

## SCHEDULE 1

Regulation 5(1)

### REQUIREMENTS FOR APPROVAL OF A PERSON AS OPERATOR

#### *Arrangements and resources*

1. An Operator must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with his rules or, as respects monitoring, arrangements providing for that function to be performed on his behalf (and without affecting his responsibility) by another body or person who is able and willing to perform it.

#### *Financial resources*

2. An Operator must have financial resources sufficient for the proper performance of his functions as an Operator.

#### *Promotion and maintenance of standards*

3. An Operator must be able and willing to promote and maintain high standards of integrity and fair dealing in the operation of the relevant system and to cooperate, by the sharing of information or otherwise, with the Treasury and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

#### *Operation of the relevant system*

4.—(1) Except in the circumstances referred to in subparagraph (2), where an Operator causes or permits a part of the relevant system which is not the Operator-system to be operated by another person (other than as his agent) the Operator—

- (a) shall monitor compliance by the person and that part with the requirements of this Schedule; and
- (b) shall have arrangements to ensure that the person provides him with such information and such assistance as he may require in order to meet his obligations under these Regulations.

(2) Where a part of the relevant system which is not the Operator-system comprises procedures which enable dematerialised instructions to be authenticated in accordance with paragraph 5(3)(b), the Operator shall have arrangements to ensure that he is provided with such information and such assistance as he may require in order to keep under review his agreement to the specifications by which those dematerialised instructions may be authenticated.

#### *System security*

5.—(1) A relevant system must be so constructed and operate in such a way that it satisfies the requirements of subparagraphs (2) to (6).

(2) The relevant system must minimise the possibility of unauthorised access to, or modification of, any program or data held in any computer forming part of the Operator-system.

(3) Each dematerialised instruction must be authenticated—

- (a) in accordance with the specifications of the Operator, and those specifications shall provide that each dematerialised instruction—
  - (i) is identifiable as being from the computers of the Operator or of a particular system-participant; and

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- (ii) is designed to minimise fraud and forgery; or
- (b) if it is sent to the Operator by, or by the Operator to, a depositary, a clearing house or an exchange, in accordance with specifications of that depositary, clearing house or exchange to which the Operator has agreed and which provide that each dematerialised instruction—
  - (i) is identifiable as being from the computers of the Operator or of the depositary, clearing house or exchange which sent it; and
  - (ii) is designed to minimise fraud and forgery.
- (4) Each dematerialised instruction must, in accordance with any relevant rules of the Operator and with the specifications of the Operator or the specifications referred to in subparagraph (3)(b) (as the case may be), express by whom it has been sent and, where relevant, on whose behalf it has been sent.
- (5) Each dematerialised instruction must, in accordance with any relevant rules of the Operator and with the specifications of the Operator or the specifications referred to in subparagraph (3)(b) (as the case may be), indicate—
  - (a) where it is sent to a system-participant or the Operator, that it is addressed to that system-participant or the Operator;
  - (b) where it is sent to a person who is using the facilities of a sponsoring system-participant to receive dematerialised instructions, that it is addressed to that person and the sponsoring system-participant; and
  - (c) where it is sent to the Operator in order for him to send an Operator-instruction to a system-participant, that it is addressed to the Operator, to the system-participant and, if the system-participant is acting as a sponsoring system-participant, to the relevant person on whose behalf the sponsoring system-participant receives dematerialised instructions.
- (6) The relevant system must minimise the possibility for a system-participant to send a dematerialised instruction on behalf of a person from whom he has no authority.
- (7) For the purposes of this paragraph—
  - “clearing house” means a body or association—
    - (a) which is a recognised clearing house within section 285(1)(b) of the 2000 Act;
    - (b) which is authorised under that Act to provide clearing services in the United Kingdom; or
    - (c) which provides services outside the United Kingdom which are similar in nature to those provided by any such body or association, and which is regulated or supervised in the provision of those services by a regulatory body or agency of government;
  - “depositary” means a body or association carrying on business outside the United Kingdom with whom an Operator has made arrangements—
    - (a) to enable system-members to hold (whether directly or indirectly) and transfer title to securities (other than participating securities) by means of facilities provided by that body or association; or
    - (b) to enable that body or association to permit persons to whom it provides services in the course of its business to hold (whether directly or indirectly) and transfer title to participating securities by means of the Operator’s relevant system; and
  - “exchange” means a body or association—
    - (a) which is a recognised investment exchange within section 285(1)(a) of the 2000 Act;
    - (b) which is authorised under that Act to provide a facility for the matching and execution of transactions in securities in the United Kingdom; or

- (c) which provides services outside the United Kingdom which are similar in nature to those provided by any such body or association, and which is regulated or supervised in the provision of those services by a regulatory body or agency of government.

