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STATUTORY INSTRUMENTS

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**1996 No. 1469**

**FINANCIAL SERVICES**

**The Financial Markets and Insolvency Regulations 1996**

<i>Made</i>	- - - -	<i>5th June 1996</i>
<i>Laid before Parliament</i>		<i>6th June 1996</i>
<i>Coming into force</i>	- -	<i>15th July 1996</i>

The Treasury and the Secretary of State, in exercise of the powers conferred by sections 185 and 186 of the Companies Act 1989<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I**  
**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Financial Markets and Insolvency Regulations 1996 and shall come into force on 15th July 1996.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Companies Act 1989;

“business day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971<sup>(2)</sup>;

“issue”, in relation to an uncertificated unit of a security, means to confer on a person title to a new unit;

“register of securities”—

(a) in relation to shares, means a register of members; and

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(1) 1989 c. 40. The powers originally vested in the Secretary of State by sections 185 and 186 of the Companies Act 1989 are now exercisable by him jointly with the Treasury by virtue of the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

(2) 1971 c. 80.

- (b) in relation to units of a security other than shares, means a register maintained by the issuer, whether by virtue of the 1995 Regulations or otherwise, of persons holding the units;

“the 1995 Regulations” means the Uncertificated Securities Regulations 1995<sup>(3)</sup>;

“relevant nominee” means a system-member who is a subsidiary undertaking of the Operator designated by him as such in accordance with such rules and practices as are mentioned in paragraph 19(d) of Schedule 1 to the 1995 Regulations;

“settlement bank” means a person who has contracted with an Operator to make payments in connection with transfers, by means of a relevant system, of title to uncertificated units of a security and of interests of system-beneficiaries in relation to such units;

“system-beneficiary” means a person on whose behalf a system-member or former system-member holds or held uncertificated units of a security;

“system-charge” means a charge of a kind to which regulation 3(2) applies;

“system-member” means a person who is permitted by an Operator to transfer by means of a relevant system title to uncertificated units of a security held by him; and “former system-member” means a person whose participation in the relevant system is terminated or suspended;

“transfer”, in relation to title to uncertificated units of a security, means the generation of an Operator-instruction requiring a participating issuer to register a system-member on the relevant register of securities as the holder of those units; and in relation to an interest of a system-beneficiary in relation to uncertificated units of a security, means the transfer of the interest to another system-beneficiary by means of a relevant system; and

other expressions used in these Regulations which are also used in the 1995 Regulations have the same meanings as in those Regulations.

(2) For the purposes of these Regulations, a person holds a unit of a security if—

- (a) in the case of an uncertificated unit, he is entered on a register of securities in relation to the unit in accordance with regulation 19 of the 1995 Regulations; and
- (b) in the case of a certificated unit, he has title to the unit.

(3) A reference in any of these Regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations.

(4) A reference in any of these Regulations to a numbered paragraph shall, unless the reference is to a paragraph of a specified regulation, be construed as a reference to the paragraph bearing that number in the regulation in which the reference is made.

## PART II

### SYSTEM-CHARGES

#### Application of Part VII of the Act in relation to system-charges

**3.—**(1) Subject to the provisions of these Regulations, Part VII of the Act<sup>(4)</sup> shall apply in relation to—

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(3) S.I. 1995/3272.

(4) Part VII of the Companies Act 1989 has been amended by the Financial Markets and Insolvency Regulations 1991 (S.I. 1991/880).

(a) a charge to which paragraph (2) applies (“a system-charge”) and any action taken to enforce such a charge; and  
(b) any property subject to a system-charge,  
in the same way as it applies in relation to a market charge, any action taken to enforce a market charge and any property subject to a market charge.

(2) This paragraph applies in relation to a charge granted in favour of a settlement bank for the purpose of securing debts or liabilities arising in connection with any of the following—

- (a) a transfer of uncertificated units of a security to a system-member by means of a relevant system whether the system-member is acting for himself or on behalf of a system-beneficiary;
- (b) a transfer, by one system-beneficiary to another and by means of a relevant system, of his interests in relation to uncertificated units of a security held by a relevant nominee where the relevant nominee will continue to hold the units;
- (c) an agreement to make a transfer of the kind specified in paragraph (a);
- (d) an agreement to make a transfer of the kind specified in paragraph (b); and
- (e) an issue of uncertificated units of a security to a system-member by means of a relevant system whether the system-member is acting for himself or on behalf of a system-beneficiary.

