title to them is transferred.

## **KEEPING OF REGISTERS AND RECORDS**

### **Entries on registers and records in respect of shares**

20.—(1) In respect of every company which is a participating issuer, there shall be—

- (a) a register kept and entered up by the participating issuer in accordance with paragraph 2 of Schedule 3; and such a register is referred to in these Regulations as an Aissuer register of members'; and
- (b) a register kept and entered up by an Operator in accordance with paragraph 4 of Schedule 3; and such a register is referred to in these Regulations as an AOperator register of members';

and references in the 1985 Act to a company's register of members shall, unless the context otherwise requires, be construed in relation to a company which is a participating issuer as referring to the company's issuer register of members and Operator register of members.

(2) A participating issuer which is a company shall—

- (a) maintain a record of the entries made in its Operator register of members; and such a record is referred to in these Regulations as a Arecord of uncertificated shares'; and

- (b) keep and enter up that record in accordance with paragraph 5 of Schedule 3.

### **Entries on registers and records in respect of public sector securities**

**21.**—(1) In respect of every participating security which is a public sector security the Operator shall keep and enter up a register in accordance with paragraph 14 of Schedule 3; and such a register is referred to in these Regulations as an AOperator register of public sector securities’.

(2) Subject to paragraph (3), the Bank of England shall—

- (a) maintain a record of the entries made in an Operator register of public sector securities; and such a record is referred to in these Regulations as a Arecord of public sector securities’; and

- (b) keep and enter up that record in accordance with paragraph 15 of Schedule 3.

(3) Where the security to which an Operator register of public sector securities relates is a local authority security, the record of public sector securities shall be maintained—

- (a) by the relevant local authority; or

- (b) if the local authority has appointed another person to act as registrar for the purpose of the 1974 Regulations in respect of that security, by the person so appointed.

### **Entries on registers and records in respect of other securities**

**22.**—(1) Where a participating issuer is required by or under an enactment or instrument to maintain in the United Kingdom a register of persons holding securities (other than shares or public sector securities) issued by him, then—

- (a) in so far as that register relates to any class of security which is a participating security; and

- (b) to the extent that it relates to securities held in uncertificated form,

the Operator instead of the participating issuer shall maintain the register, and shall keep and enter it up in accordance with paragraph 12 of Schedule 3; and the part of the register which is so maintained is referred to in these Regulations as an AOperator register of corporate securities’.

(2) A participating issuer shall—

- (a) maintain a record of the entries made in any Operator register of corporate securities relating to a participating security issued by him; and such a record is referred to in these Regulations as a Arecord of uncertificated corporate securities’; and

- (b) keep and enter up that record in accordance with paragraph 13 of Schedule 3.

(3) Where a participating issuer is not required by or under an enactment or instrument to maintain in the United Kingdom in respect of a participating security issued by him a register of persons holding units of that participating security, the Operator shall maintain a register recording—

- (a) the names and addresses of the persons holding units of that security in uncertificated form; and

- (b) how many units of that security each such person holds in that form.

### **General provisions concerning keeping registers and records**

**23.**—(1) The obligations of an Operator to maintain any register of securities, imposed by these Regulations, shall not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty.

(2) Without prejudice to paragraph (1) or to any lesser period of limitation and to any rule as to the prescription of rights, liability incurred by a participating issuer or by an Operator arising—

- (a) from the making or deletion of an entry in a register of securities or record of securities pursuant to these Regulations; or

- (b) from a failure to make or delete any such entry,

shall not be enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of a failure, the failure first occurred.

(3) No notice of any trust, expressed, implied or constructive, shall be entered on an Operator register of securities, or a part of such a register, or be receivable by an Operator.

(4) Schedule 3 (which provides for the keeping of registers and records of participating securities, and which excludes, or applies with appropriate modifications, certain provisions of the 1985 Act) shall have effect.

### **Effect of entries on registers**

**24.**—(1) Subject to regulation 29 and to paragraphs (2) and (3) below, a register of members is prima facie evidence of any matters which are by these Regulations directed or authorised to be inserted in it.

(2) Paragraph (1) does not apply to a company's issuer register of members to the extent that any of the particulars entered in that register in accordance with paragraph 2(1) of Schedule 3 are inconsistent with the company's Operator register of members.

(3) Notwithstanding any entry in a company's issuer register of members, the entry of a person's name and address in that register shall not be treated as showing that person to be a member of the company unless—

- (a) the issuer register of members also shows him as holding shares in the company in certificated form; or
- (b) the Operator register of members shows him as holding shares in the company in uncertificated form.

(4) Section 361 of the 1985 Act shall not apply with respect to a company which is a participating issuer.

(5) Subject to regulation 29, an Operator register of public sector securities is prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of any matters which are by these Regulations directed or authorised to be inserted in it.

(6) Subject to regulation 29, an entry on an Operator register of corporate securities which records a person as holding units of a security in uncertificated form shall be evidence of such title to the units as would be evidenced if the entry on the that register—

- (a) were an entry on the part of such register as is mentioned in regulation 22(1) which is maintained by the participating issuer; and
- (b) related to units of that security held in certificated form.

(7) Subject to regulation 29, an entry on a register maintained by virtue of regulation 22(3) shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, that the person to whom the entry relates has such title to the units of the security which he is recorded as holding in uncertificated form as he would have if he held the units in certificated form.

### **Rectification of registers of securities**

**25.**—(1) Unless the circumstances described in paragraph (2) apply, a participating issuer shall not rectify an issuer register of securities if such rectification would also require the rectification of an Operator register of securities.

(2) The circumstances referred to in paragraph (1) are that the rectification of an issuer register of securities is effected—

- (a) with the consent of the Operator; or
- (b) by order of a court in the United Kingdom.

(3) An Operator who rectifies an Operator register of securities shall immediately—

- (a) generate an Operator-instruction to inform the relevant participating issuer of the change to the entry (unless the change is made in response to an issuer-instruction); and
- (b) generate an Operator-instruction to inform the system-members concerned of the change to the entry.

## Closing registers

26. Notwithstanding section 358 of the 1985 Act or any other enactment, a participating issuer shall not close a register of securities relating to a participating security without the consent of the Operator.

## Registration by an Operator of transfers of securities

27.—(1) Unless regulation 28 applies, (and subject to paragraphs (2) and (3) of this regulation)—

- (a) upon settlement of a transfer of uncertificated units of a security in accordance with his rules; or
- (b) following receipt of an issuer-instruction notifying him that the circumstances specified in regulation 33(2)(b) have arisen in respect of a transfer of units of a participating security,

an Operator shall register on the relevant Operator register of securities the transfer of title to those units of that security.

(2) An Operator shall refuse to register a transfer of title to units of a participating security in accordance with a system-member instruction or an issuer-instruction (as the case may be) if he has actual notice that the transfer is—

- (a) prohibited by order of a court in the United Kingdom;
- (b) prohibited or avoided by or under an enactment;
- (c) a transfer to a deceased person; or
- (d) where the participating issuer is constituted under the law of Scotland, prohibited by or under an arrestment.

(3) Without prejudice to his rules, an Operator may refuse to register a transfer of title to units of a participating security in accordance with a system-member instruction or an issuer-instruction (as the case may be) if the instruction requires a transfer of units—

- (a) to an entity which is not a natural or legal person;
- (b) to a minor (which in relation to a participating issuer constituted under the law of Scotland, shall mean a person under 16 years of age);
- (c) to be held jointly in the names of more persons than is permitted under the terms of the issue of the security; or
- (d) where, in relation to the system-member instruction or the issuer-instruction (as the case may be), the Operator has actual notice of any of the matters specified in regulation 35(5)(a)(i) to (iii).

(4) An Operator shall not register a transfer of title to uncertificated units of a security on an Operator register of securities otherwise than in accordance with paragraph (1) unless he is required to do so by order of a court in the United Kingdom or by or under an enactment.

(5) Paragraph (4) shall not be taken to prevent an Operator from entering a person who is a system-member on an Operator register of securities to whom title to uncertificated units of a security has been transmitted by operation of law.

(6) Immediately upon—

- (a) the registration by an Operator of the transfer of title to units of a security in accordance with—
  - (i) paragraph (1);
  - (ii) an order of a court in the United Kingdom; or
  - (iii) a requirement arising by or under an enactment; or
- (b) the making or deletion by an Operator of an entry on an Operator register of securities—
  - (i) following the transmission of title to uncertificated units of a security by operation of law; or
  - (ii) upon the transfer of uncertificated units of a security to be held by a person in certificated form,

the Operator shall generate an Operator-instruction to inform the relevant participating issuer of the registration, or of the making or deletion of the entry (as the case may be); and where appropriate the

participating issuer shall register the transfer or transmission of title to those units on an issuer register of securities in accordance with regulation 28.

(7) Subsection (5) of section 183 of the 1985 Act shall apply in relation to a refusal by an Operator to register a transfer of securities in any of the circumstances specified in paragraphs (2) or (3), as it applies in relation to a refusal by a company to register a transfer of shares or debentures; and in that subsection as it so applies—

- (a) the reference to the date on which the transfer was lodged with the company shall be taken to be a reference to the date on which the relevant system-member instruction or issuer-instruction (as the case may be) was received by the Operator; and
- (b) the reference to a notice of the refusal shall be taken to be a reference to an Operator-instruction informing the relevant system-member or participating issuer (as the case may be) of the refusal.

(8) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of that section shall apply to an Operator and his officers in the event of a default in complying with subsection (5) of that section as applied by paragraph (7).

### **Registration by a participating issuer of transfers of securities following conversion into certificated form**

**28.**—(1) Paragraphs (2) to (5) apply where relevant units of a security are transferred by means of a relevant system to a person who is to hold them thereafter in certificated form.

(2) Subject to paragraphs (3) and (4), a participating issuer shall register a transfer of title to relevant units of a security on an issuer register of securities in accordance with an Operator-instruction.

(3) A participating issuer shall refuse to register a transfer of title to relevant units of a participating security in accordance with an Operator-instruction if he has actual notice that the transfer is—

- (a) prohibited by order of a court in the United Kingdom;
- (b) prohibited or avoided by or under an enactment;
- (c) a transfer to a deceased person; or
- (d) where the participating issuer is constituted under the law of Scotland, prohibited by or under an arrestment,

(4) A participating issuer may refuse to register a transfer of title to relevant units of a security in accordance with an Operator-instruction if the instruction requires a transfer of units—

- (a) to an entity which is not a natural or legal person;
- (b) to a minor (which in relation to a participating issuer constituted under the law of Scotland, shall mean a person under 16 years of age);
- (c) to be held jointly in the names of more persons than is permitted under the terms of the issue of the security; or
- (d) where, in relation to the Operator-instruction, the participating issuer has actual notice from the Operator of any of the matters specified in regulation 35(5)(a)(i) to (iii).

(5) A participating issuer shall notify the Operator by issuer-instruction whether he has registered a transfer in response to an Operator-instruction to do so.

(6) A participating issuer shall not register a transfer of title to relevant units of a security on an issuer register of securities unless he is required to do so by an Operator-instruction.

(7) A unit of a security is a relevant unit for the purposes of this regulation if, immediately before the transfer in question, it was held by the transferor in uncertificated form.

(8) Subsection (5) of section 183 of the 1985 Act shall apply in relation to a refusal by a participating issuer to register a transfer of securities in any of the circumstances specified in paragraphs (3) and (4), as it applies in relation to a refusal by a company to register a transfer of shares or debentures; and in that subsection as it so applies the reference to the date on which the transfer was lodged with the company shall be taken to be a reference to the date on which the Operator-instruction was received by the participating issuer.

(9) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of that section shall apply to a participating issuer and his officers in the event of a default in complying with subsection (5) of that section as applied by paragraph (8).

### **Registration to be in accordance with regulations 27 and 28**

29. Any purported registration of a transfer of title to an uncertificated unit of a security other than in accordance with regulation 27 or 28 shall be of no effect.

### **Registration of linked transfers**

30.—(1) Where an Operator receives two or more system-member instructions requesting him to register two or more transfers of title to uncertificated units of a security, and it appears to the Operator—

- (a) either—
  - (i) that there are fewer units of the security registered on an Operator register of securities in the name of a person identified in any one of the system-member instructions as a transferor than the number of units to be transferred from him; or
  - (ii) that any one of the transfers taken alone is one in relation to which it has not been established in accordance with paragraph 21(1)(c) of Schedule 1 that a settlement bank has agreed to make a payment; and
- (b) that registration of all of the transfers would result in each of the persons identified in the system-member instructions as a transferor having title to a number of units of a security equal to or greater than nil; and
- (c) that the combined effect of all the transfers taken together would result in paragraph 21(1)(c) of Schedule 1 being satisfied,

the Operator may treat the transfers as linked transfers.

(2) Except in the circumstances described in paragraph (3), notwithstanding that there may be fewer uncertificated units of the security registered on an Operator register of securities in the name of a person identified in any one of the system-member instructions as a transferor than the number of uncertificated units to be transferred from him, where an Operator treats two or more transfers of uncertificated units of a security as linked transfers, he may, upon settlement of those transfers in accordance with his rules, either—

- (a) register the combined effect of all the transfers taken together; or
- (b) register all the transfers simultaneously.

