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STATUTORY INSTRUMENTS

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**2001 No. 3755**

**The Uncertificated Securities Regulations 2001**

**PART 3**

**PARTICIPATING SECURITIES**

*PARTICIPATION BY ISSUERS*

**Participation in respect of shares**

**14.** Where—

- (a) an Operator permits title to shares of a class 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 transferred by means of a relevant system; and
- (b) the company in question permits the holding of shares of that class in uncertificated form and the transfer of title to any such shares by means of a relevant system,

title to shares of that class which are recorded on an Operator register of members may be transferred by means of that relevant system.

**15.** This regulation applies to a class of shares if a company's articles of association are in all respects consistent 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) these Regulations.

**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 of that class in uncertificated form;
- (b) the transfer of title to shares of 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; or
- (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;
- (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;
- (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.

**17.—(1)** A class of shares in relation to which, immediately before the coming into force of these Regulations—

- (a) regulation 15 of the 1995 Regulations applied; or
- (b) a directors' resolution passed in accordance with regulation 16 of the 1995 Regulations was effective,

shall be taken to be a class of shares in relation to which regulation 15 of these Regulations applies or, as the case may be, a directors' resolution passed in accordance with regulation 16 is effective.

(2) On the coming into force of these Regulations a company's articles of association in relation to any such class of shares, and the terms of issue of any such class of shares, shall cease to apply to the extent that they are inconsistent with any provision of these Regulations.

### **Interpretation of regulations 15, 16 and 17**

**18.** For the purposes of regulations 15, 16 and 17 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**

19.—(1) Subject to paragraph (2), where—

- (a) an Operator permits title to a security other than a share to be transferred by means of a relevant system; and
- (b) the issuer permits the holding of units of that security in uncertificated form and the transfer of title to units of that security by means of a relevant system,

title to units of that security which are recorded on an Operator register of securities may be transferred by means of that relevant system.

(2) In relation to any security other than a share, if the law under which it is constituted is not the law of England and Wales, Northern Ireland or Scotland, or if the current terms of its issue are 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) subject to paragraph (3), 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) On the coming into force of these Regulations the current terms of issue of a relevant participating security shall cease to apply to the extent that they are inconsistent with any provision of these Regulations.

(4) For the purposes of this regulation—

- (a) a relevant participating security is a participating security (other than a share) the terms of issue of which, immediately before the coming into force of these Regulations, were in all respects consistent with the 1995 Regulations; and
- (b) 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 AND RECORDS*

### **Entries on registers and records in respect of shares**

20.—(1) In respect of every company which is a participating issuer, there shall be—

- (a) a register maintained by the participating issuer, and such a register is referred to in these Regulations as an “issuer register of members”; and
- (b) a register maintained by the Operator, and such a register is referred to in these Regulations as an “Operator register of members”.

(2) A participating issuer which is a company shall keep and enter up the issuer register of members in accordance with paragraph 2 of Schedule 4.

(3) In respect of every company which is a participating issuer, the Operator shall keep and enter up the Operator register of members in accordance with paragraph 4 of Schedule 4.

(4) References in any enactment or instrument to a company’s register of members shall, unless the context otherwise requires, be construed in relation to a company which is a participating issuer as referring to the company’s issuer register of members and Operator register of members.

(5) Paragraph (4) does not apply in relation to a company’s issuer register of members to the extent that any of the particulars entered in that register in accordance with paragraph 2(1) of Schedule 4 are inconsistent with the company’s Operator register of members.

(6) A participating issuer which is a company shall—

- (a) maintain a record of the entries made in its Operator register of members; and such a record is referred to in these Regulations as a “record of uncertificated shares”; and
  - (b) keep and enter up that record in accordance with paragraph 5 of Schedule 4.
- (7) 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) a company which is a participating issuer and its officers in the event of a default in complying with paragraph (1)(a) or (6)(a), or
  - (b) an Operator and his officers in the event of a default in complying with paragraph (1)(b).

