
STATUTORY INSTRUMENTS

1995 No. 3272

COMPANIES

The Uncertificated Securities Regulations 1995

Made - - - - 18th December 1995

Coming into force - - 19th December 1995

The Treasury in exercise of the powers conferred on them by the Transfer of Functions (Financial Services) Order 1992(1) and by section 207 of the Companies Act 1989(2) and of all other powers enabling them in that behalf, hereby make the following Regulations of which a draft has been laid before Parliament in accordance with section 207(9) of the Companies Act 1989 and approved by resolution of each House of Parliament:

PART I

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and Commencement

1. These Regulations may be cited as the Uncertificated Securities Regulations 1995 and shall come into force the day after the day on which they are made.

Purposes and basic definitions

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.

(3) Part II of these Regulations has effect for the purpose of securing—

- (a) that the Operator of a relevant system is a person approved for the purpose by the Treasury; and

- (b) that a person is only approved if it appears to the Treasury that certain requirements are satisfied with respect to that person, the relevant system and his rules and practices.
- (4) Part III of these Regulations has effect for the purpose—
 - (a) of enabling companies and other persons to become participating issuers in relation to a relevant system, that is to say, persons who permit—
 - (i) the holding of units of securities issued by them in uncertificated form; and
 - (ii) the transfer by means of the system of title to units of such of the securities issued by them as are held in that form; and
 - (b) of establishing the duties and obligations of participating issuers in relation to uncertificated units of a security with respect to the keeping of registers, the registration of transfers and other matters.
- (5) Part IV of these Regulations has effect for the purpose of securing—
 - (a) in certain circumstances—
 - (i) that the persons expressed to have sent instructions by means of a relevant system which are properly authenticated, and the persons on whose behalf those instructions are expressed to have been sent, are prevented from denying to the persons to whom those instructions are addressed that certain information relating to them is correct; and
 - (ii) that the persons to whom the instructions referred to in subparagraph (a)(i) are addressed may accept that certain information relating to them is correct; and
 - (b) in certain circumstances that persons suffering loss are compensated by the person approved under Part II of these Regulations.

Interpretation

3.—(1) In these Regulations—

“the 1985 Act” means the Companies Act 1985(3);

“the 1986 Act” means the Financial Services Act 1986(4);

“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(5);

“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;

(3) 1985 c. 6
(4) 1986 c. 60
(5) 1978 c. 30

“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 depository;
- “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;

“officer”, in relation to a participating issuer, includes—

- (a) where the participating issuer is a company, such persons as are mentioned in section 744 of the 1985 Act;
- (b) where 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 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-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(6);

“participating issuer” means 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;

“register of members” means a register of members maintained by a company under section 352 of the 1985 Act;

“register of securities”—

- (a) in relation to shares, means a register of members; and
- (b) in relation to units of a security other than shares, means a register maintained by the issuer, whether by virtue of these Regulations or otherwise, of persons holding the units;

“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 depository

receipt within the meaning of paragraph 4 of Schedule 2 to the Criminal Justice Act 1993(7), and other securities of any description, and interests in a security;

“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;

“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;

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

“unit of 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(b) of Schedule 1 to these Regulations; and
- (b) 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(c) of Schedule 1 to these Regulations; and a dematerialised instruction may be attributable to more than one person.

(3) In these Regulations, except where otherwise indicated—

- (a) a reference to a numbered regulation or Schedule is a reference to the regulation of or the Schedule to these Regulations so numbered;
- (b) a reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation so numbered;
- (c) a reference in a Schedule to a numbered paragraph is a reference to the paragraph of that Schedule so numbered; and
- (d) a reference in a paragraph to a numbered subparagraph is a reference to the subparagraph of that paragraph so numbered.

PART II

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 a 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.

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, 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, 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 it 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);

- (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.

Miscellaneous

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 of 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 are likely to have, to any significant extent the effect of restricting, 9 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 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 the 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 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(8).

Prevention of restrictive practices

13. Schedule 2 (which reproduces, with necessary modifications, the provisions of sections 119, 120 and 122 to 126 and 128 of the 1986 Act) shall have effect.

PART III

PARTICIPATING ISSUERS

Participation by issuers

Participation in respect of shares

14.—(1) Where an Operator permits a class of shares 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 a participating security, title to shares of that class which are recorded on a register of members as being held in uncertificated form may be transferred by means of the relevant system to which the permission relates.

