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STATUTORY INSTRUMENTS

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**1995 No. 3272**

**The Uncertificated Securities Regulations 1995**

**PART III**

**PARTICIPATING ISSUERS**

*Keeping of registers*

**Entries on registers**

**19.**—(1) A participating issuer which is a company shall enter on its register of members, in respect of any class of shares which is a participating security, how many shares each member holds in uncertificated form and certificated form respectively.

(2) Without prejudice to sections 190 and 191 of the 1985 Act, a participating issuer who, apart from this regulation, is required by or under an enactment or instrument to maintain in the United Kingdom a register of persons holding securities (other than shares) issued by him, shall enter on that register in respect of any class of security which is a participating security—

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

(3) A participating issuer who, apart from this regulation, is not required by or under an enactment or instrument to maintain in the United Kingdom in respect of a participating security issued by him a register of persons holding units of that participating security, shall maintain in the United Kingdom a register recording—

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

(4) 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 a participating issuer and his officers in the event of a default in complying with paragraph (1), (2) or (3).

(5) Without prejudice to any lesser period of limitation and to any rule as to the prescription of rights, liability incurred by a participating issuer arising—

- (a) from the making or deletion of an entry in a register of securities pursuant to paragraph (1), (2) or (3); or
- (b) from a failure to make or delete any such entry,

shall not be enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of a failure, the failure first occurred.

- (6) For the purposes of paragraph (1)—

- (a) notwithstanding section 362 of, or paragraph 2(1) of Schedule 14 to, the 1985 Act, the reference to a company's register of members shall not be taken to include an overseas branch register;
- (b) those members who hold shares in uncertificated form may not be entered as holders of those shares on an overseas branch register; and
- (c) any shares with respect to which share warrants to bearer are issued under section 188 of the 1985 Act shall be regarded as forming a separate class of shares.

(7) No notice of any trust, expressed, implied or constructive, shall be entered on a register of securities which is maintained by virtue of paragraph (3) in relation to uncertificated units of a security, or be receivable by the registrar of such a register.

(8) Paragraph (7) shall not apply to a participating issuer constituted under the law of Scotland.

### **Effect of entries on registers**

**20.**—(1) Subject to regulation 23(7), an entry on such a register as is mentioned in regulation 19(1) or (2) which records a person as holding units of a security in uncertificated form shall be evidence of such title to the units as would be evidenced if the entry on the register related to units of that security held in certificated form.

(2) Subject to regulation 23(7), an entry on a register maintained by virtue of regulation 19(3) shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, that the person to whom the entry relates has such title to the units of the security which he is recorded as holding in uncertificated form as he would have if he held the units in certificated form.

### **Rectification of and changes to registers of securities**

**21.**—(1) A participating issuer shall not rectify a register of securities in relation to uncertificated units of a security held by a system-member except—

- (a) with the consent of the Operator; or
- (b) by order of a court in the United Kingdom.

(2) A participating issuer who rectifies or otherwise changes an entry on a register of securities in relation to uncertificated units of a security (except in response to an Operator-instruction) shall immediately—

- (a) notify the Operator; and
- (b) inform the system-members concerned,

of the change to the entry.

### **Closing registers**

**22.** Notwithstanding section 358 of the 1985 Act or any other enactment, a participating issuer shall not close a register of securities relating to a participating security without the consent of the Operator.

### **Registration of transfers of securities**

**23.**—(1) A participating issuer shall register a transfer of title to uncertificated units of a security on a register of securities in accordance with an Operator-instruction unless—

- (a) the transfer is prohibited—
  - (i) by order of a court in the United Kingdom; or
  - (ii) by or under an enactment; or

- (b) he has actual notice that the transfer is—
    - (i) avoided by or under an enactment; or
    - (ii) a transfer to a deceased person; or
    - (iii) where the participating issuer is constituted under the law of Scotland, prohibited by or under an arrestment; or
  - (c) the circumstances described in paragraph (2) apply; or
  - (d) he is entitled by virtue of paragraph (3) to refuse to register the transfer.
- (2) The circumstances referred to in paragraph (1)(c) are that the transfer is one of two or more transfers in respect of which the Operator has notified the participating issuer in accordance with regulation 24(1), and that to those transfers regulation 24(2) does not apply by virtue of regulation 24(3).
- (3) A participating issuer may refuse to register a transfer of title to uncertificated units of a security in accordance with an Operator-instruction if the instruction requires a transfer of units—
- (a) to an entity which is not a natural or legal person;
  - (b) to a minor (which in relation to a participating issuer constituted under the law of Scotland, shall mean a person under 16 years of age);
  - (c) to be held jointly in the names of more persons than is permitted under the terms of the issue of the security; or
  - (d) where, in relation to the Operator-instruction, the participating issuer has actual notice from the Operator of any of the matters specified in regulation 29(5)(a)(i) to (iii).
- (4) A participating issuer shall notify the Operator by issuer-instruction whether he has registered a transfer in response to an Operator-instruction to do so.
- (5) A participating issuer shall not register a transfer of title to uncertificated units of a security on a register of securities unless he is required to do so by an Operator-instruction, an order of a court in the United Kingdom, by regulation 35(2), or by or under an enactment.
- (6) Paragraph (5) shall not be taken to prevent a participating issuer from entering a person on a register of securities to whom title to uncertificated units of a security has been transmitted by operation of law.
- (7) Any purported registration of a transfer of title to an uncertificated unit of a security other than in accordance with this regulation shall be of no effect.
- (8) Subsection (5) of section 183 of the 1985 Act shall apply in relation to a refusal by a participating issuer to register a transfer of securities in any of the circumstances specified in paragraph (1), as it applies in relation to a refusal by a company to register a transfer of shares or debentures; and in that subsection as it so applies the reference to the date on which the transfer was lodged with the company shall be taken to be a reference to the date on which the Operator-instruction was received by the participating issuer.
- (9) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of that section shall apply to a participating issuer and his officers in the event of a default in complying with subsection (5) of that section as applied by paragraph (8).

