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STATUTORY INSTRUMENTS

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**1992 No. 225**

**The Uncertificated Securities Regulations 1992**

**PART IX**

**CREATION OF UNCERTIFICATED SECURITIES INTRODUCTORY**

**Securities: conversion into, and issue in, uncertificated form**

74.—(1) A company may, in accordance with this Part of these Regulations, convert the units of any certificated security of the company in issue into an uncertificated security or may issue units of a security in uncertificated form.

(2) A company may not, however, so convert or issue any shares of the company if:

- (a) they are not fully paid up as to the nominal value thereof and the whole of any premium thereon; or
- (b) they are numbered.

(3) For the purposes of this Part of these Regulations, an “enabling resolution” is a special resolution passed by the company authorising the conversion of any securities of the company into uncertificated form and, where units of any security (existing or future) are at any time to be issued by the company, their issue in such form rather than certificated form, should the directors of the company think fit.

**CHAPTER I**

**CONVERSION OF CERTIFICATED SECURITIES**

**Conversion of certificated securities into uncertificated form**

75.—(1) Subject to the following provisions of this regulation, conversion of a certificated security into an uncertificated security shall be effected by two directors or a director and the secretary of the company signing a certificate of conversion in the form set out in Schedule 4 (with any necessary modifications).

(2) Subject to paragraph (7), no such certificate shall be of any effect unless:

- (a) the board of directors or a duly authorised committee of the same have authorised (in a resolution complying with paragraph (6)) the signature of the certificate on or after a specified date and the certificate is signed on or after that date;
- (b) the Secretary of State has consented to the system commencing operation under regulation 5; and
- (c) the Operator has agreed to the conversion of the security and any conditions attached to that agreement have been satisfied.

(3) It is the duty of a company, prior to the conversion of a security, to:

- (a) make adequate preparations and arrangements for the effecting of the conversion of the security (in particular by preparing or causing to be prepared a record of entitlements to

take effect from the moment of conversion) and the carrying out of its functions under these Regulations in connection with the security (in particular by making arrangements for the keeping of a record of entitlements); and

- (b) ensure the requirements set out in paragraph (4) have been complied with.

It is the duty of any company controller appointed with respect to the security to co-operate with the company in making the preparations and arrangements referred to in sub-paragraph (a).

- (4) The requirements referred to in paragraph (3)(b) are:

- (a) the company must at some time have passed an enabling resolution;
- (b) conversion of the security must have been authorised by a relevant resolution of the holders of the security at least two months prior to the date on which the security is converted, unless the terms on which the security has been issued authorise the conversion of the security into an uncertificated security or the security is shares of the company in circumstances where the company has only one class of shares and the resolution which constitutes the enabling resolution in addition authorised the conversion of the shares into uncertificated form; and
- (c) the required publicity must have been given to the proposal to convert, unless, the security being a security in relation to which certificates are in issue, the company has collected in, or received indemnities in respect of, all certificates in issue with respect to the security.

- (5) For the purposes of paragraph (4):

- (a) a relevant resolution is:
- (i) where the security concerned is shares, or any class of shares, an extraordinary resolution passed by the holders of the shares or shares of that class;
- (ii) in any other case: —a resolution passed by the holders of not less than three quarters of the units of the security, or, —in the case of a resolution put at a meeting of the holders at which a poll is not demanded, a resolution passed by not less than three quarters of the holders of the units of the security who (being entitled to do so) vote on the resolution, whether in person or (where permitted) by proxy, provided that no resolution shall be treated as a relevant resolution for this purpose if, in addition to conversion, it deals with any other business;
- (b) the required publicity is the publication of a notice which includes the relevant statements on at least three occasions prior to the date on which conversion of the security is effected in such manner and on such occasions as the Operator may direct.

For the purposes of sub-paragraph (b), the relevant statements are:

- (i) where the notice is published prior to the passing of any resolution required by paragraph (4) (b), a statement that it is proposed that the security (identifying it) of the company (naming it) be converted into an uncertificated security to which these Regulations will apply and that a resolution will shortly be put to the holders of the security for their approval of the conversion;
- (ii) where the notice is published after the passing of that resolution, or no resolution is required, a statement that it is proposed that the security (identifying it) of the company (naming it) will shortly be converted into an uncertificated security to which these Regulations will apply and that persons holding by way of security certificates to units of the security concerned should as soon as possible take steps to preserve their security under the provisions of these Regulations; the date for last receipt of instruments of transfer under paragraph
- (6) shall also be stated if known; and
- (iii) (in either case) if the notice is to be the final notice of conversion, a statement of that fact.

Also for the purposes of sub-paragraph (b), a notice is none the less published by a company if it is published by the Operator, including where it is included in a notice published by the Operator relating to a number of companies.

(6) A resolution of the directors, or a duly authorised committee of the same, authorising signature of a certificate with respect to a security under paragraph (2)(a) shall specify a date (referred to below as the “relevant date”) after which no further proper instruments of transfer received with respect to the security will be acted upon prior to conversion, being a date not less than 3 working days and not more than 10 working days before the date specified in the resolution as the date on or after which the certificate of conversion may be signed.

Subject to paragraph (8) or to any direction issued by the Operator, no proper instrument of transfer with respect to the security which is to be converted received by the company after the relevant date may be registered by the company in the appropriate register (paragraph 1 of Part I of Schedule 5 applies to such instruments).

(7) The commencement of the operation of a record of entitlements with respect to a security by the Operator shall be conclusive evidence that the conditions set out in paragraph (2)(a) and (c) have been complied with with respect to that security (except in any proceedings for damages against any person for breach of a duty imposed by this regulation).

