

## SCHEDULE 1

Regulation 5(1)

### REQUIREMENTS FOR APPROVAL OF A PERSON AS OPERATOR

#### *Arrangements and resources*

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

#### *Financial resources*

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

#### *Promotion and maintenance of standards*

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

#### *Operation of the relevant system*

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

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

(2) Where a part of the relevant system which is not the Operator-system comprises procedures which enable dematerialised instructions to be authenticated in accordance with paragraph 5(3)(b), the Operator shall have arrangements to ensure that he is provided with such information and such assistance as he may require in order to keep under review his agreement to the specifications by which those dematerialised instructions may be authenticated.

#### *System security*

5.—(1) A relevant system must be so constructed and operate in such a way that it satisfies the requirements of subparagraphs (2) to (6).

(2) The relevant system must minimise the possibility of unauthorised access to, or modification of, any program or data held in any computer forming part of the Operator-system.

(3) Each dematerialised instruction must be authenticated—

- (a) in accordance with the specifications of the Operator, and those specifications shall provide that each dematerialised instruction—
  - (i) is identifiable as being from the computers of the Operator or of a particular system-participant; and

- (ii) is designed to minimise fraud and forgery; or
- (b) if it is sent to the Operator by, or by the Operator to, a depository, a clearing house or an exchange, in accordance with specifications of that depository, clearing house or exchange to which the Operator has agreed and which provide that each dematerialised instruction—
  - (i) is identifiable as being from the computers of the Operator or of the depository, clearing house or exchange which sent it; and
  - (ii) is designed to minimise fraud and forgery.
- (4) Each dematerialised instruction must, in accordance with any relevant rules of the Operator and with the specifications of the Operator or the specifications referred to in subparagraph (3)(b) (as the case may be), express by whom it has been sent and, where relevant, on whose behalf it has been sent.
- (5) Each dematerialised instruction must, in accordance with any relevant rules of the Operator and with the specifications of the Operator or the specifications referred to in subparagraph (3)(b) (as the case may be), indicate—
  - (a) where it is sent to a system-participant or the Operator, that it is addressed to that system-participant or the Operator;
  - (b) 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
  - (c) 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
- (6) The relevant system must minimise the possibility for a system-participant to send a dematerialised instruction on behalf of a person from whom he has no authority.
- (7) For the purposes of this paragraph—
  - “clearing house” means a body or association—
    - (a) which is a recognised clearing house within section 285(1)(b) of the 2000 Act;
    - (b) which is authorised under that Act to provide clearing services in the United Kingdom; or
    - (c) which provides services outside the United Kingdom which are similar in nature to those provided by any such body or association, and which is regulated or supervised in the provision of those services by a regulatory body or agency of government;
  - “depository” means a body or association carrying on business outside the United Kingdom with whom an Operator has made arrangements—
    - (a) to enable system-members to hold (whether directly or indirectly) and transfer title to securities (other than participating securities) by means of facilities provided by that body or association; or
    - (b) to enable that body or association to permit persons to whom it provides services in the course of its business to hold (whether directly or indirectly) and transfer title to participating securities by means of the Operator’s relevant system; and
  - “exchange” means a body or association—
    - (a) which is a recognised investment exchange within section 285(1)(a) of the 2000 Act;
    - (b) which is authorised under that Act to provide a facility for the matching and execution of transactions in securities in the United Kingdom; or

- (c) which provides services outside the United Kingdom which are similar in nature to those provided by any such body or association, and which is regulated or supervised in the provision of those services by a regulatory body or agency of government.

#### *System capabilities*

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

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

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

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

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

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

**11.** A relevant system must—

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

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

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

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

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

**15.** A relevant system must—

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

(b) prevent the transfer of units in excess of that limit.

**16.** For the purposes of paragraph 15(a)(ii), once authority is granted pursuant to a system charge (within the meaning of regulation 3 of the Financial Markets and Insolvency Regulations 1996<sup>(1)</sup>) a limit of such authority shall not be imposed or changed without the consent of the donee of that authority.

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

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

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

**19.** Paragraph 18 shall not apply to any wholly dematerialised security.

#### *Operating procedures*

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

**21.—(1)** Subject to subparagraphs (2) to (5), a relevant system must comprise procedures which provide that an Operator only registers a transfer of title to uncertificated units of a security or generates an Operator-instruction requiring a participating issuer to register such a transfer, and only generates an Operator-instruction informing a settlement bank of its payment obligations in respect of such a transfer, if—

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

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

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

- (a) the Operator may amend an Operator register of securities; and

---

(1) [S.I. 1996/1469](#).

