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STATUTORY INSTRUMENTS

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**1992 No. 225**

**The Uncertificated Securities Regulations 1992**

**PART II**

**THE OPERATOR, CONTROLLERS AND APPROVED PERSONS**

**CHAPTER II**

**CONTROLLERS**

*company Controllers*

**Company controllers**

9.—(1) A company which has in issue an uncertificated security must at all times have a person appointed by it to act as a controller with respect to that security having no discretion to refuse to hold an entitlement to a unit of security for any person; a controller appointed by a company having no discretion to hold an entitlement for the persons in respect of whom he or it is appointed to act is known in these regulations as a “primary company controller”.

(2) A company may appoint two or more persons to act concurrently as primary company controllers:

- (a) each being appointed to hold entitlements for a separate category or separate categories of persons determined by such criterion or criteria as the company considers fit; or
- (b) each being appointed to hold entitlements for the same category or categories of person,

or a combination of these.

Where a company so appoints more than one primary company controller, there must be, amongst the controllers so appointed, a controller appointed to hold entitlements for any given category of person.

(3) A company may in addition appoint one or more controllers having discretion to refuse to hold an entitlement to a unit of security of the company for a person for whom the controller is appointed to act; such a controller may be appointed to hold entitlements for any person or with respect to any category or categories of persons and is known in these Regulations as an “alternative company controller”.

(4) A company shall not appoint a person to act as a company controller unless it has satisfied itself that the person concerned:

- (a) has been admitted as a participant under regulation 94 to perform the functions of a company controller with respect to the security concerned;
- (b) has appointed a person in each jurisdiction (other than a jurisdiction in which the first mentioned person is incorporated or has an established place of business upon which service may be made under the law of that jurisdiction) to accept on his or its behalf service of any process in connection with the performance of his or its functions under these regulations and the person appointed is ready and willing to accept such service; and

(c) has appointed a person (other than himself or itself) to be his or its default nominee for the purposes of these Regulations.

(5) A company may appoint itself or one of its subsidiary undertakings (within the meaning of part VII of the 1985 Act) as a company controller (whether primary or alternative).

(6) A company shall, for each of its uncertificated securities, maintain a list of controllers appointed by it with respect to that security which, for each controller, sets out:

- (a) the name of the company and the identity of the security;
- (b) the name of the controller;
- (c) whether the controller is a primary or alternative company controller;
- (d) the category, or categories, of persons for whom the controller is appointed to hold entitlements;
- (e) (if a body corporate) the address of the controller's office;
- (f) (if a body corporate) the country of the controller's incorporation;
- (g) (if an individual or unincorporated body of persons) the address of his or its principal place of business;
- (h) the name and address of any persons appointed to accept service of process on the controller's behalf or otherwise the place in each jurisdiction upon which service may be effected in connection with the performance of the controller's functions under these Regulations; and
- (i) the name and address of the controller's default nominee.

The company shall:

- (i) make the list available for the inspection of any person at its registered office during business hours on any working day; and
- (ii) deliver a copy of the list, and of any amended list, to the registrar of companies for registration within 5 working days of its preparation or amendment.

(7) A company controller shall notify the company of any change in the particulars listed with respect to him or it in the list maintained under paragraph (6) which are required by sub-paragraphs (b), (e) to (g) or (i) of that paragraph and may notify the company which he or it wishes to amend the particulars given in the list in respect of sub-paragraph (h) thereof. The company shall amend the list as soon as practicable after receipt of any such notice.

(8) Section 352(5) of the 1985 Act shall apply to a default in complying with the provisions of paragraph (6) and the second sentence of paragraph (7) as it applies with respect to a default in complying with section 352 of that Act.

(9) A company shall be jointly and severally liable with a person appointed by it to act as a company controller for any failure of that person, acting as a company controller for that company, to perform his or its duties under these regulations.

#### **Company controllers: authorisation and duties**

**10.—(1)** A company controller has authority, by virtue of his or its appointment, to hold entitlements for persons within the category or categories of persons in respect of which he or it is appointed, without the necessity of obtaining any separate authority from those persons.

Subject to these Regulations, it is the duty of a company controller, owed to the company appointing him or it, to hold entitlements only for persons he or it has authority to hold entitlements for, but any other duty imposed by these Regulations on a company controller owed to an account holder is owed by the controller irrespective of whether he or it has authority to hold entitlements for that account holder.

(2) Where a company has appointed more than one primary company controller to hold entitlements for the same category of person, it is for the company to determine which controller is to hold entitlements for a particular person falling within that category.

(3) Where a company has appointed an alternative company controller, a person may expressly elect to have any entitlements to units of the security in question, which are or are to be held for that person, held by an alternative company controller by giving instructions to the company accordingly, which shall make any necessary arrangements.

However a company may treat a person:

- (a) falling within the category or categories of person for which an alternative company controller is appointed;
- (b) for whom any entitlements are or are to be held by a company controller; and
- (c) who has not given instructions that the entitlements be held by a primary company controller,

as having elected to have the entitlements held by an alternative company controller.

