
STATUTORY INSTRUMENTS

1995 No. 3272

The Uncertificated Securities Regulations 1995

PART II

THE OPERATOR

Approval and compliance

Applications for approval

4.—(1) A person may apply to the Treasury for their approval of him as Operator of a relevant system.

(2) Any such application—

(a) shall be made in such a manner as the Treasury may direct; and

(b) shall be accompanied by such information as the Treasury may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the Treasury may require the applicant to furnish additional information.

(4) The directions and requirements given or imposed under paragraphs (2) and (3) may differ as between different applications.

(5) Any information to be furnished to the Treasury under this regulation shall, if they so require, be in such form or verified in such manner as they may specify.

(6) Every application shall be accompanied by a copy of any rules and guidance to be issued by the applicant.

Grant and refusal of approval

5.—(1) If, on an application made under regulation 4, it appears to the Treasury that the requirements of Schedule 1 are satisfied with respect to the application, they may—

(a) subject to the payment of any fee charged by virtue of regulation 6(1); and

(b) subject to the provisions of Schedule 2,

approve the applicant as Operator of a relevant system.

(2) An approval under this regulation shall be by instrument in writing and shall state the date on which it takes effect.

(3) Schedule 1 (which imposes requirements which must appear to the Treasury to be satisfied with respect to an Operator, the relevant system and his rules and practices) shall have effect.

(4) Where the Treasury refuse an application for approval they shall give the applicant a written notice to that effect stating the reasons for the refusal.

Fees

6.—(1) The Treasury may charge a fee to a person seeking approval as Operator of a relevant system.

(2) The Treasury may charge an Operator a periodical fee.

(3) Any fee chargeable by the Treasury under this regulation shall not exceed an amount which reasonably represents the amount of costs incurred—

- (a) in the case of a fee charged to a person seeking approval, in determining whether approval ought to be granted; and
- (b) in the case of a periodical fee, in satisfying themselves that the Operator and the relevant system in question continue to meet the requirements of Schedule 1 to these Regulations and that the Operator is complying with any obligations to which he is subject by virtue of them.

(4) For the purposes of paragraph (3), the costs incurred by the Treasury shall be determined on the basis that they include such proportion of the following matters as are properly attributable to the performance of the relevant function—

- (a) expenditure on staff, equipment, premises, facilities, research and development;
- (b) the allocation, over a period of years, whether before or after the coming into force of these Regulations, of any initial expenditure incurred wholly and exclusively to perform the function or to prepare for its performance;
- (c) any notional interest incurred on any capital expended on or in connection with the performance of the function or in preparing for its performance and, in a case in which any function is exercisable by a designated agency, any actual interest payable on any sums borrowed which have been so expended; and
- (d) any other matter which, in accordance with generally accepted accounting principles, may properly be taken account of in ascertaining the costs properly attributable to the performance of the function.

(5) For the purposes of paragraph (4)(c)—

- (a) “notional interest” means any interest which that person might reasonably have been expected to have been liable to pay had the sums expended been borrowed at arm’s length; and
- (b) “actual interest” means the actual interest paid on sums borrowed in a transaction at arm’s length and, where a sum has been borrowed otherwise than in such a transaction, means whichever is the lesser of the interest actually paid and the interest that might reasonably have been expected to be paid had the transaction been at arm’s length.

(6) Any fee received by the Treasury under this regulation shall be paid into the Consolidated Fund.

(7) Any fee received by a designated agency under this regulation may be retained by it.

Supervision

Withdrawal of approval

7.—(1) If at any time it appears to the Treasury that any requirement of Schedule 1 is not satisfied, or that an Operator has failed to comply with any obligation to which he is subject by virtue of these Regulations, they may, by written instrument, subject to paragraph (2), withdraw approval from that Operator.

(2) Subsections (2) to (9) of section 11 of the 1986 Act shall apply in relation to the withdrawal of approval from an Operator under paragraph (1) as they apply in relation to the revocation of a recognition order under subsection (1) of that section; and in those subsections as they so apply—

- (a) any reference to a recognised organisation shall be taken to be a reference to an Operator; and
- (b) any reference to members of a recognised organisation shall be taken to be a reference to system-users.

Compliance orders and directions

8.—(1) If at any time it appears to the Treasury that any requirement of Schedule 1 is not satisfied, or that an Operator has failed to comply with any obligation to which he is subject by virtue of these Regulations, they may—

- (a) make an application to the court; or
- (b) subject to paragraph (3), give to the Operator such directions as they think fit for securing that the relevant requirement is satisfied or obligation complied with.

(2) If on any application by the Treasury under paragraph (1)(a) the court is satisfied that the requirement is not satisfied or, as the case may be, that the Operator has failed to comply with the obligation in question, it may order the Operator to take such steps as the court directs for securing that the requirement is satisfied or that the obligation is complied with.

(3) Before giving a direction under paragraph (1)(b) the Treasury shall—

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

(4) The jurisdiction conferred by paragraph (2) shall be exercised by the High Court and the Court of Session.