(3) Without prejudice to his rules, an Operator shall not settle any transfers of uncertificated units of a security, which he may treat as linked transfers by virtue of paragraph (1), in a case in which—

- (a) registration of the combined effect of the linked transfers, or simultaneous registration of all the transfers (as the case may be), in accordance with paragraph (2) would not result in each of the persons identified in the system-member instructions as a transferor having title to a number of uncertificated units of the security equal to or greater than nil; or
- (b) one or more of the transfers constituting the linked transfers may not be registered by virtue of the fact that the Operator has actual notice of any of the circumstances specified in regulation 27(2), or is to be refused registration by virtue of regulation 27(3).

### **Position of a transferee prior to entry on an issuer register of securities**

31.—(1) Paragraph (2) applies when an Operator deletes an entry on an Operator register of securities in consequence of which—

- (a) the Operator must generate an Operator-instruction in accordance with regulation 27(6); and
- (b) by virtue of that instruction a participating issuer must register, on an issuer register of securities, a transfer of title to uncertificated units of a security constituted under the law of England and Wales or Northern Ireland.

(2) Where this paragraph applies—

(a) subject to—

- (i) subparagraph (b); and
- (ii) any enactment or rule of law,

the transferor shall, notwithstanding the deletion of the entry in the Operator register of securities, retain title to the requisite number of uncertificated units of the relevant participating security until the transferee is entered on the relevant issuer register of securities as the holder thereof; and

(b) the transferee shall acquire an equitable interest in the requisite number of uncertificated units of that security.

(3) Paragraph (4) applies when an Operator deletes an entry on an Operator register of securities in consequence of which—

- (a) the Operator must generate an Operator-instruction in accordance with regulation 27(6); and
- (b) by virtue of that instruction a participating issuer must register, on an issuer register of securities, a transfer of title to uncertificated units of a security constituted under the law of Scotland.

(4) Where this paragraph applies—

(a) subject to—

- (i) subparagraph (b); and
- (ii) any enactment or rule of law,

the transferor shall, notwithstanding the deletion of the entry in the Operator register of securities, retain title to the requisite number of uncertificated units of the relevant participating security until the transferee is entered on the relevant issuer register of securities as the holder thereof; and

(b) the transferor shall hold the requisite number of uncertificated units of that security on trust for the benefit of the transferee.

(5) The requisite number for the purposes of this regulation is the number of units which are to be specified in the Operator-instruction which the Operator must generate in accordance with regulation 27(6).

(6) This regulation has effect notwithstanding that the units to which the deletion of the entry in the Operator register of securities relates, or in which an interest arises by virtue of paragraph (2)(b) or (4)(b), or any of them, may be unascertained.

(7) In Scotland—

- (a) this regulation has effect notwithstanding that the requirements relating to the creation of a trust under any enactment or rule of law have not been complied with; and
- (b) as from the time the trust referred to in paragraph (4)(b) arises, any holder, or any holder thereafter, of a floating charge over any part of the property of the transferor shall be deemed to have received notice of the trust's existence and of the property to which it relates.

(8) Subject to paragraphs (5) and (7), this regulation shall not be construed as conferring a proprietary interest (whether of the kind referred to in paragraphs (2)(b) or (4)(b), or any other kind) in units of a security if the conferring of such an interest at the time specified in these Regulations would otherwise be void by or under an enactment or rule of law.

(9) In this regulation—

- (a) “the transferee” means the person to be identified in the Operator-instruction as the transferee; and
- (b) “the transferor” means the person to be identified in the Operator-instruction as the transferor.

## CONVERSIONS AND NEW ISSUES

### Conversion of securities into certificated form

**32.—**(1) A unit of a participating security shall not be converted from uncertificated form into certificated form unless an Operator generates an Operator-instruction to notify the relevant participating issuer that a

conversion event has occurred; and in this regulation such an Operator-instruction is referred to as a “rematerialisation notice”.

(2) A conversion event occurs–

- (a) where a conversion is permitted by the rules made and practices instituted by an Operator; or
- (b) following receipt by an Operator of a system-member instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name of the system-member; or
- (c) following receipt by an Operator of an issuer-instruction–
  - (i) stating that it is given in accordance with regulation 41(2); and
  - (ii) identifying the holding of uncertificated units of the participating security to which a notice sent pursuant to section 430(5)(a) of the 1985 Act relates.

(3) An Operator–

- (a) may generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(a); and
- (b) shall generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(b) or (c).

(4) On the generation of a rematerialisation notice–

- (a) the Operator shall delete any entry in an Operator register of securities which shows the relevant system-member as the holder of the unit or units specified in the rematerialisation notice; and
- (b) the participating issuer to whom the rematerialisation notice is addressed shall enter the name of the system-member on an issuer register of securities as the holder of that unit or those units.

(5) During any period between the deletion of any entry in an Operator register of securities required to be made by paragraph (4)(a) and the making of the entry in an issuer register of securities required to be made by paragraph (4)(b)–

- (a) the relevant system-member shall retain title to the units of the security specified in the rematerialisation notice notwithstanding the deletion of any entry in the Operator register of securities; and
- (b) where those units are shares, the relevant system-member shall be deemed to continue to be a member of the company.

(6) Following–

- (a) the making of an entry in an issuer register of securities in accordance with paragraph (4)(b); or
- (b) registration of a transfer of title to uncertificated units of a security in accordance with regulation 28,

the relevant participating issuer shall, where the terms of issue of the security in question provide for a certificate to be issued, issue a certificate in respect of the units of the security to the relevant person.

(7) Subsection (1)(b) of section 185 of the 1985 Act shall apply in relation to the issue of a certificate by a participating issuer pursuant to paragraph (6) as it applies in relation to the completion and having ready for delivery by a company of share certificates, debentures or certificates of debenture stock; and in that subsection as it so applies the reference to the date on which a transfer was lodged with the company shall be a reference to the date on which the participating issuer received the relevant rematerialisation notice in accordance with this regulation, or the relevant Operator-instruction in accordance with regulation 27(6).

(8) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of section 183 of the 1985 Act shall apply–

- (a) to an Operator and his officers in the event of a default in complying with paragraph (4)(a); and
- (b) to a participating issuer and his officers in the event of a default in complying with paragraph (4)(b).

(9) Such sanctions as apply to a company and its officers in the event of a default in complying with that section shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (6) in accordance with the requirements laid down in paragraph (7).

### **Conversion of securities into uncertificated form**

**33.**—(1) A unit of a participating security shall not be converted from certificated form into uncertificated form unless the participating issuer notifies the Operator by means of an issuer-instruction that any of the circumstances specified in paragraph (2) have arisen; and in this regulation such an issuer-instruction is referred to as a “dematerialisation notice”.

(2) The circumstances referred to in paragraph (1) are—

- (a) where the unit of the participating security is held by a system-member, that the participating issuer has received—
  - (i) a request in writing from the system-member in the form required by the rules made and practices instituted by the Operator in order to comply with paragraph 18 of Schedule 1 that the unit be converted from certificated form to uncertificated form; and
  - (ii) subject to paragraph (4), the certificate relating to that unit; and
- (b) where the unit of the participating security is to be registered on an Operator register of securities in the name of a system-member following a transfer of the unit to him, that the participating issuer—
  - (i) subject to paragraph (3), has received by means of the Operator-system a proper instrument of transfer in favour of the system-member relating to the unit to be transferred;
  - (ii) subject to paragraph (4), has received by means of the Operator-system the certificate relating to that unit; and
  - (iii) may accept by virtue of the rules made and practices instituted by the Operator in order to comply with paragraph 18 of Schedule 1 that the system-member to whom the unit is to be transferred wishes to hold it in uncertificated form.

(3) The requirement in paragraph (2)(b)(i) that the participating issuer shall have received an instrument of transfer relating to the unit of the participating security shall not apply in a case where for a transfer of a unit of that security no instrument of transfer is required.

(4) The requirements in paragraphs (2)(a)(ii) and (2)(b)(ii) that the participating issuer shall have received a certificate relating to the unit of the participating security shall not apply in a case where the system-member or transferor (as the case may be) does not have a certificate in respect of the unit to be converted into uncertificated form because no certificate has yet been issued to him or is due to be issued to him in accordance with the terms of issue of the relevant participating security.

(5) Subject to paragraphs (3) and (4), a participating issuer shall not give a dematerialisation notice except in the circumstances specified in paragraph (2).

(6) Upon giving a dematerialisation notice, a participating issuer shall delete any entry in any issuer register of securities which evidences title to the unit or units of the participating security in question.

(7) Following receipt of such a notice, an Operator shall, unless his rules permit otherwise, enter the name of the relevant system-member on an Operator register of securities as the holder of the relevant unit or units of the participating security in question, provided that this obligation shall be subject to regulation 27 if the notice was given in the circumstances specified in paragraph (2)(b).

(8) When a dematerialisation notice is given, the relevant system-member, or the transferor of the unit or units of the security in question (as the case may be)—

- (a) shall retain title to the units of the security specified in the dematerialisation notice notwithstanding the deletion of any entry in any issuer register of securities required to be made by paragraph (6); and
- (b) where those units are shares, shall be deemed to continue to be a member of the company.

(9) Where a dematerialisation notice is given in the circumstances specified in paragraph (2)(b), such title shall be retained, and (where appropriate) such membership shall be deemed to continue, until the time at

which the Operator enters the name of the relevant system-member on an Operator register of securities in accordance with paragraph (7).

(10) Within 2 months of receiving a dematerialisation notice, an Operator shall generate an Operator-instruction informing the participating issuer whether an entry has been made in an Operator register of securities in response to the dematerialisation notice.

(11) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of section 183 of the 1985 Act shall apply—

- (a) to a participating issuer and his officers in the event of a default in complying with paragraph (7); and
- (b) to an Operator and his officers in the event of a default in complying with paragraphs (7) and (10).

### **New issues in uncertificated form**

**34.**—(1) Upon an issue of units of a participating security, a participating issuer may require the Operator to enter the name of a person on an Operator register of securities as the holder of new units of that security in uncertificated form if, and only if, that person is a system-member; and provided that compliance with any such requirement shall be subject to the rules of the Operator.

(2) For the purposes of calculating the number of new units to which a system-member is entitled a participating issuer may treat a system-member's holdings of certificated and uncertificated units of a security as if they were separate holdings.

(3) A requirement made by a participating issuer under paragraph (1) may be made by means of an issuer-instruction and shall specify the names of the persons to be entered in the Operator register of securities as the holders of new uncertificated units of the security, and the number of such units to be issued to each of those persons.

## **PART 4**

### **DEMATERIALIZED INSTRUCTIONS ETC.**

#### **Properly authenticated dematerialised instructions**

**35.**—(1) This regulation has effect for the purpose of determining the rights and obligations of persons to whom properly authenticated dematerialised instructions are attributable and of persons to whom properly authenticated dematerialised instructions are addressed, when such instructions relate to an uncertificated unit of a security, or relate to a right, benefit or privilege attaching to or arising from such a unit, or relate to the details of a holder of such a unit.

(2) Where a properly authenticated dematerialised instruction is expressed to have been sent on behalf of a person by a sponsoring system-participant or the Operator—

- (a) the person on whose behalf the instruction is expressed to have been sent shall not be able to deny to the addressee—
  - (i) that the properly authenticated dematerialised instruction was sent with his authority; or
  - (ii) that the information contained in the properly authenticated dematerialised instruction is correct; and
- (b) the sponsoring system-participant or the Operator (as the case may be) shall not be able to deny to the addressee—
  - (i) that he has authority to send the properly authenticated dematerialised instruction; or
  - (ii) that he has sent the properly authenticated dematerialised instruction.

(3) Where a properly authenticated dematerialised instruction is expressed to have been sent by a person, and the properly authenticated dematerialised instruction is not expressed to have been sent on behalf of another person, the person shall not be able to deny to the addressee—

- (a) that the information contained in the properly authenticated dematerialised instruction is correct; or
- (b) that he has sent the properly authenticated dematerialised instruction.

(4) An addressee who receives (whether directly, or by means of the facilities of a sponsoring system-participant acting on his behalf) a properly authenticated dematerialised instruction may, subject to paragraph (5), accept that at the time at which the properly authenticated dematerialised instruction was sent or at any time thereafter–

- (a) the information contained in the instruction was correct;
- (b) the system-participant or the Operator (as the case may be) identified in the instruction as having sent the instruction sent the instruction; and
- (c) the instruction, where relevant, was sent with the authority of the person on whose behalf it is expressed to have been sent.