Where the company has appointed more than one alternative company controller with respect to the same category or categories of persons, it is for the company to determine, in the absence of express instructions from the person for whom entitlements are to be held, which alternative company controller is to hold the entitlements in a particular case, class of case or generally. This paragraph is without prejudice to an alternative company controller's right, under the terms of his or its appointment, to refuse to hold entitlements for a particular person.

(4) Subject to any requirement imposed on a company controller by these Regulations and to the following paragraphs of this regulation, a company controller is under a duty to each of his or its account holders to act in accordance with, and only in accordance with, the instructions of that account holder in connection with entitlements held for that account holder. However no instruction is receivable by a company controller for the purposes of any provision of these Regulations unless the instruction:

- (a) (if given by means of the Operator's part of the system) has been given by an approved person; and
- (b) (if given by other means) has been given in writing signed by the account holder (in the case of persons acting jointly being together an account holder, by each of them).

(5) Subject to the next paragraph, a company controller, unless he or it has actual notice to the contrary with respect to a particular purported instruction, shall be entitled and bound to treat any instruction comprised in a valid communication which is purportedly issued on behalf of one of his or its account holders as being issued by an approved person with the authority of that account holder, who shall be bound by the communication accordingly. This paragraph is without prejudice to the liability of any person for the giving of an instruction without authority.

(6) A company controller shall not comply with an instruction or purported instruction given in the form of a valid communication or otherwise on behalf of an account holder by an approved person where, and to the extent that, it is in receipt of a written instruction from the account holder the effect of which is that the controller is not to act in accordance with such instructions; where such a written instruction has once been given it shall continue to have effect to the extent that it has not been expressly cancelled by a further written instruction.

### **Duty of company to facilitate communications**

**11.—(1)** A company that has appointed more than one primary company controller shall appoint on behalf of those controllers a person (which may be the company or one of the primary company controllers) to act as agent of those controllers in connection with the receipt and transmission of

any communications to and from the Operator or participants by means of the Operator's part of the system.

(2) The Operator and any participant, unless they have actual notice to the contrary with respect to a particular purported communication, shall be entitled and bound to treat any valid communication which is purportedly issued on behalf of a primary company controller by a person so appointed as being issued with the authority of the controller, who shall be bound by the communication accordingly. This paragraph is without prejudice to the liability of the person so appointed for the making of a communication without authority.

(3) A company shall be jointly and severally liable with a person appointed by it to act as an agent under this regulation for any failure of that person, acting as such agent, to receive and transmit communications in a timely and accurate manner.

### **Company controllers: further provisions**

12. Schedule 1 to these Regulations has effect with respect to further provisions governing company controllers.

### **Commercial controllers Commercial controllers: authorisation and duties**

13.—(1) A commercial controller has authority to hold entitlements for a person other than himself or itself if, but only if, he or it has an agreement with that person to do so (in the case of entitlements to be held for two or more persons acting jointly, if he or it has such agreement with each such person) and that agreement:

- (a) sets out the extent of the authority of the controller to deal with entitlements held for that person;
- (b) provides for the form and manner in which any instructions for the purposes of any provision of these Regulations required by the terms of such authority are to be receivable by the controller; and
- (c) appoints the controller as the agent of the account holder for the transmission of communications by means of the Operator's part of the system relating to entitlements held or to be held for the account holder or the units of a security to which the entitlements relate (including communications with respect to any right, privilege or benefit attaching to, or arising from, such units).

(2) Subject to these Regulations (and in particular regulation 51), it is the duty of a commercial controller:

- (a) to hold entitlements only for persons he or it is authorised to hold entitlements for; and
- (b) upon:
  - (i) receiving actual notice that he or it holds an entitlement for a person he or it has no authority to hold entitlements for in circumstances where the controller has not consented to the transfer of the entitlement and the entitlement is not subject to an instruction of the kind referred to in regulation 34; and
  - (ii) failing to obtain authority from the person concerned within 5 working days of having received such notice,

forthwith to notify a transaction to the Operator under which the entitlement is to be transferred to a primary company controller (or to such other controller as the person concerned may have instructed under paragraph (3)) and to instruct that controller to hold the entitlement for the person concerned (for this purpose no instructions from the person concerned being required);

but any duty imposed by these Regulations on a commercial controller owed to an account holder is owed by him or it irrespective of whether he or it has authority to hold entitlements for that account holder.

(3) Subject to paragraph (2) and these Regulations, for as long as a commercial controller holds entitlements for an account holder he or it has no authority to hold for, it is the duty of the commercial controller:

- (a) to act on the written instructions, and only on the written instructions, of the account holder in dealing with entitlements held for that account holder or otherwise for the purposes of any provision of these Regulations; and
- (b) not to make any communications on behalf of the account holder unless he or it has been expressly authorised in writing to do so,

provided that the controller shall not act on any purported instruction, or authority to make a communication, unless signed by the account holder (in the case of two or more persons acting jointly, by each of them).