#### *System capabilities*

**6.** A relevant system must ensure that the Operator-system can send and respond to properly authenticated dematerialised instructions in sufficient volume and speed.

**7.** Before an Operator registers a transfer of title to uncertificated units of a security, a relevant system must be able to establish—

- (a) that the transferor has title to such number of units of the security as is in aggregate at least equal to the number to be transferred; or
- (b) that the transfer is one of two or more transfers which may be registered in accordance with regulation 30(2).

**8.** Before an Operator-instruction to a participating issuer to register a transfer of title to uncertificated units of a security is generated, a relevant system must be able to establish that the transferor has title to such number of units of the security as is in aggregate at least equal to the number to be transferred.

**9.** A relevant system must enable an Operator to comply with his obligations to keep all necessary Operator registers of securities in accordance with these Regulations.

**10.** A relevant system must maintain adequate records of all dematerialised instructions.

**11.** A relevant system must—

- (a) enable each system-member to obtain a copy of any records relating to him as are maintained by the relevant system in order to comply with paragraph 7(a), 8 or 10; and
- (b) be able to make correcting entries in such records as are maintained in order to comply with paragraph 7(a) or 8 which are inaccurate.

**12.** A relevant system must be able to permit each participating issuer to inspect the entries from time to time appearing in an Operator register of securities relating to any participating security issued by him.

**13.** A relevant system must be able to establish, where there is a transfer of uncertificated units of a security to a system-member for value, that a settlement bank has agreed to make payment in respect of the transfer, whether alone or taken together with another transfer for value.

**14.** A relevant system must ensure that the Operator-system is able to generate Operator-instructions—

- (a) requiring participating issuers to amend the appropriate issuer registers of securities kept by them;
- (b) informing participating issuers in a way which enables them to amend the appropriate records of securities kept by them; and
- (c) informing settlement banks of their payment obligations.

**15.** A relevant system must—

- (a) enable a system-member—
  - (i) to grant authority to a sponsoring system-participant to send properly authenticated dematerialised instructions on his behalf; and
  - (ii) to limit such authority by reference to the net value of the units of the securities to be transferred in any one day; and

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(b) prevent the transfer of units in excess of that limit.

**16.** For the purposes of paragraph 15(a)(ii), once authority is granted pursuant to a system charge (within the meaning of regulation 3 of the Financial Markets and Insolvency Regulations 1996<sup>(1)</sup>) a limit of such authority shall not be imposed or changed without the consent of the donee of that authority.

**17.** Nothing in paragraph 15 or 16 shall be taken, in respect of an authority, to modify or derogate from the protections given by or under any enactment to a donee of the authority or a third person.

**18.** A relevant system must enable system-members—

- (a) to change the form in which they hold units of a participating security; and
- (b) where appropriate, to require participating issuers to issue certificates relating to units of a participating security held or to be held by them.

**19.** Paragraph 18 shall not apply to any wholly dematerialised security.

#### *Operating procedures*

**20.** A relevant system must comprise procedures which provide that it responds only to properly authenticated dematerialised instructions which are attributable to a system-user or an Operator.

**21.—**(1) Subject to subparagraphs (2) to (5), a relevant system must comprise procedures which provide that an Operator only registers a transfer of title to uncertificated units of a security or generates an Operator-instruction requiring a participating issuer to register such a transfer, and only generates an Operator-instruction informing a settlement bank of its payment obligations in respect of such a transfer, if—

- (a) it has—
  - (i) received a system-member instruction which is attributable to the transferor; or
  - (ii) been required to do so by a court in the United Kingdom or by or under an enactment;
- (b) it has—
  - (i) established that the transferor has title to such number of units as is in aggregate at least equal to the number to be transferred; or
  - (ii) established that the transfer is one of two or more transfers which may be registered in accordance with regulation 30(2);
- (c) in the case of a transfer to a system-member for value, it has established that a settlement bank has agreed to make payment in respect of the transfer, whether alone or taken together with another transfer for value; and
- (d) the transfer is not in excess of any limit which by virtue of paragraph 15(a)(ii) the transferor has set on an authority given by him to a sponsoring system-participant.

(2) Subparagraph (1)(a) shall not prevent the registration by an Operator of a transfer of title to uncertificated units of a security, or the generation of an Operator-instruction, in accordance with procedures agreed between the Operator and the transferor to enable the transfer by means of a relevant system of uncertificated units of a security provided that such transfer is for the purpose of, or relates to, facilitating the provision of financial credit or financial liquidity to the transferor by a settlement bank, the Bank of England, the European Central Bank, any other central bank, or any other body having functions as a monetary authority.

