
STATUTORY INSTRUMENTS

1992 No. 225

The Uncertificated Securities Regulations 1992

Citation and commencement

1. These Regulations may be cited as the Uncertificated Securities Regulations 1992 and shall come into force on the day after the day on which they are made.

PART I

INTERPRETATION AND DELEGATION OF FUNCTIONS

Interpretation

2.—(1) In these Regulations (unless the context otherwise requires):

“the 1985 Act” means the Companies Act 1985⁽¹⁾;

“the 1986 Act” means the Financial Services Act 1986⁽²⁾;

“the 1986 Order” means the Companies (Northern Ireland) Order 1986⁽³⁾;

“the 1989 Act” means the Companies Act 1989;

“account holder” means a person for whom a controller holds an entitlement (whether or not the entitlement has been expressly allocated to that person by an entry in a record of account holders), save that where a controller holds an entitlement for two or more persons acting jointly those persons jointly shall be regarded as the account holder for the purposes of these Regulations;

“alternative company controller” means a company controller appointed under regulation g(3); that is to say having discretion to refuse to hold an entitlement to a unit of the security for any person for whom he or it is appointed to act;

“the appropriate register” means the register on which holders of units of a security of the kind in question are by virtue of any enactment required to be recorded or (in the absence of such enactment) on which the holders of the security in question are required to be recorded by the terms of its issue; in particular, the appropriate register is, in the case of shares, the company’s register of members maintained under section 352 of the 1985 Act;

“approved person” means a person admitted under regulation 94 to perform the functions of an approved person under these Regulations;

“certificated”, in connection with any security, means a security, the title to a unit of which is, by virtue of any enactment, instrument or rule of law:

- (a) required to be evidenced by a certificate or other document in writing; or
- (b) transferable only by means of an instrument in writing;

(1) 1985 c. 6.

(2) 1986 c. 60.

(3) S.I.1986/1032 (N.I.6).

“commercial controller” means a person admitted under regulation 94 to perform the functions of a commercial controller under these Regulations (in particular regulation 13) with respect to any uncertificated security of any company, save that a person, not being a company controller, recorded as holding entitlements on an Operator’s record of entitlements shall be regarded as a commercial controller for the purposes of the registration of the holders of the security concerned notwithstanding that that person has not been so admitted or that person’s admission has terminated;

“communication” includes any instruction, election, acceptance or any other message of any kind;

“company” means a company within the meaning of section 735 of the 1985 Act;

“company controller” means a person who is appointed by a company under regulation 9 to perform the functions of a company controller (whether primary or alternative) under these Regulations with respect to an uncertificated security of the company;

“company’s record of entitlements” means a record kept by a company under regulation 25;

“Complaints Commissioner” means the person appointed under regulation 99;

“controller” means either a commercial controller or a company controller;

“court of competent jurisdiction” means a court having jurisdiction over the matter in question;

“default nominee”, in relation to a controller, means a person appointed by the controller under regulation 61;

“duty”, where there is a reference to the duties of a person, includes any obligation imposed on that person under these Regulations whether or not expressed to be a duty; an “enactment” includes an enactment comprised in any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978(4) or (in the case of the law of Northern Ireland) an instrument within the meaning of section 1 of the Interpretation Act (Northern Ireland) 1954(5); an “entitlement” means the power with respect to a unit of an uncertificated security referred to in regulation 22;

“fixed register date” means such date as is referred to in regulation 44;

“general call for instructions” means a call by a company for proper instructions to register from controllers under regulation 45;

“the holder”, in relation to a unit of a security, means a person registered as its holder, save that where a unit is registered in the name of two or more persons acting jointly, those persons jointly shall be regarded as the holder of the unit for the purposes of these Regulations;

“insolvency practitioner” means a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(6) and any person performing similar functions under the law of any country outside the United Kingdom, together with any form of receiver appointed in connection with the dissolution of any body of persons whether or not as a consequence of insolvency;

“instrument” includes a deed and any other instrument in writing, including the memorandum and articles of association of a company;

“jurisdiction” means one of the three territorial divisions of the United Kingdom with a distinct system of law, namely England and Wales, Scotland and Northern Ireland;

“limited instruction to register” means a proper instruction to register of the kind referred to in regulation 20(2)(b);

(4) 1978 c. 30.
(5) 1954 c. 33 (N.I.)
(6) 1986 c. 45.

“lost benefit” means any dividend, interest or other benefit which should have been received, but was not received due to a failure of a person to perform functions under these Regulations, but does not include a new unit;

“lost unit” means a unit of a security entitlement to which was, or should have been, held by a particular controller but which is no longer, or is not, so held due to a failure of a person to perform functions under these Regulations;

“new unit” means a unit of a security or an interest in a unit of a security to which, where a takeover, rights issue or other event has occurred, a person was entitled but did not obtain due to the failure of a person to perform functions under these Regulations or to which a person would have been entitled but for such a failure;

“notification of a transaction” means a notification of a transaction with respect to a unit of a security (or the entitlement to it) to the Operator or (as the case may be) a company under regulation 31;

“officer”, in addition to the meaning given to it by the 1985 Act, shall include, in relation to a partnership, any partner thereof;

“official receiver” means the official receiver as defined in section 399 of the Insolvency Act 1986;

“the Operator” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited or such other person as is for the time being substituted as the Operator in accordance with regulation 8;

“the Operator’s part of the system” means those procedures within the system involving the participation of the Operator (whether directly or as agent of any other person) or the use of facilities provided by the Operator (and includes procedures relating to the making of communications by means of those facilities);

“Operator’s record of entitlements” means a record kept by the Operator under regulation 24;

“participant” means a controller, an approved person or any person who may, under the system, notify a transaction under regulation 31;

“periodic update” means any update of the appropriate register for an uncertificated security under regulation 41 as a consequence of which a new version of the register is produced;

“primary company controller” means a company controller appointed under regulation 9(1) or (2); that is to say having no discretion to refuse to hold an entitlement to a unit of the security for any person for whom he or it is appointed to act;

“proper instruction to register” means such instruction as is referred to in regulation 20;

“record of account holders” means a record kept by a controller under regulation 28;

“record of entitlements” means the company’s record of entitlements or the Operator’s record of entitlements;

“register event” has the meaning ascribed to it by regulation 43; “Regulations” includes any applicable rules made under these Regulations;

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds and other securities of any description of a company (including subscription warrants) and “security” means a particular type of security of a particular company;

“standing instruction to register” means a proper instruction to register of the kind referred to in regulation 20(2)(a);

“the system” means the procedures for transferring and recording title to units of a security and the ancillary procedures set out in these Regulations, together with any supplementary procedures or requirements prescribed by rules made under regulation 112;

“terms of issue”, in relation to a security, includes the terms on which units of the security are held or transferred;

“title”, in connection with an uncertificated security, means the title which would be obtainable by a person through being properly registered as the holder of a certificated security of the same kind on the appropriate register for that security;

accordingly in England and Wales and Northern Ireland “title” means legal title unless the process of registration of a certificated security of the same kind confers only an equitable title;

“the tribunal” means the Financial Services Tribunal⁽⁷⁾ performing functions for the purposes of regulations 96 and 103;

“type”, in connection with a security, means an issue, or a series of issues, of units of securities of a company conferring uniform rights and obligations on each of the holders of units of securities of that description (for example equity shares of a particular class ranking *pari passu*);

“uncertificated”, in connection with a security, means a security the title to units of which, under these Regulations, is not required to be evidenced by a certificate or which is otherwise transferable under these Regulations;

“unit of a security” means a single example of a particular security (for example a single share) or (in the case of stock) the smallest transferable unit of the security;

“a valid communication” is a communication effected in accordance with the Operator’s part of the system which conforms with any applicable rules made under regulation 112 as to the form and manner in which a communication is to be made;

“working day” means any day except Saturday, Sunday, Good Friday, Christmas day or a bank holiday within the meaning of the Banking and -Financial Dealings Act 1971⁽⁸⁾; and other expressions bear the meaning given to them in the 1985 Act or (as the case may be) the 1986 Order.

(2) References in these Regulations to the date “by reference to which” the appropriate register for an uncertificated security is or is to be updated are to a fixed register date in relation to the security or the date specified in a general call for instructions.

(3) References in these Regulations (however expressed) to the admission of a security into the system by the Operator are to be construed as referring to its giving consent to the conversion of the security into, or its issue in, uncertificated form.

(4) References in these Regulations to the functions of the Operator include reference to functions delegated to the Operator under regulation 3.

Delegation of functions

3.—(1) Where a function to which this regulation applies is expressed to be exercisable by the Operator, it shall, notwithstanding that fact, be vested in and exercisable by the Secretary of State unless for the time being delegated to the Operator in accordance with this regulation.

(2) The Secretary of State may by written instrument delegate to the Operator all or any of the functions to which this regulation applies except that he shall not delegate the function of making rules under regulation 105 defining the persons or classes of person eligible for compensation under the scheme.

(3) Any function may be delegated either wholly or in part.

(4) The Secretary of State shall not delegate the whole or any part of the function unless it appears to him that the Operator is able and willing to exercise it.

(7) The Financial Services Tribunal was established by section 95 of the 1986 Act.

(8) 1971 c. 80.

- (5) The Secretary of State may by written instrument resume all or any functions he has delegated.
- (6) Any function may be resumed either wholly or in part.
- (7) This regulation applies to functions under or by virtue of regulations 14, 15, 56, 75, 76, 78, 80, 81(2), 84, 85, 88, 94, 95, 96, 97, 98, 105, 106(1)(b), 111 and 112.
- (8) Paragraphs 6 to 9 and 12(1) to (3)(a) of Schedule 9 to the 1986 Act shall, with any necessary modifications and subject to paragraph (9) below, apply to the exercise of any rule making function as they apply to legislative functions exercisable by the designated agency under that Act.
- (9) The application of paragraph 12(1) to (3)(a) of Schedule 9 to the 1986 Act shall not have effect in relation to any proposal which takes a form specified in a direction given by the Secretary of State under regulation 6.

PART II

THE OPERATOR, CONTROLLERS AND APPROVED PERSONS

CHAPTER I

THE OPERATOR

Operation of the system

4. Subject to the consent of the Secretary of State being given under regulation 5, and in addition to any other duties imposed by these Regulations, it shall, to the extent that the Operator exercises relevant functions under these Regulations, be the duty of the Operator, owed to the Secretary of State:

- (a) to operate the Operator's part of the system;
- (b) to admit and supervise participants;
- (c) to maintain such computer-based facilities as are reasonably necessary to enable the Operator to comply with its functions under these Regulations;
- (d) to ensure that at all times the conditions specified in regulation 5(1)(b)(i) to (iii) are satisfied;
- (e) to co-operate, by the sharing of information and otherwise, with the Secretary of State and any other body or authority having responsibility for the supervision of investment business and other financial services; and
- (f) to have regard, in performing its functions under these Regulations, to the protection of investors.

Commencement of operation of system

5.—(1) If the function of admitting securities into the system is delegated to it, the Operator shall not admit the first security into the system unless it has notified the Secretary of State that:

- (a) a compensation scheme has been established in accordance with Part XIV of these Regulations;
- (b) it is satisfied that it is ready and able to perform the duties specified in regulation 4 and that:
 - (i) there exist the facilities required under regulation 4(c), that they comply with these Regulations, that it is ready to operate them effectively and efficiently and that it has in place in relation to the facilities and their operation appropriate safeguards to reduce, so far as it is reasonably practicable to do so, the possibility of error or

fraud and of unauthorised access to, or manipulation of, data or programs for the time being on or transmitted through, the facilities;

- (ii) if relevant functions in relation to the admission and supervision of participants are delegated to it, each participant is required to have in place safeguards to reduce, so far as it is reasonably practicable to do so, the possibility of unauthorised access, to or manipulation of, data or programs for the time being on, or transmitted through, the facilities of the Operator;
- (iii) if the function of admitting participants is delegated to it, it has properly performed its obligations in connection with those persons whom at the date of the notification it has agreed to admit as participants

and the Secretary of State has given his consent.

(2) The Secretary of State shall not refuse consent under paragraph (1) unless it appears to him that the Operator's notification to him under that paragraph is not well-founded.

Powers of Secretary of State to give directions

6.—(1) The Secretary of state shall consider;

- (a) any relevant complaint made to him;
- (b) any information in any report made to him by the Operator under regulation 7;
- (c) any information in a report made to him by the Complaints Commissioner

for the purpose of determining whether he should give directions to the Operator in accordance with paragraph (2).

(2) If, whether or not as a result of any such complaint or information, at any time the Secretary of State concludes that the Operator is failing or may be about to fail to perform its functions under these Regulations, or that if a notification were then made to him under regulation 5(1) he could not give his consent, he may give to the Operator such directions as he considers necessary to secure that such failures are corrected or that matters are such that he could give his consent.

(3) Before giving a direction under this regulation the Secretary of State shall, if circumstances permit, consult the Operator and afford it an opportunity to make representations.

(4) In deciding whether to give a direction under this regulation, the Secretary of State shall, so far as it is practicable to estimate it, take into account the cost to the operator of complying with the direction and costs to other persons resulting from the operator's compliance.

(5) It shall be the duty of the Operator, owed to the Secretary of State, to comply with a direction under this regulation.

(6) The Operator shall furnish the Secretary of State with such information as he may reasonably require for the purpose of exercising his functions under this regulation or regulation 5 and, for these purposes, may give such directions to participants as it considers necessary.

Any information to be furnished to the Secretary of State shall, if he so requires, be in such form or verified in such manner as he may specify.

(7) Section 192(1), (4) and (6) of the 1986 Act⁽⁹⁾ (International Obligations) shall apply to the Operator as it applies to the persons mentioned in subsection (2) of that section.

Operator's report

7.—(1) The Operator shall made such reports to the Secretary of State on or in connection with the discharge of its functions under these Regulations as the Secretary of State may require.

(9) Section 192 of the Financial Services Act 1986 (c. 60) was substituted by section 201 of the Companies Act 1989 (c. 40).

(2) Without prejudice to the generality of paragraph (1), the Secretary of State may require that reports deal with specified subjects, or specified periods of time, and may require that they set out details of complaints received by the Operator and of the Operator's response to complaints.

Powers of Secretary of State to substitute new Operator

8.—(1) If at any time:

- (a) the Secretary of State considers that there exist, or are about to exist, conditions which would enable him to give a direction under regulation 6, but that such a direction would not secure that the relevant failures were corrected or that matters were such that he could give the consent referred to in that regulation; or
- (b) the Operator so requests,

the Secretary of State may substitute another person (including one whom he has established for the purpose) as the Operator.

Before substituting a person under sub-paragraph (a), the Secretary of State shall, if circumstances so permit, inform the Operator of the grounds upon which he proposes to make the substitution and afford the operator an opportunity to make representations.

(2) The Secretary of state may, in connection with any such substitution, by instrument in writing, make provision:

- (a) for the carrying on and completion by the substituted Operator of anything in the process of being done by the former Operator at the time of the substitution; and
- (b) for the substitution of the substituted Operator for the former Operator in any instrument, contract or legal proceedings.

(3) The Secretary of State may direct that property of the former operator shall be made available to the substituted Operator for the purpose of enabling the substituted Operator to exercise its functions under these Regulations to such extent, and for such period, as appears to him to be necessary to ensure that the system continues to function in an orderly manner and that investors are properly protected; and it shall be the duty of the former Operator, and any insolvency practitioner acting in relation to the former operator, to comply with any such direction.