(3) In its application, by virtue of these Regulations, in relation to a system-charge, section 173(2) of the Act shall have effect as if the references to “purposes specified” and “specified purposes” were references to any one or more of the purposes specified in paragraph (2).

#### **Circumstances in which Part VII applies in relation to system-charge**

4.—(1) Part VII of the Act shall apply in relation to a system-charge granted by a system-member and in relation to property subject to such a charge only if—

- (a) it is granted to a settlement bank by a system-member for the purpose of securing debts or liabilities arising in connection with any of the transactions specified in regulation 3(2), being debts or liabilities incurred by that system-member or by a system-beneficiary on whose behalf he holds uncertificated units of a security; and
- (b) it contains provisions which refer expressly to the relevant system in relation to which the grantor is a system-member.

(2) Part VII of the Act shall apply in relation to a system-charge granted by a system-beneficiary and in relation to property subject to such a charge only if—

- (a) it is granted to a settlement bank by a system-beneficiary for the purpose of securing debts or liabilities arising in connection with any of the transactions specified in regulation 3(2), incurred by that system-beneficiary or by a system-member who holds uncertificated units of a security on his behalf; and
- (b) it contains provisions which refer expressly to the relevant system in relation to which the system-member who holds the uncertificated units of a security in relation to which the system-beneficiary has the interest is a system-member.

#### **Extent to which Part VII applies to a system-charge**

5. Part VII of the Act shall apply in relation to a system-charge only to the extent that—

- (a) it is a charge over any one or more of the following—
  - (i) uncertificated units of a security held by a system-member or a former system-member;

- (ii) interests of a kind specified in regulation 25(1)(a) or 25(2)(a) of the 1995 Regulations in uncertificated units of a security in favour of a system-member of a former system-member;
  - (iii) interests of a system-beneficiary in relation to uncertificated units of a security;
  - (iv) units of a security which are no longer in uncertificated form because the person holding the units has become a former system-member;
  - (v) sums or other benefits receivable by a system-member or former system-member by reason of his holding uncertificated units of a security, or units which are no longer in uncertificated form because the person holding the units has become a former system-member;
  - (vi) sums or other benefits receivable by a system-beneficiary by reason of his having an interest in relation to uncertificated units of a security or in relation to units which are no longer in uncertificated form because the person holding the units has become a former system-member;
  - (vii) sums or other benefits receivable by a system-member or former system-member by way of repayment, bonus, preference, redemption, conversion or accruing or offered in respect of uncertificated units of a security, or units which are no longer in uncertificated form because the person holding the units has become a former system-member;
  - (viii) sums or other benefits receivable by a system-beneficiary by way of repayment, bonus, preference, redemption, conversion or accruing or offered in respect of uncertificated units of a security in relation to which he has an interest or in respect of units in relation to which the system-beneficiary has an interest and which are no longer in uncertificated form because the person holding the units has become a former system-member;
  - (ix) sums or other benefits receivable by a system-member or former system-member in respect of the transfer of uncertificated units of a security by or to him by means of a relevant system;
  - (x) sums or other benefits receivable by a system-member or former system-member in respect of an agreement to transfer uncertificated units of a security by or to him by means of a relevant system;
  - (xi) sums or other benefits receivable by a system-beneficiary in respect of the transfer of the interest of a system-beneficiary in relation to uncertificated units of a security by or to him by means of a relevant system or in respect of the transfer of uncertificated units of a security by or to a system-member acting on his behalf by means of a relevant system;
  - (xii) sums or other benefits receivable by a system-beneficiary in respect of an agreement to transfer the interest of a system-beneficiary in relation to uncertificated units of a security by or to him by means of a relevant system, or in respect of an agreement to transfer uncertificated units of a security by or to a system-member acting on his behalf by means of a relevant system; and
- (b) it secures—
- (i) the obligation of a system-member or former system-member to reimburse a settlement bank, being an obligation which arises in connection with any of the transactions specified in regulation 3(2) and whether the obligation was incurred by the system-member when acting for himself or when acting on behalf of a system-beneficiary; or

- (ii) the obligation of a system-beneficiary to reimburse a settlement bank, being an obligation which arises in connection with any of the transactions specified in regulation 3(2) and whether the obligation was incurred by the system-beneficiary when acting for himself or by reason of a system-member acting on his behalf.