(8) If the certificate of conversion has not been signed within three working days of the date specified in the resolution of the directors under paragraph (2)(a), the resolution shall lapse and the prohibition on registration of transfers under paragraph (6) shall cease. The directors may pass such further resolutions under paragraph (2)(a) as are required until conversion is effected.

#### **Duties of Operator with respect to conversion**

76.—(1) It is the duty of the Operator not to agree to the conversion of any security unless the Operator is reasonably satisfied that the company has made adequate arrangements and preparations with respect to the conversion and for the carrying out of its functions under these Regulations in respect of that security.

(2) The Operator may make its agreement subject to conditions.

#### **Delivery of conversion certificate to registrar of companies**

77.—(1) The company shall deliver to the registrar of companies for registration a certified copy of the certificate signed under regulation 75(1) by which conversion of any security was effected, within 7 working days of the date on which it was signed.

(2) Section 380(6) of the 1985 Act applies to a failure to comply with the provisions of this regulation as it does to a failure to comply with section 380(2) or (3) of that Act.

(3) In this regulation “certified copy” means a copy certified as a true copy by a notary, notary public or other person authorised by law, in the jurisdiction where the company is incorporated, to administer oaths or authenticate documents.

### **CHAPTER II**

#### **ISSUE OF A SECURITY IN UNCERTIFICATED FORM**

##### **Issue of uncertificated securities**

78.—(1) A company:

- (a) shall issue units of a security in uncertificated form if the units are to form part of a security that is already in issue in uncertificated form; or

- (b) may issue units of a security in such form if they form a new security and the conditions referred to in paragraph (2) have been complied with.

Any issue of units of a security in certificated form where they are to form part of an existing uncertificated security shall be void and vice versa.

- (2) The conditions referred to in paragraph (1)(b) are that:
- (a) the Operator has agreed to the units proposed to be issued being issued in uncertificated form and any conditions attached to such agreement have been satisfied; and
  - (b) the Secretary of State has consented to the system commencing operation under regulation 5.

If these conditions are not satisfied, the units concerned shall be treated as having been issued in certificated form, but commencement of the operation of a record of entitlements with respect to the security by the Operator shall be conclusive evidence that the condition referred to in subparagraph (a) has been complied with with respect to that security, except in any proceedings for damages for breach of a duty imposed by this regulation.

(3) It is in addition the duty of a company not to issue a new security in uncertificated form unless the company has at some time passed an enabling resolution.

(4) Where units of a security are to be issued in uncertificated form and are to form part of a security that is already in issue in uncertificated form, the appropriate register may be amended at any time so as to record the holders of the units issued.

#### **Duty of company to make adequate preparations and arrangements**

**79.** It is the duty of a company proposing to issue a new security in uncertificated form or to issue units of a security in such form to make, prior to the issue:

- (a) adequate preparations and arrangements for the carrying out of its functions under these Regulations in connection with the security (in particular by making arrangements for the keeping of a record of entitlements with respect to the security or the units); and
- (b) adequate preparations and arrangements for the issue of the units, whether of the new security or of an existing security, in particular (in the case of a new security) by preparing a record of entitlements to take effect as its record of entitlements for the security from the moment of issue.

#### **Duty of Operator to satisfy itself over company's preparations**

**80.**—(1) Where regulation 78(2)(a) applies, the Operator shall not agree to the issue of units of a security proposed to be issued by a company in uncertificated form unless the Operator is reasonably satisfied that the company has made adequate arrangements and preparations with respect to the issue and for the carrying out of its functions under these Regulations with respect to the security to be issued.

- (2) The Operator may make its agreement subject to conditions.

### CHAPTER III

#### CONVERSION AND ISSUE: MISCELLANEOUS PROVISIONS

#### **General duties and powers of Operator in admitting securities into the system**

**81.**—(1) Where the function of admitting securities into the system is delegated to it, it is the duty of the Operator not to agree to the conversion of any security into, or issue of any security in, uncertificated form unless it has made adequate arrangements for the carrying out of its own functions under these Regulations, so far as that security is concerned or makes its agreement subject

to the completion of those arrangements. Such arrangements shall include crediting, in a record of entitlements for the security, the Operator as a controller acting under regulation 62 and any alternative company controller with any entitlements the Operator is instructed by the company to credit them with.

(2) The Operator shall not be required to agree to the conversion of a security into, or issue of a new security in, uncertificated form if, in the Operator's opinion, the security is unsuitable, by reason (in the case of shares) of the terms of the company's memorandum or articles of association or (in the case of any securities) of the terms governing its issue, to be an uncertificated security given the facilities available for the operation of the system or any additional provision made in the company's memorandum or articles of association, or (as the case may be) in any other terms of issue of the security, under regulation 120.

(3) The Secretary of State, where the function of admitting securities into the system has been delegated to the Operator, may direct the Operator:

- (a) to agree to the conversion or issue of a security in uncertificated form (subject to such conditions being imposed as he may direct) upon the application of any person aggrieved by a refusal of the Operator to so agree, if in his opinion the Operator's decision is arbitrary or otherwise without adequate justification; or
- (b) to abandon any condition it has imposed on its agreement to the conversion of a security into or issue of any security in uncertificated form, if in his opinion the condition is arbitrary or otherwise without adequate justification.

### **Further provisions**

**82.**—(1) Upon the conversion of a security into, or the issue of units of a security in, uncertificated form, a controller recorded on a record of entitlements prepared for the security as having an entitlement to a unit of the security converted or issued shall there-upon have that entitlement save that where, and for as long as, the sum of the entitlements on the Operator's and company's records of entitlements exceeds the units of a security in issue, the question whether the controller has the entitlement is in addition to be determined by ascertaining whether the controller would have been recorded with it if the excess had not arisen.

(2) Schedule 5 to these Regulations makes further provision with respect to the conversion of a security into, or issue of units of a security in, uncertificated form.