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

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

- (4) A relevant system must comprise procedures which provide that—
  - (a) the Operator may amend an Operator register of securities; and
  - (b) an Operator-instruction requiring a participating issuer to register a transfer of units of a wholly dematerialised security, or informing a settlement bank of its payment obligations in respect of such a transfer, may be generated,

if necessary to effect a transfer of such units, on the termination of participation in the relevant system by the system-member by whom those units are held and if in accordance with the rules made and practices instituted by the Operator in order to comply with this Schedule, to a person nominated under the Operator's rules.

(5) Subparagraph (1)(a) shall not prevent the registration by an Operator of a transfer of title to uncertificated units of a security, or the generation of an Operator-instruction, in order to give effect to the procedures referred to in subparagraph (3) or (4).

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

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

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

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

- 24.** A relevant system must comprise procedures which—
  - (a) enable system-users to notify the Operator of an error in or relating to a dematerialised instruction; and
  - (b) ensure that, where the Operator becomes aware of an error in or relating to a dematerialised instruction, he takes appropriate corrective action.

#### *Rules and Practices*

- 25.** An Operator's rules and practices—
  - (a) must bind system-members and participating issuers—
    - (i) so as to ensure the efficient processing of transfers of title to uncertificated units of a security in response to Operator-instructions; and
    - (ii) as to the action to be taken where transfer of title in response to a system-member instruction or an Operator-instruction cannot be effected;

- (b) must make provision as to the manner in which a system-member or the relevant participating issuer may change the form in which that system-member holds units of a participating security (other than a wholly dematerialised security);
  - (c) must make provision for a participating issuer to cease to participate in respect of a participating security so as—
    - (i) to minimise so far as practicable any disruption to system-members in respect of their ability to transfer the relevant security; and
    - (ii) to provide the participating issuer with any relevant information held by the Operator relating to the uncertificated units of the relevant security held by system-members;
  - (d) must make provision for the orderly termination of participation by system-members and system-participants whose participation is disruptive to other system-members or system-participants or to participating issuers;
  - (e) must make provision—
    - (i) as to which of the Operator’s records are to constitute an Operator register of securities in relation to a participating security, or a participating security of a particular kind; and
    - (ii) as to the times at which, and the manner in which, a participating issuer may inspect an Operator register of securities in accordance with paragraph 12;
  - (f) if they make provision for the designation of a subsidiary undertaking as a relevant nominee, must require that the relevant nominee maintain adequate records of—
    - (i) the names of the persons who have an interest in the securities it holds; and
    - (ii) the nature and extent of their interests; and
  - (g) must make provision for the authentication by the Operator of any written notification given under regulation 25(3) or 32(2)(c).
- 26.** An Operator’s rules and practices must require—
- (a) that each system-participant is able to send and receive properly authenticated dematerialised instructions;
  - (b) that each system-member has arrangements—
    - (i) for properly authenticated dematerialised instructions attributable to him to be sent;
    - (ii) for properly authenticated dematerialised instructions to be received by or for him; and
    - (iii) with a settlement bank for payments to be made, where appropriate, for units of a security transferred by means of the relevant system; and
  - (c) that each participating issuer is able to respond with sufficient speed to Operator-instructions.
- 27.** An Operator must have rules which require system-users and former system-users to provide him with such information in their possession as he may require in order to meet his obligations under these Regulations.

## 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 Directive [2000/12/EC](#) of the European Parliament and of the Council.<sup>(2)</sup>

(2) Subject to subparagraph (5), 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 in his capacity as such; or
- (c) any practices of a system-user,

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

(3) the powers exercisable under this paragraph are—

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

(4) 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.

(5) The provisions of Schedule 3 shall apply as regards the procedure to be followed before—

- (a) refusing to approve a person as Operator of a relevant system pursuant to subparagraph (1); or
- (b) exercising any of the powers conferred by subparagraph (3).

#### *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 the designated agency by virtue of regulation 11.

(2) The designated agency—

- (a) shall send to the Treasury a copy of the rules and any guidance copies of which accompany the application for approval together with any other information supplied with or in connection with the application; and

---

(2) Directive of the European Parliament and of the Council of 20th March 2000 relating to the taking up and pursuit of the business of credit institution (O.J. No. L 126, 26.5.2000, p. 1).

(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 the designated agency) have been precluded by paragraph 1(1) from granting approval.

(3) The designated agency shall send to the Treasury a copy of any notice received by it from an Operator under regulation 10(5).

(4) If at any time it appears to the Treasury that there are circumstances such that (apart from the delegation of functions to the designated agency) they would have been able to exercise any of the powers conferred by paragraph 1(3) they may, notwithstanding the delegation of functions to the designated agency but subject to paragraph 1(5)—

- (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) The provisions of Schedule 3 shall apply as regards the procedure to be followed before the Treasury exercise their power to refuse leave under subparagraph (2), or their power to give a direction under subparagraph (4), in respect of an Operator.