### **Registration of linked transfers**

- 24.—**(1) Where an Operator sends two or more Operator-instructions requiring a participating issuer to register two or more transfers of title to uncertificated units of a security, and it appears to the Operator—
- (a) either—

- (i) that there are fewer units of the security registered identified in any one of the Operator-instructions as a transferor than the number of units to be transferred from him; or
- (ii) that any one of the transfers taken alone is one in relation to which it has not been established in accordance with paragraph 15(1)(c) of Schedule 1 that a settlement bank has agreed to make a payment; and
- (b) that registration of all of the transfers would result in each of the persons identified in the Operator-instructions as a transferor having title to a number of units of a security equal to or greater than nil; and
- (c) that the combined effect of all the transfers taken together would result in paragraph 15(1)(c) of Schedule 1 being satisfied,

the Operator may notify the participating issuer that the transfers are linked transfers.

(2) Except in the circumstances described in paragraph (3), notwithstanding that there may be fewer uncertificated units of the security registered in the name of a person identified in any one of the Operator-instructions as a transferor than the number of uncertificated units to be transferred from him, where an Operator notifies a participating issuer that transfers are linked transfers, the participating issuer may either—

- (a) register the combined effect of all the transfers taken together; or
  - (b) register all the transfers simultaneously.
- (3) Paragraph (2) does not apply in a case in which—
- (a) registration of the combined effect of the linked transfers, or simultaneous registration of all the transfers (as the case may be), would not result in each of the persons identified in the Operator-instructions as a transferor having title to a number of uncertificated units of the security equal to or greater than nil; or
  - (b) one or more of the transfers constituting the linked transfers may not be registered by virtue of the circumstances specified in regulation 23(1)(a) or (b), or is to be refused registration by virtue of regulation 23(3).

### **Position of a transferee prior to entry on a register**

**25.—**(1) At the time an Operator-instruction is generated which will require a participating issuer to register on a register of securities a transfer of title to any uncertificated units of a security constituted under the law of England and Wales or Northern Ireland—

- (a) the transferee shall acquire an equitable interest in the requisite number of uncertificated units of the security of the kind specified in the Operator-instruction in which the transferor has an equitable interest by virtue of this regulation, or in relation to which the transferor is recorded on the relevant register of securities as having title; and
- (b) the equitable interest shall subsist until the time specified in paragraph (4).

(2) At the time an Operator-instruction is generated which will require a participating issuer to register on a register of securities a transfer of title to any uncertificated units of a security constituted under the law of Scotland—

- (a) the transferor shall as from that time be deemed to hold the requisite number of uncertificated units of the security in which he has an interest by virtue of this regulation, or in relation to which he is recorded on the relevant register of securities as having title, on trust for the benefit of the transferee; and
- (b) the trust shall subsist until the time specified in paragraph (4).

(3) For the purposes of paragraphs (1)(a) and (2)(a), it shall not be denied that the transferee has obtained the equitable interest referred to in paragraph (1)(a), or that the transferor holds the interest referred to in paragraph (2)(a) on trust for the benefit of the transferee, solely by reason of the fact that the transferor acquired his equitable interest by virtue of paragraph (1)(a) at the same time as the transferee's equitable interest arises in that interest, or that the transferor acquired his interest by virtue of paragraph (2)(a) at the same time that he is deemed to hold that interest on trust for the transferee.

(4) Subject to any enactment or rule of law, an interest acquired under paragraph (1) or (2)—

- (a) in a case other than one in which under regulation 24(2)(a) a participating issuer registers the combined effect of linked transfers, shall subsist until the time that the transferee is entered on the register of securities in respect of the transfer of units to him; and
- (b) in a case in which under regulation 24(2)(a) a participating issuer registers the combined effect of linked transfers, shall subsist until the time that the combined effect of all the linked transfers is registered.

(5) The requisite number for the purposes of this regulation is whichever of the following is the lower at the time that the Operator-instruction is sent, namely—

- (a) the number of units which are specified in the Operator-instruction; and
- (b) the total of the number of uncertificated units in relation to which the transferor is recorded on the register of securities as having title and the number in which he has an interest by virtue of paragraph (1) or (2), less that number of units in which such interests subsist in favour of a third party by virtue of an earlier Operator-instruction requiring a participating issuer to register on a register of securities a transfer of title to those units.

(6) This regulation has effect notwithstanding that the units to which the Operator-instruction relates, or in which an interest arises by virtue of paragraph (1) or (2), or any of them, may be unascertained.

(7) In Scotland—

- (a) this regulation has effect notwithstanding that the requirements relating to the creation of a trust under any enactment or rule of law have not been complied with; and
- (b) as from the time the trust referred to in paragraph (2) arises, any holder, or any holder thereafter, of a floating charge over any part of the property of the transferor shall be deemed to have received notice of the trust's existence and of the property to which it relates.

(8) Subject to paragraphs (6) and (7), this regulation shall not be construed as conferring a proprietary interest (whether of the kind referred to in paragraphs (1) or (2), or any other kind) in units of a security if the conferring of such an interest at the time specified in these Regulations would otherwise be void by or under an enactment or rule of law.

(9) In this regulation—

- (a) “the transferee” means the person identified in the Operator-instruction as the transferee; and
- (b) “the transferor” means the person identified in the Operator-instruction as the transferor.