
STATUTORY INSTRUMENTS

1995 No. 3272

The Uncertificated Securities Regulations 1995

PART III

PARTICIPATING ISSUERS

Participation by issuers

Participation in respect of shares

14.—(1) Where an Operator permits a class of shares in relation to which regulation 15 applies, or in relation to which a directors' resolution passed in accordance with regulation 16 is effective, to be a participating security, title to shares of that class which are recorded on a register of members as being held in uncertificated form may be transferred by means of the relevant system to which the permission relates.

(2) In paragraph (1) the reference to a register of members shall not include an overseas branch register.

15.—(1) This regulation applies to a class of shares if a company's articles of association in all respects are consistent with—

- (a) the holding of shares in that class in uncertificated form;
- (b) the transfer of title to shares in that class by means of a relevant system; and
- (c) these Regulations.

(2) A company may permit the holding of shares in a class to which this regulation applies in uncertificated form, and the transfer of title to any such shares by means of a relevant system.

16.—(1) This regulation applies to a class of shares if a company's articles of association in any respect are inconsistent with—

- (a) the holding of shares in that class in uncertificated form;
- (b) the transfer of title to shares in that class by means of a relevant system; or
- (c) any provision of these Regulations.

(2) A company may resolve, subject to paragraph (6)(a), by resolution of its directors (in this Part referred to as a "directors' resolution") that title to shares of a class issued or to be issued by it may be transferred by means of a relevant system.

(3) Upon a directors' resolution becoming effective in accordance with its terms, and for as long as it is in force, the articles of association in relation to the class of shares which were the subject of the directors' resolution shall not apply to any uncertificated shares of that class to the extent that they are inconsistent with—

- (a) the holding of shares of that class in uncertificated form;
- (b) the transfer of title to shares of that class by means of a relevant system; and

(c) any provision of these Regulations.

(4) Unless a company has given notice to every member of the company in accordance with its articles of association of its intention to pass a directors' resolution before the passing of such a resolution, it shall give such notice within 60 days of the passing of the resolution.

(5) Notice given by the company before the coming into force of these Regulations of its intention to pass a directors' resolution which, if it had been given after the coming into force of these Regulations would have satisfied the requirements of paragraph (4), shall be taken to satisfy the requirements of that paragraph.

(6) In respect of a class of shares, the members of a company may by ordinary resolution—

- (a) if a directors' resolution has not been passed, resolve that the directors of the company shall not pass a directors' resolution; or
- (b) if a directors' resolution has been passed but not yet come into effect in accordance with its terms, resolve that it shall not come into effect; or
- (c) if a directors' resolution has been passed and is effective in accordance with its terms but the class of shares has not yet been permitted by the Operator to be a participating security, resolve that the directors' resolution shall cease to have effect; or
- (d) if a directors' resolution has been passed and is effective in accordance with its terms and the class of shares has been permitted by the Operator to be a participating security, resolve that the directors shall take the necessary steps to ensure that title to shares of the class that was the subject of the directors' resolution shall cease to be transferable by means of a relevant system and that the directors' resolution shall cease to have effect;

and the directors shall be bound by the terms of any such ordinary resolution.

(7) Such sanctions as apply to a company and its officers in the event of a default in complying with section 376 of the 1985 Act shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (4).

(8) A company shall not permit the holding of shares in such a class as is referred to in paragraph (1) in uncertificated form, or the transfer of title to shares in such a class by means of a relevant system, unless in relation to that class of shares a directors' resolution is effective.

(9) This regulation shall not be taken to exclude the right of the members of a company to amend the articles of association of the company, in accordance with the articles, to allow the holding of any class of its shares in uncertificated form and the transfer of title to shares in such a class by means of a relevant system.

Interpretation of regulations 15 and 16

17. For the purposes of regulations 15 and 16 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.

Participation in respect of securities other than shares

18.—(1) Subject to paragraph (2), where an Operator permits a security other than a share to be a participating security, title to units of that security which are recorded in a register of securities as being held in uncertificated form may be transferred by means of a relevant system.

(2) In relation to any security (other than a share), if the law under which it is constituted is not a law of England and Wales, Northern Ireland or Scotland, or if a current term of its issue is in any respect inconsistent with—

- (a) the holding of title to units of that security in uncertificated form;

- (b) the transfer of title to units of that security by means of a relevant system; or
- (c) these Regulations,

the issuer shall not permit the holding of units of that security in uncertificated form, or the transfer of title to units of that security by means of a relevant system.

(3) In this regulation the terms of issue of a security shall be taken to include the terms prescribed by the issuer on which units of the security are held and title to them is transferred.

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.