(4) Nothing in paragraph (3) shall be taken as enabling the Secretary of State to deprive the former operator of the use of any property without securing the payment of appropriate compensation, whether at the time of the direction or as soon as circumstances permit its calculation, having regard to any liabilities (including contingent liabilities) or obligations which the substituted operator may assume.

In exercising the powers conferred on him by paragraph (3), the Secretary of State shall have regard to any other purposes for which the property is being used by the Operator acting in any other capacity recognised or conferred by any enactment.

(5) It shall be the duty of a former Operator, notwithstanding that it is the subject of insolvency proceedings, to preserve any records it may hold relating to the system until transferred to the substituted Operator under paragraph (3) or for five years (whichever is the shorter period).

Any insolvency practitioner appointed in relation to the Operator shall be under the same duty.

(6) It shall be the duty of a substituted Operator which has received any records, or copies of records, under this regulation, to permit their inspection and copying by any person who is an officer of the former Operator, or any insolvency practitioner appointed in relation to that Operator, or the official receiver.

(7) Functions delegated to a former Operator shall be deemed to be delegated to a substituted Operator.

CHAPTER II CONTROLLERS

company Controllers

Company controllers

9.—(1) A company which has in issue an uncertificated security must at all times have a person appointed by it to act as a controller with respect to that security having no discretion to refuse to hold an entitlement to a unit of security for any person; a controller appointed by a company having no discretion to hold an entitlement for the persons in respect of whom he or it is appointed to act is known in these regulations as a “primary company controller”.

(2) A company may appoint two or more persons to act concurrently as primary company controllers:

(a) each being appointed to hold entitlements for a separate category or separate categories of persons determined by such criterion or criteria as the company considers fit; or

(b) each being appointed to hold entitlements for the same category or categories of person, or a combination of these.

Where a company so appoints more than one primary company controller, there must be, amongst the controllers so appointed, a controller appointed to hold entitlements for any given category of person.

(3) A company may in addition appoint one or more controllers having discretion to refuse to hold an entitlement to a unit of security of the company for a person for whom the controller is appointed to act; such a controller may be appointed to hold entitlements for any person or with respect to any category or categories of persons and is known in these Regulations as an “alternative company controller”.

(4) A company shall not appoint a person to act as a company controller unless it has satisfied itself that the person concerned:

(a) has been admitted as a participant under regulation 94 to perform the functions of a company controller with respect to the security concerned;

(b) has appointed a person in each jurisdiction (other than a jurisdiction in which the first mentioned person is incorporated or has an established place of business upon which service may be made under the law of that jurisdiction) to accept on his or its behalf service of any process in connection with the performance of his or its functions under these regulations and the person appointed is ready and willing to accept such service; and

(c) has appointed a person (other than himself or itself) to be his or its default nominee for the purposes of these Regulations.

(5) A company may appoint itself or one of its subsidiary undertakings (within the meaning of part VII of the 1985 Act) as a company controller (whether primary or alternative).

(6) A company shall, for each of its uncertificated securities, maintain a list of controllers appointed by it with respect to that security which, for each controller, sets out:

(a) the name of the company and the identity of the security;

(b) the name of the controller;

(c) whether the controller is a primary or alternative company controller;

(d) the category, or categories, of persons for whom the controller is appointed to hold entitlements;

- (e) (if a body corporate) the address of the controller's office;
- (f) (if a body corporate) the country of the controller's incorporation;
- (g) (if an individual or unincorporated body of persons) the address of his or its principal place of business;
- (h) the name and address of any persons appointed to accept service of process on the controller's behalf or otherwise the place in each jurisdiction upon which service may be effected in connection with the performance of the controller's functions under these Regulations; and
- (i) the name and address of the controller's default nominee.

The company shall:

- (i) make the list available for the inspection of any person at its registered office during business hours on any working day; and
- (ii) deliver a copy of the list, and of any amended list, to the registrar of companies for registration within 5 working days of its preparation or amendment.

(7) A company controller shall notify the company of any change in the particulars listed with respect to him or it in the list maintained under paragraph (6) which are required by sub-paragraphs (b), (e) to (g) or (i) of that paragraph and may notify the company which he or it wishes to amend the particulars given in the list in respect of sub-paragraph (h) thereof. The company shall amend the list as soon as practicable after receipt of any such notice.

(8) Section 352(5) of the 1985 Act shall apply to a default in complying with the provisions of paragraph (6) and the second sentence of paragraph (7) as it applies with respect to a default in complying with section 352 of that Act.

(9) A company shall be jointly and severally liable with a person appointed by it to act as a company controller for any failure of that person, acting as a company controller for that company, to perform his or its duties under these regulations.

Company controllers: authorisation and duties

10.—(1) A company controller has authority, by virtue of his or its appointment, to hold entitlements for persons within the category or categories of persons in respect of which he or it is appointed, without the necessity of obtaining any separate authority from those persons.

Subject to these Regulations, it is the duty of a company controller, owed to the company appointing him or it, to hold entitlements only for persons he or it has authority to hold entitlements for, but any other duty imposed by these Regulations on a company controller owed to an account holder is owed by the controller irrespective of whether he or it has authority to hold entitlements for that account holder.

(2) Where a company has appointed more than one primary company controller to hold entitlements for the same category of person, it is for the company to determine which controller is to hold entitlements for a particular person falling within that category.

(3) Where a company has appointed an alternative company controller, a person may expressly elect to have any entitlements to units of the security in question, which are or are to be held for that person, held by an alternative company controller by giving instructions to the company accordingly, which shall make any necessary arrangements.

However a company may treat a person:

- (a) falling within the category or categories of person for which an alternative company controller is appointed;
- (b) for whom any entitlements are or are to be held by a company controller; and

- (c) who has not given instructions that the entitlements be held by a primary company controller,

as having elected to have the entitlements held by an alternative company controller.

Where the company has appointed more than one alternative company controller with respect to the same category or categories of persons, it is for the company to determine, in the absence of express instructions from the person for whom entitlements are to be held, which alternative company controller is to hold the entitlements in a particular case, class of case or generally. This paragraph is without prejudice to an alternative company controller's right, under the terms of his or its appointment, to refuse to hold entitlements for a particular person.

(4) Subject to any requirement imposed on a company controller by these Regulations and to the following paragraphs of this regulation, a company controller is under a duty to each of his or its account holders to act in accordance with, and only in accordance with, the instructions of that account holder in connection with entitlements held for that account holder. However no instruction is receivable by a company controller for the purposes of any provision of these Regulations unless the instruction:

- (a) (if given by means of the Operator's part of the system) has been given by an approved person; and
- (b) (if given by other means) has been given in writing signed by the account holder (in the case of persons acting jointly being together an account holder, by each of them).

(5) Subject to the next paragraph, a company controller, unless he or it has actual notice to the contrary with respect to a particular purported instruction, shall be entitled and bound to treat any instruction comprised in a valid communication which is purportedly issued on behalf of one of his or its account holders as being issued by an approved person with the authority of that account holder, who shall be bound by the communication accordingly. This paragraph is without prejudice to the liability of any person for the giving of an instruction without authority.

(6) A company controller shall not comply with an instruction or purported instruction given in the form of a valid communication or otherwise on behalf of an account holder by an approved person where, and to the extent that, it is in receipt of a written instruction from the account holder the effect of which is that the controller is not to act in accordance with such instructions; where such a written instruction has once been given it shall continue to have effect to the extent that it has not been expressly cancelled by a further written instruction.

Duty of company to facilitate communications

11.—(1) A company that has appointed more than one primary company controller shall appoint on behalf of those controllers a person (which may be the company or one of the primary company controllers) to act as agent of those controllers in connection with the receipt and transmission of any communications to and from the Operator or participants by means of the Operator's part of the system.

(2) The Operator and any participant, unless they have actual notice to the contrary with respect to a particular purported communication, shall be entitled and bound to treat any valid communication which is purportedly issued on behalf of a primary company controller by a person so appointed as being issued with the authority of the controller, who shall be bound by the communication accordingly. This paragraph is without prejudice to the liability of the person so appointed for the making of a communication without authority.

(3) A company shall be jointly and severally liable with a person appointed by it to act as an agent under this regulation for any failure of that person, acting as such agent, to receive and transmit communications in a timely and accurate manner.

Company controllers: further provisions

12. Schedule 1 to these Regulations has effect with respect to further provisions governing company controllers.

Commercial controllers Commercial controllers: authorisation and duties

13.—(1) A commercial controller has authority to hold entitlements for a person other than himself or itself if, but only if, he or it has an agreement with that person to do so (in the case of entitlements to be held for two or more persons acting jointly, if he or it has such agreement with each such person) and that agreement:

- (a) sets out the extent of the authority of the controller to deal with entitlements held for that person;
- (b) provides for the form and manner in which any instructions for the purposes of any provision of these Regulations required by the terms of such authority are to be receivable by the controller; and
- (c) appoints the controller as the agent of the account holder for the transmission of communications by means of the Operator's part of the system relating to entitlements held or to be held for the account holder or the units of a security to which the entitlements relate (including communications with respect to any right, privilege or benefit attaching to, or arising from, such units).

(2) Subject to these Regulations (and in particular regulation 51), it is the duty of a commercial controller:

- (a) to hold entitlements only for persons he or it is authorised to hold entitlements for; and
- (b) upon:
 - (i) receiving actual notice that he or it holds an entitlement for a person he or it has no authority to hold entitlements for in circumstances where the controller has not consented to the transfer of the entitlement and the entitlement is not subject to an instruction of the kind referred to in regulation 34; and
 - (ii) failing to obtain authority from the person concerned within 5 working days of having received such notice,

forthwith to notify a transaction to the Operator under which the entitlement is to be transferred to a primary company controller (or to such other controller as the person concerned may have instructed under paragraph (3)) and to instruct that controller to hold the entitlement for the person concerned (for this purpose no instructions from the person concerned being required);

but any duty imposed by these Regulations on a commercial controller owed to an account holder is owed by him or it irrespective of whether he or it has authority to hold entitlements for that account holder.

(3) Subject to paragraph (2) and these Regulations, for as long as a commercial controller holds entitlements for an account holder he or it has no authority to hold for, it is the duty of the commercial controller:

- (a) to act on the written instructions, and only on the written instructions, of the account holder in dealing with entitlements held for that account holder or otherwise for the purposes of any provision of these Regulations; and
- (b) not to make any communications on behalf of the account holder unless he or it has been expressly authorised in writing to do so,

provided that the controller shall not act on any purported instruction, or authority to make a communication, unless signed by the account holder (in the case of two or more persons acting jointly, by each of them).

(4) An agreement between a commercial controller and one of the controller's account holders entered into for the purposes of paragraph (1) shall be deemed to continue to exist, notwithstanding that the agreement may have terminated for any reason, until the controller has actual notice of its termination (whether on death or otherwise).

(5) A company or any other recipient, unless they have actual notice to the contrary with respect to a particular communication, shall be entitled and bound to treat any communication, given in the form of a valid communication, which is purportedly issued on behalf of the holder of a unit of a security or one of his or its account holders by a commercial controller as having being issued with the authority of the person on whose behalf it is purportedly issued, who shall be bound by the communication accordingly. This paragraph is without prejudice to the liability of the person so appointed for the making of a communication without authority, but it applies whether or not the holder of a unit or account holder concerned is identified in the communication, provided that the identity of the holder or account holder is, within such period as the recipient of the communication may reasonably require, notified to the recipient by the controller concerned.

(6) In addition a company, unless it has actual notice to the contrary, shall be entitled and bound to treat any commercial controller who has instructed the registration of a person as the holder of units of a security of a company as having the authority to hold, for that person, entitlements to any units of a security of the company to be issued or transferred to the person by reference to the units with which he is registered.

(7) Notwithstanding any provision to the contrary in an agreement made for the purposes of paragraph (1) (but in addition to any other means provided therein for the termination of the agreement), an account holder has the right, without penalty (but subject to any reasonable charges and any accrued liabilities), to send a notice in writing to his commercial controller terminating the controller's authority to hold entitlements for the account holder. Such a notice shall have no effect on any instructions already given by the account holder to the controller.

Replacement of commercial controller

14.—(1) If:

- (a) it appears to the Operator that there is a risk to the interests of persons or of any category of persons for whom a commercial controller holds entitlements which cannot adequately be dealt with under the other provisions of these Regulations;
- (b) a commercial controller so requests; or
- (c) the Operator's power of termination under regulation 96 has become exercisable

the Operator may effect a transfer of entitlements held by the controller concerned to another controller (including one which it has established for the purpose), such controller having a duty to hold those entitlements for the persons for whom the controller concerned held them, by amending its record of entitlements accordingly and without the necessity of obtaining any consent from the controller concerned.

(2) It is the duty of any commercial controller from whom entitlements have been transferred in accordance with paragraph (1), and of any officer of such a controller and of any insolvency practitioner appointed in relation to that controller, to preserve and deliver up to the Operator such records, or copies of records (including any instructions received under regulation 34) as the Operator may reasonably require and to provide all necessary co-operation in connection with the effecting of any such transfer. It is also the duty of such a person to notify the Operator of any entitlements to which regulations 34, 51, 52 or 53 apply.

(3) As soon as practicable after effecting a transfer under this regulation, the Operator shall inform the account holders concerned of the transfer and the identity of the controller to whom the entitlements have been transferred. The Operator shall give to the transferee controller any record or information received by the Operator under paragraph (2) as soon as practicable after its receipt.

(4) Where under this regulation the Operator transfers entitlements from one controller to another, any instructions received by the first mentioned controller with regard to those entitlements prior to the transfer which have not been acted upon at the time of transfer may (and in the case of instructions received under regulation 34 shall) be treated as instructions received by the other controller, to the extent that satisfactory evidence of them is obtained by the other controller and the other controller is satisfied that he or it has established the number of entitlements to be held for the account holder concerned. Where the other controller has reason to believe that an entitlement transferred is or may be one to which regulation 34, 51, 52 or 53 applies, it shall take reasonable steps to ascertain whether or not the entitlement is subject to the regulation in question.

(5) The Operator may treat consents and notifications of transactions with respect to an entitlement given by a replaced controller before the transfer as being given on behalf of the replacement controller. Where this paragraph is taken advantage of by the Operator, the replacement controller shall not be liable for any defect in, or lack of authority for, the giving of the consent or notification.

(6) A standing instruction to register given by a replaced controller shall be treated as having been given on behalf of the replacement controller; the replacement controller shall not, however, be liable for any defect in such an instruction to register solely by reason of the provisions of this paragraph.

(7) The Operator shall not effect a transfer under this regulation to any controller other than a primary company controller except with the consent of that controller and on such terms as may be agreed between them. Where that controller is a commercial controller, regulation 13(1), (2), (4) and (7) shall not apply until either there is an agreement, made for the purposes of regulation 13(1), between the account holder and the commercial controller, or (if sooner) until the expiry of 3 months from the date of receipt of the entitlements by the controller; the other provisions of that regulation shall apply, in particular regulation 13(3).

(8) Where the Operator effects a transfer under this regulation to a primary company controller it shall take all practicable steps, at its own expense (but without prejudice to its right to recover the cost from the controller from whom entitlements have been transferred) to provide complete and up to date records to the primary company controller and otherwise to ensure that the primary company controller is in a position to perform his or its functions under these Regulations.

(9) It shall be the duty of any replacement controller which has received any records, or copies of records, under this regulation, to permit their inspection and copying by any person who is an officer of the replaced controller or any insolvency practitioner who is appointed in relation to that controller or the official receiver.