Injunctions and restitution orders

9.—(1) If on the application of the Treasury the court is satisfied that—

- (a) there is a reasonable likelihood that any person will contravene any provision of the rules of an Operator to which that person is subject and which regulate the carrying on by him of investment business within the meaning of the 1986 Act;
- (b) any person has contravened any such rule, and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) any person has contravened any such rule, and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

(2) Subsections (2) to (9) of section 61 of the 1986 Act shall apply in relation to the application of the Treasury for an injunction or, in Scotland, an interdict under paragraph (1) as they have effect in relation to the application of the Secretary of State for an injunction or, in Scotland, an interdict under subsection (1) of that section; and in those subsections as they so apply—

- (a) the reference to a recognised clearing house shall be taken to be a reference to an Operator;

- (b) the reference in subsection (2) to such rules as are mentioned in subsection (1)(a)(iv) shall be taken to be a reference to the rules mentioned in paragraph (1)(a);
- (c) the reference to such steps as are mentioned in subsection (1) shall be taken to be a reference to such steps as are mentioned in paragraph (1);
- (d) the reference in subsection (3)(a) to profits having accrued to any person as a result of his contravention of any provision or condition mentioned in subsection (1)(a) shall be taken to be a reference to profits having accrued to any person as a result of his contravention of any rule mentioned in paragraph (1)(a);
- (e) the references to subsection (3) shall be taken to be references to that subsection as it so applies.

Provision of information by Operators

10.—(1) The Treasury may, in writing, require an Operator to give them such information as they may specify.

(2) The Treasury may, in writing, require an Operator to furnish them at such times or in respect of such periods as they may specify with such information relating to that Operator as is so specified.

(3) Where an Operator amends, revokes or adds to his rules or guidance he shall within seven days give written notice to the Treasury of the amendment, revocation or addition.

(4) The notices and information required to be given or furnished under the foregoing provisions of this regulation shall be such as the Treasury reasonably require for the exercise of their functions under these Regulations.

(5) The Treasury may require information to be given by a specified time, in a specified form and to be verified in a specified manner.

Miscellaneous

Delegation of Treasury functions

11.—(1) If it appears to the Treasury that there is a body corporate—

- (a) to which functions have been transferred under section 114 of the 1986 Act; and
- (b) which is able and willing to discharge all or any of the functions conferred by this Part of these Regulations,

they may, subject to paragraphs (2) and (3), by instrument in writing delegate all or any of those functions to that body; and a body to which functions are so delegated is referred to in these Regulations as a “designated agency”.

(2) The functions conferred on the Treasury by regulation 12 may not be delegated.

(3) A designated agency shall send to the Treasury a copy of any guidance issued by virtue of these Regulations and any requirements imposed by it on the Operator by virtue of regulation 10, and give them written notice of any amendment or revocation of or addition to any such guidance or requirements.

(4) A designated agency shall—

- (a) send to the Treasury a copy of any guidance issued by it which is intended to have continuing effect and is issued in writing or other legible form; and
- (b) give them written notice of any amendment, revocation of or addition to guidance issued by it,

but notice need not be given of the revocation of guidance other than is mentioned in subparagraph (a) or of any amendment or addition which does not result in or consist of such guidance as is there mentioned.

(5) The Treasury shall not delegate any function to a designated agency unless they are satisfied that—

- (a) any guidance issued by it in the exercise of its functions under these Regulations;
- (b) requirements imposed by it on the Operator by virtue of regulation 10;
- (c) any guidance proposed to be issued by it in the exercise of its functions under these Regulations; or
- (d) any requirements it proposes to impose on the Operator by virtue of regulation 10,

do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, or if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(6) The powers conferred by paragraph (7) shall be exercisable by the Treasury if at any time it appears to them that—

- (a) any guidance issued by the designated agency in the exercise of its functions under these Regulations;
- (b) requirements imposed by the designated agency on the Operator by virtue of regulation 10; or
- (c) any practices of a designated agency followed in the exercise of its functions under these Regulations,

have, or are intended or are likely to have, to any significant extent the effect of restricting, 9 distorting or preventing competition and that the effect is greater than is necessary for the protection of investors.

(7) The powers exercisable under this paragraph are—

- (a) to resume all or any of the functions delegated to the designated agency by the written instrument referred to in paragraph (1); or
- (b) to direct the designated agency to take specified steps for the purpose of securing that the guidance, requirements or practices in question do not have the effect mentioned in paragraph (6).

(8) The Treasury may by written instrument—

- (a) at the request or with the consent of a designated agency; or
- (b) if at any time it appears to them that a designated agency is unable or unwilling to discharge all or any of the functions delegated to it,

resume all or any of the functions delegated to the agency under paragraph (1).

(9) Section 187(3) of the 1986 Act shall apply in relation to anything done or omitted in the discharge or purported discharge of functions delegated under paragraph (1) as it applies in relation to anything done or omitted to be done in the discharge or purported discharge of functions exercisable by virtue of a delegation order made by virtue of section 114 of the 1986 Act.

(10) In this regulation—

- (a) any reference to guidance issued to an Operator by a designated agency is a reference to any guidance issued or any recommendation made by the designated agency in writing, or other legible form, which is intended to have continuing effect, and is issued or made to an Operator; and

- (b) references to the practices of the designated agency are references to the practices of the designated agency in its capacity as such.

International obligations

12.—(1) If it appears to the Treasury—

- (a) that any action proposed to be taken by an Operator or designated agency would be incompatible with Community obligations or any other international obligations of the United Kingdom; or
- (b) that any action which an Operator or designated agency has power to take is required for the purpose of implementing any such obligation,

they may direct the Operator or designated agency not to take or, as the case may be, to take the action in question.

(2) A direction under this regulation may include such supplementary or incidental requirements as the Treasury think necessary or expedient.

(3) Where the function of granting under regulation 5, or withdrawing under regulation 7, an Operator's approval is exercisable by a designated agency, any direction under paragraph (1) in respect of that Operator shall be a direction requiring the agency to give the Operator such a direction as is specified in the direction by the Treasury.

(4) Any direction under this regulation is enforceable on application of the person who gave it, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988(1).

Prevention of restrictive practices

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