(2) In paragraph (1) the reference to a register of members shall not include an overseas branch register.

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.

Interpretation of regulations 15 and 16

17. For the purposes of regulations 15 and 16 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

18.—(1) Subject to paragraph (2), where an Operator permits a security other than a share to be a participating security, title to units of that security which are recorded in a register of securities as being held in uncertificated form may be transferred by means of a relevant system.

(2) In relation to any security (other than a share), if the law under which it is constituted is not a 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) 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) In this regulation 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

Entries on registers

19.—(1) A participating issuer which is a company shall enter on its register of members, in respect of any class of shares which is a participating security, how many shares each member holds in uncertificated form and certificated form respectively.

(2) Without prejudice to sections 190 and 191 of the 1985 Act, a participating issuer who, apart from this regulation, is required by or under an enactment or instrument to maintain in the United Kingdom a register of persons holding securities (other than shares) issued by him, shall enter on that register in respect of any class of security which is a participating security—

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

(3) A participating issuer who, apart from this regulation, 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, shall maintain in the United Kingdom 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 person holds in that form.

(4) 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 a participating issuer and his officers in the event of a default in complying with paragraph (1), (2) or (3).

(5) Without prejudice to any lesser period of limitation and to any rule as to the prescription of rights, liability incurred by a participating issuer arising—

- (a) from the making or deletion of an entry in a register of securities pursuant to paragraph (1), (2) or (3); 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.

(6) For the purposes of paragraph (1)—

- (a) notwithstanding section 362 of, or paragraph 2(1) of Schedule 14 to, the 1985 Act, the reference to a company's register of members shall not be taken to include an overseas branch register;
- (b) those members who hold shares in uncertificated form may not be entered as holders of those shares on an overseas branch register; and
- (c) 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.

(7) No notice of any trust, expressed, implied or constructive, shall be entered on a register of securities which is maintained by virtue of paragraph (3) in relation to uncertificated units of a security, or be receivable by the registrar of such a register.

(8) Paragraph (7) shall not apply to a participating issuer constituted under the law of Scotland.

Effect of entries on registers

20.—(1) Subject to regulation 23(7), an entry on such a register as is mentioned in regulation 19(1) or (2) 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 register related to units of that security held in certificated form.

(2) Subject to regulation 23(7), an entry on a register maintained by virtue of regulation 19(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 and changes to registers of securities

21.—(1) A participating issuer shall not rectify a register of securities in relation to uncertificated units of a security held by a system-member except—

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

(2) A participating issuer who rectifies or otherwise changes an entry on a register of securities in relation to uncertificated units of a security (except in response to an Operator-instruction) shall immediately—

- (a) notify the Operator; and
- (b) inform the system-members concerned,

of the change to the entry.

Closing registers

22. 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 of transfers of securities

23.—(1) A participating issuer shall register a transfer of title to uncertificated units of a security on a register of securities in accordance with an Operator-instruction unless—

- (a) the transfer is prohibited—
 - (i) by order of a court in the United Kingdom; or

- (ii) by or under an enactment; or
 - (b) he has actual notice that the transfer is—
 - (i) avoided by or under an enactment; or
 - (ii) a transfer to a deceased person; or
 - (iii) where the participating issuer is constituted under the law of Scotland, prohibited by or under an enactment; or
 - (c) the circumstances described in paragraph (2) apply; or
 - (d) he is entitled by virtue of paragraph (3) to refuse to register the transfer.
- (2) The circumstances referred to in paragraph (1)(c) are that the transfer is one of two or more transfers in respect of which the Operator has notified the participating issuer in accordance with regulation 24(1), and that to those transfers regulation 24(2) does not apply by virtue of regulation 24(3).
- (3) A participating issuer may refuse to register a transfer of title to uncertificated 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 29(5)(a)(i) to (iii).
- (4) 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.
- (5) A participating issuer shall not register a transfer of title to uncertificated units of a security on a register of securities unless he is required to do so by an Operator-instruction, an order of a court in the United Kingdom, by regulation 35(2), or by or under an enactment.
- (6) Paragraph (5) shall not be taken to prevent a participating issuer from entering a person on a register of securities to whom title to uncertificated units of a security has been transmitted by operation of law.
- (7) Any purported registration of a transfer of title to an uncertificated unit of a security other than in accordance with this regulation shall be of no effect.
- (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 paragraph (1), 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 of linked transfers

24.—(1) Where an Operator sends two or more Operator-instructions requiring a participating issuer 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 identified in any one of the Operator-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 15(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 Operator-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 15(1)(c) of Schedule 1 being satisfied,

the Operator may notify the participating issuer that the transfers are linked transfers.