CHAPTER III

APPROVED PERSONS

Approved persons

15.—(1) The Operator may admit as a participant one or more persons to carry out the functions of an approved person under these Regulations. A person may be so admitted either generally or for a specified period of time or for specified purposes.

(2) It is the function of an approved person under these Regulations to be:

- (a) the means whereby an instruction may be given by means of the Operator's part of the system to a company controller on behalf of one of the controller's account holders; and

(b) responsible for ensuring that no such instruction is given by such means unless the instruction has been authorised by the account holder on whose behalf it is purportedly given (where two or more persons acting together are the account holder, by each of them).

(3) Without prejudice to regulation 57, it is the duty of an approved person not to communicate an instruction to a company controller on behalf of an account holder of that controller unless the approved person has authority from the account holder (in the case of persons acting jointly, from each of them) to do so.

PART III

RECORDING AND TRANSFER OF TITLE

The appropriate register

16.—(1) A company shall record the names of holders of units of an uncertificated security of the company on the appropriate register, giving the particulars required by any applicable enactment and the terms of issue of the security (subject to paragraph (2)).

(2) Schedule 2 to these Regulations has effect so as to modify or exclude the provisions of certain provisions of the 1985 Act with respect to the keeping of a register of members and a register of debenture holders.

Evidential value of the appropriate register

17. The appropriate register for an uncertificated security shall be (if it would not otherwise be) prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, that a person registered in it as the holder of a unit of an uncertificated security has the title to that unit.

Transfers to be only in accordance with Regulations

18.—(1) Subject to the provisions of any enactment or rule of law by or under which the title to a unit of a security is or may be transferred or transmitted to, or devolve on, a person or persons by operation of law, any purported transfer of the title to a unit of an uncertificated security other than in accordance with these Regulations shall be of no effect.

(2) Subject as aforesaid, this regulation has (without prejudice to regulation 48) effect notwithstanding the provisions of any enactment or instrument or of any rule of law; in particular:

- (a) sections 182(1)(b) and 183 of the 1985 Act shall not be applicable to shares in uncertificated form;
- (b) section 53(1)(c) of the Law of Property Act 1925⁽¹⁰⁾ shall not apply (if it would otherwise do so) to the transfer of the title to an uncertificated security; and
- (c) section 136 of the Law of Property Act 1925 shall not apply (if it would otherwise do so) to the transfer of the title to an uncertificated security.

Transfer of title

19. Subject to an enactment or an Order of a court to which regulation 53 applies, the title to a unit of an uncertificated security is transferred:

- (a) from one person to another by the registration of that other as the holder of the unit in the appropriate register in response to a proper instruction to register; or

(10) 1925 c. 20.

- (b) from a person to a controller's default nominee as a result of the company registering, under these Regulations, the nominee as holder of the unit,

notwithstanding that the transferor of the unit may not be identified in the instruction or is otherwise unidentifiable as such by the company.

Definition of a proper instruction to register

20.—(1) For the purposes of these Regulations a proper instruction to register is an instruction issued by a controller holding, at the appropriate date, the entitlement to a unit of a security to register a specified person as the holder of that unit which conveys, either itself or when read with any associated information held by the company, the relevant particulars of that person.

(2) A proper instruction to register may either be:

- (a) standing, that is to say the person specified in it is to be registered at each periodic update of the appropriate register as the holder of the units specified in the instruction; or
- (b) limited, that is to say the person specified in it is to be registered in the appropriate register as the holder of the units specified in the instruction until the next periodic update of the appropriate register.

(3) For the purpose of paragraph (1), the relevant particulars are:

- (a) the name and address of the person to be registered as holder or, in the case of joint holders, the name and address of the person to be registered as the first holder together with the names of the other persons to be registered as holders;
- (b) the security and the number of units in respect of which registration is to be effected;
- (c) any other particulars required (in the case of shares) by the memorandum and articles of the company concerned or (in the case of any security) by the terms of issue of the security governing the registration of holders of units of the security; and
- (d) the identity of the issuing controller.

(4) For the purposes of this regulation, the "appropriate date" is:

- (a) in the case of a periodic update of the appropriate register, the date by reference to which the register is to be updated;
- (b) in the case of a proper instruction to register referred to in regulation 42 (Transfers where transferor identified):
 - (i) where the instruction is in respect of a controller's default nominee registered in that capacity, the date by reference to which the default nominee was registered; and
 - (ii) in any other case, the date by reference to which the proper instruction was issued.

Execution of instructions to register by a company

21.—(1) It is the duty of a company to execute, in accordance with these Regulations, a proper instruction to register at the occasion of each periodic update of the appropriate register under regulation 41, unless paragraph (2) applies.

(2) A company shall refuse to register a person as the holder of a unit of an uncertificated security in response to a proper instruction to register if required so to do by or under any enactment and may so refuse:

- (a) where the directors (or the company) are given express powers (in the case of shares) under the memorandum and articles of association of the company, or (in the case of any security) by the terms of issue of the security, to refuse to register the person in question as the holder of the unit of the security; and

(b) where the directors would have had power to refuse the registration of the person as the holder of a unit of a certificated security of the same kind.

(3) No notice shall be receivable by the company (other than from the issuing controller) that any particular conveyed by a proper instruction to register (together with any relevant associated information held by the company) is erroneous, given in breach of the controller's duties under these Regulations or otherwise not in accordance with the controller's instructions or authority to act.

PART IV

ENTITLEMENT

CHAPTER I

ENTITLEMENT

Entitlement to a unit of a security

22.—(1) With respect to each unit of an uncertificated security there shall be a power, which may only be held and exercised by a controller, to instruct the registration of a person as the holder of the unit on the appropriate register; this power is known in these Regulations as the “entitlement” to the unit.

(2) Whether or not a controller has an entitlement to a unit of a security is determined by whether the controller is recorded on a record of entitlements as having such an entitlement, save that where, and for as long as, the sum of the entitlements on the Operator's and company's records of entitlements exceeds the units of a security in issue, the question of whether the controller has the entitlement is in addition to be determined by ascertaining whether the controller would have been recorded with it if the excess had not arisen.

Entitlement as an interest in shares for the purposes of the 1985 Act

23.—(1) An entitlement shall not be an interest in a share for any purpose of the following provisions of the 1985 Act:

- (a) Part VI; and
- (b) sections 324 to 326, 328 and 346, together with Schedule 13.

(2) This regulation is without prejudice to the provisions of paragraph 1 of Schedule 8 to these Regulations (which provides that an account holder for whom an entitlement to a share is held has an interest in the share concerned inter alia for the purposes of Part VI of the 1985 Act).

The Operator's record of entitlements

24.—(1) It is the duty of the Operator to establish and maintain a record of holders of entitlements to units of each security which it admits into the system.

(2) The Operator shall enter into the Operator's record of entitlements for a security the name of each commercial and alternative company controller holding an entitlement to a unit of the security concerned, together with the number of entitlements held by that controller.

(3) It is the duty of the Operator, in respect of each record of entitlements maintained by it, to transmit to the company concerned, by means of the Operator's part of the system, the identity of, and number of entitlements held by, each controller recorded on the record at an identified point of time on each working day, at the latest by the end of the next working day.

Company's record of entitlements

25.—(1) It is the duty of every company having in issue an uncertificated security to establish and maintain a record of holders of entitlements to units of the security concerned.

(2) The company shall enter into the company's record of entitlements for a particular security the name of each primary company controller holding an entitlement to a unit of the security concerned, together with the number of entitlements held by that controller.

Location and inspection of records of entitlements

26.—(1) Section 353(1), (2) and (4) of the 1985 Act (Location of register) shall apply with respect to a company's record of entitlements as it applies with respect to a company's register of members maintained under that Act. The information with respect to the Operator's record of entitlements received by the company under regulation 24(3) for a day shall be kept until the company has received information in respect of a subsequent day and shall be kept by the company at the same place as the company's record of entitlements; section 353(4) of the 1985 Act shall apply with any necessary modifications.

(2) Section 356 of the 1985 Act (Inspection of register and index) shall apply to a company's record of entitlements and the information with respect to the Operator's record of entitlements received by the company under regulation 24(3), for the period during which the company is required to keep that information under paragraph (1) above, as it applies to a company's register of members maintained under that Act; section 723A of the 1985 Act shall apply, with any necessary modifications for the purposes of section 356 as applied by this paragraph as it applies generally for the purposes of section 356.

(3) Where, pursuant to section 353(1)(b) of the 1985 Act as applied by paragraph (1), a company's record of entitlements or the information with respect to the Operator's record of entitlements received by the company under regulation 24(3) is kept at the office of some person other than the company, and by reason of any default of that person the company fails to comply with section 353(2) or 356 of that Act as applied by this regulation, section 357 of that Act shall apply so as to make that person liable to the same penalties as if the person were an officer of the company in default and so as to extend the power of the Court under section 356(6) (as so applied) to the making of Orders against that person.

CHAPTER II

ENTITLEMENTS AND ACCOUNT HOLDERS

Account holders

27.—(1) As between a controller and his or its account holders, each entitlement held by the controller shall be expressly allocated by the controller as being exercisable for the benefit of the account holder for whom the entitlement is held by noting that the entitlement is held for that account holder in the controller's record of account holders for the security. Notwithstanding that there has been a failure to make such an express allocation, an entitlement held by the controller for an account holder shall remain held for that account holder.

(2) However as against any other person (including the Operator, any other controller and the company issuing the security) all entitlements to units of a security held by a controller shall be treated as being held in a single undivided pool and (save as otherwise provided under these Regulations) no notice is receivable by any such person that a particular entitlement is or was held for a particular person. Accordingly no notice is to be receivable by any other person that a transfer of an entitlement is being or has been effected without the instructions or authority of the account holder with respect to that entitlement.

(3) It is the duty of a controller, in issuing a proper instruction to register with respect to an entitlement, to instruct the registration of the account holder for whom it is held as the holder of the unit of a security concerned.

(4) This regulation is subject to regulation 53(5).

Controller's record of account holders

28.—(1) It is the duty of a controller to establish and maintain at least one record of his or its account holders with respect to a security. A controller may establish more than one record with respect to a security, splitting the entitlements held by him or it in the security between the records.

(2) A controller shall note on a record of account holders maintained by him or it with respect to a security:

- (a) the name and address of each of his or its account holders with respect to that security (in the case of persons acting jointly who are together treated as an account holder, the names of each such person together with the address of the first named); and
- (b) the number of entitlements to units of the security held by him or it for the account holder.

(3) Where a commercial controller, under paragraph (1), maintains more than one record of account holders for a security, the Operator may treat the entitlements, for the purposes of the system, as being held by separate controllers; in such a case these Regulations (other than regulation 29) shall apply as if the controller was a separate person acting as a commercial controller with respect to the entitlements so treated as being held by separate controllers.

(4) A record of account holders maintained by a controller shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, that entitlements recorded as being held for a person are in fact held for that person.

Insufficiency of entitlements

29.—(1) If at any time:

- (a) a controller holds less entitlements to a particular security than he or it ought to be holding if he or it had properly carried out his or its functions under these Regulations or (in the case of a commercial controller) under any agreement entered into for the purposes of regulation 13(1);
- (b) it is not reasonably practicable to identify and rectify the reason for the deficiency or the deficiency is not otherwise remedied by the controller; and
- (c) it is necessary for any purpose to determine for whom the controller should hold the entitlements to the security,

paragraphs (2) to (4) shall have effect.

(2) If at the time the question falls to be determined the controller concerned holds any relevant entitlements for an account holder, those entitlements shall be held by the controller, to the extent necessary to remedy the shortfall, for the account holders of the controller, other than any person for whom a relevant entitlement is held, with respect to the security concerned. For this purpose a relevant entitlement is an entitlement to the security concerned held by the controller, being a body corporate:

- (a) for:
 - (i) itself or
 - (ii) a member of a group (within the meaning of section 262 of the 1985 Act) of which it is a member where it or such a member is acting with respect to the unit of a security

concerned as principal or as trustee (directly or indirectly) for persons who are all members of such a group; or

(b) for any other person:

(i) acting as a nominee with regard to the unit of a security concerned for the controller or a member of a group (within the meaning of section 262 of the 1985 Act) of which the controller is a member where the controller or such a group member is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for persons who are all members of such a group, or

(ii) acting as trustee (directly or indirectly) for persons who are all members of such a group;

regulation 28(3) shall not apply.

Where the controller is a partnership, for the purposes of this paragraph a relevant entitlement is an entitlement to a unit of the security concerned held by the partnership for a partner or for any person who is a person connected with the partner within the meaning of section 346 of the 1985 Act (taking references therein to a director of a company as references to the partner), where the partner or that person is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for persons who are partners or persons who are all such connected persons with respect to partners or for partners and such persons; regulation 28(3) shall not apply.

Where the controller is an individual, for the purposes of this paragraph a relevant entitlement is an entitlement to a unit of the security concerned held by him for himself or for any person who is a person connected with him within the meaning of section 346 of the 1985 Act (taking references therein to a director of a company as references to the individual), where he or that person is acting with respect to the unit of a security concerned as principal or as trustee (directly or indirectly) for the controller or persons who are all such connected persons or for the controller and such persons; regulation 28(3) shall not apply.

(3) Otherwise (if, but only if, there remains at the time the question falls to be determined a shortfall of entitlements after the application of paragraph (2)) the entitlements shall be held for the account holders (other than any person for whom a relevant entitlement was held) in proportion to the entitlements which ought to be held for them by the controller.

(4) This regulation is without prejudice to any liability the controller may have incurred as a consequence of any breach of his or its duties and applies notwithstanding any entries on a controller's record of account holders.

(5) Paragraphs (2) to (4) shall also apply where a controller receives entitlements from another controller as a result of a transfer under regulation 12 and Schedule 1 or regulation 14 and:

(a) that other controller, in relation to the entitlements transferred, held less entitlements to a particular security than he or it ought to have been holding if he or it had properly carried out his or its functions under these Regulations; and

(b) it is not reasonably practicable to identify and rectify the reason for the deficiency;

for the purpose of establishing the persons for whom the entitlements are to be held by the controller.

They shall apply with any necessary modifications and as if the question for whom the entitlements transferred were held had fallen to be determined by the other controller immediately prior to the transfer.

CHAPTER III

TRANSFERS OF ENTITLEMENTS

Transfer of entitlement

30.—(1) Subject to paragraph (2), an entitlement is transferred from one controller to another by the entry of the transferee of the entitlement as its holder in a record of entitlements.

The corresponding amendment of the entry in respect of the transferor is not required to effect the transfer, but the Operator or (as the case may be) the company shall debit the transferor with the entitlement.

(2) Where an entitlement is to be transferred from a primary company controller to a commercial (or alternative company) controller, or vice versa, transfer of the entitlement is effected by the crediting of the transferee, or (as the case may be) the debiting of the transferor, with the entitlement on the Operator's record of entitlements; the corresponding amendment to the company's record of entitlements not being required to effect the transfer.

It is however the duty of the company, having been notified of a transfer of an entitlement to or from a primary company controller, to amend its record of entitlements so as to reflect the transfer.

(3) Subject to these Regulations, it is the duty of (in the case of the Operator's record of entitlements) the Operator or (in the case of the company's record of entitlements) the company to effect a transfer of an entitlement if, but only if:

- (a) it is in receipt of a notification of a transaction with respect to the entitlement (and, if the notification has been given on conditions, those conditions have been satisfied); and
- (b) the transferor and (unless a primary company controller) the proposed transferee of the entitlement have consented to the transfer

(and, if the consent has been given on conditions, those conditions have been satisfied), (no consent as transferee being required from a primary company controller).