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

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

- (a) whether to refuse to approve a person as Operator of a relevant system pursuant to paragraph 1(1); or
- (b) Whether to refuse for the granting of an approval pursuant to 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(5) or paragraph 2(3) together with such other information as the Treasury consider will assist the Director in discharging his functions under subparagraphs (4) and (5).

(4) The Director shall keep under review—

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

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

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

(6) The Director may from time to time consider whether any such practices as are mentioned in paragraph 1(2) have, or are intended or likely to have, to any significant extent the effect mentioned



in subparagraph (2) and, if so, what that effect is or is likely to be; and if he is of that opinion he shall make a report to the Treasury stating his opinion and what the effect is or is likely to be.

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

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

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

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

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

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

(3) Subsections (6) to (8) of section 85 of the Fair Trading Act 1973(3) (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 the designated agency in the exercise of its functions under these Regulations or any practices of the designated agency in the exercise of its functions under these Regulations.

(2) Where an Operator’s 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 the Fair Trading Act 1973 falling within section 49 of that Act the Competition Commission find that a monopoly situation within the meaning of that Act exists and—

---

(3) 1973 c. 41.

- (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 the designated agency in the exercise of functions delegated to it under regulation 11; or
- (b) that any such person's conduct is carrying on any business to which those rules relate is the subject of guidance issued by an Operator or the 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 the designated agency,

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

#### *Exemptions from the Competition Act 1998*

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

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

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

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

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

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

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

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

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

(5) In this paragraph—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998(4); and

“specified practices” means—

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

---

(4) 1998 c. 41.

- (ii) otherwise attributable to the conduct of the Operator as such; and expression used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in same way as for the purposes of that Part of that Act.

### *Supplementary provisions*

7.—(1) 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.

(2) 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.

(3) 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

Regulations 5(4), 7(3) and 8(4)

### PROCEDURE FOR REFUSAL OR WITHDRAWAL OR APPROVAL AS AN OPERATOR, OR FOR GIVING DIRECTIONS, ETC.

1. Before—
  - (a) refusing an application for approval as an Operator made under regulation 4 (whether or not pursuant to paragraph 1(1) of Schedule 2);
  - (b) withdrawing an Operator's approval under regulation 7(2);
  - (c) giving a direction under regulation 8;
  - (d) exercising any power conferred by paragraph 1(3) of Schedule 2;
  - (e) exercising the power to refuse leave under paragraph 2(2) of Schedule 2; or
  - (f) giving a direction under paragraph 2(4) of Schedule 2, the Treasury shall—
    - (i) give written notice of their intention to do so to the Operator;
    - (ii) take such steps as they consider reasonably practicable to bring the notice to the attention of system-users; and
    - (iii) publish the notice in such manner as they think appropriate for bringing it to the attention of other persons who are, in their opinion, likely to be affected.
2. A notice under paragraph 1 shall—
  - (a) state why the Treasury intend to refuse the application, withdraw the approval, give the direction, or exercise the power in question; and
  - (b) draw attention to the right to make representations conferred by paragraph 3.
3. Before the end of the period for making representations—
  - (a) the Operator,
  - (b) any system-user, and
  - (c) any other person who is likely to be affected by the proposed withdrawal or direction, may make representations to the Treasury.

4. The period for making representations is—
  - (a) two months beginning—
    - (i) with the date on which the notice under paragraph 1 is served on the Operator; or
    - (ii) if later, with the date on which that notice is published; or
  - (b) such longer period as the Treasury may allow in the particular case.
5. In deciding whether to refuse the application, withdraw the approval, give the direction, or exercise the power in question, the Treasury shall have regard to any representations made in accordance with paragraph 3.
6. When the Treasury have decided whether to refuse the application, withdraw the approval, give the direction, or exercise the power in question they shall, if they have decided to refuse the application, withdraw the Operator’s approval under regulation 7(2), give a direction under regulation 8 or exercise a power conferred by paragraph 1(3) of Schedule 2—
  - (a) give the Operator written notice of their decision; and
  - (b) take such steps as they consider reasonably practicable for bringing their decision to the attention of system-users and of any other persons who are, in the Treasury’s opinion, likely to be affected.
7. If the Treasury consider it essential to do so, they may withdraw an Operator’s approval under regulation 7(2) or give a direction under regulation 8—
  - (a) without following the procedure set out in this Schedule; or
  - (b) if the Treasury have begun to follow that procedure, regardless of whether the period for making representations has expired.
8. If the Treasury have, in relation to a particular matter, followed the procedure set out in paragraphs 1 to 5, they need not follow it again if, in relation to that matter, they decide to take action other than that specified in their notice under paragraph 1.