(5) Subject to paragraph (6), an addressee may not accept any of the matters specified in paragraph (4) if at the time he received the properly authenticated dematerialised instruction or at any time thereafter–

- (a) he was a person other than a participating issuer or a sponsoring system-participant receiving properly authenticated dematerialised instructions on behalf of a participating issuer, and he had actual notice–
  - (i) that any information contained in it was incorrect;
  - (ii) that the system-participant or the Operator (as the case may be) expressed to have sent the instruction did not send the instruction; or
  - (iii) where relevant, that the person on whose behalf it was expressed to have been sent had not given to the Operator or the sponsoring system-participant (as the case may be), identified in the properly authenticated dematerialised instruction as having sent it, his authority to send the properly authenticated dematerialised instruction on his behalf; or
- (b) he was a participating issuer, or a sponsoring system-participant receiving properly authenticated dematerialised instructions on behalf of a participating issuer, and–
  - (i) he had actual notice from the Operator of any of the matters specified in subparagraph (a); or
  - (ii) if the instruction was an Operator-instruction requiring the registration of a transfer of title, he had actual notice of any of the circumstances specified in regulation 28(3); or
- (c) he was an Operator and the instruction related to a transfer of units of a security which was in excess of any limit imposed by virtue of paragraph 15 of Schedule 1; or
- (d) he was an Operator and had actual notice of any of the circumstances specified in regulation 27(2) in a case where the instruction was–
  - (i) a system-member instruction requesting him to settle a transfer in accordance with his rules; or
  - (ii) an issuer-instruction given in the circumstances specified in regulation 33(2)(b) requesting him to register a transfer of title.

(6) Notwithstanding that an addressee has received in respect of a properly authenticated dematerialised instruction actual notice of the kind referred to in paragraph (5), the addressee may accept the matters specified in paragraph (4) if at the time that he received the actual notice it was not practicable for him to halt the processing of the instruction.

(7) Subject to paragraph (8), a person who is permitted by this regulation to accept any matter shall not be liable in damages or otherwise to any person by reason of his having relied on the matter that he was permitted to accept.

(8) The provisions of paragraph (7) do not affect–

- (a) any liability of the Operator to pay compensation under regulation 36; or
- (b) any liability of a participating issuer under regulation 45 arising by reason of a default in complying with, or contravention of, regulation 28(6).

(9) Subject to paragraph (7), this regulation has effect without prejudice to the liability of any person for causing or permitting a dematerialised instruction–

- (a) to be sent without authority; or
  - (b) to contain information which is incorrect; or
  - (c) to be expressed to have been sent by a person who did not send it.
- (10) For the purposes of this regulation–
- (a) a properly authenticated dematerialised instruction is expressed to have been sent by a person or on behalf of a person if it is attributable to that person; and
  - (b) an addressee is the person to whom a properly authenticated dematerialised instruction indicates it is addressed in accordance with the specifications of the Operator drawn up in order to satisfy paragraph 5(1)(e) of Schedule 1.

(11) Nothing in this regulation shall be taken, in respect of any authority, to modify or derogate from the protections to a donee or third person given by or under any enactment or to prohibit a donee or third person so protected from accepting any of the matters specified in paragraph (4).

**Liability for forged dematerialised instructions, induced amendments to Operator registers of securities, and induced Operator-instructions**

**36.**—(1) For the purpose of this regulation–

- (a) a dematerialised instruction is a forged dematerialised instruction if–
  - (i) it was not sent from the computers of a system-participant or the computers comprising an Operator-system; or
  - (ii) it was not sent from the computers of the system-participant or the computers comprising an Operator-system (as the case may be) from which it is expressed to have been sent;
- (b) an act is a causative act if, not being a dematerialised instruction and not being an act which causes a dematerialised instruction to be sent from the computer of a system-participant, it unlawfully causes the Operator–
  - (i) to make, delete or amend an entry on an Operator register of securities; or
  - (ii) to send an Operator-instruction to a participating issuer;
- (c) an entry on, deletion from, or amendment to an Operator register of securities is an induced amendment if it is an entry on, deletion from, or amendment to an Operator register of securities which results from a causative act or a forged dematerialised instruction; and
- (d) an Operator-instruction is an induced Operator-instruction if it is an Operator-instruction to a participating issuer which results from a causative act or a forged dematerialised instruction.

(2) If, as a result of a forged dematerialised instruction (not being one which results in an induced amendment to an Operator register of securities or an induced Operator-instruction), an induced amendment to an Operator register of securities, or an induced Operator-instruction, any one of the following events occurs–

- (a) the name of any person remains on, is entered on, or is removed or omitted from, a register of securities;
- (b) the number of units of a security in relation to which the name of any person is entered on a register of securities is increased, reduced, or remains unaltered;
- (c) the description of any units of a security in relation to which the name of any person is entered on a register of securities is changed or remains unaltered;

and that person suffers loss as a result, he may apply to the court for an order that the Operator compensate him for his loss.

(3) It is immaterial for the purposes of paragraph (2)(a) to (c) whether the event is permanent or temporary.

(4) The court shall not make an order under paragraph (2)–

- (a) if the Operator identifies a person as being responsible (whether alone or with others) for the forged dematerialised instruction (not being one which results in an induced amendment to an

Operator register of securities or an induced Operator-instruction) or the causative act or forged dematerialised instruction resulting in the induced amendment to the Operator register of securities or the induced Operator-instruction (as the case may be) notwithstanding that it is impossible (for whatever reason) for the applicant to obtain satisfactory compensation from that person; or

(b) if the Operator shows that a participating issuer would be liable under regulation 45 to compensate the applicant for the loss in respect of which the application is made, by reason of the participating issuer's default in complying with, or contravention of, regulation 28(6).

(5) Subject to paragraph (6), the court may award to an applicant compensation for—

- (a) each forged dematerialised instruction (not being one which results in an induced amendment to an Operator register of securities or an induced Operator-instruction);
- (b) each induced amendment to an Operator register of securities; and
- (c) each induced Operator-instruction,

resulting in an event mentioned in paragraph (2)(a) to (c); provided that the court shall not award to an applicant more than ,50000 for each such forged dematerialised instruction, induced amendment to an Operator register of securities, or induced Operator-instruction.

(6) In respect of liability arising under this regulation the court shall—

- (a) in awarding compensation only order the Operator to pay such amount of compensation as it appears to it to be just and equitable in all the circumstances having regard to the loss sustained by the applicant as a result of the forged dematerialised instruction, induced amendment to the Operator register of securities, or induced Operator-instruction;
- (b) in ascertaining the loss, apply the same rules concerning the duty of a person to mitigate his loss as apply to damages recoverable under the common law of England and Wales, Northern Ireland, or Scotland, (as the case may be); and
- (c) where it finds that the loss was to any extent caused or contributed to by any act or omission of the applicant, reduce the amount of the award by such proportion as it thinks just and equitable having regard to that finding.

(7) An application to a court for an order under paragraph (2) shall not prejudice any right of the Operator to recover from a third party any sum that he may be ordered to pay.

(8) This regulation does not affect any liability or right which any person may incur or have apart from this regulation.

(9) Where an application is made under paragraph (2), and the Operator receives from the applicant a request for information or documents relating to—

- (a) a forged dematerialised instruction;
- (b) an induced amendment to an Operator register of securities; or
- (c) an induced Operator-instruction,

in respect of which the application is made, the Operator shall, in so far as he is able, and in so far as the request is reasonable, within one month furnish the applicant with the information and documents.

(10) The applicant shall, in so far as he is able, within one month furnish the Operator with such information or documents as the Operator reasonably requests in connection with an application under paragraph (2) with respect to—

- (a) steps taken by the applicant to prevent the giving of any forged dematerialised instruction (whether of the kind referred to in paragraph (2) or any other kind); and
- (b) steps taken by the applicant to mitigate the loss suffered by him;

provided that the applicant need not furnish information or documents pursuant to this paragraph until the Operator has complied with any request made by virtue of paragraph (9).

(11) Neither the Operator nor the applicant shall be required to disclose any information by virtue of, respectively, paragraph (9) or (10) which would be privileged in the course of civil proceedings; and which

in Scotland they would be entitled to refuse to disclose on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(12) The jurisdiction conferred by this regulation shall be exercisable, in the case of a participating security constituted under the law of England and Wales, or Northern Ireland, by the High Court; and in the case of a participating security constituted under the law of Scotland by the Court of Session.

## PART 5

### MISCELLANEOUS AND SUPPLEMENTAL

#### MISCELLANEOUS

##### **Construction of references to transfers etc.**

**37.** References in any enactment or rule of law to a proper instrument of transfer or to a transfer with respect to securities, or any expression having like meaning, shall be taken to include a reference to—

- (a) a system-member instruction requesting an Operator, upon settlement of a transfer of uncertificated units of a security in accordance with his rules, to register a transfer of title on the relevant Operator register of securities; and
- (b) an Operator-instruction to a participating issuer to register a transfer of title on the relevant issuer register of securities in accordance with the Operator-instruction.

##### **Certain formalities and requirements not to apply**

**38.—**(1) Any requirements in an enactment or rule of law which apply in respect of the transfer of securities otherwise than by means of a relevant system shall not prevent—

- (a) an Operator from registering a transfer of title to uncertificated units of a security upon settlement of a transfer of such units in accordance with his rules; or
- (b) an Operator-instruction from requiring a participating issuer to register a transfer of title to uncertificated units of a security.

(2) Subject to regulation 32(6), notwithstanding any enactment, instrument or rule of law, a participating issuer shall not issue a certificate in relation to any uncertificated units of a participating security.

(3) A document issued by or on behalf of a participating issuer purportedly evidencing title to an uncertificated unit of a participating security shall not be evidence of title to the unit of the security; and in particular—

- (a) section 186 of the 1985 Act shall not apply to any document issued with respect to uncertificated shares; and
- (b) regulation 3(2) of the 1965 Regulations and regulation 6(3) of the 1974 Regulations shall not apply to any document issued with respect to uncertificated units of a public sector security.

(4) Any requirement in or under any enactment to endorse any statement or information on a certificate evidencing title to a unit of a security—

- (a) shall not prohibit the conversion into, or issue of, units of the security in uncertificated form; and
- (b) in relation to uncertificated units of the security, shall be taken to be a requirement for the relevant participating issuer to provide the holder of the units with the statement or information on request by him.

(5) Sections 53(1)(c) and 136 of the Law of Property Act 1925 (which impose requirements for certain dispositions and assignments to be in writing) shall not apply (if they would otherwise do so) to—

- (a) any transfer of title to uncertificated units of a security by means of a relevant system; and
- (b) any disposition or assignment of an interest in uncertificated units of a security title to which is held by a relevant nominee.

(6) In paragraph (5) “relevant nominee” means a subsidiary undertaking of an Operator designated by him as a relevant nominee in accordance with such rules and practices as are mentioned in paragraph 25(f) of Schedule 1 to these Regulations.

### **Trusts, trustees and personal representatives etc.**

**39.**—(1) Unless expressly prohibited from transferring units of a security by means of any computer-based system, a trustee or personal representative shall not be chargeable with a breach of trust or, as the case may be, with default in administering the estate by reason only of the fact that—

- (a) for the purpose of acquiring units of a security which he has the power to acquire in connection with the trust or estate, he has paid for the units under arrangements which provide for them to be transferred to him from a system-member but not to be so transferred until after the payment of the price;
- (b) for the purpose of disposing of units of a security which he has power to dispose of in connection with the trust or estate, he has transferred the units to a system-member under arrangements which provide that the price is not to be paid to him until after the transfer is made; or
- (c) for the purpose of holding units of a security belonging to the trust or estate in uncertificated form and for transferring title to them by means of a relevant system, he has become a system-member.

(2) Notwithstanding section 192 of the 1985 Act, a trustee of a trust deed for securing an issue of debentures shall not be chargeable with a breach of trust by reason only of the fact that he has assented to an amendment of the trust deed only for the purposes of—

- (a) allowing the holding of debentures in uncertificated form;
- (b) allowing the exercise of rights attaching to the debentures by means of a relevant system; or
- (c) allowing the transfer of title to the debentures by means of a relevant system;

provided that he has given or caused to be given notice of the amendment in accordance with the trust deed not less than 30 days prior to its becoming effective to all persons registered as holding the debentures on a date not more than 21 days before the dispatch of the notice.

(3) Without prejudice to regulation 23(3) or section 360 of the 1985 Act, the Operator shall not be bound by or compelled to recognise any express, implied or constructive trust or other interest in respect of uncertificated units of a security, even if he has actual or constructive notice of the said trust or interest.

(4) Paragraph (3) shall not prevent, in the case of a participating issuer constituted under the law of Scotland, the Operator giving notice of a trust to the participating issuer on behalf of the system-member.

### **Notices of meetings etc.**

**40.**—(1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Changes to entries on the relevant register of securities after the time specified by virtue of paragraph (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

(3) For the purposes of—

- (a) serving notices of meetings, whether under section 370(2) of the 1985 Act, any other enactment, a provision in the articles of association or any other instrument; or
- (b) sending copies of the documents required to be sent to any person by section 238 of the 1985 Act,

a participating issuer may determine that persons entitled to receive such notices, or copies of such documents (as the case may be), are those persons entered on the relevant register of securities at the close of business on a day determined by him.