Notifications of transactions

31.—(1) A notification of a transaction must be received by the Operator unless the entitlements are to be transferred between primary company controllers only.

(2) For the purposes of these Regulations a notification of a transaction to the Operator is such notification of a proposed transfer of an entitlement, which is contained in such message or combination of messages from such person or persons and issued in such circumstances as the Operator recognises as a notification of a transaction under the Operator's part of the system.

(3) For the purposes of these Regulations, a notification of a transaction to the company is an instruction to effect the transfer of an entitlement, which is contained in a message issued by a primary company controller specifying the requisite particulars.

(4) For the purposes of paragraph (3), the requisite particulars are:

- (a) the name and address of the account holder (or where persons acting jointly are together the account holder, the names of each account holder and the address of the first named) on behalf of whom the transferee is to hold the entitlement;
- (b) the security concerned; and
- (c) the number of entitlements to be transferred.

Consent to transfers of entitlements by controllers

32.—(1) It is the duty of a controller to consent to the transfer of an entitlement as transferor if, but only if:

- (a) when requested to give his or its consent under the Operator's part of the system, he or it knows the total number of entitlements he or it is being requested to consent to the transfer of and the identity of the uncertificated security concerned;
- (b) when requested to give his or its consent under the Operator's part of the system, he or it knows the identity of the account holder in relation to whom he or it is being requested to give consent;
- (c) (in the case of a company controller) he or it is in receipt of an instruction from the account holder for whom the entitlement to be transferred is held to consent to the transfer;
- (d) (in the case of a commercial controller) he or it is authorised (where required, by an instruction) by the account holder to consent to the transfer of the entitlement; and
- (e) he or it holds an entitlement for the account holder, which he or it has not previously consented to the transfer of and which is not the subject of an instruction under regulation 33.

This paragraph is without prejudice to the provisions of Chapters II to IV of Part VI of these Regulations.

(2) In addition a company controller shall not consent to a transfer of an entitlement if, being requested to consent to the transfer of a number of entitlements by a communication by means of the Operator's part of the system, he or it cannot satisfy in full the request.

(3) Subject to regulation 14(7) it is the duty of a commercial or alternative company controller to consent to a transfer of an entitlement as transferee if, but only if:

- (a) when requested to give his or its consent under the Operator's part of the system, he or it knows the identity of the person for whom the entitlement is to be held;
- (b) he or it is authorised to hold the entitlement for that person; and
- (c) when requested to give his or its consent under the Operator's part of the system, he or it knows the number of entitlements he or it is being asked to consent to the transfer of and the identity of the uncertificated security concerned.

CHAPTER IV

Off-Market Transfers Where One Controller involved

Instruction to controller to hold for another

33.—(1) An account holder, for whom a controller holds an entitlement, may instruct the controller to hold the entitlement for another specified person in place of the account holder, provided the instruction sets out the requisite particulars.

For this purpose the requisite particulars are:

- (a) the name and address of the account holder (in the case of persons acting jointly who are together an account holder, the name and address of each of them);
- (b) the name and address of the person on whose behalf the controller is to hold the entitlement for the future (in the case of persons acting jointly who are together to be the account holder, the name of each of them and the address of the person first named in the instruction);
- (c) the security concerned; and
- (d) the number of entitlements concerned.

(2) In the case of a commercial controller, paragraph (1) is subject to any agreement between the controller and his or its account holder.

(3) It is the duty of a controller to give effect to an instruction received under this regulation by expressly re-allocating the entitlement as being held for the person specified by amending his or its record of account holders accordingly, provided that:

- (a) the controller holds sufficient entitlements to units of the security for the instructing account holder, which he or it has not previously consented to the transfer of and which have not been the subject of instructions under this regulation, to enable him or it to comply in full with the instruction; and
- (b) he or it has authority to hold the entitlements for the person specified.

This paragraph is without prejudice to the provisions of Chapters II to IV of Part VI of these Regulations.

(4) Upon a controller entering, under paragraph (3), the name of a person into a record of account holders as the person for whom an entitlement is held, the controller shall thereupon hold the entitlement for that person (who accordingly is thereupon the account holder with respect to the entitlement) in place of the person giving the instruction, notwithstanding that the controller may have neglected to make the corresponding amendment to the entry of the latter.

(5) In the case of one among two or more primary company controllers or an alternative company controller, if the controller, having received an instruction under this regulation, is not able to give effect to the instruction solely because he or it has no authority to hold entitlements for any person specified, he or it shall notify a transaction to (in the case of a primary company controller) the company or (in the case of an alternative company controller) the Operator for the entitlement or entitlements concerned to be transferred to a primary company controller which is so authorised and instruct that controller to hold the entitlement for the person specified.

Conditional instructions by way of security (England and Wales and Northern Ireland)

34.—(1) This regulation shall have effect so as to facilitate the giving of a security interest over units of a security under the law of England and Wales or Northern Ireland.

(2) Without prejudice to any other circumstances in which a conditional instruction may be issued to a controller, an account holder may, in order to give security for any obligation, issue an instruction to a controller to hold an entitlement for another person (which may be the controller) under regulation 33(1) on terms that the instruction:

- (a) is conditional upon being confirmed by the person specified in the instruction; and
- (b) is to cease to have effect if that person cancels it but is otherwise irrevocable as between the controller and the account holder.

(3) A controller shall acknowledge the receipt of such an instruction to the account holder and the person specified in the instruction, giving the date of its receipt.

(4) Where a commercial controller has received such an instruction but the instruction has not yet been confirmed or cancelled, the controller shall not issue any communication on behalf of the account holder to the company or any other person in respect of the entitlements subject to the instruction unless he or it has given 10 working days prior notice to the person specified in the instruction.

(5) A commercial controller:

- (a) may agree with an account holder that he or it will not receive instructions under this regulation; and
- (b) shall not accept an instruction under this regulation unless he or it is authorised to hold any entitlement concerned.

This regulation is also subject to any agreement between such a controller, an account holder of that controller giving an instruction under this regulation and any person specified in the instruction.

(6) An instruction given under paragraph (1) shall be regarded, for the purposes of any provision of these Regulations, as being an instruction under regulation 33(1), notwithstanding its conditional nature.

A person giving such an instruction shall be regarded as the account holder with respect to any entitlement concerned until the instruction has been confirmed and acted upon.

PART V REGISTRATION AND THE APPROPRIATE REGISTER

CHAPTER I

Registration and Controllers

Controller's duty to issue proper instructions

35.—(1) If a controller held, or holds, an entitlement to a unit of a security at a date:

- (a) being a fixed register date of the company concerned; or
- (b) specified in a general call for instructions,

it is his or its duty to issue a proper instruction to register with respect to the entitlement (unless there was, or (as the case may be) is, a standing instruction extant with respect to the entitlement to which regulation 36(1) does not apply).

(2) Where a controller has failed to issue a proper instruction to register with respect to any entitlement for a periodic update of the appropriate register, the company shall register the controller's default nominee as holder of the unit to which the entitlement relates.

Having registered a default nominee under this paragraph, the company shall notify the controller concerned of the registration as soon as reasonably practicable.

Controller's duty to cancel standing instructions to register or transfer

36.—(1) Where a controller has issued a standing instruction to register a person as holder of a unit of an uncertificated security, it is his or its duty to notify the company if the entitlement concerned ceases to be held by him or it for that person.

(2) Such a notification shall be issued as soon as reasonably practicable after the entitlement is no longer so held.

(3) Upon receipt of such a notification, the company shall treat the standing instruction as no longer extant or, where the standing instruction relates to other entitlements not covered by the notification, as no longer extant to the extent of the entitlements covered by the notification.

Multiple instructions by controllers

37.—(1) Subject to the provisions of this regulation, a company shall not register a person as holding a unit of any uncertificated security in response to a proper instruction to register if the controller which has issued the instruction has, for the purposes of the periodic update of the register in question, purportedly issued such instructions with respect to more units of the security than there were entitlements held by that controller in respect of the security on the date by reference to which the register is to be updated.

(2) However before a company may refuse to register a person under paragraph (1) it must first have taken such steps as are reasonably practicable, if any, to call (in the case of a commercial or alternative company controller by means of a valid communication) for further proper instructions to register with respect to the entitlements held by that controller on the date by reference to which the register is to be updated.

Consequences of refusal of registration

38.—(1) Where a company refuses for any reason to register on the appropriate register a person as a holder of a unit of an uncertificated security in response to a proper instruction to register, it shall instead register, as the holder, the default nominee of the controller that issued the proper instruction to register that person.

(2) Having registered a default nominee under this regulation, the company shall notify the controller concerned of the registration as soon as reasonably practicable.

Amendment of particulars

39.—(1) A controller shall, by issuing an instruction to a company, amend the particulars set out in any proper instruction to register issued by him or it with respect to the name or address of the person registered or to be registered as holder if it is provided with appropriate evidence that there has been a change of the holder's name or address.

(2) A company may amend the appropriate register so as to reflect an instruction amended under this regulation other than at a periodic update of the register, if the instruction amended has already been acted upon.

(3) A company need not give effect to an instruction as amended under this regulation if the amending instruction is received so close to a periodic update of the register that it is not reasonably practicable to have regard to it.

Company to inform persons of controllers holding entitlements

40. Where an application is made in writing to a company by any person who provides satisfactory evidence that, by reason of proceedings (whether administrative or judicial) in contemplation or being taken with respect to a unit of a security of the company registered in the name of a specified holder, the person has reason to know the name and address of the controller that has instructed the registration of the holder, the company shall provide that information to the applicant as soon as reasonably practicable, together (where the controller is a company controller) with any address for service on that controller set out in the list maintained under regulation 9.

CHAPTER II

Maintenance of the Appropriate Register

Maintenance of the appropriate register

41.—(1) A company having in issue an uncertificated security shall maintain the appropriate register for that security in accordance with the provisions of this Chapter of this Part of these Regulations.

(2) The appropriate register for an uncertificated security shall be made up periodically and not, subject to regulations 39, 42, 72, 73 and 78, continuously.

Accordingly, subject to those regulations, no proper instruction to register received by a company may be given effect to other than at a periodic update of the appropriate register.

(3) A periodic update of an appropriate register for an uncertificated security shall be carried out:

- (a) after each general call for instructions; and
- (b) after each fixed register date of the company.

In each case the register shall be made up from the proper instructions to register the company has received in response to the general call or with respect to the fixed register date, together with any standing instructions that are extant.

(4) A periodic update of an appropriate register for an uncertificated security shall take the form of the preparation of a new version of the register; the new version shall supersede the old version of the register with effect from the completion of the update (and not with effect from any earlier date).

(5) Notwithstanding the provisions of any other regulation, a company shall not update an appropriate register under this regulation unless, at the date by reference to which the register is to be updated, the sum of the entitlements recorded on the operator's and company's records of entitlements reconciled with the total number of units of the relevant security then in issue or the records have been made to so reconcile as at that date by their amendment under regulations 72 and 73.

Transfer where transferor identified

42.—(1) Notwithstanding regulation 41, a company may amend the appropriate register for an uncertificated security other than at a periodic update if it is in receipt of a proper instruction to register in respect of a unit of the security which in addition identifies the person currently registered as holder of the unit concerned.

(2) However no such instruction may be acted upon by the company unless it has been issued by the same controller as issued the instruction to register the current holder.

(3) Subject to regulation 21(2), a company shall so amend the register if it is in receipt of such an instruction and the registered holder concerned is the default nominee of the instructing controller registered in that capacity; such an amendment is to be made as soon as is reasonably practicable after receipt of the instruction.

Register events

43.—(1) Where:

- (a) the appropriate register for an uncertificated security is to be utilised to determine a matter listed in Schedule 3 to these Regulations against a security of the kind in question; and
- (b) that matter is to be determined by reference to the appropriate register as it stands on a specified date,

it is the duty of the company (or, as the case may be, the directors of the company), if practicable, to use for the purpose a version of the appropriate register that has been updated by reference to a date not more than 5 days prior to the specified date.

(2) The use of the appropriate register to determine a matter listed in Schedule 3 in circumstances where paragraph (1) applies is known in these regulations as "a register event".

Fixed register dates

44.—(1) There shall be, for every uncertificated security, at least one day in every period of five weeks by reference to which the appropriate register for that security is to be updated under these Regulations, known in these Regulations as a "fixed register date".

(2) The fixed register dates for a security shall be agreed for each period of six calendar months between the Operator and the company concerned (or, failing such agreement assigned by the Operator to the company), at least 5 working days in advance of the start of the period.

(3) The fixed register dates so agreed or assigned for a period shall be published by the company in such form as the company reasonably considers is calculated to bring the dates to the notice of those persons likely to be interested in them.

(4) Notwithstanding that a fixed register date has been so agreed or assigned, that date shall be treated as cancelled if the company has issued a general call for instructions by reference to a date within 5 working days either side of the fixed register date and notifies the Operator, prior to receiving proper instructions to register with respect to the fixed register date, that it does not wish to receive such instructions.

General calls for instructions

45.—(1) A company may issue at any time a general call for instructions specifying a date by reference to which it proposes to update the appropriate register for a security.

A date specified in a general call shall be a date prior to the date on which the general call is issued, but may not be a date prior to the last date by reference to which the appropriate register was updated.

(2) The general call shall be issued:

- (a) to each commercial and alternative company controller which held entitlements on the date specified (other than a controller which issues only standing instructions to register), by means of the Operator's part of the system; and
- (b) to each primary company controller, in such form as may be agreed between the company and the controller or, failing such agreement, in writing.

Right of controllers to trigger general call for instructions

46.—(1) A company shall, having received a requisition by one or more controllers under this regulation, forthwith issue a general call for instructions with respect to a security.

(2) A requisition under this regulation may be given by one or more controllers provided that in doing so they rely upon entitlements held by them amounting in number, at the date the requisition is made, to one tenth or more of the units of the security in question than in issue.

(3) It is the duty of a controller to make, or join in, a requisition under this regulation in reliance on an entitlement held by him or it if, but only if, he or it has been instructed to do so by the account holder for whom the entitlement is held.

(4) A requisition under this regulation must be signed by each of the requisitionists by a person authorised by him or it to do so, and is made when deposited at the company's registered office.

CHAPTER III

Winding Up

Commencement of winding up

47.—(1) This regulation applies from the commencement of the winding up, within the meaning of the Insolvency Act 1986, of a company which has in issue an uncertificated security and for as long as any winding up proceedings under that Act may subsist.

(2) An appropriate register for an uncertificated security of the company may only be updated (whether periodically or otherwise), or otherwise amended, with (in the case of a voluntary liquidation) the consent of the liquidator of the company or (in the case of a compulsory winding up) the court seised of the winding up proceedings in relation to the company.

Where an appropriate register has been updated or amended without such consent, the update shall be void save and to the extent it is ratified by (in the case of a voluntary liquidation) the liquidator or

(in the case of a compulsory winding up) the court seized of the winding up proceedings in relation to the company.

(3) Regulations 43 to 46 shall not apply.

PART VI

UNCERTIFICATED SECURITIES

CHAPTER I

Uncertificated Securities: General Provisions

Exclusion of enactments and rule of law

48.—(1) A company shall not be under any obligation (if it otherwise would be) to issue any certificate evidencing the title to a unit of an uncertificated security of the company and in particular section 185 of the 1985 Act shall not apply to a company to the extent that it has uncertificated shares.