## SCHEDULE 4

Regulation 23(4)

### KEEPING OF REGISTERS AND RECORDS OF PARTICIPATING SECURITIES

#### *Interpretation*

1. In this Schedule—

“uncertificated shares” means shares title to which may be transferred by means of a relevant system; and

“certificated shares” means shares which are not uncertificated shares; and “uncertificated stock” means stock title to which may be transferred by means of a relevant system; and “certificated stock” means stock which is not uncertificated stock.
- 2.—(1) Every participating issuer which is a company shall enter in its issuer register of members—
  - (a) the names and addresses of the members;
  - (b) the date on which each person was registered as a member; and
  - (c) the date at which any person ceased to be a member.(2) With the names and addresses of the members there shall be entered a statement—

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

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

(4) Subject to subparagraph (5), section 352 of the 1985 Act shall not apply to a company which is a participating issuer, other than as respects any overseas branch register.

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

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

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

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

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

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

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

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

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

#### *Records of uncertificated shares*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7.—(1)** Every participating issuer which is a company having more than 50 members shall, unless the particulars required by paragraph 2(1) to be entered in the issuer register of members are kept in such a form as to constitute in themselves an index, keep an index of the names of the members of

the company and shall, within 14 days after the date on which any alteration is made in the issuer register of members or the Operator register of members, make any necessary alteration in the index.

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

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

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

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

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

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

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

and references to the 1985 Act in the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991<sup>(5)</sup> shall be construed accordingly.

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

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

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

**11.** Where, under section 359 of the 1985 Act, the court orders rectification of the register of members of a company which is a participating issuer, it shall not order the payment of any damages under subsection (2) of that section to the extent that such rectification relates to the company's Operator register of members and does not arise from an act or omission of the Operator on the instructions of that company or from fraud or other wilful default, or negligence, on the part of that company.

---

(5) S.I. 1991/1998.

*Registers of public sector securities*

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

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

(2) The following provisions of the 1965 Regulations shall not apply in respect of units of UK Government securities held in uncertificated form—

- regulations 1 to 3;
- regulations 3C to 3E;
- regulations 5 to 13;
- regulations 17 and 18; and
- regulations 19 to 22.

(3) The following provisions of the 1974 Regulations shall not apply in respect of units of local authority securities held in uncertificated form—

- regulations 5 and 6;
- regulations 8 to 14;
- regulation 16; and
- regulation 21.

*Records of uncertificated public sector securities*

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

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

(3) The participating issuer shall, unless it is impracticable to do so by virtue of circumstances beyond his control, ensure that the record of uncertificated public sector securities is regularly reconciled with the Operator register of public sector securities.

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

(5) The provisions of the Bankers' Books Evidence Act 1879<sup>(6)</sup> shall apply for the purpose of proving any entry in the record of uncertificated public sector securities as if the participating issuer were a bank and a banker within the meaning of that Act, and as if such entry in the record, or, where the information recorded therein is not in readable form and is later transcribed into readable form, the transcribed version of such entry, were an entry in a banker's book.

---

<sup>(6)</sup> 42 & 43 Vict c. 11.



### *Registers of corporate securities*

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

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

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

### *Records of uncertificated corporate securities*

**15.—**(1) A participating issuer shall enter in a record of uncertificated corporate securities the same particulars, so far as practicable, as are required by paragraph 14(1) to be entered in the relevant Operator register of corporate securities.

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

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

(4) In the case of a participating issuer which is a company, the record of uncertificated corporate securities shall be kept at the same place as the part of any register of debenture holders maintained by the company would be required to be kept.

(5) Section 191(1), (2), (4) and (5) of the 1985 Act shall apply in relation to a record of uncertificated corporate securities maintained by a participating issuer which is a company, so far as that record relates to debentures, as it applies or would apply to any register of debenture holders maintained by the company; and references to the 1985 Act in the Companies (Inspection and Copying of Registers, Indices and Documents) Regulations 1991 shall be construed accordingly.

(6) Any provision of an enactment or instrument which requires a register of persons holding securities (other than shares or public sector securities) to be open to inspection shall also apply to the record of uncertificated corporate securities relating to any units of those securities which are participating securities.

### *Miscellaneous*

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

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

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

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

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

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

**18.** Sections 722 and 723(1) and (2) of the 1985 Act shall apply—

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

**19.**—(1) Such sanctions as apply to a company and its officers in the event of a default in complying with section 352 of the 1985 Act shall apply to an Operator and his officers in the event of a default in complying with paragraph 4, 12 or 14.

(2) Such sanctions as apply to the registrar, within the meaning of the 1974 Regulations, in the event of a default in complying with regulation 5 of those Regulations shall apply to a participating issuer and his officers in the event of a default in complying with paragraph 13 in respect of a local authority security.

(3) Such sanctions as apply in the event of a default in complying with the requirement to maintain a register imposed by the relevant enactment or instrument referred to in Regulation 22(1) shall apply to—

- (a) a participating issuer other than a company; and
- (b) a participating issuer which is a company, in relation to so much of the record of uncertificated corporate securities as does not relate to debentures,

and his officers in the event of a default in complying with paragraph 15.