### **Entries on registers and records in respect of public sector securities**

**21.**—(1) In respect of every participating security which is a public sector security the Operator shall—

- (a) maintain a register, and such a register is referred to in these Regulations as an “Operator register of public sector securities”; and
  - (b) keep and enter up the Operator register of public sector securities in accordance with paragraph 12 of Schedule 4.
- (2) The person specified in paragraph (3) shall—
- (a) maintain a record of the entries made in an Operator register of public sector securities; and such a record is referred to in these Regulations as a “record of uncertificated public sector securities”; and
  - (b) keep and enter up that record in accordance with paragraph 13 of Schedule 4.
- (3) The person referred to in paragraph (2) is the Bank of England, except where the security to which an Operator register of public sector securities relates is a local authority security, in which case it is—
- (a) the relevant local authority; or
  - (b) if the local authority has appointed another person to act as registrar for the purpose of the 1974 Regulations in respect of that security, the person so appointed.
- (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 an Operator and his officers in the event of a default in complying with paragraph (1)(a).
- (5) Such sanctions as apply to the registrar, within the meaning of the 1974 Regulations, in the event of a default in complying with regulation 5 of those Regulations shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (2)(a) in respect of a local authority security.

### **Entries on registers and records in respect of other securities**

**22.**—(1) Paragraph (2) applies where a participating issuer is required by or under an enactment or instrument to maintain in the United Kingdom a register of persons holding securities (other than shares or public sector securities) issued by him.

(2) Where this paragraph applies, then in so far as the register in question relates to any class of security which is a participating security—

- (a) the Operator shall—
  - (i) maintain a register, and such a register is referred to in these Regulations as an “Operator register of corporate securities”; and

- (ii) keep and enter up the Operator register of corporate securities in accordance with paragraph 14 of Schedule 4;
- (b) the participating issuer—
  - (i) shall not maintain the register to the extent that it relates to securities held in uncertificated form;
  - (ii) shall maintain a record of the entries made in any Operator register of corporate securities, and such a record is referred to in these Regulations as a “record of uncertificated corporate securities”; and
  - (iii) shall keep and enter up that record in accordance with paragraph 15 of Schedule 4.
- (3) Where a participating issuer 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, the Operator shall—
  - (a) maintain a register in respect of that participating security; and
  - (b) record in that register—
    - (i) the names and addresses of the persons holding units of that security in uncertificated form, and
    - (ii) how many units of that security each such 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 an Operator and his officers in the event of a default in complying with paragraph (2)(a)(i) or (3).
- (5) Such sanctions as apply in the event of a default in complying with the requirement to maintain a register imposed by the relevant enactment or instrument referred to in paragraph (1) shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (2)(b)(ii).

### **General provisions concerning keeping registers and records**

- 23.—**(1) The obligations of an Operator to maintain and to keep and enter up any register of securities, imposed by these Regulations—
- (a) shall not give rise to any form of duty or liability on the Operator, except such as is expressly provided for in these Regulations or as arises from fraud or other wilful default, or negligence, on the part of the Operator;
  - (b) shall not give rise to any form of duty or liability on a participating issuer, other than where the Operator acts on the instructions of that participating issuer, in the absence of fraud or other wilful default, or negligence, on the part of that participating issuer; and
  - (c) shall not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty.
- (2) Without prejudice to paragraph (1) or to any lesser period of limitation and to any rule as to the prescription of rights, liability incurred by a participating issuer or by an Operator arising—
- (a) from the making or deletion of an entry in a register of securities or record of securities pursuant to these Regulations; 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.
- (3) No notice of any trust, expressed, implied or constructive, shall be entered on an Operator register of securities, or a part of such a register, or be receivable by an Operator.

(4) Schedule 4 (which provides for the keeping of registers and records of participating securities, and which excludes, or applies with appropriate modifications, certain provisions of the 1985 Act) shall have effect.

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

**24.**—(1) Subject to regulation 29 and to paragraphs (2) and (3) below, a register of members is prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of any matters which are by these Regulations directed or authorised to be inserted in it.

(2) Paragraph (1) does not apply to a company's issuer register of members to the extent that any of the particulars entered in that register in accordance with paragraph 2(1) of Schedule 4 are inconsistent with the company's Operator register of members.

(3) The entry of a person's name and address in a company's issuer register of members shall not be treated as showing that person to be a member of the company unless—

- (a) the issuer register of members also shows him as holding shares in the company in certificated form;
- (b) the Operator register of members shows him as holding shares in the company in uncertificated form; or
- (c) he is deemed to be a member of the company by regulation 32(6)(b).