Conversions and new issues

Conversion of securities into certificated form

26.—(1) A participating issuer shall not change a unit of a participating security from uncertificated to certificated form except —

- (a) where permitted by the rules made and practices instituted by an Operator in order to comply with paragraphs 13, 19(b) or (c) of Schedule 1; or
- (b) following receipt of an Operator-instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name of a system-member; or
- (c) subject to regulation 23, following receipt of an Operator-instruction requiring the registration of a transfer of title to uncertificated units of a security to a person who is not a system-member; or

- (d) on the registration, in accordance with regulation 35(2), of an offeror who is not a system-member as holder of the units of the security referred to in that regulation.
- (2) In the circumstances specified in paragraph (1)(b) to (d) a participating issuer shall—
 - (a) record on the register of securities that the units of the security are held in certificated form; 16
 - (b) where a certificate can be issued for the security, issue a certificate in respect of the units of the security to the relevant person; and
 - (c) notify the Operator that the units are no longer held in uncertificated form.
- (3) Subsection (1)(b) of section 185 of the 1985 Act shall apply in the circumstances specified in paragraph (1)(b) to (d) in relation to the issue of a certificate by a participating issuer pursuant to paragraph (2)(b) as it applies in relation to the completion and having ready for delivery by a company of share certificates, debentures or certificates of debenture stock; and in that subsection as it so applies the reference to the date on which a transfer was lodged with the company shall be a reference to the date on which the participating issuer received the relevant Operator-instruction or, where relevant, the date on which the participating issuer registered the offeror as holding the units of the security referred to in regulation 35(2).
- (4) Such sanctions as apply to a company and its officers in the event of a default in complying with that section shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (2) in accordance with the requirements laid down in paragraph (3).

Conversion of securities into uncertificated form

- 27.—(1) A participating issuer shall not change a unit of a participating security from certificated form to uncertificated form except in the circumstances specified in paragraph (2).
- (2) The circumstances referred to in paragraph (1) are—
 - (a) where the unit of the participating security is held by a system-member, that the participating issuer has received—
 - (i) a request in writing in the form required by the rules made and practices instituted by an Operator in order to comply with paragraph 13 of Schedule 1 to register the system-member as holding the unit in uncertificated form; and
 - (ii) subject to paragraph (4), the certificate relating to the certificated unit which is to be converted into uncertificated form;
 - (b) where the unit of the participating security is to be registered on a register of securities in the name of a system-member following a transfer of the unit to him from a person other than the nominee of a recognised investment exchange, that the participating issuer—
 - (i) subject to paragraph (3), has received by means of the Operator-system a proper instrument of transfer in favour of the system-member relating to the unit to be transferred;
 - (ii) subject to paragraph (4), has received by means of the Operator-system the certificate relating to the certificated unit which is to be transferred and converted into uncertificated form; and
 - (iii) may accept by virtue of the rules made and practices instituted by an Operator in order to comply with paragraph 13 of Schedule 1 that the system-member to whom the unit is to be transferred wishes to hold it in uncertificated form; and
 - (c) where the unit of the participating security is to be registered on a register of securities in the name of a system-member following a transfer of the unit to him from a nominee of a recognised investment exchange, that the participating issuer—

- (i) has received a proper instrument of transfer in favour of the system-member from the nominee relating to the unit to be transferred; and
- (ii) may accept by virtue of the rules made and practices instituted by an Operator in order to comply with paragraph 13 of Schedule 1 that the system-member to whom the unit is to be transferred wishes to hold it in uncertificated form.

(3) The requirement in paragraph (2)(b)(i) that the participating issuer shall have received an instrument of transfer relating to the unit of the participating security shall not apply in a case where for a transfer of a unit of that security no instrument of transfer is required.

(4) The requirements in paragraphs (2)(a)(ii) and (2)(b)(ii) that the participating issuer shall have received a certificate relating to the unit of the participating security shall not apply in a case where the system-member or transferor (as the case may be) does not have a certificate in respect of the unit to be converted into uncertificated form because no certificate has yet been issued to him.

(5) In the circumstances specified in paragraph (2)(a), on receipt of the request referred to in paragraph (2)(a)(i) and (except where paragraph (4) applies) the certificate referred to in paragraph (2)(a)(ii), the participating issuer shall, within two months—

- (a) enter on the register of securities that the system-member holds the unit in uncertificated form; and
- (b) send the Operator an issuer-instruction informing him of the entry on the relevant register of securities.

(6) In the circumstances specified in paragraph (2)(b), on receipt of the instrument of transfer referred to in paragraph (2)(b)(i) (except where paragraph (3) applies) and the certificate referred to in paragraph (2)(b)(ii) (except where paragraph (4) applies), the participating issuer shall—

- (a) upon recording that the system-member holds the unit, enter on the register of securities that he holds the unit in uncertificated form; and
- (b) within 2 months thereafter, send the Operator an issuer-instruction informing him of the entry on the register of securities.

(7) In the circumstances specified in paragraph (2)(c), on receipt of the instrument of transfer referred to in paragraph (2)(c)(i), the participating issuer shall—

- (a) upon recording that the system-member holds the unit, enter on the register of securities that he holds the unit in uncertificated form; and
- (b) within 2 months thereafter, send the Operator an issuer-instruction informing him of the entry on the register of securities.

(8) Such sanctions as apply to a company in the event of a default by it in complying with subsection (5) of section 183 of the 1985 Act shall apply to a participating issuer in the event of a default by him in complying with paragraph (5), (6) or (7).

(9) In this regulation “recognised investment exchange” has the same meaning as in the 1986 Act.

New issues in uncertificated form

28.—(1) A participating issuer may issue units of a participating security in uncertificated form to a person if, and only if, that person is a system-member.

(2) For the purposes of calculating the number of new units to which a system-member is entitled a participating issuer may treat a system-member’s holdings of certificated and uncertificated units of a security as if they were separate holdings.

(3) On the issue in uncertificated form of new units of a participating security, the participating issuer shall by issuer-instruction notify the Operator of the persons to whom the uncertificated units of a security have been issued and of the number of such units issued to each of those persons.