(4) Subparagraphs (2) and (3) shall not apply to any of the following or its officers—

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

**20.** An officer of a participating issuer shall be in default in complying with, or in contravention of paragraph 2, 5, 6, 7, 13 or 15, or section 722(2) of the 1985 Act as applied by paragraph 18, if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

**21.** An officer of an Operator shall be in default in complying with, or in contravention of, the provisions referred to in paragraph 19(1) of this Schedule, or of section 722(2) of the 1985 Act as applied by paragraph 18, if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

## SCHEDULE 5

Regulation 49(5)

## ADAPTATIONS IN RESPECT OF NORTHERN IRELAND

<i>Column 1</i> <i>References to the 1985 Act</i>	<i>Column 2</i> <i>Provisions of these Regulations</i>	<i>Column 3</i> <i>Reference to the 1986 Order(7)</i>
Section 182	Paragraph 7 of Schedule 7	Article 192
Section 183	Regulations 27(8) and (9), 28(8) and (9), 32(9), 33(11), 38(7) and 42(12)	Article 193
Section 185	Paragraph 8 of Schedule 7 Regulations 32(8) and (10) and 42(5) and (6)	Article 195
Section 186	Regulation 38(3)	Article 196
Section 188	Regulation 18	Article 198
Section 190	Paragraph 14 of Schedule 4	Article 199
Section 191	Paragraphs 14 and 15 of Schedule 4	Article 200
Section 192	Regulation 40(2)	Article 201
Section 209	Paragraph 9 of Schedule 7	Article 217
Section 238	Regulation 41(3)	Article 246
Section 352	Regulations 20(7), 21(4) and 22(40)	Article 360
Section 352A	Paragraphs 2, 5 and 19 of Schedule 4	Article 360A
Section 353	Paragraph 3 of Schedule 4	Article 361
Section 354	Paragraph 6 of Schedule 4	Article 362
Section 355	Paragraph 7 of Schedule 4	Article 363
Section 356	Paragraph 8 of Schedule 4	Article 364
Section 356	Paragraphs 9 and 10 of Schedule 4	Article 364

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

<i>Column 1</i> <i>References to the 1985 Act</i>	<i>Column 2</i> <i>Provisions of these Regulations</i>	<i>Column 3</i> <i>Reference to the 1986 Order(7)</i>
Section 357	Paragraph 6 of Schedule 4	Article 365
Section 358	Regulation 26	Article 366
Section 359	Paragraph 11 of Schedule 4	Article 367
Section 360	Regulation 40(3)	Article 368
Section 361	Regulation 24(4)	Article 369
Section 370	Regulation 41(3)	Article 378
Section 376	Regulation 16(7)	Article 384
Section 380	Paragraph 10 of Schedule 7	Article 388
Section 428	Regulation 42(13)	Article 421
Section 429	Regulation 42(1), (2), (7), (8) and (13)	Article 422
Section 430	Regulation 42(1), (2), (5), (7), (8), (13) and (14)	Article 423
Section 430D	Regulation 42(13) and (14)	Article 423D
Section 722	Paragraphs 18, 20 and 21 of Schedule 4	Article 671
Section 723	Paragraph 18 of Schedule 4	Article 672
Section 735	Regulation 3(1)	Article 3
Section 744	Regulation 3(1)	Article 2
Paragraph 25 of Schedule 13	Paragraph 9 of Schedule 4	Paragraph 24 of Schedule 13

## SCHEDULE 6

Regulation 50

## TRANSITORY PROVISIONS

1. Prior to the day on which section 19 of the 2000 Act comes into force, each provision of these Regulations specified in this Schedule shall have effect modified as provided in this Schedule.

2. The definition of “securities” in Regulation 3(1) shall be modified by the substitution of the words “the 1986 Act” for the words “section 235 of the 2000 Act”.

3. Regulation 5 shall be modified by the substitution for paragraph (4) of—

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

“(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.”.

4. Regulation 7 shall be modified by—

- (a) the insertion in paragraph (2) of the words “subject to paragraph (3)” after the words “they may”; and
- (b) the substitution for paragraphs (3) to (6) of—

“(3) Subsections (2) to (7) and (9) of section 11 of the 1986 Act shall apply in relation to the withdrawal by the Treasury of approval from an Operator under paragraph (2) as they apply in relation to the revocation by the Secretary of State 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;
- (b) any reference to members of a recognised organisation shall be taken to be a reference to system-users;
- (c) any reference to the Secretary of State shall be taken to be a reference to the Treasury;
- (d) any reference to an order other than a recognition order shall be taken to be a reference to a written instrument; and
- (e) the reference in subsection (6) to the interests of investors shall be taken to be a reference to the interests of system-users.”