(4) The day determined by a participating issuer under paragraph (3) may not be more than 21 days before the day that the notices of the meeting, or the copies of the documents (as the case may be), are sent.

(5) This regulation is without prejudice to the protection afforded by paragraph 5(3) of Schedule 3 to a participating issuer which is a company.

### **Notices to minority shareholders**

**41.**—(1) This regulation shall apply in relation to any uncertificated units of a security to which a notice given pursuant to section 429 of the 1985 Act relates, in place of the provisions of section 430(6) of that Act.

(2) On receipt of a notice sent pursuant to section 430(5)(a) of the 1985 Act relating to uncertificated units of a participating security (whether or not it also relates to certificated units of the security), a company which is a participating issuer shall by issuer-instruction—

(a) inform the Operator that the notice has been received; and

(b) identify the holding of uncertificated units of the participating security to which the notice relates.

(3) On receipt of such an issuer-instruction, the Operator shall generate an Operator-instruction in accordance with regulation 32(1) and the units of the participating security specified in the issuer-instruction shall be converted into certificated form in accordance with regulation 32.

(4) On registration on an issuer register of securities (in accordance with regulation 32(4)(b)) of the relevant system-member as the holder of the units in question, the participating issuer shall be under the same obligation to enter the offeror on that register as the holder of those units, in place of the relevant system-member, as it would be if it had received an Operator-instruction under regulation 28(2) requiring it to register a transfer of title to those units in that manner; and regulation 28(9) shall have effect accordingly.

(5) For the purposes of paragraph (4), the “relevant system-member” means the system-member identified in the notice sent pursuant to section 430(5)(a) of the 1985 Act as the holder of the uncertificated units to which the notice relates.

(6) The reference in section 430D(5) of the 1985 Act to section 430(6) shall be taken to include a reference to the provisions of paragraph (4).

(7) In this regulation, “offeror” has the meaning given by section 428(8) of the 1985 Act as construed in accordance with section 430D(5) of that Act.

### **Irrevocable powers of attorney**

**42.**—(1) This regulation applies where the terms of an offer for all or any uncertificated units of a participating security provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer.

(2) An acceptance communicated by properly authenticated dematerialised instruction in respect of uncertificated units of a security shall constitute a grant of an irrevocable power of attorney by the system-member accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer.

(3) Where the contract constituted by such offer and acceptance referred to in paragraphs (1) and (2) respectively is governed by the law of England and Wales, section 4 of the Powers of Attorney Act 1971(a) shall apply to a power of attorney constituted in accordance with this regulation.

(4) A declaration in writing by the offeror stating the terms of a power of attorney and that it has been granted by virtue of this regulation and stating the name and address of the grantor shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of the grant; and any requirement in any enactment, rule of law, or instrument to produce a copy of the power of attorney, or such a copy certified in a particular manner, shall be satisfied by the production of the declaration or a copy of the declaration certified in that manner.

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(a) 1971 c.27.

(5) In the application of this regulation to an offer, acceptance or contract governed by the law of Scotland, any reference to an irrevocable power of attorney shall mean and include reference to an irrevocable mandate, however expressed.

### **Actual notice**

**43.** For the purpose of determining under these Regulations whether a person has actual notice of a fact, matter or thing that person shall not under any circumstances be taken to be concerned to establish whether or not it exists or has occurred.

### **Participating securities issued in uncertificated form**

**44.** In respect of a participating security which is specified in Schedule 4 or whose terms of issue provide that its units may only be held in uncertificated form and title to them may only be transferred by means of a relevant system, nothing in these Regulations shall require a participating issuer or its officers to maintain a register which records how many units of the participating security are held in certificated form or to change a unit of such a participating security from uncertificated form to certificated form or vice versa.

## **DEFAULTS AND CONTRAVENTIONS**

### **Breaches of statutory duty**

**45.**—(1) A default in complying with, or a contravention of, regulation 16(8), 19(2), 25(1), 26, 28(5) or (6), 33(5), or 41(2) shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise adversely affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) Paragraph (1) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from paragraph (1).

### **Liability of officers for contraventions**

**46.**—(1) In regulation 16(7), 28(9), 32(8) and (9), or 33(11) an officer of a participating issuer shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

(2) In regulation 27(8), 32(8) or 33(11) an officer of an Operator shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

### **Exemption from liability**

**47.**—(1) Regulations 28(9), 32(8) and (9), and 33(11) shall not apply to any of the following or its officers—

- (a) the Crown;
- (b) any person acting on behalf of the Crown;
- (c) the Bank of England; or
- (d) in respect of a security which immediately before it became a participating security was transferable by exempt transfer within the meaning of the Stock Transfer Act 1982(a), a participating issuer.

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(a) 1982 c.41.

## NORTHERN IRELAND

### Application to Northern Ireland

**48.**—(1) In their application to Northern Ireland, these Regulations shall have effect with the following modifications.

(2) In regulation 38(5)–

- (a) for the reference to section 53(1)(c) of the Law of Property Act 1925 there shall be substituted a reference to section 6 of the Statute of Frauds (Ireland) 1695(a); and
- (b) for the reference to section 136 of the Law of Property Act 1925 there shall be substituted a reference to section 87 of the Judicature (Northern Ireland) Act 1978(b).

(3) In regulation 42(3) for the reference to section 4 of the Powers of Attorney Act 1971 there shall be substituted a reference to section 3 of the Powers of Attorney Act (Northern Ireland) 1971(c).

(4) For references to provisions of the 1985 Act there shall be substituted references to the equivalent provisions of the 1986 Order and, in particular, for the references to the 1985 Act listed in column 1 of Schedule 5 in the provisions of these Regulations listed in column 2 of that Schedule, there shall be substituted the references to the 1986 Order listed in column 3 of that Schedule.

## AMENDMENTS AND REVOCATIONS

### Minor and consequential amendments

**49.** Schedule 6 (minor and consequential amendments) shall have effect.

### Revocations

**50.**—(1) The following provisions of the 1965 Regulations are hereby revoked, namely–

- regulation 4(3) and (4);
- regulations 4A and 4B;
- regulation 6(5);
- regulation 17(7);
- regulation 18(5);
- regulation 19(2);
- regulation 20(2); and
- Schedule 1.

(2) The following provisions of the 1974 Regulations are hereby revoked, namely–

- regulation 6(6);
- regulation 6A;
- regulation 7(1)(b), (4) and (5);
- regulation 8(2) and (3);
- regulation 9(4);
- regulation 10(3);
- regulation 16(4);
- regulation 21(3); and

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(a) 1695 c.12(Ir).

(b) 1978 C.23.

(c) 1971 c.33 (N.I.).

Schedule 2.

(3) The 1995 Regulations are hereby revoked.

Date

[  
Two of the Lords Commissioners  
of Her Majesty's Treasury

## REQUIREMENTS FOR APPROVAL OF A PERSON AS OPERATOR

*Arrangements and resources*

1. An Operator must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with his rules or, as respects monitoring, arrangements providing for that function to be performed on his behalf (and without affecting his responsibility) by another body or person who is able and willing to perform it.

*Financial resources*

2. An Operator must have financial resources sufficient for the proper performance of his functions as an Operator.

*Promotion and maintenance of standards*

3. An Operator must be able and willing to promote and maintain high standards of integrity and fair dealing in the operation of the relevant system and to cooperate, by the sharing of information or otherwise, with the Treasury and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

*Operation of the relevant system*

4.—(1) Except in the circumstances referred to in subparagraph (2), where an Operator causes or permits a part of the relevant system which is not the Operator-system to be operated by another person (other than as his agent) the Operator—

- (a) shall monitor compliance by the person and that part with the requirements of this Schedule; and
- (b) shall have arrangements to ensure that the person provides him with such information and such assistance as he may require in order to meet his obligations under these Regulations.

(2) Where a part of the relevant system which is not the Operator-system comprises procedures which enable dematerialised instructions to be authenticated in accordance with paragraph 5(1)(c), the Operator shall have arrangements to ensure that he is provided with such information and such assistance as he may require in order to keep under review his approval of the specifications by which those dematerialised instructions may be authenticated.

*System security*

5.—(1) A relevant system must be constructed and operate in such a way—

- (a) so as to minimise the possibility of unauthorised access to, or modification of, any program or data held in any computer forming part of the Operator-system;
- (b) that (unless subparagraph (1)(c) applies) each dematerialised instruction is properly authenticated in accordance with the specifications of the Operator, which shall provide that each dematerialised instruction—
  - (i) is identifiable as being from the computers of a particular system-participant; and
  - (ii) is designed to minimise fraud and forgery;
- (c) that (unless it complies with subparagraph (1)(b)) each dematerialised instruction sent to the Operator by a depository, a clearing house or an exchange is properly authenticated in accordance with the specifications of the sender, which shall provide that each dematerialised instruction—
  - (i) is identifiable as being from the computers of the depository, clearing house or exchange which sent it; and
  - (ii) is designed to minimise fraud or forgery;

- (d) that each dematerialised instruction, in accordance with the specifications of the Operator or the specifications referred to in subparagraph (1)(c) (as the case may be), expresses by whom it has been sent and, where relevant, on whose behalf it has been sent;
- (e) that each dematerialised instruction, in accordance with the specifications of the Operator or the specifications referred to in subparagraph (1)(c) (as the case may be), indicates–
  - (i) where it is sent to a system-participant or the Operator, that it is addressed to that system-participant or the Operator; and
  - (ii) where it is sent to a person who is using the facilities of a sponsoring system-participant to receive dematerialised instructions, that it is addressed to that person and the sponsoring system-participant; and
  - (iii) where it is sent to the Operator in order for him to send an Operator-instruction to a system-participant, that it is addressed to the Operator, to the system-participant and, if the system-participant is acting as a sponsoring system-participant, to the relevant person on whose behalf the sponsoring system-participant receives dematerialised instructions; and
- (f) that the possibility for a system-participant to send a dematerialised instruction on behalf of a person from whom he has no authority is minimised.

(2) For the purposes of this paragraph–

“clearing house” means a body or association–

- (a) which is a recognised clearing house for the purposes of the 1986 Act;
- (b) which is authorised under that Act to provide clearing services in the United Kingdom; or
- (c) which provides services outside the United Kingdom which are similar in nature to those provided by any such body or association, and which is regulated or supervised in the provision of those services by a regulatory body or agency of government;

“depository” means a body or association carrying on business outside the United Kingdom with whom an Operator has made arrangements–

- (a) to enable system-members to hold and transfer title to securities (other than participating securities) by means of facilities provided by that body or association; or
- (b) to enable that body or association to permit persons to whom it provides services in the course of its business to hold and transfer title to participating securities by means of the Operator’s relevant system; and

“exchange” means a body or association–

- (a) which is a recognised investment exchange for the purposes of the 1986 Act;
- (b) which is authorised under that Act to provide a facility for the matching and execution of transactions in securities in the United Kingdom; or
- (c) which provides services outside the United Kingdom which are similar in nature to those provided by any such body or association, and which is regulated or supervised in the provision of those services by a regulatory body or agency of government.

#### *System capabilities*

**6.** A relevant system must ensure that the Operator-system can send and respond to properly authenticated dematerialised instructions in sufficient volume and speed.

**7.** Before an Operator registers a transfer of title to uncertificated units of a security, a relevant system must be able to establish–

- (a) that the transferor has title to such number of units of the security as is in aggregate at least equal to the number to be transferred; or
- (b) that the transfer is one of two or more transfers which may be registered in accordance with regulation 30(2).

**8.** Before an Operator-instruction to a participating issuer to register a transfer of title to uncertificated units of a security is generated, a relevant system must be able to establish that the transferor has title to such number of units of the security as is in aggregate at least equal to the number to be transferred.

**9.** A relevant system must enable an Operator to comply with his obligations to keep all necessary Operator registers of securities in accordance with these Regulations.

**10.** A relevant system must maintain adequate records of all dematerialised instructions.

**11.** A relevant system must be able–

- (a) to permit each system-member to obtain a copy of any records relating to him as are maintained by the relevant system in order to comply with paragraph 7(a), 8 or 10; and
- (b) to make correcting entries in such records as are maintained in order to comply with paragraph 7(a) or 8 which are inaccurate.

**12.** A relevant system must be able to permit each participating issuer to inspect the entries from time to time appearing in an Operator register of securities relating to any participating security issued by him.

**13.** A relevant system must be able to establish, where there is a transfer of uncertificated units of a security to a system-member for value, that a settlement bank has agreed to make payment in respect of the transfer, whether alone or taken together with another transfer for value.

**14.** A relevant system must ensure that the Operator-system is able to generate Operator-instructions–

- (a) requiring participating issuers to amend the appropriate issuer registers of securities kept by them;
- (b) informing participating issuers in a way which enables them to amend the appropriate records of securities kept by them; and
- (c) informing settlement banks of their payment obligations.

**15.** A relevant system must–

- (a) enable a system-member–
  - (i) to grant authority to a sponsoring system-participant to send properly authenticated dematerialised instructions on his behalf; and
  - (ii) to limit such authority by reference to the net value of the units of the securities to be transferred in any one day; and
- (b) prevent the transfer of units in excess of that limit.