(4) Section 361 of the 1985 Act shall not apply with respect to a company which is a participating issuer.

(5) Subject to regulation 29, an Operator register of public sector securities is prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of any matters which are by these Regulations directed or authorised to be inserted in it.

(6) Subject to regulation 29, an entry on an Operator register of corporate securities 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 that register—

- (a) were an entry on the part maintained by the participating issuer of such register as is mentioned in regulation 22(1); and
- (b) where appropriate, related to units of that security held in certificated form.

(7) Subject to regulation 29, an entry on a register maintained by virtue of regulation 22(3)(a) shall (where the units are capable of being held in certificated form) 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 registers of securities**

**25.**—(1) Unless the circumstances described in paragraph (2) apply, a participating issuer shall not rectify an issuer register of securities if such rectification would also require the rectification of an Operator register of securities.

(2) The circumstances referred to in paragraph (1) are that the rectification of an issuer register of securities is effected—

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

(3) A participating issuer who rectifies an issuer register of securities in order to give effect to an order of a court in the United Kingdom shall immediately give the Operator written notification of

the change to the entry, if any rectification of the Operator register of securities may also be required (unless the change to the issuer register is made in response to an Operator-instruction).

- (4) An Operator who rectifies an Operator register of securities shall immediately—
- (a) generate an Operator-instruction to inform the relevant participating issuer of the change to the entry (unless the change is made in response to an issuer-instruction); and
  - (b) generate an Operator-instruction to inform the system-members concerned of the change to the entry.

### **Closing registers**

**26.** 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 by an Operator of transfers of securities**

**27.**—(1) Except where relevant units of a security are transferred by means of a relevant system to a person who is to hold them thereafter in certificated form (and subject to paragraphs (2) and (4))—

- (a) upon settlement of a transfer of uncertificated units of a security in accordance with his rules;
- (b) following receipt of an issuer-instruction notifying him that the circumstances specified in regulation 33(2)(b) have arisen in respect of a transfer of units of a participating security; or
- (c) following receipt of an issuer-instruction given under Regulation 42(8)(b),

an Operator shall register on the relevant Operator register of securities the transfer of title to those units of that security.

(2) An Operator shall refuse to register a transfer of title to units of a participating security in accordance with a system-member instruction or an issuer-instruction (as the case may be) if he has actual notice that the transfer is—

- (a) prohibited by order of a court in the United Kingdom;
- (b) prohibited or avoided by or under an enactment;
- (c) a transfer to a deceased person; or
- (d) where the participating issuer is constituted under the law of Scotland, prohibited by or under an arrestment.

(3) Notwithstanding that an Operator has received, in respect of a transfer of title to units of a participating security, actual notice of the kind referred to in paragraph (2), the Operator may register that transfer of title on the relevant Operator register of securities if at the time that he received the actual notice it was not practicable for him to halt the process of registration.

(4) Without prejudice to his rules, an Operator may refuse to register a transfer of title to units of a participating security in accordance with a system-member instruction or an issuer-instruction (as the case may be) 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 system-member instruction or the issuer-instruction (as the case may be), the Operator has actual notice of any of the matters specified in regulation 35(5)(a)(i) to (iii).

(5) An Operator shall not register a transfer of title to uncertificated units of a security on an Operator register of securities otherwise than in accordance with paragraph (1) unless he is required to do so by order of a court in the United Kingdom or by or under an enactment.

(6) Paragraph (5) shall not be taken to prevent an Operator from entering on an Operator register of securities a person who is a system-member to whom title to uncertificated units of a security has been transmitted by operation of law.

(7) Immediately upon—

- (a) the registration by an Operator of the transfer of title to units of a participating security in accordance with—
- (i) paragraph (1);
  - (ii) an order of a court in the United Kingdom; or
  - (iii) a requirement arising by or under an enactment; or
- (b) the making or deletion by an Operator of an entry on an Operator register of securities—
- (i) following the transmission of title to uncertificated units of a security by operation of law; or
  - (ii) upon the transfer of uncertificated units of a security to a person who is to hold them thereafter in certificated form,

the Operator shall generate an Operator-instruction to inform the relevant participating issuer of the registration, or of the making or deletion of the entry (as the case may be); and where appropriate the participating issuer shall register the transfer or transmission of title to those units on an issuer register of securities in accordance with regulation 28.