5. Regulation 8 shall be modified by—

- (a) the substitution for paragraph (4) of—

“(4) Before giving a direction under paragraph (2)(b) the Treasury shall—

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

- (b) the omission of paragraphs (5) and (7).

6. In Regulation 9—

- (a) paragraph (7) shall be modified by the substitution of the words “Subsections (6) and (7) of section 61 of the 1986 Act” for the words “Subsections (3) to (5) and (8) of section 382 of the 2000 Act”;
- (b) paragraphs (10) to (12) shall be modified by the substitution of the words “investment business within the meaning of the 1986 Act” for the words from “business of any of the following kinds” in paragraph (10) to the end of paragraph (12).

7. Regulation 11(1) shall be modified to read—

“(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 (5), 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”.”.

8. In paragraph 5(7) of Schedule 1—
- (a) paragraph (a) of the definition of “clearing house” shall be modified by the substitution of the words “for the purposes of the 1986 Act” for the words “within section 285(1)(b) of the 2000 Act”; and
  - (b) paragraph (a) of the definition of “exchange” shall be modified by the substitution of the words “for the purposes of the 1986 Act” for the words “within section 285(1)(a) of the 2000 Act”.
9. Schedule 2 shall be modified by—
- (a) the substitution for subparagraph (5) in paragraph 1 of—

“(5) 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 by the Secretary of State 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;
    - (b) any reference to members of a recognised organisation shall be taken to be a reference to system-users;
    - (c) any reference to the Secretary of State shall be taken to be a reference to the Treasury; and
    - (d) any reference to an order other than a recognition order shall be taken to be a reference to a written instrument.”;
  - (b) the omission from paragraph 2 of subparagraph (5); and
  - (c) the insertion after paragraph 7 of a new paragraph reading—

“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.”.

## SCHEDULE 7

Regulation 51

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### Part 1

##### PRIMARY LEGISLATION

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

1. In section 3 of the National Debt Act 1870(8), for the definition of “Stockholder” there shall be substituted—

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

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

###### *The National Debt (Stockholders Relief) Act 1892*

2. In subsection (1) of section 2 of the National Debt (Stockholders Relief) Act 1892(9), for the word “inscribed” there shall be substituted “entered in a relevant register”.

###### *The Finance (No. 2) Act 1915*

3. In section 48 of the Finance (No. 2) Act 1915(10)—

- (d) after “Director of Savings,” there shall be inserted “to the Operator of any relevant system”; and
- (e) after “by that person” there shall be inserted “; and in this section “Operator” and “relevant system” have the same meanings as they have in the Uncertificated Securities Regulations 2001”.

###### *The Finance Act 1916*

4. In section 67 of the Finance act 1916(11)—

- (a) after “Director of Savings”, there shall be inserted “the Operator of any relevant system”; and
- (b) at the end of that section there shall be added; “and in this section “Operator” and “relevant system” have the same meanings as they have in the Uncertificated Securities Regulations 2001”.

---

(8) 1870 c. 71.

(9) 1892 c. 39; section 2 was substituted by section 108(1) of the Finance Act 1997 (c. 16).

(10) 1915 c. 89; the relevant amendment to section 48 was made by section 108(1) of the Post Office Act 1969 (c. 48).

(11) 1916 c. 24; section 67 was amended by section 108(1) of the Post Office Act 1969.

*The Finance Act 1949*

5. In section 48 of the Finance Act 1949(12)—
- (a) in subsection (1), after “Bank of England” where it first appears there shall be inserted “or the Operator of any relevant system”;
  - (b) in the proviso to subsection (1)—
    - (i) for “the Bank of England shall not” there shall be substituted “neither the Bank of England nor any such Operator shall”; and
    - (ii) for “to the Bank” there shall be substituted “to the Bank, or to that Operator as the case may be.”;
  - (c) in subsection (2), after “Bank of England” there shall be inserted “or the Operator, as the case may be.”; and
  - (d) after subsection (4) the following subsection shall be added—

“(5) In this section, “Operator” and “relevant system” have the same meanings as they have in the Uncertificated Securities Regulations 2001.”.

*The Finance (No. 2) Act 1975*

6. In section 73 of the Finance (No. 2) Act 1975(13)—
- (a) in subsection (4), after “means” in the definition of “the Bank” there shall be inserted “(subject to subsection (4A))”; and
  - (b) after subsection (4) the following subsection shall be added—

“(4A) In the case of units of stock which are recorded on a register kept by the Operator of a relevant system—

    - (a) the reference to the Bank in subsection (1) so far as it relates to paragraph (c) of that subsection; and
    - (b) the references to the Bank in subsections (2) and (3) so far as they apply for the purposes of that paragraph,

shall be taken to be reference to that Operator; and in this subsection “Operator” and “relevant system” have the same meanings as in the Uncertificated Securities Regulations 2001.”.