**16.** For the purposes of paragraph 15(a)(ii), once authority is granted pursuant to a system charge (within the meaning of regulation 3 of the Financial Markets and Insolvency Regulations 1996(a)) a limit of such authority shall not be imposed or changed without the consent of the donee of that authority.

**17.** Nothing in paragraph 15 or 16 shall be taken, in respect of an authority, to modify or derogate from the protections given by or under any enactment to a donee of the authority or a third person.

**18.** A relevant system must enable system-members–

- (a) to change the form in which they hold units of a participating security; and
- (b) where appropriate, to require participating issuers to issue certificates relating to units of a participating security held or to be held by them.

**19.** Paragraph 18 shall not apply to any participating security specified in Schedule 4 or whose terms of issue provide that its units may only be held in uncertificated form and title to them may only be transferred by means of a relevant system.

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(a) S.I. 1996/1469.

### *Operating procedures*

**20.** A relevant system must comprise procedures which provide that it responds only to properly authenticated dematerialised instructions which are attributable to a system-user or an Operator.

**21.—**(1) Subject to subparagraphs (2) and (3), a relevant system must comprise procedures which provide that an Operator only registers a transfer of title to uncertificated units of a security or generates an Operator-instruction requiring a participating issuer to register such a transfer, and only generates an Operator-instruction informing a settlement bank of its payment obligations in respect of such a transfer, if—

- (a) it has—
  - (i) received a system-member instruction from the transferor; or
  - (ii) been required to do so by a court in the United Kingdom or by or under an enactment;
- (b) it has—
  - (i) established that the transferor has title to such number of units as is in aggregate at least equal to the number to be transferred; or
  - (ii) established that the transfer is one of two or more transfers which may be registered in accordance with regulation 30(2);
- (c) in the case of a transfer to a system-member for value, it has established that a settlement bank has agreed to make payment in respect of the transfer, whether alone or taken together with another transfer for value; and
- (d) the transfer is not in excess of any limit which by virtue of paragraph 15(a)(ii) the transferor has set on an authority given by him to a sponsoring system-participant.

(2) Subparagraph (1)(a) shall not prevent the registration by an Operator of a transfer of title to uncertificated units of a security, or the generation of an Operator-instruction, in accordance with procedures agreed between the Operator and the transferor to enable the transfer by means of a relevant system of uncertificated units of a security provided that such transfer is for the purpose of, or relates to, facilitating the provision of financial liquidity to the transferor by a settlement bank or the Bank of England.

(3) A relevant system must comprise procedures which provide that—

- (a) an Operator may amend an Operator register of securities; and
- (b) an Operator-instruction requiring a participating issuer to register a transfer of uncertificated units of a security, or informing a settlement bank of its payment obligations in respect of such a transfer, may be generated,

if necessary to correct an error and if in accordance with the rules and practices of an Operator instituted in order to comply with this Schedule.

**22.—**(1) Subject to subparagraph (2), a relevant system must comprise procedures which provide that an Operator-instruction to a participating issuer relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security, is generated only if it has—

- (a) received a properly authenticated dematerialised instruction attributable to the system-member having the right, privilege or benefit requiring the Operator to generate an Operator-instruction to the participating issuer; or
- (b) been required to do so by a court in the United Kingdom or by or under an enactment.

(2) A relevant system must comprise procedures which provide that an Operator-instruction to a participating issuer relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security, may be generated if necessary to correct an error and if in accordance with the rules and practices of an Operator instituted in order to comply with this Schedule.

**23.** A relevant system must comprise procedures which ensure that, where participating issuers keep records of securities, those records are regularly reconciled with the relevant Operator registers of securities.

**24.** A relevant system must comprise procedures which—

- (a) enable system-users to notify the Operator of an error in or relating to a dematerialised instruction; and
- (b) ensure that, where the Operator becomes aware of an error in or relating to a dematerialised instruction, he takes appropriate corrective action.

*Rules and practices*

**25. An Operator's rules and practices–**

- (a) must bind system-members and participating issuers–
  - (i) so as to ensure the efficient processing of transfers of title to uncertificated units of a security in response to Operator-instructions; and
  - (ii) as to the action to be taken where transfer of title in response to a system-member instruction or an Operator-instruction cannot be effected;
- (b) must make provision to enable a system-member to change the form in which he holds units of a participating security;
- (c) must make provision for a participating issuer to cease to participate in respect of a participating security so as–
  - (i) to minimise so far as practicable any disruption to system-members in respect of their ability to transfer the relevant security; and
  - (ii) to provide the participating issuer with any relevant information held by the Operator relating to the uncertificated units of the relevant security held by system-members;
- (d) must make provision for the orderly termination of participation by system-members and system-participants whose participation is disruptive to other system-members or system-participants or to participating issuers;
- (e) must make provision–
  - (i) as to which of the Operator's records are to constitute an Operator register of securities in relation to a participating security, or a participating security of a particular kind; and
  - (ii) as to the times at which, and the manner in which, a participating issuer may inspect an Operator register of securities in accordance with paragraph 12;
- (f) if they make provision for the designation of a subsidiary undertaking as a relevant nominee, must require that the relevant nominee maintain adequate records of–
  - (i) the names of the persons who have an interest in the securities it holds; and
  - (ii) the nature and extent of their interests.

**26. An Operator's rules and practices must require–**

- (a) that each system-participant is able to send and receive properly authenticated dematerialised instructions;
- (b) that each system-member has arrangements–
  - (i) for properly authenticated dematerialised instructions attributable to him to be sent;
  - (ii) for properly authenticated dematerialised instructions to be received by or for him; and
  - (iii) with a settlement bank for payments to be made, where appropriate, for units of a security transferred by means of the relevant system; and
- (c) that each participating issuer is able to respond with sufficient speed to Operator-instructions.

**27. An Operator must have rules which require system-users and former system-users to provide him with such information in their possession as he may require in order to meet his obligations under these Regulations.**

## PREVENTION OF RESTRICTIVE PRACTICES

*Examination of rules and practices*

**1.**—(1) The Treasury shall not approve a person as Operator of a relevant system unless they are satisfied that the rules and any guidance of which copies are furnished with the application for approval—

- (a) do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
- (b) if they have or are intended to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors, or for compliance with Directive 2000/12/EC of the European Parliament and of the Council<sup>(a)</sup>.

(2) The powers conferred by subparagraph (3) shall be exercisable by the Treasury if at any time it appears to them that—

- (a) any rules made or guidance issued by an Operator,
- (b) any practices of an Operator; or
- (c) any practices of a system-user,

have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that the effect is greater than is necessary for the protection of investors or for compliance with Directive 2000/12/EC of the European Parliament and of the Council.

(3) The powers exercisable under this paragraph are—

- (a) to withdraw approval from the Operator;
- (b) to direct the Operator to take specified steps for the purpose of securing that the rules, guidance or practices in question do not have the effect mentioned in subparagraph (2); or
- (c) to make alterations in the rules of the Operator for that purpose.

(4) Subsections (2) to (5), (7) and (9) of section 11 of the 1986 Act shall apply in relation to the withdrawal of approval under subparagraph (3) as they apply in relation to the revocation of an order under subsection (1) of that section; and in those subsections as they so apply—

- (a) any reference to a recognised organisation shall be taken to be a reference to the Operator; and
- (b) any reference to members of a recognised organisation shall be taken to be a reference to system-users.

(5) The practices referred to in subparagraph (2)(b) are practices of the Operator in his capacity as such.

(6) The practices referred to in subparagraph (2)(c) are practices in relation to business in respect of which system-users are subject to the rules of the Operator and which are required or contemplated by his rules or guidance or otherwise attributable to his conduct in his capacity as Operator.

*Modification of paragraph 1 where delegation order is made*

**2.**—(1) This paragraph applies instead of paragraph 1 where the function of approving a person as Operator has been delegated to a designated agency by virtue of regulation 11.

(2) The designated agency—

- (a) shall send to the Treasury a copy of the rules and any guidance copies of which are furnished with the application for approval together with any other information supplied with or in connection with the application; and
- (b) shall not grant the approval without the leave of the Treasury,

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<sup>(a)</sup> Directive of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ No. L 126, 26.5.2000).

and the Treasury shall not give leave in any case in which they would (apart from the delegation of functions to a designated agency) have been precluded by paragraph 1(1) from granting approval.

(3) A designated agency shall send to the Treasury a copy of any notice received by it from an Operator under regulation 10(3).

(4) If at any time it appears to the Treasury that there are circumstances such that (apart from a delegation order) they would have been able to exercise any of the powers conferred by paragraph 1(3) they may, notwithstanding the delegation order—

- (a) themselves exercise the power conferred by paragraph 1(3)(a); or
- (b) direct the designated agency to exercise the power conferred by paragraph 1(3)(b) or (c) in such manner as they may specify.

(5) In this paragraph “delegation order” means an instrument in writing under regulation 11.

#### *Reports by the Director General of Fair Trading*

3.—(1) The Treasury shall before deciding—

- (a) whether to refuse to grant an approval in pursuance of paragraph 1(1); or
- (b) whether to refuse leave for the granting of an approval in pursuance of paragraph 2(2),

send to the Director General of Fair Trading (in this schedule referred to as “the Director”) a copy of the rules and of any guidance which the Treasury are required to consider in making that decision together with such other information as the Treasury consider will assist in discharging his functions under subparagraph (2)3(2).

(2) The Director shall report to the Treasury whether, in his opinion, the rules and guidance copies of which are sent to him under subparagraph (1) have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and, if so, what that effect is likely to be; and in making any decision as is mentioned in subparagraph (1) the Treasury shall have regard to the Director’s report.

(3) The Treasury shall send to the Director copies of any notice received by them under regulation 10(3) or paragraph 2(3) together with such other information as the Treasury consider will assist the Director in discharging his functions under subparagraphs (4) and (5).

(4) The Director shall keep under review—

- (a) the rules, guidance and practices mentioned in paragraph 1(2); and
- (b) the matters specified in the notices of which copies are sent to him under subparagraph (3),

and if at any time he is of the opinion that any such rules or guidance taken together with any such matters, have, or are intended or likely to have, to any significant extent the effect mentioned in subparagraph (2), he shall report his opinion to the Treasury stating what in his opinion that effect is or is likely to be.

(5) The Director may report to the Treasury his opinion that any such matter as is mentioned in subparagraph (4)(b) does not in his opinion have, and is not intended or likely to have, to any significant extent the effect mentioned in subparagraph (2).

(6) The Director may from time to time consider whether any such practices as are mentioned in paragraph 1(2) have, or are intended or likely to have, to any significant extent the effect mentioned in subparagraph (2) and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Treasury stating his opinion and what the effect is or is likely to be.

(7) The Treasury shall not exercise their powers under paragraph 1(3) or 2(4) except after receiving a report from the Director under subparagraph (4) or (6).

(8) The Director may, if he thinks fit, publish any report made by him under this paragraph but shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the person seeking approval as an Operator) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

*Investigations by the Director General of Fair Trading*

4.—(1) For the purpose of investigating any matter with a view to his consideration under paragraph 3 the Director may by a notice in writing—

- (a) require any person to produce, at any time and place specified in the notice, to the Director or to any person appointed by him for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation; or
- (b) require any person carrying on business to furnish to the Director such information as may be specified or described in the notice, and specify the time within which, and the manner and form in which, any such information is to be furnished.

(2) A person shall not under this paragraph be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(3) Subsections (6) to (8) of section 85 of the Fair Trading Act 1973<sup>(a)</sup> (enforcement provisions) shall apply in relation to a notice under this paragraph as they apply in relation to a notice under subsection (1) of that section but as if in subsection (7) of that section, for the words from “any one” to “the Commission” there were substituted “the Director”.

*Exemptions from the Fair Trading Act 1973*

5.—(1) For the purpose of determining whether a monopoly situation within the meaning of the Fair Trading Act 1973 exists by reason of the circumstances mentioned in section 7(1)(c) of that Act, no account shall be taken of—

- (a) the rules or guidance issued by an Operator or any conduct constituting such a practice as is mentioned in paragraph 1(2); or
- (b) any guidance issued by a designated agency in the exercise of its functions under these Regulations or any practices of a designated agency in the exercise of its functions under these Regulations.

(2) Where approval is withdrawn there shall be disregarded for the purpose mentioned in subparagraph (1) any such conduct as is mentioned in that subparagraph which occurred while the approval was in force.

(3) Where on a monopoly reference under section 50 or 51 of said Act of 1973 falling within section 49 of that Act the Competition Commission find that a monopoly situation within the meaning of that Act exists and—

- (a) that the person (or, if more than one, any of the persons) in whose favour it exists is subject to the rules of an Operator or to the requirements imposed and guidance issued by a designated agency in the exercise of functions delegated to it under regulation 11(1); or
- (b) that any such person’s conduct in carrying on any business to which those rules relate is the subject of guidance issued by an Operator or designated agency; or
- (c) that the person (or, if more than one, any of the persons) in whose favour the monopoly situation exists is an Operator or designated agency,

the Commission, in making their report on that reference, shall exclude from their consideration the question whether the rules, guidance or any acts or omissions of such an Operator or agency as is mentioned in subparagraph (c) in his or its capacity as such operate, or may be expected to operate, against the public interest; and section 54(3) of that Act shall apply subject to the provisions of this paragraph.