(8) Subsection (5) of section 183 of the 1985 Act shall apply in relation to a refusal by an Operator to register a transfer of securities in any of the circumstances specified in paragraphs (2) and (4), 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—

- (a) 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 relevant system-member instruction or issuer-instruction (as the case may be) was received by the Operator; and
- (b) the reference to a notice of the refusal shall be taken to be a reference to an Operator-instruction, or written notification from the Operator, informing the relevant system-member or participating issuer (as the case may be) of the refusal.

(9) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of section 183 of the 1985 Act shall apply to an Operator and his officers in the event of a default in complying with that subsection as applied by paragraph (8).

### **Registration by a participating issuer of transfers of securities upon conversion into certificated form**

**28.**—(1) Paragraphs (2) to (5) apply where relevant units of a security are transferred by means of a relevant system to a person who is to hold them thereafter in certificated form.

(2) Subject to paragraphs (3) and (4), a participating issuer shall (where appropriate) register a transfer of title to relevant units of a security on an issuer register of securities in accordance with an Operator-instruction.



(3) A participating issuer shall refuse to register a transfer of title to relevant units of a security in accordance with an Operator-instruction if he has actual notice that the transfer is—

- (a) prohibited by order of a court in the United Kingdom;
- (b) prohibited or avoided by or under an enactment;
- (c) a transfer to a deceased person; or
- (d) where the participating issuer is constituted under the law of Scotland, prohibited by or under an arrestment.

(4) A participating issuer may refuse to register a transfer of title to relevant 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 35(5)(a)(i) to (iii).

(5) 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.

(6) A participating issuer shall not register a transfer of title to relevant units of a security on an issuer register of securities unless he is required to do so—

- (a) by an Operator-instruction;
- (b) by an order of a court in the United Kingdom; or
- (c) by or under an enactment.

(7) A unit of a security is a relevant unit for the purposes of this regulation if, immediately before the transfer in question, it was held by the transferor in uncertificated form.

(8) Subsection (5) of section 183 of the 1985 Act shall apply in relation to a refusal by a participating issuer to register under paragraph (2) a transfer of securities in any of the circumstances specified in paragraphs (3) and (4), 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 section 183 of the 1985 Act shall apply to a participating issuer and his officers in the event of a default in complying with that subsection as applied by paragraph (8).

### **Registration to be in accordance with regulations 27 and 28**

**29.** Any purported registration of a transfer of title to an uncertificated unit of a security other than in accordance with regulation 27 or 28 shall be of no effect.

### **Registration of linked transfers**

**30.—**(1) Paragraph (2) applies where an Operator receives two or more system-member instructions requesting him 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 on an Operator register of securities in the name of a person identified in any of the system-member instructions as a transferor than the number of units to be transferred from him under those system-member instructions; or
- (ii) that it has not been established in accordance with paragraph 21(1)(c) of Schedule 1, in relation to any of the transfers taken without regard to the other transfers, 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 system-member instructions as a transferor having title to a number of uncertificated 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 21(1)(c) of Schedule 1 being satisfied.
- (2) Where this paragraph applies, the Operator may either—
  - (a) register the combined effect of all the transfers taken together; or
  - (b) register all the transfers simultaneously,

unless one or more of those transfers may not be registered by virtue of the fact that the Operator has actual notice of any of the circumstances specified in regulation 27(2), or is to be refused registration by virtue of regulation 27(4).

(3) Notwithstanding that an Operator has received, in respect of two or more such system-member instructions as are referred to in paragraph (1), actual notice of the kind referred to in paragraph (2), the Operator may register all the transfers in question or their combined effect if at the time that he received the actual notice it was not practicable for him to halt the process of registration.