(2) Except in the circumstances described in paragraph (3), notwithstanding that there may be fewer uncertificated units of the security registered in the name of a person identified in any one of the Operator-instructions as a transferor than the number of uncertificated units to be transferred from him, where an Operator notifies a participating issuer that transfers are linked transfers, the participating issuer may either—

- (a) register the combined effect of all the transfers taken together; or
 - (b) register all the transfers simultaneously.
- (3) Paragraph (2) does not apply 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), would not result in each of the persons identified in the Operator-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 circumstances specified in regulation 23(1)(a) or (b), or is to be refused registration by virtue of regulation 23(3).

Position of a transferee prior to entry on a register

25.—(1) At the time an Operator-instruction is generated which will require a participating issuer to register on a register of securities a transfer of title to any uncertificated units of a security constituted under the law of England and Wales or Northern Ireland—

- (a) the transferee shall acquire an equitable interest in the requisite number of uncertificated units of the security of the kind specified in the Operator-instruction in which the transferor has an equitable interest by virtue of this regulation, or in relation to which the transferor is recorded on the relevant register of securities as having title; and
- (b) the equitable interest shall subsist until the time specified in paragraph (4).

(2) At the time an Operator-instruction is generated which will require a participating issuer to register on a register of securities a transfer of title to any uncertificated units of a security constituted under the law of Scotland—

- (a) the transferor shall as from that time be deemed to hold the requisite number of uncertificated units of the security in which he has an interest by virtue of this regulation, or in relation to which he is recorded on the relevant register of securities as having title, on trust for the benefit of the transferee; and
- (b) the trust shall subsist until the time specified in paragraph (4).

(3) For the purposes of paragraphs (1)(a) and (2)(a), it shall not be denied that the transferee has obtained the equitable interest referred to in paragraph (1)(a), or that the transferor holds the interest referred to in paragraph (2)(a) on trust for the benefit of the transferee, solely by reason of the fact that the transferor acquired his equitable interest by virtue of paragraph (1)(a) at the same time as the transferee's equitable interest arises in that interest, or that the transferor acquired his interest by virtue of paragraph (2)(a) at the same time that he is deemed to hold that interest on trust for the transferee.

(4) Subject to any enactment or rule of law, an interest acquired under paragraph (1) or (2)—

- (a) in a case other than one in which under regulation 24(2)(a) a participating issuer registers the combined effect of linked transfers, shall subsist until the time that the transferee is entered on the register of securities in respect of the transfer of units to him; and
- (b) in a case in which under regulation 24(2)(a) a participating issuer registers the combined effect of linked transfers, shall subsist until the time that the combined effect of all the linked transfers is registered.

(5) The requisite number for the purposes of this regulation is whichever of the following is the lower at the time that the Operator-instruction is sent, namely—

- (a) the number of units which are specified in the Operator-instruction; and
- (b) the total of the number of uncertificated units in relation to which the transferor is recorded on the register of securities as having title and the number in which he has an interest by virtue of paragraph (1) or (2), less that number of units in which such interests subsist in favour of a third party by virtue of an earlier Operator-instruction requiring a participating issuer to register on a register of securities a transfer of title to those units.

(6) This regulation has effect notwithstanding that the units to which the Operator-instruction relates, or in which an interest arises by virtue of paragraph (1) or (2), 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 (2) 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 (6) and (7), this regulation shall not be construed as conferring a proprietary interest (whether of the kind referred to in paragraphs (1) or (2), 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 identified in the Operator-instruction as the transferee; and
- (b) “the transferor” means the person identified in the Operator-instruction as the transferor.