(3) A relevant system must comprise procedures which provide that—

- (a) the Operator may amend an Operator register of securities; and

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- (b) an Operator-instruction requiring a participating issuer to register a transfer of uncertificated units of a security, or informing a settlement bank of its payment obligations in respect of such a transfer, may be generated,

if necessary to correct an error and if in accordance with the rules made and practices instituted by the Operator in order to comply with this Schedule.

- (4) A relevant system must comprise procedures which provide that—

- (a) the Operator may amend an Operator register of securities; and
- (b) an Operator-instruction requiring a participating issuer to register a transfer of units of a wholly dematerialised security, or informing a settlement bank of its payment obligations in respect of such a transfer, may be generated,

if necessary to effect a transfer of such units, on the termination of participation in the relevant system by the system-member by whom those units are held and if in accordance with the rules made and practices instituted by the Operator in order to comply with this Schedule, to a person nominated under the Operator's rules.

(5) Subparagraph (1)(a) shall not prevent the registration by an Operator of a transfer of title to uncertificated units of a security, or the generation of an Operator-instruction, in order to give effect to the procedures referred to in subparagraph (3) or (4).

**22.—**(1) Subject to subparagraph (2), a relevant system must comprise procedures which provide that an Operator-instruction to a participating issuer relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security, is generated only if it has—

- (a) received a properly authenticated dematerialised instruction attributable to the system-member having the right, privilege or benefit requiring the Operator to generate an Operator-instruction to the participating issuer; or
- (b) been required to do so by a court in the United Kingdom or by or under an enactment.

(2) A relevant system must comprise procedures which provide that an Operator-instruction to a participating issuer relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security, may be generated if necessary to correct an error and if in accordance with the rules made and practices instituted by an Operator in order to comply with this Schedule.

**23.** A relevant system must comprise procedures which ensure that, where participating issuers keep records of securities, those records are regularly reconciled with the relevant Operator registers of securities.

**24.** A relevant system must comprise procedures which—

- (a) enable system-users to notify the Operator of an error in or relating to a dematerialised instruction; and
- (b) ensure that, where the Operator becomes aware of an error in or relating to a dematerialised instruction, he takes appropriate corrective action.

#### *Rules and practices*

**25.** An Operator's rules and practices—

- (a) must bind system-members and participating issuers—
  - (i) so as to ensure the efficient processing of transfers of title to uncertificated units of a security in response to Operator-instructions; and
  - (ii) as to the action to be taken where transfer of title in response to a system-member instruction or an Operator-instruction cannot be effected;

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- (b) must make provision as to the manner in which a system-member or the relevant participating issuer may change the form in which that system-member holds units of a participating security (other than a wholly dematerialised security);
- (c) must make provision for a participating issuer to cease to participate in respect of a participating security so as—
  - (i) to minimise so far as practicable any disruption to system-members in respect of their ability to transfer the relevant security; and
  - (ii) to provide the participating issuer with any relevant information held by the Operator relating to the uncertificated units of the relevant security held by system-members;
- (d) must make provision for the orderly termination of participation by system-members and system-participants whose participation is disruptive to other system-members or system-participants or to participating issuers;
- (e) must make provision—
  - (i) as to which of the Operator's records are to constitute an Operator register of securities in relation to a participating security, or a participating security of a particular kind; and
  - (ii) as to the times at which, and the manner in which, a participating issuer may inspect an Operator register of securities in accordance with paragraph 12;
- (f) if they make provision for the designation of a subsidiary undertaking as a relevant nominee, must require that the relevant nominee maintain adequate records of—
  - (i) the names of the persons who have an interest in the securities it holds; and
  - (ii) the nature and extent of their interests; and
- (g) must make provision for the authentication by the Operator of any written notification given under regulation 25(3) or 32(2)(c).

**26.** An Operator's rules and practices must require—

- (a) that each system-participant is able to send and receive properly authenticated dematerialised instructions;
- (b) that each system-member has arrangements—
  - (i) for properly authenticated dematerialised instructions attributable to him to be sent;
  - (ii) for properly authenticated dematerialised instructions to be received by or for him; and
  - (iii) with a settlement bank for payments to be made, where appropriate, for units of a security transferred by means of the relevant system; and
- (c) that each participating issuer is able to respond with sufficient speed to Operator-instructions.

**27.** An Operator must have rules which require system-users and former system-users to provide him with such information in their possession as he may require in order to meet his obligations under these Regulations.