*Exemptions from the Competition Act 1998*

6.—(1) The Chapter I prohibition does not apply to—

- (a) an agreement for the constitution of an Operator; or

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(a) 1973 c.41.

- (b) an agreement for the constitution of a person who has applied for approval as an Operator in accordance with these Regulations and whose application has not yet been determined,

to the extent to which the agreement relates to rules made or guidance issued by the Operator.

(2) The Chapter I prohibition does not apply to a decision made by an Operator to the extent to which the decision relates to any of the rules made or guidance issued by that Operator or to the Operator's specified practices.

(3) The Chapter I prohibition does not apply to the specified practices of—

- (a) an Operator; or
- (b) a person who is subject to the rules of an Operator.

(4) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—

- (a) an Operator; or
- (b) a person who is subject to the rules of an Operator,

to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by these Regulations or by any rules made or guidance issued by the Operator or by the Operator's specified practices.

(5) In this paragraph—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998(a); and

“specified practices” means—

- (a) any practices of an Operator in its capacity as such; or
- (b) any practices of persons who are members of, or otherwise subject to rules made by, an Operator and which are practices—
  - (i) in relation to business in respect of which the persons in question are subject to the rules of the Operator where those practices are required or contemplated by the rules of the Operator or by guidance issued by the Operator; or
  - (ii) otherwise attributable to the conduct of the Operator as such;

and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

#### *Supplementary provisions*

7.—(1) Before the Treasury exercise a power under paragraph 1(3)(b) or (c), or their power to refuse leave under paragraph 2(2), or their power to give a direction under paragraph 2(4), in respect of an Operator, they shall—

- (a) give written notice of their intention to do so to the Operator and take such steps (whether by publication or otherwise) as they think appropriate for bringing the notice to the attention of any other person who in their opinion is likely to be affected by the exercise of the power; and
- (b) have regard to any representation made within such time as they consider reasonable by the Operator or by any such other person.

(2) A notice under subparagraph (1) shall give particulars of the manner in which the Treasury propose to exercise the power in question and state the reasons for which they propose to act; and the statement of reasons may include matters contained in any report received by them under paragraph 3.

(3) Any direction given under this Schedule shall, on the application of the person by whom it was given, be enforceable by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

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(a) 1998 c.41.

(4) The fact that any rules made by an Operator have been altered by or pursuant to a direction given by the Treasury under this Schedule shall not preclude their subsequent alteration or revocation by the Operator.

(5) In determining under this Schedule whether any guidance has, or is likely to have, any particular effect the Treasury and the Director may assume that the persons to whom it is addressed will act in conformity with it.

### SCHEDULE 3

Regulation 23(4)

## KEEPING OF REGISTERS AND RECORDS OF PARTICIPATING SECURITIES

### *Interpretation*

#### 1. In this Schedule—

“uncertificated shares” means shares title to which may be transferred by means of a relevant system; and “certificated shares” means shares which are not uncertificated shares; and

“uncertificated stock” means stock title to which may be transferred by means of a relevant system; and “certificated stock” means stock which is not uncertificated stock.

### *Registers of members*

#### 2.—(1) Every participating issuer which is a company shall enter in its issuer register of members—

- (a) the names and addresses of the members;
- (b) the date on which each person was registered as a member; and
- (c) the date at which any person ceased to be a member.

#### (2) With the names and addresses of the members there shall be entered a statement—

- (a) of the certificated shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class; and
- (b) of the amount paid or agreed to be considered as paid on the certificated shares of each member.

(3) Where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the issuer register of members shall show the amount and class of the certificated stock held by each member, instead of the amount of shares and the particulars relating to shares specified in subparagraph (2).

(4) Subject to subparagraph (5), section 352 of the 1985 Act shall not apply to a company which is a participating issuer.

(5) Section 352(5) of the 1985 Act shall apply to a participating issuer which is a company which makes default in complying with this paragraph and every officer of it who is in default as if such a default were a default in complying with section 352 of that Act.

(6) An entry relating to a former member of the company may be removed from the issuer register of members after the expiration of 20 years beginning with the day on which he ceased to be a member.

(7) For the purposes of this paragraph references to an issuer register of members shall not be taken to include an overseas branch register.

3. Section 352A of the 1985 Act shall apply to a participating issuer which is a private company limited by shares as if references therein to the company’s register of members were references to its issuer register of members.

4.—(1) In relation to every participating issuer which is a company, an Operator of a relevant system shall, in respect of any class of shares which is a participating security for the purposes of that system, enter on an Operator register of members—

- (a) the names and addresses of the members who hold uncertificated shares in the company;

- (b) with those names and addresses a statement of the uncertificated shares held by each member and, where the company has more than one class of issued uncertificated shares, distinguishing each share by its class; and
- (c) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the Operator register of members shall show the amount and class of uncertificated stock held by each member, instead of the amount of shares and the particulars relating to shares specified in subparagraph (b).

(2) An entry relating to a member of a company who has ceased to hold any uncertificated shares in the company may be removed from the Operator register of members after the expiration of 20 years beginning with the day on which he ceased to hold any such shares.

(3) For the purposes of this paragraph references to an Operator register of members shall not be taken to include an overseas branch register.

(4) Members of a company who hold shares in uncertificated form may not be entered as holders of those shares on an overseas branch register.

#### *Records of uncertificated shares*

**5.**—(1) Every participating issuer which is a company shall enter in its record of uncertificated shares—

- (a) the same particulars, so far as practicable, as are required by paragraph 4(1) to be entered in the Operator register of members; and
- (b) a statement of the amount paid or agreed to be considered as paid on the uncertificated shares of each member.

(2) A company to which this paragraph applies shall, unless it is impracticable to do so by virtue of circumstances beyond its control, ensure that the record of uncertificated shares is regularly reconciled with the Operator register of members.

(3) Provided that it has complied with subparagraph (2), a company shall not be liable in respect of any act or thing done or omitted to be done by or on behalf of the company in reliance upon the assumption that the particulars entered in any record of uncertificated shares which the company is required to keep by these Regulations accord with the particulars entered in its Operator register of members.

(4) Section 352(5) of the 1985 Act shall apply to a participating issuer which is a company which makes default in complying with this paragraph and every officer of it who is in default as if such a default were a default in complying with section 352 of that Act.

#### *Location of issuer register of members and records of uncertificated shares, and ancillary matters*

**6.**—(1) Subject to subparagraph (2), a company's issuer register of members and its record of uncertificated shares shall be kept at its registered office, except that—

- (a) if the work of making up the issuer register of members or the record of uncertificated shares is done at another office of the company, they may be kept there; and
- (b) if the company arranges with some other person for the making up of the issuer register of members or the record of uncertificated shares to be undertaken on its behalf by that other, they may be kept at the office of the other at which the work is done;

but the issuer register of members must not be kept, in the case of a company registered in England and Wales, at any place elsewhere than in England and Wales or, in the case of a company registered in Scotland, at any place elsewhere than in Scotland.

(2) A company's issuer register of members and its record of uncertificated shares shall at all times be kept at the same place.

(3) Subject as follows, every participating issuer which is a company shall send notice in the prescribed form to the registrar of companies of the place where its issuer register of members and its record of uncertificated shares are kept, and of any change in that place, provided that any notice sent by such a company in accordance with section 353(2) of the 1985 Act, and which has effect on the coming into force of these Regulations, shall be treated as being a notice sent in compliance with this subparagraph.

(4) The notice need not be sent if the issuer register of members and the record of uncertificated shares have at all times since they came into existence been kept at the company's registered office.

(5) Subject to subparagraph (6), sections 353 and 357 of the 1985 Act shall not apply to a company which is a participating issuer.

(6) Section 353(4) of the 1985 Act shall apply to a participating issuer which is a company which makes default in complying with subparagraph (2) at any time, or makes default for 14 days in complying with subparagraph (3), and every officer of it who is in default as if such a default were a default in complying with section 353(2) of that Act.

**7.**—(1) Every participating issuer which is a company having more than 50 members shall, unless the particulars required by paragraph 2(1) to be entered in the issuer register of members are kept in such a form as to constitute in themselves an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the issuer register of members or the Operator register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the issuer register of members and, in the case of a member who holds uncertificated shares in the company, in the record of uncertificated shares, to be readily found.

(3) The index shall be at all times kept at the same place as the issuer register of members and the record of uncertificated shares.

(4) Subject to subparagraph (5), section 354 of the 1985 Act shall not apply to a company which is a participating issuer.

(5) Section 354(4) of the 1985 Act shall apply to a participating issuer which is a company which makes default in complying with this paragraph and every officer of it who is in default as if such a default were a default in complying with section 354 of that Act.

**8.** Section 355 of the 1985 Act shall apply to a company which is a participating issuer as if references in that section to the company's register of members were references instead to its issuer register of members.

**9.** Section 356 of, and paragraph 25 of Schedule 13 to, the 1985 Act shall apply to a company which is a participating issuer as if—

- (a) references in those provisions to the company's register of members were references to its issuer register of members and its record of uncertificated shares; and
- (b) references in section 356 to the company's index of members were references to the index required to be kept by paragraph 7,

and references to the 1985 Act in the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991(a) shall be construed accordingly.

**10.** Where under paragraph 6(1)(b), a company's issuer register of members and record of uncertificated shares is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

- paragraph 6(2) (record of uncertificated shares to be kept with issuer register of members),
- paragraph 6(3) (notice to registrar),
- paragraph 7(3) (index to be kept with issuer register of members and record of uncertificated shares), or
- section 356 of the 1985 Act (inspection),

or with any requirement of the 1985 Act as to the production of the register of members or any part thereof, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under section 356(6) of the 1985 Act extends to the making of orders against that other and his officers and servants.

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(a) S.I. 1991/1998.

**11.** Where, under section 359 of the 1985 Act, the court orders rectification of the register of members of a company which is a participating issuer, it shall not order the payment of any damages under subsection (2) of that section to the extent that such rectification relates to the company's Operator register of members.

#### *Registers of corporate securities*

**12.—**(1) Where an Operator of a relevant system is required to maintain an Operator register of corporate securities, that register shall comprise the following particulars which the Operator shall enter on it, namely—

- (a) the names and addresses of the persons holding units of the relevant participating security in uncertificated form; and
- (b) how many units of that security each such person holds in that form.

(2) Sections 190 and 191 of the 1985 Act shall not apply to any part of an Operator register of corporate securities.

#### *Records of uncertificated corporate securities*

**13.—**(1) A participating issuer shall enter in a record of uncertificated corporate securities the same particulars, so far as practicable, as are required by paragraph 12(1) to be entered in the relevant Operator register of corporate securities.

(2) A company to which this paragraph applies shall, unless it is impracticable to do so by virtue of circumstances beyond its control, ensure that the record of uncertificated corporate securities is regularly reconciled with the Operator register of corporate securities.

(3) Provided that it has complied with subparagraph (2), a company shall not be liable in respect of any act or thing done or omitted to be done by or on behalf of the company in reliance upon the assumption that the particulars entered in any record of uncertificated corporate securities which the company is required to keep by these Regulations accord with the particulars entered in any Operator register of corporate securities relating to it.

(4) The record of uncertificated corporate securities shall be kept at the same place as the part of the register of debenture holders maintained by the company.

(5) Section 191(1), (2), and (5) of the 1985 Act shall apply to the record of uncertificated corporate securities as it applies to any register of debenture holders maintained by the company; and references to the 1985 Act in the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991 shall be construed accordingly.

(6) Section 191(4) of the 1985 Act shall apply to a participating issuer which is a company which makes default in complying with this paragraph and every officer of it who is in default as if such a default were a default in complying with section 191 of that Act.

#### *Registers of public sector securities*

**14.—**(1) Where an Operator of a relevant system is required to maintain an Operator register of public sector securities, that register shall comprise the following particulars which the Operator shall enter on it, namely—

- (a) the names and addresses of the persons holding units of the relevant participating security in uncertificated form; and
- (b) how many units of that security each such person holds in that form.

(2) The provisions of the 1965 Regulations which are mentioned in subparagraph (3) shall not apply in respect of UK Government securities held in uncertificated form.

- (3) Those provisions are—
- regulations 1 to 3;
  - regulations 3C to 3E;

regulations 5 to 13;  
regulations 17 and 18; and  
regulations 19 to 22.

(4) The provisions of the 1974 Regulations which are mentioned in subparagraph (5) shall not apply in respect of local authority securities held in uncertificated form.

(5) Those provisions are—  
regulations 5 and 6;  
regulations 8 to 14;  
regulation 16; and  
regulation 21.