(2) Subject to paragraph 4 of Schedule 5 to these Regulations, any certificate issued by or on behalf of a company purportedly evidencing the title to a unit of an uncertificated security of the company shall not be (if it would otherwise be) *prima facie* evidence, and in Scotland sufficient evidence unless the contrary is shown, of the title to the unit and in particular section 186 of the 1985 Act shall not have effect in relation to any certificate issued with respect to uncertificated shares.

(3) No rule of law to the effect that, in a contract to transfer the title to units of a security, it is a term that the transferor shall execute and deliver to the transferee a proper instrument of transfer and a certificate evidencing the rights and interests liable to be conveyed (or obtain a certification of the transfer from any person) shall apply with respect to units of an uncertificated security.

Implied terms in contracts for the transfer of uncertificated securities

49.—(1) It is an implied term in a contract for the transfer of a unit of an uncertificated security that:

- (a) any authority, instructions or notifications of transactions necessary for the effecting of the transfer will be given by the transferor or by persons acting on behalf of the transferor; and
- (b) the controller to hold any entitlements concerned for the transferee is to be a company controller.

(2) A term implied into a contract by this regulation may be excluded or varied expressly or, where the contract makes alternative provision, impliedly.

For this purpose a contract may make alternative provision expressly or by implication.

Trustees holding units of an uncertificated security

50.—(1) A provision in any instrument or enactment which authorises:

- (a) the holding and investment of trust property in units of a security; or
- (b) the variation of investments in units of a security comprising trust property,

shall be deemed to authorise investment of trust property in units of any uncertificated security which, if the security had been in certificated form, would have been an authorised investment for the purposes of the provision or rule of law.

(2) Paragraph (1) shall be without prejudice to:

- (a) any other condition which is imposed by the instrument, enactment or rule of law relating to the investment of trust property in units of a security; and
- (b) any express provision of any instrument which prohibits the investment of trust property in units of an uncertificated security.

(3) Any provision of any instrument or enactment or any rule of law relating to the employment of agents by trustees shall not be taken as precluding the holding of, or investment of trust property in, units of an uncertificated security by virtue only of the reason that the power to transfer the units is under these Regulations held for the trustees by a controller and a trustee shall not be answerable for the insufficiency or deficiency of any securities or any income therefrom, or for any other loss due to the acts, neglects or defaults of the controller unless the same happens through the trustee's own wilful default or neglect.

(4) For the purpose of this regulation "trustee" (in England and Wales and Northern Ireland) shall include a personal representative and any other person acting in a fiduciary capacity and (in Scotland) any person who is a trustee for the purposes of the Trusts (Scotland) Act 1921(11) and "trust property" shall include all property held by persons acting in such capacities.

CHAPTER II

Transmission by Operation of Law

Transmission &c by operation of law

51.—(1) This regulation applies where:

- (a) the affairs of an account holder are, by or under any enactment or Order of a court of competent jurisdiction or (without prejudice to the foregoing) by virtue of the appointment of a receiver of any description, being managed by or are subject to the control of another (the "manager") (whether generally or to the extent of any entitlements held for that account holder by a controller) and the consent of the manager is, by or under the enactment or Order, required to the transfer of units of a security held by the account holder;
- (b) the rights of an account holder to enforce the duties of the controller owed to that account holder have become vested in another ("the successor") by operation of law;
- (c) by or under any enactment or Order of a court of competent jurisdiction or any rule of law, the title to a unit of an uncertificated security, or the right to transfer the unit or be registered with it, has devolved upon, is vested in, or has been transmitted to or otherwise howsoever become held by a person ("the successor") by operation of law; or
- (d) (in the case of shares) by or under the company's memorandum and articles of association or (in the case of any securities) by the terms of issue of the security, the right to transfer a unit of a security has become vested in a person ("the successor")

any such circumstances being referred to below as a "relevant circumstance".

(2) A controller, having received actual notice of a relevant circumstance affecting an entitlement held by him or it or a unit of an uncertificated security the entitlement to which is held by him or it (together referred to below as "an affected entitlement") is under a duty not to consent to any transfer of an affected entitlement or to act upon any instruction to hold such an entitlement for another or otherwise act in relation to such an entitlement without the consent of the manager or successor or upon the instructions of the successor.

This paragraph shall not be construed as invalidating, or requiring any such consent for, an instruction received by the controller prior to receiving such actual notice, provided that the instruction has by then been acted upon by the controller or is otherwise irrevocable.

(11) 1921 c. 58.

(3) A controller shall, however, having received such notice continue to regard the person for whom an affected entitlement is or has been held as the account holder with respect to that entitlement (even though a person (if an individual) is dead or (if a body of persons corporate or unincorporate) has been dissolved), in particular by continuing to instruct the registration of that person when he or it is required to issue proper instructions to register under the system, until he or it receives an instruction with respect to the entitlement from the successor under the following provisions of this regulation or (as the case may be) a notification from the manager under paragraph (7).

Accordingly, if a commercial controller is no longer authorised to hold entitlements for the account holder after receipt of actual notice of a relevant circumstance, regulation 13(1) and (2) shall not apply.

(4) The procedures set out in paragraphs (5) and (6) may be followed in order that a successor may become registered as the holder of a unit to which an affected entitlement relates or otherwise transfer it or deal with the affected entitlement.

(5) A successor may instruct the controller to hold an affected entitlement for the successor or may give such instruction with respect to a transfer of the entitlement or the holding of the entitlement for another as if the successor were the account holder with respect to the entitlement (in the case of a commercial controller as if there were no agreement under regulation 13(1)) and the instruction shall have effect accordingly.

(6) Subject to paragraph (7), a controller need not give effect to an instruction under paragraph (5), unless he or it has received such evidence as the controller may reasonably require of the relevant circumstance; in particular he or it may require production of the following:

- (a) where an enactment or Order of a court constitutes the relevant circumstance, a copy of the enactment or an office copy of the Order; and
- (b) where the title to a unit of an uncertificated security or the rights of an account holder to enforce the duties of a controller has or have devolved as a result of the death of a person, any document:
 - (i) which (in England and Wales or Northern Ireland) is by law sufficient evidence of probate or the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to the successor;
 - (ii) which (in Scotland) is by law sufficient evidence of confirmation as executor of a deceased person having been granted to the successor with respect to the rights of the person against the controller in connection with an entitlement or to a unit of an uncertificated security, the entitlement to which is held by the controller.

(7) A manager shall notify the controller if the affairs of the account holder have ceased to be under his management or control.

(8) Unless on actual notice to the contrary with respect to a particular purported instruction, a company controller shall be entitled and bound to act upon an instruction issued by means of the Operator's part of the system with respect to an affected entitlement as being issued with the authority of the successor by an approved person and the successor shall be bound accordingly, provided that the successor has, prior to the controller's receipt of the instruction, given the controller such evidence as the controller may reasonably require of the relevant circumstance (including any matter referred to in paragraph (6)(a) or (b)).

(9) Where instructions have been received by a controller from an account holder prior to the controller receiving actual notice of a relevant circumstance, the controller may, notwithstanding any provision of this regulation, act on those instructions if, as a result of the manner in which communications received by the controller are processed, it is not practicable for the controller to halt the processing of the instruction.

(10) Subject to paragraph (11) paragraphs (1) to (9) shall (so far as applicable) apply with any necessary modifications where a relevant circumstance occurs in respect of a person amongst two

or more persons acting jointly who are together an account holder or jointly registered as the holder of a unit of an uncertificated security.

(11) This paragraph applies where an entitlement held by a controller is held for two or more persons acting jointly and the controller receives actual notice of the vesting, by operation of law, of the unit of an uncertificated security to which the entitlement relates, or otherwise the rights of those persons to enforce the duties of the controller, in the survivor or survivors of those persons.

The controller shall hold the entitlement for the survivor or survivors who shall be the account holder with respect to the entitlement.

(12) In this regulation “enactment” includes, in relation to paragraph (1)(a) and (c), any legislation in any country which is effective to achieve the circumstances therein referred to.

(13) This regulation is subject to regulation 53.

CHAPTER III

Injunctions, Interdicts and other Orders

Injunctions, interdicts and other Orders

52.—(1) This regulation applies where in, or in connection with, any judicial proceedings before a court of competent jurisdiction (whether or not in the United Kingdom) an injunction, interdict, charging order, warrant for arrestment or other Order (all referred to in the regulation as an “Order”) is made (and if necessary served) which has the effect of:

- (a) restraining the transfer of a unit of an uncertificated security by a person; or
- (b) restraining any dealing by a person in connection with an entitlement to a unit of a security held for a person.

This regulation applies (if the Order so applies) whether or not the Order relates to units or entitlements held by or for the person at the date of the Order.

(2) Where a controller receives actual notice of such an Order relating either to a unit of a security the entitlement to which is held by him or it or to an entitlement held by him or it, the controller shall be under a duty (notwithstanding any other provision of these Regulations and in addition to any other effect such notice may have) not to do any act which would have the effect of frustrating the effect of the Order or which is otherwise inconsistent with its terms and in addition to do any act which is open to it under the system (by way of withdrawal of any consent to a transfer of the entitlement or otherwise), to prevent the Order being so frustrated or the occurrence of circumstances inconsistent with its terms.

(3) No such Order shall however have effect to the extent that it would prevent a periodic update of the appropriate register for an uncertificated security under these Regulations; in particular it shall not require a company to maintain the registration of a person as the holder of a unit where the company has no proper instruction to register that person as holder of the unit.

(4) Where instructions have been received by a controller from an account holder prior to the controller receiving actual notice of such an Order, the controller may, notwithstanding any provision of this regulation, act on those instructions if, as a result of the manner in which communications received by the controller are processed, it is not practicable for the controller to halt the processing of the instruction.

(5) This regulation is subject to regulation 53.

CHAPTER IV

Restrictions Avoiding Transfer

Restrictions avoiding the transfer of title to securities arising from an enactment

53.—(1) This regulation applies where there exists a restriction (other than a restriction resulting from the winding up of the company which has issued the security concerned) on the transfer of the title to a unit of an uncertificated security (“the restricted unit”) held by an account holder (“the affected holder”) arising by virtue of the provisions of any enactment (including any enactment relating to insolvency), or an Order of a court of competent jurisdiction, to the extent that it has the effect of avoiding (whether *ab initio* or subsequently) a transfer of a unit of a security not in accordance with the terms of the restriction.

(2) Nothing in these Regulations shall be construed as rendering valid a transfer of a restricted unit which has been so avoided and the enactment or Order shall, where a transfer has been so avoided, in addition have the effect of prohibiting an entitlement held for the affected holder being held for another person where this would have the effect of causing the registration of a person other than the affected holder in respect of a restricted unit.

(3) Subject to the following provisions of this regulation, upon receiving actual notice that a unit of an uncertificated security is a restricted unit, it is the duty of the Operator and the controller which instructed the registration of the affected holder as holder of the restricted unit (“the registering controller”) to take such steps as may be appropriate and practicable (to take precedence, in the case of a controller, over any other duty of his or its under these Regulations) to prevent any act prohibited under paragraph (2).

(4) Without prejudice to regulation 73, where the registering controller is unable to continue to issue a proper instruction to register an affected holder in respect of a restricted unit, or is or was required to cancel a standing instruction to register to that effect, as a result of a transfer of an entitlement, any transferee of that entitlement shall, upon receiving actual notice of the circumstances, be under a duty (notwithstanding any other provision of these Regulations) to hold the entitlement for the effected holder or issue a notification of a transaction whereby the entitlement is transferred back to the registering controller to be held for the affected holder.

(5) A registering controller shall, once he or it has received actual notice of the circumstances, be deemed to hold an entitlement held by him or it to a restricted unit for the affected holder, notwithstanding any instructions which the controller has received under regulation 33, even if he or it has acted upon the instruction by expressly re-allocating the entitlement to another.

(6) Notwithstanding that a proper instruction to register may not be effective to transfer the title to a unit of a security by reason of an enactment or Order to which this regulation applies, a company shall be entitled and bound to act upon a proper instruction to register a person as holder of a unit of a security, unless the company has actual notice that the entitlement concerned is to a restricted unit and an identified person other than the affected holder is the subject of the instruction.

Where a company has acted on a proper instruction to register under this paragraph, it shall not be liable in any civil or criminal proceedings solely by reason of the fact that it treated a person registered by it as the holder of the unit of a security concerned (and, in the case of shares, as a member) unless the company had, at the relevant time, actual notice that the entitlement concerned was to a restricted unit.

(7) Where instructions have been received by a controller from an account holder prior to the controller receiving actual notice that an entitlement concerned is to a restricted unit, the controller may, notwithstanding any provision of this regulation, act on those instructions if, as a result of the manner in which communications received by the controller are processed, it is not practicable for the controller to halt the processing of the instruction; this paragraph is otherwise without prejudice to paragraphs (4) and (5).

PART VII

FURTHER PROVISIONS WITH RESPECT TO THE OPERATOR, CONTROLLERS, AND OTHER PARTICIPANTS

Operator's management of the system

54.—(1) Notwithstanding any other provision of these Regulations, the Operator is not obliged to transmit through the Operator's part of the system or otherwise act upon a communication received by it which it is satisfied is obviously erroneous.

(2) The Operator may refuse to transmit a proper instruction to register or other communication to a company if the proper instruction or other communication has been superseded by a later instruction or communication or, in the case of a proper instruction to register, it (together with other instructions to register issued at the same time) would have the effect of updating the register by reference to an earlier date than that achieved by proper instructions which have already been issued.

(3) The Operator may, by notice to a company and all controllers holding entitlements to units of a security of the company (other than any controller which issues only standing instructions to register), cancel a fixed register date in respect of the security (whether before or after the date, but prior to the issue of any limited instructions to register in respect of it) if, in the opinion of the Operator, the giving of any proper instructions to register by reference to that date, having regard to any general call for instructions that has been or is likely to be made, would be likely to have the effect of updating the appropriate register by reference to an earlier date than that achieved by proper instructions issued or to be issued in response to the general call.

Communications effected by the Operator's part of the system or by the Operator

55. A recipient of any communication made by means of the Operator's part of the system or from the Operator acting as agent for a participant shall be entitled and bound to treat the communication as being issued by the person it purports to be issued by or (as the case may be) as having been transmitted by the Operator with the authority of the participant the communication purports to be on behalf of and the person or (as the case may be) the participant shall be bound by the communication accordingly. This regulation is without prejudice to the liability of the Operator or any other person concerned for the making of a communication without authority.

Lists of commercial controllers and approved persons

56.—(1) It is the duty of the Operator to maintain a list of commercial controllers which, for each such controller, sets out:

- (a) the name of the controller;
- (b) (where the Operator maintains its record of entitlements by using codes as permitted by regulation 70) the code allocated to the controller by the Operator;
- (c) (if a body corporate) the address of its registered office;
- (d) (if a body corporate) the country of its incorporation;
- (e) (if an individual or unincorporated body of persons) the address of his or its principal place of business;
- (f) the name and address of any persons appointed under regulation 95(2) to accept service of process on the controller's behalf or otherwise the place in each jurisdiction upon which such service may be effected in connection with the performance of his or its functions under these Regulations; and
- (g) the name and address of the controller's default nominee,

and to provide a copy of the list to any person upon request.

(2) A commercial controller shall notify the Operator of any change in the particulars listed with respect to him or it in the list maintained under paragraph (1) which are required by sub-paragraphs (a), (c) to (e) or (g) of that paragraph and may notify the Operator where he or it wishes to amend the particulars given in the list in respect of sub-paragraph (f) thereof. The Operator shall amend the list as soon as practicable after receipt of any such notice.