Conversions and new issues

Conversion of securities into certificated form

26.—(1) A participating issuer shall not change a unit of a participating security from uncertificated to certificated form except —

- (a) where permitted by the rules made and practices instituted by an Operator in order to comply with paragraphs 13, 19(b) or (c) of Schedule 1; or
 - (b) following receipt of an Operator-instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name of a system-member; or
 - (c) subject to regulation 23, following receipt of an Operator-instruction requiring the registration of a transfer of title to uncertificated units of a security to a person who is not a system-member; or
 - (d) on the registration, in accordance with regulation 35(2), of an offeror who is not a system-member as holder of the units of the security referred to in that regulation.
- (2) In the circumstances specified in paragraph (1)(b) to (d) a participating issuer shall—
- (a) record on the register of securities that the units of the security are held in certificated form; 16
 - (b) where a certificate can be issued for the security, issue a certificate in respect of the units of the security to the relevant person; and
 - (c) notify the Operator that the units are no longer held in uncertificated form.
- (3) Subsection (1)(b) of section 185 of the 1985 Act shall apply in the circumstances specified in paragraph (1)(b) to (d) in relation to the issue of a certificate by a participating issuer pursuant to paragraph (2)(b) 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 Operator-instruction or, where relevant, the date on which the participating issuer registered the offeror as holding the units of the security referred to in regulation 35(2).
- (4) 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 (2) in accordance with the requirements laid down in paragraph (3).

Conversion of securities into uncertificated form

- 27.—(1) A participating issuer shall not change a unit of a participating security from certificated form to uncertificated form except in the circumstances specified in paragraph (2).
- (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 in the form required by the rules made and practices instituted by an Operator in order to comply with paragraph 13 of Schedule 1 to register the system-member as holding the unit in uncertificated form; and
 - (ii) subject to paragraph (4), the certificate relating to the certificated unit which is to be converted into uncertificated form;
 - (b) where the unit of the participating security is to be registered on a register of securities in the name of a system-member following a transfer of the unit to him from a person other than the nominee of a recognised investment exchange, 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 the certificated unit which is to be transferred and converted into uncertificated form; and
 - (iii) may accept by virtue of the rules made and practices instituted by an Operator in order to comply with paragraph 13 of Schedule 1 that the system-member to whom the unit is to be transferred wishes to hold it in uncertificated form; and
- (c) where the unit of the participating security is to be registered on a register of securities in the name of a system-member following a transfer of the unit to him from a nominee of a recognised investment exchange, that the participating issuer—
- (i) has received a proper instrument of transfer in favour of the system-member from the nominee relating to the unit to be transferred; and
 - (ii) may accept by virtue of the rules made and practices instituted by an Operator in order to comply with paragraph 13 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.
- (5) In the circumstances specified in paragraph (2)(a), on receipt of the request referred to in paragraph (2)(a)(i) and (except where paragraph (4) applies) the certificate referred to in paragraph (2)(a)(ii), the participating issuer shall, within two months—
- (a) enter on the register of securities that the system-member holds the unit in uncertificated form; and
 - (b) send the Operator an issuer-instruction informing him of the entry on the relevant register of securities.
- (6) In the circumstances specified in paragraph (2)(b), on receipt of the instrument of transfer referred to in paragraph (2)(b)(i) (except where paragraph (3) applies) and the certificate referred to in paragraph (2)(b)(ii) (except where paragraph (4) applies), the participating issuer shall—
- (a) upon recording that the system-member holds the unit, enter on the register of securities that he holds the unit in uncertificated form; and
 - (b) within 2 months thereafter, send the Operator an issuer-instruction informing him of the entry on the register of securities.
- (7) In the circumstances specified in paragraph (2)(c), on receipt of the instrument of transfer referred to in paragraph (2)(c)(i), the participating issuer shall—
- (a) upon recording that the system-member holds the unit, enter on the register of securities that he holds the unit in uncertificated form; and
 - (b) within 2 months thereafter, send the Operator an issuer-instruction informing him of the entry on the register of securities.
- (8) Such sanctions as apply to a company in the event of a default by it in complying with subsection (5) of section 183 of the 1985 Act shall apply to a participating issuer in the event of a default by him in complying with paragraph (5), (6) or (7).
- (9) In this regulation “recognised investment exchange” has the same meaning as in the 1986 Act.

New issues in uncertificated form

28.—(1) A participating issuer may issue units of a participating security in uncertificated form to a person if, and only if, that person is a system-member.

(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) On the issue in uncertificated form of new units of a participating security, the participating issuer shall by issuer-instruction notify the Operator of the persons to whom the uncertificated units of a security have been issued and of the number of such units issued to each of those persons.