**Limitation on disapplication of sections 10(1)(b) and 11(3)(c) of Insolvency Act 1986 in relation to system-charges**

6.—(1) This regulation applies where an administration order is made in relation to a system-member or former system-member.

(2) The disapplication of sections 10(1)(b) and 11(3)(c) of the Insolvency Act 1986<sup>(5)</sup> by section 175(1)(a) of the Act shall have effect, in relation to a system-charge granted by a system-member or former system-member, only to the extent necessary to enable there to be realised, whether through the sale of uncertificated units of a security or otherwise, the lesser of the two sums specified in paragraphs (3) and (4).

(3) The first sum of the two sums referred to in paragraph (2) is the net sum of—

- (a) all payment obligations discharged by the settlement bank in connection with—
  - (i) transfers of uncertificated units of a security by means of a relevant system made during the qualifying period to or by the relevant system-member or former system-member, whether acting for himself or on behalf of a system-beneficiary;
  - (ii) agreements made during the qualifying period to transfer uncertificated units of a security by means of a relevant system to or from the relevant system-member or former system-member, whether acting for himself or on behalf of a system-beneficiary; and
  - (iii) issues of uncertificated units of a security by means of a relevant system made during the qualifying period to the relevant system-member or former system-member, whether acting for himself or on behalf of a system-beneficiary; less
- (b) all payment obligations discharged to the settlement bank in connection with transactions of any kind described in paragraph (3)(a)(i) and (ii).

(4) The second of the two sums referred to in paragraph (2) is the sum (if any) due to the settlement bank from the relevant system-member or former system-member by reason of an obligation of the kind described in regulation 5(b)(i).

(5) In this regulation and regulation 7, “qualifying period” means the period—

- (a) beginning with the fifth business day before the day on which the petition for the making of the administration order was presented; and
- (b) ending with the second business day after the day on which the administration order is made.

**Limitation on disapplication of sections 10(1)(b) and 11(3)(c) of Insolvency Act 1986 in relation to system-charges granted by a system-beneficiary**

7.—(1) This regulation applies where an administration order is made in relation to a system-beneficiary.

(2) The disapplication of sections 10(1)(b) and 11(3)(c) of the Insolvency Act 1986 by section 175(1)(a) of the Act shall have effect, in relation to a system-charge granted by a system-beneficiary, only to the extent necessary to enable there to be realised, whether through the sale of

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(5) 1986 c. 45.

interests of a system-beneficiary in relation to uncertificated units of a security or otherwise, the lesser of the two sums specified in paragraphs (3) and (4).

(3) The first of the two sums referred to in paragraph (2) is the net sum of—

(a) all payment obligations discharged by the settlement bank in connection with—

- (i) transfers, to or by the relevant system-beneficiary by means of a relevant system made during the qualifying period, of interests of the system-beneficiary in relation to uncertificated units of a security held by a relevant nominee, where the relevant nominee has continued to hold the units;
- (ii) agreements made during the qualifying period to transfer, to or from the relevant system-beneficiary by means of a relevant system, interests of the system-beneficiary in relation to uncertificated units of a security held by a relevant nominee, where the relevant nominee will continue to hold the units;
- (iii) transfers, during the qualifying period and by means of a relevant system, of uncertificated units of a security, being transfers made to or by a system-member acting on behalf of the relevant system-beneficiary;
- (iv) agreements made during the qualifying period to transfer uncertificated units of a security by means of a relevant system to or from a system-member acting on behalf of the relevant system-beneficiary; and
- (v) issues of uncertificated units of a security made during the qualifying period and by means of a relevant system, being issues to a system-member acting on behalf of the relevant system-beneficiary; less

(b) all payment obligations discharged to the settlement bank in connection with transactions of any kind described in paragraph (3)(a)(i) to (iv).

(4) The second of the two sums referred to in paragraph (2) is the sum (if any) due to the settlement bank from the relevant system-beneficiary by reason of an obligation of the kind described in regulation 5(b)(ii).

#### **Ability of administrator or receiver to recover assets in case of property subject to system-charge**

**8.—**(1) This regulation applies where an administration order is made or an administrator or an administrative receiver or a receiver is appointed, in relation to a system-member, former system-member or system-beneficiary.