(3) The Operator shall in addition maintain a list of persons it has admitted to perform the functions of an approved person, giving:

- (a) the name of the person;
- (b) (if a body corporate) its country of incorporation and the address of its registered office;
- (c) (if a partners up or an individual) his or its principal place of business; and
- (d) the name and address of any persons appointed under regulation 95(2) to accept service of process on the person's behalf or otherwise the place in each jurisdiction upon which such service may be effected on the person in connection with the performance of the person's functions under these Regulations.

The Operator shall provide a copy of the list to any person upon request.

(4) It shall be the duty of an approved person, where there has been a change in the particulars listed by reason of paragraph (3)(a) to (c) with respect to him or it in the list maintained by the Operator under paragraph (3), to notify the Operator as soon as reasonably practicable of the change; an approved person may notify the Operator where he or it wishes to amend the particulars given in the list by reason of paragraph (3)(d). The Operator shall amend the list as soon as reasonably practicable after receiving such a notice.

(5) Section 352(5) of the 1985 Act shall apply to a default in complying with the provisions of paragraphs (1) and (3) and the second sentence of paragraphs (2) and (4) as it applies with respect to a default in complying with section 352 of that Act, subject to the modification that references to "a company" or "the company" are to be treated as references to the Operator.

Duty of participants acting on behalf of others

57. It is the duty of any participant making a communication purportedly on behalf of another person by means of a valid communication to do so only with the authority of that person.

Appointment of agents

58. Nothing in these Regulations shall be taken as prohibiting the appointment by any person of any agent to perform any functions of that person under these Regulations (or to make any communication on the person's behalf) and:

- (a) references in these Regulations to a person shall include an agent of the person;
- (b) references to any communications to or from a person shall include a reference to communications to or from an agent acting on behalf of the person.

For the avoidance of doubt, the appointment of an agent to perform a person's functions under these Regulations shall not relieve the person from any liability arising from their performance or non-performance.

Persons acting in more than one capacity

59.—(1) Nothing in these Regulations (other than regulation 61(1)) shall prohibit a person combining two or more rules recognised by these Regulations.

(2) In particular:

- (a) a person may combine two or more of the following rules: primary company controller, alternative company controller, registrar of the appropriate register, keeper of the company's record of entitlements and commercial controller;
- (b) a company may act as its own company controller and, if it carries on the business of being a commercial controller, hold entitlements as commercial controller in units of its own securities.

(3) Nothing in these Regulations shall be construed as requiring that a person combining two or more roles is actually to send any communications to himself or itself, but otherwise these Regulations shall apply as if the roles were performed by different persons, so that (in particular) any knowledge held by a person in his capacity as a person performing one role shall not be imputed to the person in his capacity as a person performing another role.

Bodies corporate, partnerships and individuals as controllers

60.—(1) Where a commercial controller, being a body corporate is dissolved or being an individual dies, any entitlements held by him or it shall be treated as still being held by him or it until transferred by the Operator under regulation 14. Where a company controller, being a body corporate is dissolved or being an individual dies, any entitlements held by him or it shall be treated as still being held by him or it until transferred by the Operator or (as the case may be) the company under regulation 12 and Schedule 1.

(2) In the case of a partnership, any entitlement held by the controller shall be held by the partnership and not the partners. If the partnership ceases the entitlement shall, unless the partnership is a commercial controller and another commercial controller succeeds to the relevant business, continue to be regarded as being held by the partnership until transferred under regulation 12 and Schedule 1 or regulation 14; but if the partnership is a commercial controller and another commercial controller succeeds to the relevant business, the entitlements shall be held by that commercial controller and any instructions received by the former partnership shall be treated as instructions received by the commercial controller to the extent that satisfactory evidence of them is obtained by the commercial controller and the commercial controller is satisfied that the number of entitlements held is established.

(3) Unless the recipient has actual notice to the contrary, a valid communication purportedly issued by a person recorded as being a controller holding entitlements on a record of entitlements shall be deemed to be issued by that person, even if it transpires that that person did not exist or was dead at the time the message was issued.

Controller's default nominee

61.—(1) It is the duty of a controller:

- (a) to appoint a relevant person (other than himself or itself) to act as his or its "default nominee" for the purposes of these Regulations (that is to say as the person to be registered as the holder of units of a security to which the controller holds entitlements where the controller has failed for any reason to issue a proper instruction to register with respect to the units or such an instruction has not been acted upon for any reason by the company); and
- (b) to notify every relevant company of the name and address of the person so appointed (unless the Operator has agreed to communicate, or has communicated, this information to the company on behalf of the controller).

For the purposes of sub-paragraph (a) a "relevant person" is a body corporate whose sole business is holding property of any description on behalf of others.

(2) The registration of a default nominee, in its capacity as such, as the holder of a unit of an uncertificated security shall not cause the relevant entitlement to be held for the default nominee or the default nominee to be regarded as the account holder with respect to it.

(3) A controller's default nominee, having been registered on an appropriate register as the holder of a unit of an uncertificated security in that capacity, shall hold that unit on trust:

(a) (in the case of its registration under regulation 38 as a consequence of the provisions of regulation 21) for the account holder who has been refused registration, until another person is registered as the holder of the unit; or

(b) (in any other case) for the account holder who ought to be registered as holder of the unit, until such time as that account holder has been registered as the holder.

(4) A default nominee shall, in connection with a unit of an uncertificated security held on trust by it in its capacity as default nominee, act, and only act, in accordance with the instructions of the account holder on whose behalf it holds the unit.

(5) A default nominee shall not accept instructions from such an account holder except where the instruction is given on behalf of the account holder by the controller concerned or the instruction is given with the consent of the controller. It is the duty of the controller to give such instructions if, but only if, he or it has the like instructions from the account holder concerned.

(6) Subject to any provision to the contrary (in the case of shares) in a company's articles of association or (in the case of any type of security) in the terms of issue of a security, where a controller's default nominee is registered in that capacity as the holder of a unit of a security, the default nominee is prohibited from exercising any voting right attached to the unit and any purported exercise of such a right in contravention of this paragraph shall be disregarded for all purposes.

(7) A company shall not be treated, for the purposes of section 24 of the 1985 Act, as having less than two members by reason only of the fact that its sole member is a controller's default nominee registered in that capacity.

(8) It is the duty of a controller whose default nominee is registered on an appropriate register as holder of a unit of an uncertificated security in that capacity (except by virtue of regulation 38 as a consequence of the provisions of regulation 21) to issue an instruction to register the person who was the account holder with respect to the entitlement to that unit at the date by reference to which the register was updated, as soon as practicable.

(9) A controller may substitute another person as his or its default nominee and, if the controller does so, he or it shall notify the Operator and every company, in a security of whose the controller holds an entitlement, of the name and address of the person so substituted (unless the Operator has agreed to notify the company on behalf of the controller). However a company shall continue to regard the latest person notified to it as the controller's default nominee as that nominee unless it has been given specific notice by the controller or (as the case may be) the Operator of the substitution and the name and address of the person substituted.

(10) If a controller's default nominee is registered on an appropriate register as the holder of a unit of an uncertificated security in that capacity at the time a company is notified under paragraph (9) of a substitution, the company shall as soon as reasonably practicable substitute the new default nominee for the old on that register.

(11) A commercial controller shall be jointly and severally liable with a person appointed by the controller to act as the controller's default nominee for any breach of trust or duty on the part of that person acting as such default nominee. A company and a company controller appointed by it shall also be jointly and severally liable with a person appointed by the controller to act as the controller's default nominee with respect to the security of the company concerned for any breach of trust or duty on the part of that person whilst acting as such default nominee.

Special provisions applicable to controller holding for market nominee

62.—(1) This regulation shall apply during any period in which The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, or (if that company is no longer the Operator) the Operator for the time being, is a Recognised Investment Exchange or Recognised Clearing House (within the meaning of the 1986 Act).

(2) The Operator may perform the functions of a commercial controller with respect to any entitlements to units of a security held or to be held for a nominee appointed by the Operator in its capacity as such an Exchange or Clearing House, but in performing those functions the Operator shall only be subject to any requirements imposed on it by any rules made under regulation 112.

Arrangements for service to be made by the Operator

63.—(1) Subject to paragraph (2), the Operator shall at all times have a person in each jurisdiction appointed to accept service of any process in connection with the performance of its functions under these Regulations.

(2) The Operator need not have such a person appointed for the jurisdiction in which it is incorporated or a jurisdiction in which it has an established place of business upon which service may be made under the law of that jurisdiction. The Operator may, for such a jurisdiction, appoint a particular place of business maintained by it at which it will accept service of such process as is referred to in paragraph (1).

(3) The name and address of any person so appointed and the address of any such place of business shall be included in the list maintained by the Operator under regulation 56(1).

Service of process on participants and the Operator

64.—(1) Subject to the provisions of paragraph (5), this regulation has effect in relation to any notice, direction or other document required or authorised by or under these Regulations, or any process in connection with the performance of functions under these Regulations, to be served on any person other than the Secretary of State.

(2) Any such document may be given to or served on the person in question:

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) Any such document may:

- (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body;
- (b) in the case of a partnership, be given to or served on any partner;
- (c) in the case of an unincorporated association other than a partnership, be given to or served on any member of the governing body of the association.

(4) For the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation, the proper address of any person other than a controller, an approved person or the Operator is his last known address (whether of his residence or a place where he carries on business or is employed) and, in the case of a controller, an approved person or the Operator is the address applicable under the following provisions:

- (a) the address of any person whose name is listed (as a person on whom service may be effected in respect of the relevant jurisdiction) against the name of the controller or approved person concerned or (as the case may be) the Operator;

- (b) (in the case of the Operator) an address listed for the Operator (as an address on which service may be effected in respect of the relevant jurisdiction), in the appropriate list. For this purpose the—appropriate list is:
- (i) in the case of a company controller, that maintained by the company under regulation 9(6);
 - (ii) in the case of an approved person, that maintained by the Operator under regulation 56(3);
 - (iii) in the case of commercial controllers, that maintained by the Operator under regulation 56(1); or
 - (iv) in the case of the Operator, that maintained by the Operator under regulation 56(1) and 63;

and a list is to be treated as being the appropriate list if it was available for inspection or (as the case may be) a copy was provided under those regulations on the date of service or on any day during the period of 5 working days prior to that date.

(5) Where the Operator has appointed an agent or place of business under regulation 63 which is noted in the list maintained by the Operator under regulation 56(1), service of process in connection with the performance of its functions under these Regulations may only be effected by service under paragraph (4) (unless the copy of that list supplied to the person serving the process did not contain reference to the appointment of the agent or place of business).

(6) If at any time the person whose name is so listed with respect to a commercial controller or approved person is dead or ceases to exist or has moved from the address listed or refuses to accept service on behalf of the commercial controller or approved person, service on the commercial controller or approved person may in addition be effected at a place of business of, or the registered office of, the Operator (subject to paragraph (5)) on which service may be effected under the law of the jurisdiction concerned or at the address of a person listed (in the list referred to in regulation 56(1)) for that jurisdiction as being appointed by the Operator to accept service on its behalf.

(7) If at any time the person whose name is so listed with respect to a company controller is dead or ceases to exist or has moved from the address listed or refuses to accept service on behalf of the controller, service on the controller may in addition be effected at the registered office of the company.

Statements of account

65.—(1) Subject to paragraph (2), a controller shall, within 5 working days of any change in the number of entitlements held for one of his or its account holders or a person first becoming one of his or its account holders, send a statement of account to that person, unless the controller has reason to suspect that the address held by him or it for the person is not current or is, in his or its opinion, obviously not suitable for communications with the account holder. In the case of two or more persons acting jointly being together an account holder, the statement need only be sent to the first person listed in the controller's record of account holders.

(2) Paragraph (1) is subject to any different provision made in an agreement authorising a commercial controller to hold entitlements. It is also subject to any arrangements that might be made by a company and any primary and alternative company controllers of the company in respect of a statement to be sent in connection with the conversion of a security into uncertificated form.

(3) A controller shall ensure that a statement of account is sent to each of his or its account holders not less often than every 12 months, unless the controller has reason to suspect that the address held by him or it for the person is not current or is, in his or its opinion, obviously not suitable for communications with the account holder. This paragraph applies notwithstanding any provision in

any agreement to the contrary, including any agreement authorising a commercial controller to hold entitlements (entered into under regulation 13).

- (4) A statement of account under this regulation shall at least state:
- (a) the name and address of the controller;
 - (b) whether the controller is acting as a commercial, alternative company or primary company controller in relation to the account;
 - (c) the name of the account holder (in the case of persons acting jointly who are together an account holder, the name of each such person);
 - (d) the address of the account holder as recorded in the controller's record of account holders (in the case of persons acting jointly who are together an account holder, the address of the first person listed in the record);
 - (e) the date as at which the statement is drawn up;
 - (f) the name of the company which has issued the security concerned;
 - (g) the identity of the security concerned;
 - (h) the number of entitlements in that security held for the account holder on the date as at which the statement is drawn up; and
 - (i) (where the statement is issued under paragraph (1) due to a change in the number of entitlements held for a person) the increase or decrease in the number of entitlements held.

Informal information as to account holders

66. If at any time the Operator and any commercial controller should afford the opportunity to companies to obtain, by means of the Operator's part of the system, information of the following kinds, any communication to the company containing such information shall not be used for the purposes of updating in any manner the appropriate register for the security concerned:

- (a) information about some or all of the account holders of a particular controller or controllers only; or
- (b) information about the account holders of controllers as at a date prior to the last periodic update of the register.

PART VIII

FURTHER PROVISIONS WITH RESPECT TO THE PROCEDURES, RECORDS AND REGISTERS

THE PROCEDURES

No notice of trusts

67.—(1) No notice of any trusts or other interest in a unit of an uncertificated security is to be receivable by the Operator. Nor is any such notice to be receivable by a controller, unless it is given by the account holder for whom the controller holds the entitlement to the unit concerned. Nothing in this paragraph shall be construed as preventing, in the case of a company incorporated in Scotland, the Operator giving notice of a trust to a company on behalf of a controller.

(2) Section 360 of the 1985 Act shall (in the case of a company registered in England and Wales or Northern Ireland) have effect with respect to the appropriate register for an uncertificated security and the registrar of that register, whether or not the uncertificated security concerned is shares. However where the title to an uncertificated security is itself equitable title (for example in the case

of debenture stock), section 360 as so applied shall have effect with respect to any interest in that equitable title.

Priority between communications

68.—(1) Subject to the next paragraph, where a controller receives two or more conflicting communications it is the duty of the controller to:

- (a) act on the communications in the order of their receipt; or
- (b) (in the event that they are received simultaneously or their time of receipt cannot be determined) to reject them.

Communications shall not be regarded as conflicting for this purpose solely because one communication amends or countermands the other.

(2) Paragraph (1) shall apply unless it is not reasonably practicable, as a result of the manner in which communications received by the controller are processed, for the controller to comply with that paragraph.

Where paragraph (1) does not apply:

- (a) communications shall be regarded as having been properly acted upon by the controller notwithstanding that they have not been processed in order of their receipt or issue provided that they have been acted upon in the normal course of processing; and
- (b) the controller shall not be in breach of any duty of his or its under these Regulations by failing to act upon the communications in the order in which they have been received or made.

Powers of attorney (England and Wales and Northern Ireland)

69.—(1) This regulation, which has effect for the law of England and Wales and Northern Ireland, applies where the terms of an offer for all or any units of an uncertificated security provide that a person accepting the offer creates an irrevocable power of attorney (in the terms set out therein) in favour of the offeror or a person nominated by the offeror.