#### *Records of uncertificated public sector securities*

**15.**—(1) The relevant person shall enter in a record of uncertificated public sector securities the same particulars, so far as is practicable, as are required by paragraph 14(1) to be entered in the relevant Operator register of public sector securities.

(2) In respect of every participating security which is a UK Government security, the record of public sector securities shall be kept in the office of the Chief Registrar of the Bank of England.

(3) The relevant person shall ensure that the record of uncertificated public sector securities is regularly reconciled with the Operator register of public sector securities.

(4) Provided that he has complied with subparagraph (3), a relevant person shall not be liable in respect of any act or thing done or omitted to be done by him or on his behalf in reliance upon the assumption that the particulars entered in any record of uncertificated public securities which he is required to keep by these Regulations accord with the particulars entered in the Operator register of public sector securities to which the record relates.

(5) The provisions of the Bankers' Books Evidence Act 1879(a) shall apply for the purpose of proving any entry in the record of public sector securities as if the relevant person were a bank and a banker within the meaning of that Act, and as if such entry in the record, or, where the information recorded therein is not in readable form and is later transcribed into readable form, the transcribed version of such entry, were an entry in a banker's book..

(6) For the purposes of this paragraph, the "relevant person" means—

- (a) in respect of a local authority security—
  - (i) the relevant local authority; or
  - (ii) if the local authority has appointed another person to act as registrar for the purpose of the 1974 Regulations in respect of that security, the person so appointed; and
- (b) in respect of any other public sector security, the Bank of England.

#### *Miscellaneous*

**16.**—(1) Every register which an Operator is required to maintain by virtue of these Regulations shall be kept in the United Kingdom.

(2) Provided that it is kept in the United Kingdom, any such register which relates to securities issued by a company shall be deemed to be kept—

- (a) in the case of a company registered in England and Wales, in England and Wales; or
- (b) in the case of a company registered in Scotland, in Scotland.

**17.**—(1) An entry in a register of securities or in a record of securities relating to a person who no longer holds the securities which are the subject of the entry may be removed from the register or the record (as the

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(a) 42 & 43 Vict c.11.

case may be) after the expiration of 20 years beginning with the day on which the person ceased to hold any of those securities.

(2) Subparagraph (1) does not apply in respect of an entry in a register of members.

**18.** Sections 722 and 723 of the 1985 Act shall apply–

- (a) to any register, record or index required to be kept by any person in accordance with these Regulations as they apply to any register, record or index required by the Companies Acts to be kept by a company; and
- (b) to an Operator and its officers as they apply to a company and its officers.

**19.** Such sanctions as apply to a company and its officers in the event of a default in complying with section 352 of the 1985 Act shall apply to an Operator and his officers in the event of a default in complying with regulations 20(1)(b), 21(1) or 22(1) or (3), or paragraphs 4, 12 or 14 of this Schedule.

**20.** An officer of a participating issuer shall be in default in complying with, or in contravention of, regulations 20(1)(a) or 20(2), or paragraphs 2, 5, 6 or 7 of this Schedule if, and only if, he knowingly and wilfully authorises or permits the default or contravention.

**21.** An officer of an Operator shall be in default in complying with, or in contravention of, the provisions referred to in paragraph 19 of this Schedule, or section 722(2) of the 1985 Act if, and only if, he knowingly and wilfully authorises or permits the default or contravention.

#### SCHEDULE 4

Regulation 44

#### THE PARTICIPATING SECURITIES SPECIFIED IN REGULATION 44 AND SCHEDULE 1 PARAGRAPH 19

Floating Rate Treasury Stock 2001.

A strip, in relation to any stock or bond, within the meaning of section 47(1B) of the Finance Act 1942(a).

#### SCHEDULE 5

Regulation 48(4)

#### ADAPTATIONS IN RESPECT OF NORTHERN IRELAND

| <i>Column 1</i><br><i>References to the 1985 Act</i> | <i>Column 2</i><br><i>Provisions of</i><br><i>these Regulations</i>                       | <i>Column 3</i><br><i>Reference to the</i><br><i>1986 Order*</i> |
|--|---|--|
| Section 182  | Paragraph 2 of<br>Schedule 6  | Article 192  |
| Section 183  | Regulation 27(7)<br>Regulation 28(8)<br>Regulation 33(11)<br>Paragraph 3 of<br>Schedule 6 | Article 193  |
| Section 185  | Regulation 32(7)  | Article 195  |
| Section 186  | Regulation 38(3)  | Article 196  |
| Section 188  | Regulation 18   | Article 198  |

(a) 1942 c.21; section 47(1B) was inserted by the Finance Act 1996 (c.8), section 202(2).

|              |                               |              |
|--------------|-------------------------------|--------------|
| Section 190  | Paragraph 12 of<br>Schedule 3 | Article 199  |
| Section 191  | Paragraph 12 of<br>Schedule 3 | Article 200  |
|              | Paragraph 13 of<br>Schedule 3 |              |
| Section 192  | Regulation 39(2)              | Article 201  |
| Section 209  | Paragraph 4 of<br>Schedule 6  | Article 217  |
| Section 238  | Regulation 40(3)              | Article 246  |
| Section 352  | Paragraph 2 of<br>Schedule 3  | Article 360  |
|              | Paragraph 5 of<br>Schedule 3  |              |
|              | Paragraph 19 of<br>Schedule 3 |              |
| Section 352A | Paragraph 3 of<br>Schedule 3  | Article 360A |
| Section 353  | Paragraph 6 of<br>Schedule 3  | Article 361  |
| Section 354  | Paragraph 7 of<br>Schedule 3  | Article 362  |
| Section 355  | Paragraph 8 of<br>Schedule 3  | Article 363  |
| Section 356  | Paragraph 9 of<br>Schedule 3  | Article 364  |
|              | Paragraph 10 of<br>Schedule 3 |              |
| Section 357  | Paragraph 6 of<br>Schedule 3  | Article 365  |
| Section 358  | Regulation 26                 | Article 366  |
| Section 359  | Paragraph 11 of<br>Schedule 3 | Article 367  |
| Section 360  | Regulation 39(3)              | Article 368  |
| Section 361  | Regulation 24(4)              | Article 369  |
| Section 370  | Regulation 40(3)              | Article 378  |
| Section 376  | Regulation 16(7)              | Article 384  |
| Section 380  | Paragraph 5 of<br>Schedule 6  | Article 388  |
| Section 428  | Regulation 41(7)              | Article 421  |
| Section 429  | Regulation 41(1)              | Article 422  |
| Section 430  | Regulation 32(2)              | Article 423  |
|              | Regulation 41(1)              |              |
|              | Regulation 41(2)              |              |
|              | Regulation 41(5)              |              |
|              | Regulation 41(6)              |              |
| Section 430D | Regulation 41(6)              | Article 423D |
|              | Regulation 41(7)              |              |
| Section 722  | Paragraph 18 of<br>Schedule 3 | Article 671  |
|              | Paragraph 21 of<br>Schedule 3 |              |

|                                |                               |                                |
|--------------------------------|-------------------------------|--------------------------------|
| Section 723                    | Paragraph 18 of<br>Schedule 3 | Article 672                    |
| Section 735                    | Regulation 3(1)               | Article 3                      |
| Section 744                    | Regulation 3(1)               | Article 2                      |
| Paragraph 25 of<br>Schedule 13 | Paragraph 9 of<br>Schedule 3  | Paragraph 24 of<br>Schedule 13 |

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\* Article 198 was substituted by Article 65(6) of, and paragraph 6 of Schedule 4 to, the Companies (No.2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)). Article 217 was substituted by regulation 8 of the Disclosure of Interests in Shares (Amendment) Regulations (Northern Ireland) 1994 (S.R. 1994 No.2) and further amended by regulation 2 of the Disclosure of Interests (Amendment) Regulations (Northern Ireland) 1996 (S.R. 1996 No.246) and regulation 75 of, and paragraph 5 of Part I of Schedule 8 to, the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations (Northern Ireland) 1997 (S.R. 1997 No.251). Article 246 was inserted by article 9 of the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)). Article 360A was inserted by article 2(1)(b) of, and paragraph 4 of the Schedule to, the Companies (Single Member Private Companies) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 405). Articles 421, 422 and 423 were substituted by Article 26 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/204 (N.I. 18)). Article 423D was inserted by Article 26 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/204 (N.I. 18)). Paragraph 24 of Schedule 13 was amended by articles 77(10) and 113 of, and Schedule 6 to, the Companies (No.2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)).

## SCHEDULE 6

Regulation 49

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

#### PRIMARY LEGISLATION

##### *The National Debt Act 1870*

1. In section 3 of the National Debt Act 1870(a), for the definition of “Stockholder” there shall be substituted—

“Stockholder” means a person holding stock, being entered as proprietor thereof in—

- (a) a register kept by the Bank of England or Ireland under regulation 1 of the Government Stock Regulations 1965; or
- (b) a register kept by the Operator of a relevant system under the Uncertificated Securities Regulations 2001 (and “Operator” and “relevant system” shall have the same meanings as they have in those Regulations):”.

##### *The Companies Act 1985*

2. In subsection (1)(b) of section 182 of the 1985 Act after “simplified process” there shall be inserted “and to regulations made under section 207 of the Companies Act 1989 (which enable title to securities to be evidenced and transferred without a written instrument).”.

3. In section 183 of that Act—

- (a) in subsection (1), after “Stock Transfer Act 1982” there shall be inserted “or is in accordance with regulations made under section 207 of the Companies Act 1989.”; and
- (b) subsection (4) shall not apply in relation to the transfer of uncertificated units of a security by means of a relevant system.

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(a) 1870 c.71.

4. In section 209(9B)(b) of the 1985 Act, for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

5. In subsection (4) of section 380 of the 1985 Act, after paragraph (k) the following paragraphs shall be added—

A(l) a resolution of the directors passed by virtue of regulation 16(2) of the Uncertificated Securities Regulations 2001 (which allow title to a company’s shares to be evidenced and transferred without written instrument); and

(m) a resolution of a company passed by virtue of regulation 16(6) of the Uncertificated Securities Regulations 2001 (which prevents or reverses a resolution of the directors under regulation 16(2) of those Regulations).”.

#### *The Financial Services Act 1986*

6. In subsection (1) of section 180 of the 1986 Act, after paragraph (n) there shall be added the following paragraph—

A(nn) to an Operator approved under the Uncertificated Securities Regulations 2001 if the information is necessary to ensure the proper functioning of a relevant system within the meaning of those Regulations in relation to defaults and potential defaults by market-participants;”.

7. In the 1986 Act, in—

- (a) paragraph 16A(a) of Schedule 1;
- (b) Note (3) to that paragraph; and
- (c) subparagraph (5B)(a) of paragraph 18 of Schedule 1,

for “Uncertificated Securities Regulations 1995” in each place where it occurs there shall be substituted “Uncertificated Securities Regulations 2001”.

#### *The Banking Act 1987*

8. In the Banking Act 1987(a), in—

- (a) paragraph 11B in the first column of the Table in section 84(1);
- (b) section 84(11)(e),

for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

## PART 2

### SUBORDINATE LEGISLATION

#### *The Government Stock Regulations 1965*

9. In the 1965 Regulations—

- (a) in regulation 1(3), for ASubject (in the case of stock which is a participating security) to any provision made by or under the 1995 Regulations, “in there shall be substituted “In”;
- (b) in regulation 2(1), for ASubject to Regulation 5 of the Stock Transfer (Gilt-edged Securities)(CGO) Service) Regulations 1985 and (in the case of stock which is a participating security) any provision made by or under the 1995 Regulations, every” there shall be substituted “Every”;
- (c) in regulation 3B(2), for “the register” there shall be substituted—

A(a) a register kept under regulation 1(1) or (1A) hereof; or

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(a) 1987 c.22; relevant amending instrument is S.I. 1996/1669.

- (b) a register kept by the Operator of a relevant system under the 2001 Regulations;”;
- (d) in regulation 4(1), there shall be omitted the words “and Regulation 4B”;
- (e) in regulation 4, there shall be inserted as new paragraphs (and numbered accordingly) after the last paragraph–
  - A( ) Stock on a register kept by the Operator of a relevant system under the 2001 Regulations shall be transferable in no other manner than by means of that system in accordance with those Regulations.
  - ( ) A strip shall be transferable in no other manner than by means of a relevant system operated by an Operator in accordance with the 2001 Regulations.”;
- (f) in regulation 5, for ASubject (in the case of stock which is a participating security) to any provision made by or under the 1995 Regulations, the” there shall be substituted “The”;
- (g) in regulation 10, for ASubject (in the case of stock which is a participating security) to any provision made by or under the 1995 Regulations, the” there shall be substituted “The”;
- (h) in regulation 10, there shall be omitted the words from “or, in the case of an exempt transfer” to the end;
- (i) in regulation 14(6), 15(4) and 16(4)–
  - (i) there shall be omitted the words Ato Regulation 4B and”; and
  - (ii) for “the 1995 Regulations” there shall be substituted “the 2001 Regulations”;
- (j) in regulation 23(1), for ““the 1995 Regulations” means the Uncertificated Securities Regulations 1995 as amended from time to time;” there shall be substituted” “the 2001 Regulations” means the Uncertificated Securities Regulations 2001 as amended from time to time;”;
- (k) in regulation 23(1), the definitions of “the CGO Service”; “CGO Service member”; and “an exempt transfer” shall be omitted; and
- (l) in regulation 23(1A), for “the 1995 Regulations” there shall be substituted “the 2001 Regulations”.