*The Companies Act 1985*

7. 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).”.
8. In subsection (1) of section 183 of that Act, after “Stock Transfer Act 1982” there shall be inserted “or is in accordance with regulations made under section 207 of the Companies Act 1989.”.
9. In section 209(9B)(b) of the 1985 Act, for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.
10. In subsection (4) of section 380 of the 1985 Act, after paragraph (k) the following paragraphs shall be added—

---

(12) 1949 c. 47.

(13) 1975 c. 45.



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

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

*The Financial Services Act 1986*

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

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

**12.** In the 1986 Act, in—

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

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

*The Banking Act 1987*

**13.** In the Banking Act 1987(14), in—

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

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

## Part 2

### SUBORDINATE LEGISLATION

*The Government Stock Regulations 1965*

**14.** In the 1965 Regulations—

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

---

(14) 1987 c. 22; relevant amending instrument is S.I. 1996/1669.

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

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

**15.** In the 1974 Regulations—

- (a) in regulation 1(3)—
  - (i) for ““the 1995 Regulations” means the Uncertificated Securities Regulations 1995 as amended from time to time;” there shall be substituted ““the 2001 Regulations” means the Uncertificated Securities Regulations 2001 as amended from time to time;”; and
  - (ii) the definitions of “the CGO Service”; “CGO Service member”; “the CGO Service Regulations”; and “exempt transfer” shall be omitted;
- (b) in regulation 6(1), for “Subject to regulation 6A below the” there shall be substituted “The”;
- (c) in regulation 7—
  - (i) in paragraph (1)(a), for “paragraph (5)” there shall be substituted “paragraph (1A)”;

---

(15) Paragraph (1) of regulation 4 was numbered as such by article 2 of [S.I. 1981/1004](#) and amended by regulation 4 of [S.I. 1985/1146](#) and regulation 2 of [S.I. 2000/1681](#); paragraphs (2) to (4) of regulation 4 were inserted by article 2 of [S.I. 1981/1004](#), regulation 4 of [S.I. 1985/1146](#) and regulation 4 of [S.I. 1997/1709](#) respectively.

- (ii) after paragraph (1) there shall be inserted as a new paragraph—
  - “(1A) Units of stock, or of bonds, which are recorded on a register kept by the Operator of a relevant system under the 2001 Regulations shall be transferable in no other manner than by means of that system in accordance with those Regulations.”;
  - and
- (iii) in paragraph (3), there shall be omitted “and any record of a transfer effected through the medium of the CGO Service,” and “or, as the case may be, the exempt transfer”;
- and
- (d) in regulation 13(2)—
  - (i) for “Subject (in the case of stock or a bond which is a participating security) to any provision made by or under the 1995 Regulations, the” there shall be substituted “The”;
  - and
  - (ii) there shall be omitted the words from “or, in the case of an exempt transfer” to the end.

*The Exchange of Securities (General) Rules 1979*

**16.** In the Exchange of Securities (General) Rules 1979(16)—

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

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

**17.** In the Companies (Registers and other Records) Regulations 1985(17)—

- (a) in regulation 1—
  - (i) in paragraph (2), at the end of the definition of “register” there shall be inserted “or regulation 20 of the 2001 Regulations”;
  - and
  - (ii) at the end of paragraph (2) there shall be inserted—

---

(16) S.I. 1979/1678; relevant amending instruments are S.I. 1985/2505; S.I. 1999/1207 and S.I. 2000/1516.

(17) S.I. 1985/724.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Uncertificated Securities Regulations 2001 No. 3755*

““the 2001 Regulations” means the Uncertificated Securities Regulations 2001; and expressions defined in the 2001 Regulations shall have the same meaning in these Regulations.”;

(b) at the end of regulation 2 there shall be inserted as new paragraphs—

“(5) This Regulation applies with respect to an issuer of members and a record of uncertificated shares which is kept by a company by recording the matters in question otherwise than in legible form—

(a) as it applies to a register of members under the Act which is kept in like fashion; and

(b) as if references to the Act were references to the 2001 Regulations.

(6) This Regulation applies with respect to an index kept by virtue of paragraph 7 of Schedule 4 to the 2001 Regulations which is kept by a company by recording the matters in question otherwise than in legible form—

(a) as it applies to an index of a register of members under the Act which is kept in like fashion; and

(b) as if references to the Act were references to the 2001 Regulations.”;

(c) at the end of regulation 3 there shall be inserted as a new paragraph—

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

(d) in regulation 6—

(i) in paragraph (1), after “the Act” there shall be inserted “or the 2001 Regulations”; and

(ii) after paragraph (2) there shall be inserted as a new paragraph—

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

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

(b) the reference to the index of the register of members were a reference to an index kept by virtue of paragraph 7 of Schedule 4 to the 2001 Regulations.”.