(2) Where this regulation applies, an acceptance communicated by a commercial controller to which regulation 13(5) applies shall have the effect, without more, of creating an irrevocable power of attorney given by the person accepting the offer to which section 4 of the Powers of Attorney Act 1971⁽¹²⁾ applies in favour of the offeror or a person nominated by the offeror in the terms set out in the terms of the offer, unless the offeror or the person nominated by him had, at the time of its receipt, actual notice that the purported acceptance was unauthorised. This paragraph is without prejudice to the liability of a controller for the making of the communication without authority, but it applies whether or not the person accepting the offer is identified in the communication, provided that the identity of that person is, within such period as the recipient of the communication may reasonably require, notified to the recipient by the controller concerned.

(3) A declaration in writing by the controller stating the terms of a power of attorney and that it has been granted by virtue of this regulation and stating the name and address of the grantor shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of the grant, and any requirement in any enactment or instrument to produce a copy of the power of attorney, or a copy thereof certified in a particular manner, may be satisfied by the production of the declaration or of a copy thereof certified in that manner.

(12) 1971 c. 27.

RECORDS AND REGISTERS

Use of codes in records and messages &c

70.—(1) Where any information is to be included in any communication issued under or contemplated by these Regulations, that information may be given by means of a code agreed between the parties to the communication.

(2) Any entry on any record or register to be made under these Regulations may, subject to the provisions of any other enactment to the contrary, be made by the use of a code, provided that a key to the codes used is maintained at the place where the register or record is kept and (where the register or record is open to the inspection of any person) is made available with the register or record for inspection. Where any person may require the provision of a copy of the register or record or part thereof, the key shall accompany any copy so provided.

Maintenance of records

71. Any record required to be maintained by these Regulations may be kept and maintained by the keeper of the record in any form and manner the keeper-thinks fit, provided that it is possible to reproduce a copy of the record in legible form. In particular the record may be updated by its replacement by a new version of the record superseding the existing version.

Rectification of errors in records and registers

72. A record of entitlements or an appropriate register for an uncertificated security may be amended by the person maintaining it if an entry on it has not been made, amended or deleted, or has been made, amended or deleted, as a consequence of a failure of the maintainer of the record to carry out its (the maintainer's) duties under these Regulations.

Rectification of record or register by the court

73.—(1) Section 359(1)(a) of the 1985 Act shall apply, with any necessary modifications, to a record of entitlements and (if it would not otherwise do so) to an appropriate register with respect to an uncertificated security as it applies to a company's register of members maintained under section 352 of that Act, but only for the purpose of enabling the rectification:

- (a) of such an appropriate register where a company, without sufficient cause, has failed to act upon a proper instruction to register or has registered a person as a holder otherwise in accordance with these Regulations;
- (b) of such an appropriate register so as to cause the re-registration of an affected holder as the holder of a restricted unit within the meaning of regulation 53 where such holder has ceased to appear on the register with respect to such unit; or
- (c) of a record of entitlements, if an entry on the record has not been made, amended or deleted, or has been made, amended or deleted, as a consequence of a failure of the holder of the record to carry out its duties under these Regulations.

Section 359(2) to (4) shall apply for the purposes of section 359(1)(a) as applied by this regulation.

(2) Section 359 shall not otherwise apply to a register of members which is the appropriate register with respect to an uncertificated security.

(3) The court, in making an Order under section 359(2) of the 1985 Act as applied by this regulation, or under any other proceedings, requiring that a record of entitlements or appropriate register for an uncertificated security is to be rectified may make any necessary consequential Orders for the amendment of any records of entitlements or requiring an entitlement to be held, or not held, for a person by a controller.

(4) Where the court has not made any consequential Orders under paragraph (3), it is the duty of the company to:

- (a) notify forthwith the Operator of the making of the Order together with the names of any commercial or alternative company controllers affected by the terms of the Order; and
- (b) where the court's Order concerns any units of a security entitlements to which are held, or are pursuant to the Order to be held, by a primary company controller, forthwith:
 - (i) amend its record of entitlements to the extent necessary to ensure that that record conforms with the rectified appropriate register; and
 - (ii) notify the controller of the Order and its terms.

(5) Where the Operator has been notified of the making of an Order, under the last paragraph or otherwise, it is its duty:

- (a) as soon as practicable to amend its record of entitlements to the extent necessary to ensure that that record conforms with the rectified appropriate register; and
- (b) as soon as practicable to notify each commercial or alternative company controller affected by the Order of the making of the Order and of its terms.

(6) It is the duty of each controller affected by the Order, having received such notification from the company or (as the case may be) from the Operator, forthwith so to amend his or its record of account holders as to ensure that the record reflects the rectified appropriate register.

PART IX

CREATION OF UNCERTIFICATED SECURITIES INTRODUCTORY

Securities: conversion into, and issue in, uncertificated form

74.—(1) A company may, in accordance with this Part of these Regulations, convert the units of any certificated security of the company in issue into an uncertificated security or may issue units of a security in uncertificated form.

- (2) A company may not, however, so convert or issue any shares of the company if:
 - (a) they are not fully paid up as to the nominal value thereof and the whole of any premium thereon; or
 - (b) they are numbered.

(3) For the purposes of this Part of these Regulations, an “enabling resolution” is a special resolution passed by the company authorising the conversion of any securities of the company into uncertificated form and, where units of any security (existing or future) are at any time to be issued by the company, their issue in such form rather than certificated form, should the directors of the company think fit.

CHAPTER I

CONVERSION OF CERTIFICATED SECURITIES

Conversion of certificated securities into uncertificated form

75.—(1) Subject to the following provisions of this regulation, conversion of a certificated security into an uncertificated security shall be effected by two directors or a director and the secretary of the company signing a certificate of conversion in the form set out in Schedule 4 (with any necessary modifications).

- (2) Subject to paragraph (7), no such certificate shall be of any effect unless:

- (a) the board of directors or a duly authorised committee of the same have authorised (in a resolution complying with paragraph (6)) the signature of the certificate on or after a specified date and the certificate is signed on or after that date;
 - (b) the Secretary of State has consented to the system commencing operation under regulation 5; and
 - (c) the Operator has agreed to the conversion of the security and any conditions attached to that agreement have been satisfied.
- (3) It is the duty of a company, prior to the conversion of a security, to:
- (a) make adequate preparations and arrangements for the effecting of the conversion of the security (in particular by preparing or causing to be prepared a record of entitlements to take effect from the moment of conversion) and the carrying out of its functions under these Regulations in connection with the security (in particular by making arrangements for the keeping of a record of entitlements); and
 - (b) ensure the requirements set out in paragraph (4) have been complied with.

It is the duty of any company controller appointed with respect to the security to co-operate with the company in making the preparations and arrangements referred to in sub-paragraph (a).

- (4) The requirements referred to in paragraph (3)(b) are:
- (a) the company must at some time have passed an enabling resolution;
 - (b) conversion of the security must have been authorised by a relevant resolution of the holders of the security at least two months prior to the date on which the security is converted, unless the terms on which the security has been issued authorise the conversion of the security into an uncertificated security or the security is shares of the company in circumstances where the company has only one class of shares and the resolution which constitutes the enabling resolution in addition authorised the conversion of the shares into uncertificated form; and
 - (c) the required publicity must have been given to the proposal to convert, unless, the security being a security in relation to which certificates are in issue, the company has collected in, or received indemnities in respect of, all certificates in issue with respect to the security.
- (5) For the purposes of paragraph (4):
- (a) a relevant resolution is:
 - (i) where the security concerned is shares, or any class of shares, an extraordinary resolution passed by the holders of the shares or shares of that class;
 - (ii) in any other case: —a resolution passed by the holders of not less than three quarters of the units of the security, or, —in the case of a resolution put at a meeting of the holders at which a poll is not demanded, a resolution passed by not less than three quarters of the holders of the units of the security who (being entitled to do so) vote on the resolution, whether in person or (where permitted) by proxy, provided that no resolution shall be treated as a relevant resolution for this purpose if, in addition to conversion, it deals with any other business;
 - (b) the required publicity is the publication of a notice which includes the relevant statements on at least three occasions prior to the date on which conversion of the security is effected in such manner and on such occasions as the Operator may direct.

For the purposes of sub-paragraph (b), the relevant statements are:

- (i) where the notice is published prior to the passing of any resolution required by paragraph (4)
- (b), a statement that it is proposed that the security (identifying it) of the company (naming it) be converted into an uncertificated security to which these Regulations will apply and that a resolution will shortly be put to the holders of the security for their approval of the conversion;

- (ii) where the notice is published after the passing of that resolution, or no resolution is required, a statement that it is proposed that the security (identifying it) of the company (naming it) will shortly be converted into an uncertificated security to which these Regulations will apply and that persons holding by way of security certificates to units of the security concerned should as soon 'as possible take steps to preserve their security under the provisions of these Regulations; the date for last receipt of instruments of transfer under paragraph
- (6) shall also be stated if known; and
- (iii) (in either case) if the notice is to be the final notice of conversion, a statement of that fact.

Also for the purposes of sub-paragraph (b), a notice is none the less published by a company if it is published by the Operator, including where it is included in a notice published by the Operator relating to a number of companies.

(6) A resolution of the directors, or a duly authorised committee of the same, authorising signature of a certificate with respect to a security under paragraph (2)(a) shall specify a date (referred to below as the “relevant date”) after which no further proper instruments of transfer received with respect to the security will be acted upon prior to conversion, being a date not less than 3 working days and not more than 10 working days before the date specified in the resolution as the date on or after which the certificate of conversion may be signed.

Subject to paragraph (8) or to any direction issued by the Operator, no proper instrument of transfer with respect to the security which is to be converted received by the company after the relevant date may be registered by the company in the appropriate register (paragraph 1 of Part I of Schedule 5 applies to such instruments).

(7) The commencement of the operation of a record of entitlements with respect to a security by the Operator shall be conclusive evidence that the conditions set out in paragraph (2)(a) and (c) have been complied with with respect to that security (except in any proceedings for damages against any person for breach of a duty imposed by this regulation).

(8) If the certificate of conversion has not been signed within three working days of the date specified in the resolution of the directors under paragraph (2)(a), the resolution shall lapse and the prohibition on registration of transfers under paragraph (6) shall cease. The directors may pass such further resolutions under paragraph (2)(a) as are required until conversion is effected.

Duties of Operator with respect to conversion

76.—(1) It is the duty of the Operator not to agree to the conversion of any security unless the Operator is reasonably satisfied that the company has made adequate arrangements and preparations with respect to the conversion and for the carrying out of its functions under these Regulations in respect of that security.

- (2) The Operator may make its agreement subject to conditions.

Delivery of conversion certificate to registrar of companies

77.—(1) The company shall deliver to the registrar of companies for registration a certified copy of the certificate signed under regulation 75(1) by which conversion of any security was effected, within 7 working days of the date on which it was signed.

(2) Section 380(6) of the 1985 Act applies to a failure to comply with the provisions of this regulation as it does to a failure to comply with section 380(2) or (3) of that Act.

(3) In this regulation “certified copy” means a copy certified as a true copy by a notary, notary public or other person authorised by law, in the jurisdiction where the company is incorporated, to administer oaths or authenticate documents.

CHAPTER II

ISSUE OF A SECURITY IN UNCERTIFICATED FORM

Issue of uncertificated securities

78.—(1) A company:

- (a) shall issue units of a security in uncertificated form if the units are to form part of a security that is already in issue in uncertificated form; or
- (b) may issue units of a security in such form if they form a new security and the conditions referred to in paragraph (2) have been complied with.

Any issue of units of a security in certificated form where they are to form part of an existing uncertificated security shall be void and vice versa.

(2) The conditions referred to in paragraph (1)(b) are that:

- (a) the Operator has agreed to the units proposed to be issued being issued in uncertificated form and any conditions attached to such agreement have been satisfied; and
- (b) the Secretary of State has consented to the system commencing operation under regulation 5.

If these conditions are not satisfied, the units concerned shall be treated as having been issued in certificated form, but commencement of the operation of a record of entitlements with respect to the security by the Operator shall be conclusive evidence that the condition referred to in subparagraph (a) has been complied with with respect to that security, except in any proceedings for damages for breach of a duty imposed by this regulation.

(3) It is in addition the duty of a company not to issue a new security in uncertificated form unless the company has at some time passed an enabling resolution.

(4) Where units of a security are to be issued in uncertificated form and are to form part of a security that is already in issue in uncertificated form, the appropriate register may be amended at any time so as to record the holders of the units issued.

Duty of company to make adequate preparations and arrangements

79. It is the duty of a company proposing to issue a new security in uncertificated form or to issue units of a security in such form to make, prior to the issue:

- (a) adequate preparations and arrangements for the carrying out of its functions under these Regulations in connection with the security (in particular by making arrangements for the keeping of a record of entitlements with respect to the security or the units); and
- (b) adequate preparations and arrangements for the issue of the units, whether of the new security or of an existing security, in particular (in the case of a new security) by preparing a record of entitlements to take effect as its record of entitlements for the security from the moment of issue.

Duty of Operator to satisfy itself over company's preparations

80.—(1) Where regulation 78(2)(a) applies, the Operator shall not agree to the issue of units of a security proposed to be issued by a company in uncertificated form unless the Operator is reasonably satisfied that the company has made adequate arrangements and preparations with respect to the issue and for the carrying out of its functions under these Regulations with respect to the security to be issued.

(2) The Operator may make its agreement subject to conditions.

CHAPTER III CONVERSION AND ISSUE: MISCELLANEOUS PROVISIONS

General duties and powers of Operator in admitting securities into the system

81.—(1) Where the function of admitting securities into the system is delegated to it, it is the duty of the Operator not to agree to the conversion of any security into, or issue of any security in, uncertificated form unless it has made adequate arrangements for the carrying out of its own functions under these Regulations, so far as that security is concerned or makes its agreement subject to the completion of those arrangements. Such arrangements shall include crediting, in a record of entitlements for the security, the Operator as a controller acting under regulation 62 and any alternative company controller with any entitlements the Operator is instructed by the company to credit them with.

(2) The Operator shall not be required to agree to the conversion of a security into, or issue of a new security in, uncertificated form if, in the Operator's opinion, the security is unsuitable, by reason (in the case of shares) of the terms of the company's memorandum or articles of association or (in the case of any securities) of the terms governing its issue, to be an uncertificated security given the facilities available for the operation of the system or any additional provision made in the company's memorandum or articles of association, or (as the case may be) in any other terms of issue of the security, under regulation 120.

(3) The Secretary of State, where the function of admitting securities into the system has been delegated to the Operator, may direct the Operator:

- (a) to agree to the conversion or issue of a security in uncertificated form (subject to such conditions being imposed as he may direct) upon the application of any person aggrieved by a refusal of the Operator to so agree, if in his opinion the Operator's decision is arbitrary or otherwise without adequate justification; or
- (b) to abandon any condition it has imposed on its agreement to the conversion of a security into or issue of any security in uncertificated form, if in his opinion the condition is arbitrary or otherwise without adequate justification.

Further provisions

82.—(1) Upon the conversion of a security into, or the issue of units of a security in, uncertificated form, a controller recorded on a record of entitlements prepared for the security as having an entitlement to a unit of the security converted or issued shall there-upon have that entitlement save that where, and for as long as, the sum of the entitlements on the Operator's and company's records of entitlements exceeds the units of a security in issue, the question whether the controller has the entitlement is in addition to be determined by ascertaining whether the controller would have been recorded with it if the excess had not arisen.