PART IV

DEMATERIALIZED INSTRUCTIONS ETC.

Properly authenticated dematerialised instructions

29.—(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—

(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—
- (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) the instruction was an Operator-instruction requiring the registration of title in the circumstances specified in regulation 23(1)(a), (b) or (c); 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 12 of Schedule 1.
- (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 his processing of the instruction.
- (7) Subject to paragraph (8), a person who is permitted by this regulation to accept any 19 matter shall not be liable in relied on the matter that he damages or otherwise to any person by reason of his having was permitted to accept.
- (8) The provisions of paragraph (7) do not affect—
- (a) any liability of the Operator to pay compensation under regulation 30; or
 - (b) any liability of a participating issuer under regulation 37 arising by reason of a default in complying with, or contravention of, regulation 23(5).
- (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(d) of Schedule 1.

Liability for forged dematerialised instructions and induced Operator-instructions

30.—(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 to send an Operator-instruction to a participating issuer; and
- (c) 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 either a forged dematerialised instruction (not being one which results in an induced Operator-instruction) 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 Operator-instruction) or the causative act or forged dematerialised instruction resulting in 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 20 37 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 23(5).

(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 Operator-instruction); and
- (b) 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 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 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; or
- (b) 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 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. 21

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

Construction of references to transfers etc.

31. 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 an Operator-instruction to a participating issuer to register a transfer of title on the relevant register of securities in accordance with the Operator-instruction.

Certain formalities and requirements not to apply

32.—(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 an Operator-instruction from requiring a participating issuer to register a transfer of title to uncertificated units of a security.

(2) Subject to regulation 26(2), 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 section 186 of the 1985 Act shall not apply to any document issued with respect to uncertificated shares.

(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 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(9) (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, or in which the relevant nominee has an interest by virtue of regulation 25(1) or (2).

(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 19(d) of Schedule 1 to these Regulations.

Trusts, trustees and personal representatives etc.

33.—(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 the 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) 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

34.—(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 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, a participating issuer may determine that persons entitled to receive such notices '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 are sent.

Notices to minority shareholders

35.—(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, a company which is a participating issuer shall be under the same obligation to enter the offeror on its register of securities as the holder of the uncertificated units of the security to which the notice relates, in place of the system-member who was immediately prior to such entry registered as the holder of such units, as it would be if it had received an Operator-instruction requiring it to amend its register of securities in such manner; and regulation 23(9) shall have effect accordingly.

(3) A company which amends its register of securities in accordance with paragraph (2) shall forthwith notify the Operator by issuer-instruction of the amendment.

(4) 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 (2).

(5) 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. 23

Irrevocable powers of attorney

36.—(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⁽¹⁰⁾ 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.

(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.

Defaults and contraventions

Breaches of statutory duty

37.—(1) A default in complying with, or a contravention of, regulation 16(8), 18(2), 21(1) or (2), 22,23(4) or (S), 26(1), 26(2)(a) or(c), 27(1), 28(3) or 35(3) 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.

(10) 1971 c. 27

(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

38. In regulation 16(7), 19(4), 23(9), 26(4) or 27(8) 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.

Northern Ireland

Application to Northern Ireland

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

(2) In regulation 32(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⁽¹¹⁾; 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⁽¹²⁾.

(3) In regulation 36(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⁽¹³⁾.

(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 3 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

40.—(1) 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).”.

(2) 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.

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

“(1) a resolution of the directors passed by virtue of regulation 16(2) of the Uncertificated Securities Regulations 1995 (which allow title to a company’s shares to be evidenced and transferred without written instrument); and

⁽¹¹⁾ 1695 c.12(Ir)

⁽¹²⁾ 1978 c. 23

⁽¹³⁾ 1971 c. 33 (N.I.)

(m) a resolution of a company passed by virtue of regulation 16(6) of the Uncertificated Securities Regulations 1995 (which prevents or reverses a resolution of the directors under regulation 16(2) of those Regulations).”.

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

“(m) to an Operator approved under the Uncertificated Securities Regulations 1995 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;”.

Revocations

41. The Uncertificated Securities Regulations 1992(**14**) are hereby revoked.

Simon Burns
Derek Conway
Two of the Lords Commissioners of Her
Majesty’s Treasury.