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

**18.** In the Stamp Duty Reserve Tax Regulations 1986(**18**), in the definition of “the Treasury Regulations” in regulation 2, for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

#### *The Companies (Registers and other Records) Regulations (Northern Ireland) 1986*

**19.** In the Companies (Registers and Records) Regulations (Northern Ireland) 1986 (**19**)—

(a) in regulation 1—

(i) at the end of the definition of “register” in paragraph (2) there shall be inserted “or regulation 20 of the 2001 Regulations”; and

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

**(19)** S.R. (N.I.) 1986 No. 306.

- (ii) at the end of paragraph (2) there shall be inserted—
  - ““the 2001 Regulations” means the Uncertificated Securities Regulations 2001; and expressions defined in the 2001 Regulations shall have the same meaning in these Regulations.”;
- (b) at the end of regulation 3 there shall be inserted as new paragraphs—
  - “(5) This Regulation applies with respect to an issuer register of members and a record of uncertificated shares which is kept by a company by recording the matters in question otherwise than in legible form—
    - (a) as it applies to a register of members under the Order which is kept in like fashion; and
    - (b) as if references to the Order were references to the 2001 Regulations.
  - (6) This Regulation applies with respect to an index kept by virtue of paragraph 7 of Schedule 4 to the 2001 Regulations which is kept by a company by recording the matters in question otherwise than in legible form—
    - (a) as it applies to an index of a register of members under the Order which is kept in like fashion; and
    - (b) as if references to the Order were references to the 2001 Regulations.”;
- (c) at the end of regulation 4 there shall be inserted as a new paragraph—
  - “(6) In the case of a company which is a participating issuer, references in this regulation to the register of members shall be taken to be a reference to the company’s issuer register of members and record of uncertificated shares.”;
- (d) in regulation 7—
  - (i) in paragraph (1), after “the Order” there shall be inserted “or the 2001 Regulations”; and
  - (ii) after paragraph (2) there shall be inserted as a new paragraph—
    - “(2A) In the case of a company which is a participating issuer, paragraph (2) shall apply as if—
      - (a) references to the register of members were references to the company’s issuer register of members and record of uncertificated shares; and
      - (b) the references to the index of the register of members were a reference to an index kept by virtue of paragraph 7 of Schedule 4 to the 2001 Regulations.”.

*The Financial Markets and Insolvency Regulations 1996*

**20.** In the Financial Markets and Insolvency Regulations 1996(20)—

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

- (iii) in the definition of “relevant nominee”, for “paragraph 19(d) of Schedule 1 to the 1995 Regulations” there shall be substituted “paragraph 25(f) of Schedule 1 to the Uncertificated Securities Regulations 2001”;
- (iv) in the definition of “transfer”, for “the generation of an Operator-instruction requiring a participating issuer to register a system-member on the relevant register of securities as the holder of those units;” there shall be substituted “the registration of a transfer of title to those units in the relevant Operator register of securities;”;
- (v) in the full-out to regulation 2(1), for “the 1995 Regulations” there shall be substituted “the Uncertificated Securities Regulations 2001”;
- (b) in regulation 2(2)(a), for “regulation 19 of the 1995 Regulations” there shall be substituted “regulation 20, 21 or 22 of the Uncertificated Securities Regulations 2001”; and
- (c) in regulation 5(a)(ii), for “regulation 25(1)(a) or 25(2)(a) of the 1995 Regulations” there shall be substituted “regulation 31(2)(b) or 31(4)(b) of the Uncertificated Securities Regulations 2001”.

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

**21.** In the Stock Transfer (Addition and Substitution of Forms) Order 1996(21), in paragraph (2) of article 1, for “Uncertificated Securities Regulation 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

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

**22.** In the Financial Services Act 1986 (Exemption) Order 1996(22), in paragraph (3) of article 1, for “Uncertificated Securities Regulations 1995” in both places where it occurs there shall be substituted “Uncertificated Securities Regulations 2001”.

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

**23.** In the Stamp Duty Reserve Tax (UK Depository Interests in Foreign Securities) Regulations 1999(23), in the definition of “foreign securities” in regulation 2, for “Uncertificated Securities Regulations 1995” there shall be substituted “Uncertificated Securities Regulations 2001”.

*The Open-Ended Investment Companies Regulations 2001*

- 24.** In the Open-Ended Investment Companies Regulations 2001—
- (a) in regulation 2(1), the definitions of “certificated form”, “participating issuer”, “participating security”, “uncertificated form” and “uncertificated unit of a security” shall be omitted;
  - (b) for regulation 50(2) there shall be substituted—
    - “(2) Paragraph (1) has effect subject to any requirements contained in FSA rules.”; and
  - (c) in paragraph 2(1) of Schedule 3, the words “Subject to sub-paragraph (2)” shall be omitted.

---

(21) S.I. 1996/1571.

(22) S.I. 1996/1587.

(23) S.I. 1999/2383.