*The Local Authority (Stocks and Bonds) Regulations 1974*

10. In the 1974 Regulations–

- (a) in regulation 1(3), for ““the 1995 Regulations” means the Uncertificated Securities Regulations 1995 as amended from time to time;” there shall be substituted ““the 2001 Regulations” means the Uncertificated Securities Regulations 2001 as amended from time to time;”;
- (b) in regulation 1(3), the definitions of “the CGO Service”; “CGO Service member”; Athe CGO Service Regulations”; and “exempt transfer” shall be omitted;
- (c) in regulation 6(1), for “Subject to regulation 6A below the” there shall be substituted “The”;
- (d) in regulation 7(1)(a), for “paragraph (5)” there shall be substituted “paragraph (1A)”;
- (e) in regulation 7, there shall be inserted as a new paragraph after paragraph (1)–
  - “(1A) Stocks or bonds on a register kept by the Operator of a relevant system under the 2001 Regulations shall be transferable in no other manner than by means of that system in accordance with those Regulations.”;
- (f) in regulation 7(3), there shall be omitted “and any record of a transfer effected through the medium of the CGO Service,” and “or, as the case may be, the exempt transfer”;
- (g) in regulation 13(2), for ASubject (in the case of stock or a bond which is a participating security) to any provision made by or under the 1995 Regulations, the” there shall be substituted “The”; and
- (h) in regulation 13(2), there shall be omitted the words from “or, in the case of an exempt transfer” to the end.

*The Exchange of Securities (General) Rules 1979*

11. In the Exchange of Securities (General) Rules 1979(a)–

- (a) in rule 3, the definitions of “the CGO Service”; “CGO Service member”; and “an exempt transfer” shall be omitted;
- (b) in rule 6, for paragraph (1A) there shall be substituted–
  - “(1A) Where the acceptance relates to a holding of uncertificated units of a security and at the time of acceptance that holding is transferable by means of a relevant system in accordance with the Uncertificated Securities Regulations 2001 as amended from time to time–
    - (a) paragraph 1(c) of this Rule shall not apply, and
    - (b) the acceptance may be made by such means of electronic communication, and subject to such conditions, as the Treasury may approve for that purpose.”; and
- (c) in rule 6, there shall be inserted as a new paragraph after paragraph (1A)–
  - “(1B) In paragraph (1A), the expressions “uncertificated units of a security” and “relevant system” shall have the same meanings as they have in the Uncertificated Securities Regulations 2001.”.

*The Companies (Registers and other Records) Regulations 1985*

12. In the Companies (Registers and other Records) Regulations 1985(b)–

- (a) in the definition of “register” in regulation 1(2), at the end there shall be inserted “and Regulation 19 of 2001 Regulations”;
- (b) in regulation 1(2), at the end, there shall be inserted–
  - “the 2001 Regulations” means the Uncertificated Securities Regulations 2001; and expressions defined in the 2001 Regulations shall have the same meaning in these Regulations;
- (c) in regulation 1(3), after “section 723(3) of the Act” there shall be inserted “or paragraph 18 of Schedule 3 to the 2001 Regulations”;
- (d) in regulation 2, at the end, there shall be inserted as new paragraphs–
  - “(5) This Regulation applies with respect to an issuer register of members and a record of uncertificated shares which is kept by a company by recording the matters in question otherwise than in legible form–
    - (a) as it applies to a register of members under the Act which is kept in like fashion; and
    - (b) as if references to the Act were references to the 2001 Regulations.
  - (6) This Regulation applies with respect to an index kept by virtue of paragraph 7 of Schedule 3 to the 2001 Regulations which is kept by a company by recording the matters in question otherwise than in legible form–
    - (a) as it applies to an index of a register of members under the Act which is kept in like fashion; and
    - (b) as if references to the Act were references to the 2001 Regulations.”
- (e) in regulation 3, at the end, there shall be inserted as a new paragraph–

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(a) S.I. 1979/1678; relevant amending instruments are S.I. 1985/1147; S.I. 1998/2505; S.I. 1999/1207 and S.I. 2000/1516.  
(b) S.I. 1985/724.

A(6) In the case of a company which is a participating issuer, references in this Regulation to the register of members shall be taken to be a reference to the company's issuer register of members and record of uncertificated shares.”;

(f) in regulation 6(1), after “the Act” there shall be inserted “or the 2001 Regulations”; and

(g) in regulation 6, after paragraph (2), there shall be inserted as a new paragraph–

A(2A) In the case of a company which is a participating issuer, paragraph (2) shall apply as if–

(a) references to the register of members were references to the company's issuer register of members and record of uncertificated shares; and

(b) the reference to the index of the register of members were a reference to an index kept by virtue of paragraph 7 of Schedule 3 to the 2001 Regulations.’.

#### *The Stamp Duty Reserve Tax Regulations 1986*

13. In the Stamp Duty Reserve Tax Regulations 1986(a), in the definition of “the Treasury Regulations in regulation 2, for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

#### *The Financial Markets and Insolvency Regulations 1996*

14. In the Financial Markets and Insolvency Regulations 1996(b)–

(a) in the definition of Aregister of securities in regulation 2(1), for “a register maintained by the issuer, whether by virtue of the 1995 Regulations or otherwise” there shall be substituted “a register, whether maintained by virtue of the Uncertificated Securities Regulations 2001 or otherwise”;

(b) in regulation 2(1), the definition of “the 1995 Regulations” shall be omitted;

(c) in the definition of “relevant nominee” in regulation 2(1), for “paragraph 19(d) of Schedule 1 to the 1995 Regulations” there shall be substituted “paragraph 25(f) of Schedule 1 to the Uncertificated Securities Regulations 2001”;

(d) in the definition of “transfer” in regulation 2(1), for “the generation of an Operator-instruction requiring a participating issuer to register a system-member on the relevant register of securities as the holder of those units;” there shall be substituted “the registration of a transfer of title to those units in the relevant Operator register of securities;”;

(e) in the full-out to regulation 2(1), for “the 1995 Regulations” there shall be substituted “the Uncertificated Securities Regulations 2001”;

(f) in regulation 2(2)(a), for “regulation 19 of the 1995 Regulations” there shall be substituted “regulation 20, 21 or 22 of the Uncertificated Securities Regulations 2001”; and

(g) in regulation 5(a)(ii), for “regulation 25(1)(a) or 25(2)(a) of the 1995 Regulations” there shall be substituted “regulation 31(2)(b) or 31(4)(b) of the Uncertificated Securities Regulations 2001”.

#### *The Stock Transfer (Addition and Substitution of Forms) Order 1996*

15. In the Stock Transfer (Addition and Substitution of Forms) Order 1996(c), in paragraph (2) of article 1, for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

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(a) S.I. 1986/1711; relevant amending instrument is S.I. 1997/2430.

(b) S.I. 1996/1469.

(c) S.I. 1996/1571.

*The Financial Services Act 1986 (Exemption) Order 1996*

16. In the Financial Services Act 1986 (Exemption) Order 1996(a), in paragraph (3) of article 1, for “Uncertificated Securities Regulations 1995” in both places where it occurs there shall be substituted “Uncertificated Securities Regulations 2001”.

*The Stamp Duty Reserve Tax (UK Depository Interests In Foreign Securities)  
Regulations 1999*

17. In the Stamp Duty Reserve Tax (UK Depository Interests in Foreign Securities) Regulations 1999(b), in the definition of “foreign securities” in regulation 2, for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

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(a) S.I. 1996/1587.  
(b) S.I. 1999/2383.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations make provision for the transfer without a written instrument, and the evidencing otherwise than by a certificate, of title to a unit of a security, in accordance with a computer-based system and procedures known as the "relevant system". The relevant system centres on a person known as the "Operator". The legal framework underlying the operation of the relevant system, together with the criteria which the Operator and the relevant system must meet, are enshrined in these Regulations.

2. Regulations 2 and 3 set out the purposes and definitions of the Regulations. A unit of a security which may be transferred by means of the relevant system is referred to as an "uncertificated" unit. A security, the units of which may become uncertificated, is referred to as a "participating security". An issuer who issues a participating security is, in relation to that security, referred to as a "participating issuer". Instructions sent by means of the relevant system are referred to as "dematerialised instructions".

3. Regulations 4 to 13 make provision for the approval of the Operator by the Treasury if it appears to them that he and any relevant system meet certain criteria specified in Schedule 1. The Regulations give the Treasury certain powers in relation to the Operator if he, or the relevant system, fails to meet the criteria, or if necessary for the performance of their functions under the Regulations. Provision is also made for the delegation by the Treasury of their functions under the Regulations to a designated agency. Schedule 2 provides for oversight by the Director General of Fair Trading of the rules and guidance of the Operator to ensure that they do not distort competition.

4. Regulations 14 to 19 set out the conditions on which issuers may allow securities issued by them to become participating securities and hence to be held in uncertificated form and transferred by means of the relevant system. Provision is made for a class of shares governed by articles of association which are in all respects consistent with the Regulations to become a participating security. Provision is also made for the directors of a company to pass a "directors' resolution" so that other classes of shares can become participating securities notwithstanding any contrary provisions in the articles of association, and for the members of the company to prevent or reverse a directors' resolution. Conditions are specified for securities other than shares to become participating securities. Transitional provision is made in respect of securities which were participating securities for the purposes of the Uncertificated Securities Regulations 1995. The 1995 Regulations are superseded by these Regulations.

5. Regulations 20 to 26 (together with Schedule 3) make provision for the keeping of "registers of securities" and "records of securities" in respect of participating securities. In particular, provision is made for the keeping by the Operator of registers recording persons holding uncertificated units of a participating security, and for the legal effect of entries on the registers which the Regulations require to be kept. Provision is also made in respect to the rectification or closing of such registers.

6. Regulations 27 to 30 make provision for the registration of transfers of title to units of a participating security. Provision is made for registration by the Operator of a transfer of title to an uncertificated unit of a security in certain circumstances (in particular, upon settlement of the transfer in accordance with the Operator's rules). Provision is also made for a participating issuer, subject to a number of exceptions, to register the transfer of title to a relevant unit of a security following an Operator-instruction to do so. Further provision is made to allow the Operator to register two or more transfers of uncertificated units of a security on a net basis, or simultaneously, in certain circumstances.

7. Regulation 31 applies in a case in which, as a consequence of a transfer of a unit of a participating security, that unit ceases to be held in uncertificated form, so that the transfer of title to the unit is therefore required to be registered on a register of securities kept by the participating

issuer. Provision is made for the transferee to acquire a property right in such units of a security before his name appears on the register of securities kept by the participating issuer. Other than in the case of Scottish securities, the transferee acquires an equitable interest in a number of units calculated in accordance with the regulation. In relation to Scottish securities, the transferor is deemed to hold on trust for the transferee a number of units which is calculated in the same way.

8. Regulations 32 to 34 make provision for the conversion of units of a participating security between certificated and uncertificated form, and for the issue of new units of a participating security in uncertificated form.

9. Regulation 35 makes provision to prevent persons sending certain dematerialised instructions, and to prevent persons on whose behalf they are sent, from denying particular matters relating to the instructions. It also makes provision for persons receiving such instructions to accept, with certain exceptions, that the information contained in them and matters relating to them are correct.

10. Regulation 36 provides that the Operator is liable, in certain circumstances, if as a result of the sending of certain dematerialised instructions, or the making of certain amendments to a register of securities kept by the Operator, a person suffers loss.

11. Regulations 37 and 38 amend certain references in enactments and rules of law, and disapply certain formalities and requirements.

12. Regulation 39 makes provision for trustees and personal representatives to use the relevant system and for debentures to be held in uncertificated form and transferred by means of the relevant system.

13. Regulation 40 makes provision for giving notices of meetings and for sending copies of certain documents.

14. Regulations 41 and 42 make provisions relating to take-overs of companies with shares held in uncertificated form.

15. Regulation 43 makes provision as to the determination of actual notice of a fact, matter or thing for the purposes of the Regulations.

16. Regulation 44 and Schedule 4 make provision as to securities which may only be held in uncertificated form.

17. Regulations 45 to 47 make provision as to liability for defaults and contraventions. Provision is made for participating issuers to be liable for breach of statutory duty for contravening certain regulations, and for the liability of officers of participating issuers and the Operator in respect of certain contraventions. Provision is also made for certain exemptions from liability.

18. Regulation 48 and Schedule 5 adapt the Regulations as they apply to Northern Ireland.

19. Regulation 49 gives effect to Schedule 6 which makes minor and consequential amendments to certain enactments.

20. Regulation 50 revokes certain enactments, including the Uncertificated Securities Regulations 1995.