18th December 1995

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SCHEDULE 1

Regulation 5(3)

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. 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.

System security

5. 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 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 each dematerialised instruction, in accordance with the specifications of the Operator, expresses by whom it has been sent and, where relevant, on whose behalf it has been sent;
- (d) that each dematerialised instruction, in accordance with the specifications of the Operator, 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
- (e) 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.

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-instruction to a participating issuer to register a transfer of uncertificated units of a security is generated, a relevant system must—

- (a) be able to establish that the transferor is likely to have title to or, by virtue of regulation 25(1) or (2), an interest in, such number of units of the security as is in aggregate at least equal to the number to be transferred; or
- (b) be able to notify the participating issuer in accordance with regulation 24(1) that the transfer is one of two or more transfers which may be registered in accordance with regulation 24(2).

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

9. 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) or 8; and
- (b) to make correcting entries in such records as are maintained in order to comply with paragraph 7(a) which are inaccurate.

10. 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.

11. A relevant system must ensure that the Operator-system is able to generate Operator-instructions—

- (a) requiring participating issuers to amend the appropriate registers of securities kept by them; and
- (b) informing settlement banks of their payment obligations.

12. 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 securities to be transferred in any one day; and
- (b) prevent the transfer of units in excess of that limit.

13. A relevant system must enable system-members—

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- (a) to change the form in which they hold or are to 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.

Operating procedures

14. 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.

15.—(1) Subject to subparagraph (2), a relevant system must comprise procedures which provide that 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, is generated only 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 is likely to have title to, or is likely to have by virtue of regulation 25(1) or (2) an interest in, 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 notified to the participating issuer in accordance with regulation 24(1);
- (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 12(a)(ii) the transferor has set on an authority given by him to a sponsoring system-participant.

(2) A relevant system must comprise procedures which provide that 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.

16.—(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.

17. A relevant system must comprise procedures which ensure that, where the relevant system maintains records in order to comply with paragraph 15(1)(b)(i), the records are regularly reconciled with the registers of securities maintained by participating issuers.

- 18.** 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

- 19.** 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 an Operator-instruction cannot be effected;
 - (b) 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 uncertificated units of the relevant security held by system-members;
 - (c) 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; and
 - (d) 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.
- 20.** 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.
- 21.** 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. 28

SCHEDULE 2

Regulation 13

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 Council Directive [89/646/EEC](#)(15).

(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 Council Directive [89/646/EEC](#).

(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.

(15) The Second Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, and amending the First Council Directive (0.J No. L386, 30.12.89, p.1).

(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,

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).

(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

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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 30 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(16) (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 Monopolies and Mergers Commission find that a monopoly situation within the meaning of that Act exists and—

(16) 1973 c. 41

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- (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 Restrictive Trade Practices Act 1976

6.—(1) The Restrictive Trade Practices Act 1976(17) shall not apply to any agreement for the constitution of an Operator, including any term deemed to be contained in it by virtue of section 8(2) or 16(3) of that Act.

(2) The said Act of 1976 shall 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,

by reason of any term the inclusion of which in the agreement is required or contemplated by the rules or guidance of the Operator.

(3) Where approval is withdrawn from an Operator the foregoing provisions shall have effect as if the Operator had continued to have approval until the end of the period of six months beginning with the day on which the withdrawal takes effect.

(4) Where an agreement ceases by virtue of this paragraph to be subject to registration—

- (a) the Director shall remove from the register maintained by him under the said Act of 1976 any particulars which are entered or filed in that register in respect of the agreement; and
- (b) any proceedings in respect of the agreement which are pending before the Restrictive Practices Court shall be discontinued.

(5) Where an agreement which has been exempt from registration by virtue of this paragraph ceases to be exempt in consequence of a withdrawal of approval from an Operator, the time within which particulars of the agreement are to be furnished in accordance with section 24 of, and Schedule 2 to, the said Act of 1976 shall be the period of one month beginning with the day on which the agreement ceased to be exempt from registration.

(6) Where in the case of an agreement registered under the said Act of 1976 a term ceases to fall within subparagraph (2) in consequence of the withdrawal of approval from an Operator and particulars of that term have not previously been furnished to the Director under section 24 of that Act, those particulars shall be furnished to him within the period of one month beginning with the day on which the term ceased to fall within that subparagraph.