(4) An agreement between a commercial controller and one of the controller's account holders entered into for the purposes of paragraph (1) shall be deemed to continue to exist, notwithstanding that the agreement may have terminated for any reason, until the controller has actual notice of its termination (whether on death or otherwise).

(5) A company or any other recipient, unless they have actual notice to the contrary with respect to a particular communication, shall be entitled and bound to treat any communication, given in the form of a valid communication, which is purportedly issued on behalf of the holder of a unit of a security or one of his or its account holders by a commercial controller as having been issued with the authority of the person on whose behalf it is purportedly issued, who shall be bound by the communication accordingly. This paragraph is without prejudice to the liability of the person so appointed for the making of a communication without authority, but it applies whether or not the holder of a unit or account holder concerned is identified in the communication, provided that the identity of the holder or account holder is, within such period as the recipient of the communication may reasonably require, notified to the recipient by the controller concerned.

(6) In addition a company, unless it has actual notice to the contrary, shall be entitled and bound to treat any commercial controller who has instructed the registration of a person as the holder of units of a security of a company as having the authority to hold, for that person, entitlements to any units of a security of the company to be issued or transferred to the person by reference to the units with which he is registered.

(7) Notwithstanding any provision to the contrary in an agreement made for the purposes of paragraph (1) (but in addition to any other means provided therein for the termination of the agreement), an account holder has the right, without penalty (but subject to any reasonable charges and any accrued liabilities), to send a notice in writing to his commercial controller terminating the controller's authority to hold entitlements for the account holder. Such a notice shall have no effect on any instructions already given by the account holder to the controller.

### **Replacement of commercial controller**

14.—(1) If:

- (a) it appears to the Operator that there is a risk to the interests of persons or of any category of persons for whom a commercial controller holds entitlements which cannot adequately be dealt with under the other provisions of these Regulations;
- (b) a commercial controller so requests; or
- (c) the Operator's power of termination under regulation 96 has become exercisable

the Operator may effect a transfer of entitlements held by the controller concerned to another controller (including one which it has established for the purpose), such controller having a duty to hold those entitlements for the persons for whom the controller concerned held them, by amending its record of entitlements accordingly and without the necessity of obtaining any consent from the controller concerned.

(2) It is the duty of any commercial controller from whom entitlements have been transferred in accordance with paragraph (1), and of any officer of such a controller and of any insolvency practitioner appointed in relation to that controller, to preserve and deliver up to the Operator such records, or copies of records (including any instructions received under regulation 34) as the Operator may reasonably require and to provide all necessary co-operation in connection with the effecting of any such transfer. It is also the duty of such a person to notify the Operator of any entitlements to which regulations 34, 51, 52 or 53 apply.

(3) As soon as practicable after effecting a transfer under this regulation, the Operator shall inform the account holders concerned of the transfer and the identity of the controller to whom the entitlements have been transferred. The Operator shall give to the transferee controller any record or information received by the Operator under paragraph (2) as soon as practicable after its receipt.

(4) Where under this regulation the Operator transfers entitlements from one controller to another, any instructions received by the first mentioned controller with regard to those entitlements prior to the transfer which have not been acted upon at the time of transfer may (and in the case of instructions received under regulation 34 shall) be treated as instructions received by the other controller, to the extent that satisfactory evidence of them is obtained by the other controller and the other controller is satisfied that he or it has established the number of entitlements to be held for the account holder concerned. Where the other controller has reason to believe that an entitlement transferred is or may be one to which regulation 34, 51, 52 or 53 applies, it shall take reasonable steps to ascertain whether or not the entitlement is subject to the regulation in question.

(5) The Operator may treat consents and notifications of transactions with respect to an entitlement given by a replaced controller before the transfer as being given on behalf of the replacement controller. Where this paragraph is taken advantage of by the Operator, the replacement controller shall not be liable for any defect in, or lack of authority for, the giving of the consent or notification.

(6) A standing instruction to register given by a replaced controller shall be treated as having been given on behalf of the replacement controller; the replacement controller shall not, however, be liable for any defect in such an instruction to register solely by reason of the provisions of this paragraph.

(7) The Operator shall not effect a transfer under this regulation to any controller other than a primary company controller except with the consent of that controller and on such terms as may be agreed between them. Where that controller is a commercial controller, regulation 13(1), (2), (4) and (7) shall not apply until either there is an agreement, made for the purposes of regulation 13(1), between the account holder and the commercial controller, or (if sooner) until the expiry of 3 months from the date of receipt of the entitlements by the controller; the other provisions of that regulation shall apply, in particular regulation 13(3).

(8) Where the Operator effects a transfer under this regulation to a primary company controller it shall take all practicable steps, at its own expense (but without prejudice to its right to recover the cost from the controller from whom entitlements have been transferred) to provide complete and up to date records to the primary company controller and otherwise to ensure that the primary company controller is in a position to perform his or its functions under these Regulations.

(9) It shall be the duty of any replacement controller which has received any records, or copies of records, under this regulation, to permit their inspection and copying by any person who is an officer of the replaced controller or any insolvency practitioner who is appointed in relation to that controller or the official receiver.