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STATUTORY INSTRUMENTS

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**1992 No. 225**

**The Uncertificated Securities Regulations 1992**

**PART I**

**INTERPRETATION AND DELEGATION OF FUNCTIONS**

**Interpretation**

2.—(1) In these Regulations (unless the context otherwise requires):

“the 1985 Act” means the Companies Act 1985<sup>(1)</sup>;

“the 1986 Act” means the Financial Services Act 1986<sup>(2)</sup>;

“the 1986 Order” means the Companies (Northern Ireland) Order 1986<sup>(3)</sup>;

“the 1989 Act” means the Companies Act 1989;

“account holder” means a person for whom a controller holds an entitlement (whether or not the entitlement has been expressly allocated to that person by an entry in a record of account holders), save that where a controller holds an entitlement for two or more persons acting jointly those persons jointly shall be regarded as the account holder for the purposes of these Regulations;

“alternative company controller” means a company controller appointed under regulation g(3); that is to say having discretion to refuse to hold an entitlement to a unit of the security for any person for whom he or it is appointed to act;

“the appropriate register” means the register on which holders of units of a security of the kind in question are by virtue of any enactment required to be recorded or (in the absence of such enactment) on which the holders of the security in question are required to be recorded by the terms of its issue; in particular, the appropriate register is, in the case of shares, the company’s register of members maintained under section 352 of the 1985 Act;

“approved person” means a person admitted under regulation 94 to perform the functions of an approved person under these Regulations;

“certificated”, in connection with any security, means a security, the title to a unit of which is, by virtue of any enactment, instrument or rule of law:

- (a) required to be evidenced by a certificate or other document in writing; or
- (b) transferable only by means of an instrument in writing;

“commercial controller” means a person admitted under regulation 94 to perform the functions of a commercial controller under these Regulations (in particular regulation 13) with respect to any uncertificated security of any company, save that a person, not being a company controller, recorded as holding entitlements on an Operator’s record of entitlements shall be regarded as a commercial controller for the purposes of the registration of the holders of the security

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(1) 1985 c. 6.

(2) 1986 c. 60.

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

concerned notwithstanding that that person has not been so admitted or that person's admission has terminated;

"communication" includes any instruction, election, acceptance or any other message of any kind;

"company" means a company within the meaning of section 735 of the 1985 Act;

"company controller" means a person who is appointed by a company under regulation 9 to perform the functions of a company controller (whether primary or alternative) under these Regulations with respect to an uncertificated security of the company;

"company's record of entitlements" means a record kept by a company under regulation 25;

"Complaints Commissioner" means the person appointed under regulation 99;

"controller" means either a commercial controller or a company controller;

"court of competent jurisdiction" means a court having jurisdiction over the matter in question;

"default nominee", in relation to a controller, means a person appointed by the controller under regulation 61;

"duty", where there is a reference to the duties of a person, includes any obligation imposed on that person under these Regulations whether or not expressed to be a duty; an "enactment" includes an enactment comprised in any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978<sup>(4)</sup> or (in the case of the law of Northern Ireland) an instrument within the meaning of section 1 of the Interpretation Act (Northern Ireland) 1954<sup>(5)</sup>; an "entitlement" means the power with respect to a unit of an uncertificated security referred to in regulation 22;

"fixed register date" means such date as is referred to in regulation 44;

"general call for instructions" means a call by a company for proper instructions to register from controllers under regulation 45;

"the holder", in relation to a unit of a security, means a person registered as its holder, save that where a unit is registered in the name of two or more persons acting jointly, those persons jointly shall be regarded as the holder of the unit for the purposes of these Regulations;

"insolvency practitioner" means a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986<sup>(6)</sup> and any person performing similar functions under the law of any country outside the United Kingdom, together with any form of receiver appointed in connection with the dissolution of any body of persons whether or not as a consequence of insolvency;

"instrument" includes a deed and any other instrument in writing, including the memorandum and articles of association of a company;

"jurisdiction" means one of the three territorial divisions of the United Kingdom with a distinct system of law, namely England and Wales, Scotland and Northern Ireland;

"limited instruction to register" means a proper instruction to register of the kind referred to in regulation 20(2)(b);

"lost benefit" means any dividend, interest or other benefit which should have been received, but was not received due to a failure of a person to perform functions under these Regulations, but does not include a new unit;

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(4) 1978 c. 30.  
(5) 1954 c. 33 (N.I.)  
(6) 1986 c. 45.