(2) The disapplication, by section 175(1)(b) and (3) of the Act, of sections 15(1) and (2), 43 and 61 of the Insolvency Act 1986 shall cease to have effect after the end of the relevant day in respect of any property which is subject to a system-charge granted by the system-member, former system-member or system-beneficiary if on the basis of a valuation in accordance with paragraph (3), the charge is not required for the realisation of the sum specified in paragraph (4) or (5).

(3) For the purposes of paragraph (2), the value of property shall, except in a case falling within paragraph (6), be such as may be agreed between the administrator, administrative receiver or receiver on the one hand and the settlement bank on the other.

(4) Where the system-charge has been granted by a system-member or former system-member, the sum referred to in paragraph (2) is whichever is the lesser of—

- (a) the sum referred to in regulation 6(3);
- (b) the sum referred to in regulation 6(4) due to the settlement bank at the close of business on the relevant day.

(5) Where the system-charge has been granted by a system-beneficiary, the sum referred to in paragraph (2) is whichever is the lesser of—

- (a) the sum referred to in regulation 7(3);
  - (b) the sum referred to in regulation 7(4) due to the settlement bank at the close of business on the relevant day.
- (6) For the purposes of paragraph (2), the value of any property for which a price for the relevant day is quoted in the Daily Official List of The London Stock Exchange Limited shall—
- (a) in a case in which two prices are so quoted, be an amount equal to the average of those two prices, adjusted where appropriate to take account of any accrued dividend or interest; and
  - (b) in a case in which one price is so quoted, be an amount equal to that price, adjusted where appropriate to take account of any accrued dividend or interest.
- (7) In this regulation “the relevant day” means the second business day after the day on which the administration order is made, or the administrative receiver or receiver is appointed.

## PART III

### MARKET CONTRACTS

#### **Amendments to section 156 of the Act**

9. After sub-section (3) of section 156 of the Act there shall be inserted the following—
- “(3A) Nothing in subsection (2)(a) or (b) shall be taken as requiring a UK investment exchange or a UK clearing house which does not enter into such contracts as are mentioned in section 155(2)(b) or (3) to have default rules relating to such contracts.”

Date: 4th June 1996

Department of Trade and Industry  
Date: 5th June 1996

*Derek Conway*  
*Bowen Wells*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

*Phillip Oppenheim*  
Parliamentary Under Secretary of State,

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations apply with modifications certain provisions of Part VII of the Companies Act 1989 (c. 40) (“Part VII”) to certain charges (and to property subject to those charges) granted in favour of those who undertake assured payment obligations in connection with the settlement of transactions through a relevant system in respect of which an Operator has been approved under the Uncertificated Securities Regulations 1995 (S.I. 1995/3272). The provisions applied are ones which modify the way in which the charges in question are treated in the event of an administration or certain kinds of receivership under the Insolvency Act 1986 (c. 45) and ones which modify the way in which rights of persons other than the chargee may be exercised in relation to property subject to those charges.

Regulation 2 defines certain expressions used elsewhere in the regulations. It provides that a charge to which the relevant provisions of Part VII are extended is referred to in the regulations as a “system-charge”. Regulation 2 also provides that certain of the expressions used in the regulations have the same meaning as in the Uncertificated Securities Regulations 1995.

Regulations 3 and 4 apply the relevant provisions of Part VII (as modified by the regulations) in relation to system-charges and to property subject to such charges if the conditions mentioned in regulation 4 are met.

Regulation 5 provides that Part VII applies in relation to a system-charge only to the extent that it is a charge over property of particular kinds and is granted to secure obligations of particular kinds.

Regulations 6 and 7 limit the disapplication of certain provisions of the Insolvency Act 1986 in relation to system-charges. The provisions in question are ones which restrict the ability of persons to take steps to enforce any security they have over the property of a company during the course of administration proceedings under the Insolvency Act.

Regulation 8 makes provision as to the ability of an administrator and certain kinds of receiver to recover property subject to a system-charge after a particular period if the property is not required for one of the purposes specified in the regulation.

The Regulations (regulation 9) also make provision clarifying the effect of those provisions of Part VII which require investment exchanges and clearing houses recognised under the Financial Services Act 1986 to have default rules enabling them to deal with certain contracts into which they enter on recognised investment exchanges and recognised clearing houses which do not enter into contracts of the relevant kind.