### **Position of a transferee prior to entry on an issuer register of securities**

**31.**—(1) Paragraph (2) applies when an Operator deletes an entry on an Operator register of securities in consequence of which—

- (a) the Operator must generate an Operator-instruction in accordance with regulation 27(7); and
- (b) by virtue of that instruction a participating issuer must register, on an issuer register of securities, a transfer of title to units of a participating security constituted under the law of England and Wales or Northern Ireland.
- (2) Where this paragraph applies—
  - (a) subject to—
    - (i) subparagraph (b); and
    - (ii) any enactment or rule of law,
 the transferor shall, notwithstanding the deletion of the entry in the Operator register of securities, retain title to the requisite number of units of the relevant participating security until the transferee is entered on the relevant issuer register of securities as the holder thereof; and
  - (b) the transferee shall acquire an equitable interest in the requisite number of units of that security.
- (3) Paragraph (4) applies when an Operator deletes an entry on an Operator register of securities in consequence of which—
  - (a) the Operator must generate an Operator-instruction in accordance with regulation 27(7); and

- (b) by virtue of that instruction a participating issuer must register, on an issuer register of securities, a transfer of title to units of a participating security constituted under the law of Scotland.
- (4) Where this paragraph applies—
  - (a) subject to—
    - (i) subparagraph (b); and
    - (ii) any enactment or rule of law,the transferor shall, notwithstanding the deletion of the entry in the Operator register of securities, retain title to the requisite number of units of the relevant participating security until the transferee is entered on the relevant issuer register of securities as the holder thereof; and
  - (b) the transferor shall hold the requisite number of units of that security on trust for the benefit of the transferee.
- (5) The requisite number for the purposes of this regulation is the number of units which are to be specified in the Operator-instruction which the Operator must generate in accordance with regulation 27(7).
- (6) This regulation has effect notwithstanding that the units to which the deletion of the entry in the Operator register of securities relates, or in which an interest arises by virtue of paragraph (2)(b) or (4)(b), 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 (4)(b) 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 paragraph (2)(b) or (4)(b), or of 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 any enactment or rule of law.
- (9) In this regulation—
  - (a) “the transferee” means the person to be identified in the Operator-instruction as the transferee; and
  - (b) “the transferor” means the person to be identified in the Operator-instruction as the transferor.

## *CONVERSIONS AND NEW ISSUES*

### **Conversion of securities into certificated form**

**32.—**(1) Except as provided in regulation 42, a unit of a participating security shall not be converted from uncertificated form into certificated form unless an Operator generates an Operator-instruction to notify the relevant participating issuer that a conversion event has occurred; and in this regulation such an Operator-instruction is referred to as a “rematerialisation notice”.

- (2) A conversion event occurs—
  - (a) where such a conversion is permitted by the Operator's conversion rules; or

- (b) following receipt by an Operator of a system-member instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name of the system-member; or
  - (c) following receipt by an Operator of written notification from a participating issuer which is a company requiring the conversion into certificated form of uncertificated units of a participating security, issued by that participating issuer and registered in the name of a system-member, and which contains a statement that the conversion is required to enable the participating issuer to deal with the units in question in accordance with provisions in that participating issuer's memorandum or articles or in the terms of issue of the units in question.
- (3) An Operator—
- (a) may generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(a);
  - (b) shall generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(b) unless the participation in the relevant system, by the system-member in whose name the uncertificated units in question are registered, has been suspended pursuant to the Operator's rules; and
  - (c) shall generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(c).
- (4) On the generation of a rematerialisation notice, the Operator shall delete any entry in an Operator register of securities which shows the relevant system-member as the holder of the unit or units specified in the rematerialisation notice.
- (5) On receipt of a rematerialisation notice, the participating issuer to whom the rematerialisation notice is addressed shall, where relevant, enter the name of the system-member on an issuer register of securities as the holder of the unit or units specified in the rematerialisation notice.
- (6) During any period between the deletion of any entry in an Operator register of securities required to be made by paragraph (4) and the making of the entry in an issuer register of securities required to be made by paragraph (5)—
- (a) the relevant system-member shall retain title to the units of the security specified in the rematerialisation notice notwithstanding the deletion of any entry in the Operator register of securities; and
  - (b) where those units are shares, the relevant system-member shall be deemed to continue to be a member of the company.
- (7) Following—
- (a) the making of an entry in an issuer register of securities in accordance with paragraph (5); or
  - (b) registration of a transfer of title to units of a security in accordance with regulation 28,
- the relevant participating issuer shall, where the terms of issue of the security in question provide for a certificate to be issued, issue a certificate in respect of the units of the security to the relevant person.
- (8) Subsection (1)(b) of section 185 of the 1985 Act shall apply in relation to the issue of a certificate by a participating issuer pursuant to paragraph (7) 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 is lodged with the company shall be a reference to the date on which the participating issuer receives the relevant rematerialisation notice in accordance with this regulation, or the relevant Operator-instruction in accordance with regulation 27(7).