“lost unit” means a unit of a security entitlement to which was, or should have been, held by a particular controller but which is no longer, or is not, so held due to a failure of a person to perform functions under these Regulations;

“new unit” means a unit of a security or an interest in a unit of a security to which, where a takeover, rights issue or other event has occurred, a person was entitled but did not obtain due to the failure of a person to perform functions under these Regulations or to which a person would have been entitled but for such a failure;

“notification of a transaction” means a notification of a transaction with respect to a unit of a security (or the entitlement to it) to the Operator or (as the case may be) a company under regulation 31;

“officer”, in addition to the meaning given to it by the 1985 Act, shall include, in relation to a partnership, any partner thereof;

“official receiver” means the official receiver as defined in section 399 of the Insolvency Act 1986;

“the Operator” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited or such other person as is for the time being substituted as the Operator in accordance with regulation 8;

“the Operator’s part of the system” means those procedures within the system involving the participation of the Operator (whether directly or as agent of any other person) or the use of facilities provided by the Operator (and includes procedures relating to the making of communications by means of those facilities);

“Operator’s record of entitlements” means a record kept by the Operator under regulation 24;

“participant” means a controller, an approved person or any person who may, under the system, notify a transaction under regulation 31;

“periodic update” means any update of the appropriate register for an uncertificated security under regulation 41 as a consequence of which a new version of the register is produced;

“primary company controller” means a company controller appointed under regulation 9(1) or (2); that is to say having no discretion to refuse to hold an entitlement to a unit of the security for any person for whom he or it is appointed to act;

“proper instruction to register” means such instruction as is referred to in regulation 20;

“record of account holders” means a record kept by a controller under regulation 28;

“record of entitlements” means the company’s record of entitlements or the Operator’s record of entitlements;

“register event” has the meaning ascribed to it by regulation 43; “Regulations” includes any applicable rules made under these Regulations;

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds and other securities of any description of a company (including subscription warrants) and “security” means a particular type of security of a particular company;

“standing instruction to register” means a proper instruction to register of the kind referred to in regulation 20(2)(a);

“the system” means the procedures for transferring and recording title to units of a security and the ancillary procedures set out in these Regulations, together with any supplementary procedures or requirements prescribed by rules made under regulation 112;

“terms of issue”, in relation to a security, includes the terms on which units of the security are held or transferred;

“title”, in connection with an uncertificated security, means the title which would be obtainable by a person through being properly registered as the holder of a certificated security of the same kind on the appropriate register for that security;

accordingly in England and Wales and Northern Ireland “title” means legal title unless the process of registration of a certificated security of the same kind confers only an equitable title;

“the tribunal” means the Financial Services Tribunal<sup>(7)</sup> performing functions for the purposes of regulations 96 and 103;

“type”, in connection with a security, means an issue, or a series of issues, of units of securities of a company conferring uniform rights and obligations on each of the holders of units of securities of that description (for example equity shares of a particular class ranking *pari passu*);

“uncertificated”, in connection with a security, means a security the title to units of which, under these Regulations, is not required to be evidenced by a certificate or which is otherwise transferable under these Regulations;

“unit of a security” means a single example of a particular security (for example a single share) or (in the case of stock) the smallest transferable unit of the security;

“a valid communication” is a communication effected in accordance with the Operator’s part of the system which conforms with any applicable rules made under regulation 112 as to the form and manner in which a communication is to be made;

“working day” means any day except Saturday, Sunday, Good Friday, Christmas day or a bank holiday within the meaning of the Banking and -Financial Dealings Act 1971<sup>(8)</sup>; and other expressions bear the meaning given to them in the 1985 Act or (as the case may be) the 1986 Order.

(2) References in these Regulations to the date “by reference to which” the appropriate register for an uncertificated security is or is to be updated are to a fixed register date in relation to the security or the date specified in a general call for instructions.

(3) References in these Regulations (however expressed) to the admission of a security into the system by the Operator are to be construed as referring to its giving consent to the conversion of the security into, or its issue in, uncertificated form.

(4) References in these Regulations to the functions of the Operator include reference to functions delegated to the Operator under regulation 3.

### **Delegation of functions**

3.—(1) Where a function to which this regulation applies is expressed to be exercisable by the Operator, it shall, notwithstanding that fact, be vested in and exercisable by the Secretary of State unless for the time being delegated to the Operator in accordance with this regulation.

(2) The Secretary of State may by written instrument delegate to the Operator all or any of the functions to which this regulation applies except that he shall not delegate the function of making rules under regulation 105 defining the persons or classes of person eligible for compensation under the scheme.

(3) Any function may be delegated either wholly or in part.

(4) The Secretary of State shall not delegate the whole or any part of the function unless it appears to him that the Operator is able and willing to exercise it.

(5) The Secretary of State may by written instrument resume all or any functions he has delegated.

(6) Any function may be resumed either wholly or in part.

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<sup>(7)</sup> The Financial Services Tribunal was established by section 95 of the 1986 Act.

<sup>(8)</sup> 1971 c. 80.

(7) This regulation applies to functions under or by virtue of regulations 14, 15, 56, 75, 76, 78, 80, 81(2), 84, 85, 88, 94, 95, 96, 97, 98, 105, 106(1)(b), 111 and 112.

(8) Paragraphs 6 to 9 and 12(1) to (3)(a) of Schedule 9 to the 1986 Act shall, with any necessary modifications and subject to paragraph (9) below, apply to the exercise of any rule making function as they apply to legislative functions exercisable by the designated agency under that Act.

(9) The application of paragraph 12(1) to (3)(a) of Schedule 9 to the 1986 Act shall not have effect in relation to any proposal which takes a form specified in a direction given by the Secretary of State under regulation 6.