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Exemptions from Competition Act 1980

7.—(1) No course of conduct constituting any such practice as is mentioned in paragraph 1(2) shall constitute an anti-competitive practice for the purpose of the Competition Act 1980(18).

(2) Where approval is withdrawn from an Operator, there shall not be treated as an anti-competitive practice for the purposes of that Act any such course of conduct as is mentioned in subparagraph (1) which occurred while the approval was effective.

Supplementary provisions

8.—(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.

(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 39(4)

ADAPTATIONS IN RESPECT OF NORTHERN IRELAND

| Column 1 Reference to the 1985 Act | Column 2 Provisions of these Regulations | Column 3 Reference to the 1986 Order(19) |
|---------------------------------------|--|--|
| Section 182 | Regulation 40(1) | Article 192 |
| Section 183 | Regulation 23(8) | Article 193 |

(18) 1980 c. 21

(19) 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)). 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)).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

| Column 1 Reference to the 1985 Act | Column 2 Provisions of these Regulations | Column 3 Reference to the 1986 Order ⁽¹⁹⁾ |
|---------------------------------------|--|--|
| | Regulation 27(8) | |
| | Regulation 40(2) | |
| Section 185 | Regulation 26(3) | Article 195 |
| Section 186 | Regulation 32(3) | Article 196 |
| Section 188 | Regulation 17 | Article 198 |
| | Regulation 19(6) | |
| Section 190 | Regulation 19(2) | Article 199 |
| Section 191 | Regulation 19(2) | Article 200 |
| Section 192 | Regulation 33(2) | Article 201 |
| Section 352 | Regulation 3(1) | Article 360 |
| | Regulation 19(4) | |
| Section 358 | Regulation 22 | Article 366 |
| Section 362 | Regulation 19(6) | Article 370 |
| Section 370 | Regulation 34(3) | Article 378 |
| Section 376 | Regulation 16(7) | Article 384 |
| Section 380 | Regulation 40(3) | Article 388 |
| Section 428 | Regulation 35(5) | Article 421 |
| Section 429 | Regulation 35(1) | Article 422 |
| Section 430 | Regulation 35(1) | Article 423 |
| | Regulation 35(2) | |
| | Regulation 35(4) | |
| Section 430D | Regulation 35(4) | Article 423D |
| | Regulation 35(5) | |
| Section 735 | Regulation 3(1) | Article 3 |
| Section 744 | Regulation 3(1) | Article 2 |
| Paragraph (2) of Schedule 14 | Regulation 19(6) | Paragraph (2) of Schedule 14 |

⁽¹⁹⁾ 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)). 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)).

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 17 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.

5. Regulations 18 to 22 make provision for the keeping by participating issuers of “registers of securities” recording persons holding in uncertificated form units of a security issued by them, and for the title that such entries confer. Provision is also made for the notification to the Operator of changes to entries on registers of securities and also for the Operator to give his consent to the rectification or closing of such registers.

6. Regulations 23 and 24 make provision for a participating issuer, subject to a number of exceptions, to register the transfer of title to an uncertificated unit of a security following an Operator-instruction to do so. Provision is also made to allow participating issuers to register two or more transfers on a net basis, or simultaneously, in certain circumstances.

7. Regulation 25 makes provision for a transferee to acquire a property right in uncertificated units transferred by means of the relevant system before his name appears on the register of securities. 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 26 to 28 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 29 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. 34 1

10. Regulation 30 provides that the Operator is liable, in certain circumstances, if as a result of the sending of certain dematerialised instructions a person suffers loss.

11. Regulations 31 and 32 amend certain references in enactments and rules of law, and disapply certain formalities and requirements.

12. Regulation 33 makes provision for trustees to use the relevant system and for debentures to be held in uncertificated form and transferred by means of the relevant system.

13. Regulation 34 makes provision for giving notices of meetings.

14. Regulations 35 and 36 make provisions relating to take-overs of companies with shares held in uncertificated form.

15. Regulations 37 and 38 provide for the liability of participating issuers and their officers for contravening certain regulations.

16. Regulation 39 and Schedule 3 adapt the Regulations as they apply to Northern Ireland.

17. Regulation 40 makes certain minor and consequential amendments to the Companies Act 1985 and the Financial Services Act 1986.

18. Regulation 41 revokes the Uncertificated Securities Regulations 1992.