(9) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of section 183 of the 1985 Act shall apply—

- (a) to an Operator and his officers in the event of a default in complying with paragraph (4); and
- (b) to a participating issuer and his officers in the event of a default in complying with paragraph (5).

(10) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (1) of section 185 of the 1985 Act shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (7) in accordance with the requirements laid down in paragraph (8).

### **Conversion of securities into uncertificated form**

**33.**—(1) A unit of a participating security shall not be converted from certificated form into uncertificated form unless the participating issuer notifies the Operator by means of an issuer-instruction that any of the circumstances specified in paragraph (2) have arisen; and in this regulation such an issuer-instruction is referred to as a “dematerialisation notice”.

(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 from the system-member in the form required by the Operator’s conversion rules that the unit be converted from certificated form to uncertificated form; and
  - (ii) subject to paragraph (4), the certificate relating to that unit; or
- (b) where the unit of the participating security is to be registered on an Operator register of securities in the name of a system-member following a transfer of the unit to him, that the participating issuer—
  - (i) subject to paragraph (3), has received (by means of the Operator-system unless the Operator’s conversion rules permit otherwise) 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 unless the Operator’s conversion rules permit otherwise) the certificate relating to that unit; and
  - (iii) may accept by virtue of the Operator’s conversion rules 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 or is due to be issued to him in accordance with the terms of issue of the relevant participating security.

(5) Subject to paragraphs (3) and (4), a participating issuer shall not give a dematerialisation notice except in the circumstances specified in paragraph (2).

(6) Upon giving a dematerialisation notice, a participating issuer shall delete any entry in any issuer register of securities which evidences title to the unit or units of the participating security in question.

(7) Following receipt of a dematerialisation notice, an Operator shall enter the name of the relevant system-member on an Operator register of securities as the holder of the relevant unit or units of the participating security in question, provided that this obligation shall be subject to regulation 27 if the notice was given in the circumstances specified in paragraph (2)(b).

(8) When a dematerialisation notice is given, the relevant system-member, or the transferor of the unit or units of the security in question, as the case may be, shall (without prejudice to any equitable interest which the transferee may have acquired in the unit or units in question)—

(a) retain title to the units of the security specified in the dematerialisation notice notwithstanding the deletion of any entry in any issuer register of securities required to be made by paragraph (6); and

(b) where those units are shares, be deemed to continue to be a member of the company.

(9) Where a dematerialisation notice is given in the circumstances specified in paragraph (2)(b), such title shall be retained, and (where appropriate) such membership shall be deemed to continue, until the time at which the Operator enters the name of the relevant system-member on an Operator register of securities in accordance with paragraph (7).

(10) Within 2 months of receiving a dematerialisation notice, an Operator shall generate an Operator-instruction informing the participating issuer whether an entry has been made in an Operator register of securities in response to the dematerialisation notice.

(11) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (5) of section 183 of the 1985 Act shall apply—

(a) to a participating issuer and his officers in the event of a default in complying with paragraph (6); and

(b) to an Operator and his officers in the event of a default in complying with paragraph (7) or (10).

### **New issues in uncertificated form**

**34.**—(1) For the purposes of an issue of units of a participating security, a participating issuer may require the Operator to enter the name of a person in an Operator register of securities as the holder of new units of that security in uncertificated form if, and only if, that person is a system-member; and provided that compliance with any such requirement shall be subject to the rules of the Operator.

(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) A requirement made by a participating issuer under paragraph (1) may be made by means of an issuer-instruction and shall specify the names of the persons to be entered in the Operator register of securities as the holders of new uncertificated units of the security, and the number of such units to be issued to each of those persons.

(4) An Operator who receives a requirement made by a participating issuer under paragraph (1) shall notify the participating issuer, by Operator-instruction or in writing, if he has not entered the name of any one or more of the persons in question in the Operator register of securities as the holder of new units of the security.