(2) Schedule 5 to these Regulations makes further provision with respect to the conversion of a security into, or issue of units of a security in, uncertificated form.

PART X CONVERSION OF UNCERTIFICATED SECURITIES INTO CERTIFICATED FORM

Introductory

83. The provisions of this Part apply:

- (a) where it is proposed to convert an uncertificated security into a certificated security; and
- (b) to require, in certain cases, uncertificated securities to be so converted.

Conversion

84.—(1) Conversion may be effected by two directors or one director and the secretary signing a certificate of conversion in the form set out in Schedule 6 (with any necessary modifications).

(2) No such certificate of conversion shall have effect unless:

- (a) its signature has been authorised by a resolution of the board of directors of the company or a duly authorised committee of the same; and
- (b) conversion of the security in question has been authorised by a relevant resolution of the holders of the security.

A resolution passed for the purposes of (b) shall specify the date on or after which conversion is proposed to be effected, being a date not less than 30 working days after the date of the meeting at which the resolution is passed; the certificate of conversion shall be signed on, or as soon as reasonably practicable after, the date so specified, but shall be ineffective if signed on any earlier date.

(3) It is the duty of the directors of a company or a duly authorised committee of the same not to authorise the signature of a conversion certificate under this regulation unless the required publicity has been given of the date on which conversion is proposed to be effected.

(4) Subject to paragraph (2), upon the signature of the certificate the security concerned shall cease to be an uncertificated security.

(5) Upon conversion, regulation 119(1) shall cease to apply, and (in the case of shares) any provision of the company's memorandum and articles of association which is inconsistent with any provision of the 1985 Act as to the transfer and registration of certificated securities of the type in question shall cease to have effect, by virtue of the provisions of section 14 of that Act.

(6) For the purposes of this regulation:

- (a) a relevant resolution is:
 - (i) (in the case of shares) a special resolution of the holders of the shares or (in the case of a particular class of shares) an extraordinary resolution passed by the class; or
 - (ii) (in any other case) a resolution passed:
 - by the holders of not less than three quarters of the units of the security, or
 - in the case of a resolution put at a meeting of the holders at which a poll is not demanded, by not less than three quarters of the holders of the units of the security

who (being entitled to do so) vote on the resolution, whether in person or (where permitted) by proxy; and

- (b) the required publicity is the publication of a notice on at least two occasions prior to the date on which conversion is proposed to be effected, in such manner and on such occasions as the Operator may direct, to the effect that conversion of the security (identifying it) of the company (naming it) from uncertificated to certificated form will be effected on or shortly after a specified date, being the date set out in the relevant resolution.

Notice to the Operator and controllers

85.—(1) A company shall deliver to the Operator a copy of any relevant resolution under regulation 84(2)(b) within 2 working days of its being passed.

(2) The Operator shall as soon as reasonably practicable select a date to be the last date on which transfers of entitlements to units of the security in question in uncertificated form under the system shall be effective and by which any instructions received under regulation 33 must have been acted upon, being a date not less than 5 working days before the date specified in the resolution authorising the conversion. Forthwith upon selecting such date the Operator shall inform all commercial and alter-native company controllers, together with the company or any person appointed as agent for primary company controllers under regulation 11, of the date selected. It shall also publish the date in such manner as may reasonably be expected, in the opinion of the Operator, to cause it to come to the attention of any person likely to be affected by the conversion.

(3) A company shall also deliver a copy of such a conversion resolution to each primary company controller with respect to the security concerned within 5 working days of the passing of the resolution. Upon its being notified of the date selected by the Operator under the last paragraph, the company shall notify all the primary company controllers (with respect to the security) of that date.

General call for instructions and issue of certificates

86.—(1) The company shall issue a general call for instructions, with the register to be updated by reference to the date specified in the resolution or such later date as the company may select, not being more than 5 working days after the date specified.

(2) The company shall update the appropriate register from the proper instructions to register received and from standing instructions extant, in accordance with the provisions of these Regulations.

(3) This updated register shall form the opening appropriate register for the security in certificated form.

(4) It is the duty of the company to issue, within two months of the date of conversion, certificates to the persons registered on the opening appropriate register in accordance with the provisions of any enactment applicable to certificated securities of the type of security in question or (to the extent there is no enactment so applicable) in accordance with the terms of issue of the security in question.

Duty of directors to convert in certain cases

87.—(1) It is the duty of the directors of a company to convert an uncertificated security into a certificated security under the procedure set out in this Part of these Regulations where a resolution has been passed by the holders of the security requesting such conversion which:

- (a) would qualify as a relevant resolution under regulation 84(6); and
- (b) specifies a date, not less than 30 working days after the date of the meeting at which the resolution is passed, on or after which conversion is proposed to be effected.

Such conversion must be effected on the date specified by the resolution or as soon as reasonably practicable after that date.

(2) For the purposes of the procedures for conversion prescribed by this Part, such a resolution shall be treated as a relevant resolution specifying a date proposed for conversion under regulation 84(2).

Compulsory conversion of uncertificated securities into certificated form

88.—(1) If it appears to the Secretary of State that:

- (a) there has been a persistent failure by a company to perform its functions under these Regulations with respect to an uncertificated security;
- (b) the company proposes to amend its memorandum and articles of association or otherwise the terms of issue of the security concerned so as to require particulars to be contained in

a proper instruction to register which cannot be accommodated by the facilities available to operate the system or (in the case of any additional provision made in the company's memorandum or articles of association) or otherwise in a manner inconsistent with the terms of these Regulations; or

- (c) the Operator is incapable (for any reason) of adequately performing its own functions with respect to an uncertificated security of a company,

he may issue a direction for the conversion of that security into certificated form in accordance with the following provisions of this regulation. Such a direction shall state a date upon which the security is to be converted into certificated form and shall be served on the company and the Operator.

(2) The Secretary of State shall, if it is practicable to do so, afford a company at least 10 working days notice of his intention to issue a direction under paragraph (1)(a) or (b) and shall consider, in deciding whether to issue such a direction, any representations made by the company within that period.

(3) Within two working days of the receipt of a direction under this regulation, the Operator shall notify every commercial and alternative company controller of its issue and of the date of conversion.

It is the duty of a company, having received a direction under this regulation, to notify every primary company controller of its issue and the date of conversion.

(4) The company shall issue a general call for instructions, specifying the date specified in the direction (or such later date as the company may select, not being more than 5 working days after the date so specified) as the date by reference to which the appropriate register is to be updated.

(5) As from the date stated in the direction, the security concerned shall cease to be an uncertificated security; paragraph (5) of regulation 84 shall apply with any necessary modifications. Paragraphs (2) to (4) of regulation 86 shall apply in connection with proper instructions to register received by virtue of paragraph (4) as they apply to such instructions received by virtue of paragraph (1) of that regulation.

(6) It is the duty of the company (on receipt of such a direction) to inform the holders of the security of its issue and publish the fact that conversion has occurred in such manner as reasonably appears to the company to be calculated to draw the fact of the conversion to the attention of any person who may be affected by it.

Conversion: further provisions

89.—(1) The fact that an uncertificated security has been converted into a certificated security under this Part of these Regulations shall not excuse any person from any liability arising out of any act or omission occurring prior to conversion that would attach to him by virtue of any of the provisions of these Regulations.

(2) The fact of the company having commenced the operation of an appropriate register for the security in certificated form shall be conclusive evidence that the security has ceased to be an uncertificated security.

(3) The company shall deliver to the registrar of companies for registration a certified copy of a certificate of conversion under regulation 84 or, where conversion is effected under regulation 88, a statement of the fact that conversion has occurred under this Part of these Regulations and the date of conversion, within 7 working days of the date on which conversion was effected.

In this paragraph "certified copy" means a copy certified as a true copy by a notary, notary public or other person authorised by law, in the jurisdiction where the company is incorporated, to administer oaths or authenticate documents.

(4) Section 380(6) of the 1985 Act applies to a failure to comply with the provisions of this regulation as it does to a failure to comply with section 380(2) or (3) of that Act.

(5) Schedule 7 has effect to make further provision with respect to the conversion of a security from uncertificated into certificated form.

PART XI

SPECIAL PROVISIONS FOR CERTAIN SECURITIES OR INTERESTS IN SECURITIES

CHAPTER I

SPECIAL PROVISIONS RELATING TO CERTAIN SECURITIES

Debentures Certain issues of debentures not to be capable of being subject to the Regulations

90. These Regulations shall not apply to an issue of debentures governed by the law of England and Wales or Northern Ireland unless the following conditions are satisfied with respect to the issue:

- (a) the terms of the issue must contain a provision (however worded) that has the effect of not binding the company to enter into the register of debenture holders any trust or (subject to an Order of a court of competent jurisdiction) recognise any trust or equity affecting the title to the debenture; and
- (b) the terms of issue must contain a provision excluding any equities as between the company and subscribers to the issue.

Disapplication of requirement to attach certificate

91.—(1) Section 402 of the 1985 Act shall not apply with respect to a unit of an uncertificated debenture; however a company shall supply to any debenture holder, without charge, a copy of a certificate of registration to which that section refers upon application being made to it.

(2) Section 191(4) of the 1985 Act applies with respect to a failure to supply a copy of a certificate of registration under this regulation as it applies to a refusal to provide a copy of trust deed for securing an issue of debentures under section 191(3).

Requirements to endorse certificates Disapplication of requirements to endorse certificate

92.—(1) This regulation applies to any requirement under any enactment or instrument to endorse any statement or information on a certificate evidencing title to a unit of a security.

(2) Such a requirement shall not be construed as prohibiting the conversion of the security into, or the issue of the security in, uncertificated form under these Regulations.

(3) In relation to an uncertificated security such a requirement shall be construed as a requirement on a controller to include the statement or information in, or in a document appended to, any statement issued by the controller under regulation 65 or (in the case of a commercial controller) which he or it is required to issue under the terms of any agreement.

A commercial controller may agree with an account holder that the statement or information is not to be given, or is to be given in a different manner.

(4) It is the duty of a company, upon request, to provide to a controller such information as may be necessary to enable the controller to comply with the requirements of this regulation.

CHAPTER II

INTERESTS IN UNITS OF A SECURITY

Interests in units of a security

93.—(1) This regulation shall apply so as to enable the transfer of an interest in a security or securities, and the recording of the holders of such an interest, where such an interest has been created or issued under the terms of any arrangement, provided that, under the terms of the arrangement, the holders of the interests created or issued thereunder are required to be entered in a register. In this regulation:

- (a) “security” includes a security issued by a company wherever incorporated; and
- (b) “interest in a security” includes any legal or equitable interest in a security, including an absolute or contingent right to acquire securities created, allotted or issued or to be created, allotted or issued under the terms of an arrangement and the beneficial interest of a person for whom securities are held on trust by a custodian or depository.

(2) Such an interest in a security under such an arrangement shall, once admitted into the system, be transferable in accordance with the procedures set out in these Regulations as if it itself were a unit of an uncertificated security, with any necessary modifications, but subject to any provision that may be made in the terms of issue of the interest or of the arrangement.

In particular (subject to any provision to the contrary in the terms of issue of the interest or of the arrangement) they shall apply as if references to:

- (a) the “appropriate register” were to the register of holders of the interests under the terms of the arrangement;
- (b) the “company” were to the person who, under the terms of the arrangement, is required to maintain the register of holders of the interests;
- (c) a “security” were to the totality of the interests issued or created under the arrangement;
- (d) the directors of the company were to the person referred to in (b) or (if applicable) those officers or employees of that person who are responsible for the effecting of entries on the register of holders of the interest;
- (e) the “title” to a unit of a security were to the right conferred by registration as the holder of the interest;
- (f) a “unit of a security” were to a single example of the interest (for example the conditional right to have a single share allotted to a person where the arrangement is a rights issue); and
- (g) voting rights or other rights attached to a unit were references to any right constituted by the interest or arising under the terms of the arrangement or given to holders of the interest by any other agreement or instrument.

(3) This regulation shall not be construed as applying to an interest or arrangement within its terms any provision of these Regulations which is expressed to be applicable to a particular kind of security only (for example which is expressed to be applicable only in respect of shares).

PART XII

ADMISSION AND SUPERVISION OF PARTICIPANTS

Admission by the Operator

94.—(1) Subject to the provisions of this regulation, the Operator may admit persons as participants in the system.

(2) The Operator shall not admit any person as a participant in the system unless satisfied, to the extent specified in this Part, that (where relevant) the person concerned:

- (a) has or will have before acting as such the financial, physical and human resources to enable him or it adequately to perform the functions under these Regulations relevant to his or its proposed activities, and to meet any obligations which he or it may reasonably be expected to incur;
- (b) can be expected adequately to perform those functions; and
- (c) meets and, where relevant, can be expected to continue to meet, such other requirements as may be specified in rules made under regulation 112,

and is otherwise a fit and proper person to be admitted to perform those functions.

(3) In the case of a person seeking admission to perform the functions of a company controller the Operator need not concern itself as to any matter referred to in paragraph (2) save to the extent that it is relevant to the technical competence of the person concerned to perform his or its functions in the system.

(4) For the purposes of deciding whether to admit any person to participation in the system, the Operator may regard itself as satisfied as to any matter if:

- (a) the Operator is informed by a relevant regulatory authority, as mentioned in paragraph (5), that it is satisfied with respect to the matter in question; and
- (b) the Operator is satisfied as to the nature and scope of the regulation or supervision exercised by that authority with respect to that matter.

(5) A relevant regulatory authority for the purposes of paragraph (4) is any authority, whether in the United Kingdom or elsewhere, and whether public or private, which exercises regulatory or supervisory functions.

(6) Section 187(4) of the 1986 Act shall apply to relevant regulatory authorities in expressing their satisfaction in accordance with this regulation as it does to the functions mentioned in that section.

(7) Subject to paragraph (8), in determining whether a person has the financial resources to enable him or it to meet any obligation which he or it may reasonably be expected to incur for the purposes of paragraph (2), the Operator may take into account a guarantee, bond, insurance, or similar arrangement provided or made directly or indirectly by any other person.

(8) In deciding whether to take into account any such guarantee, bond, insurance or other arrangement as is mentioned in paragraph (7) the Operator shall have regard to the extent to which the arrangement may subsequently be avoided and the likelihood of continuing cover being available in respect of obligations which do not emerge until a later date.

Admission procedure

95.—(1) An application to be admitted under this Part shall be made in accordance with paragraph (2) and the applicant shall furnish all such information as the Operator may require by virtue of that paragraph.

(2) Subsections (2) and (5) of section 26 of the 1986 Act shall apply for the purposes of applications under this Part as they apply for applications under that Act with the substitution, if relevant functions are delegated to the Operator, of references to the Operator for references to the Secretary of State, of references to the functions under or by virtue of these Regulations which the applicant proposes to perform for references to investment business, and of references to a person in each jurisdiction (other than a jurisdiction in which he or it has an established place of business upon which process may be served) on which process may be served for references to a place in the United Kingdom for the service of any notice or other document required or authorised to be served under the 1986 Act.

Refusal of admission, termination of participation and power, to impose restrictions

96.—(1) If it appears to the Operator that any participant is failing, or may be about to fail:

- (a) to meet the requirements of regulation 94(2); or
- (b) to comply with any duties to which he is subject under these Regulations,

or that the protection of investors so requires, the Operator may terminate that person's participation.

(2) If at any time it appears to the Operator that a participant may be unable to perform his or its functions under these Regulations or that circumstances may arise or have arisen which would justify termination of that person's participation under paragraph (1), the Operator may by notice impose such restrictions as appear to it to be appropriate (including restrictions upon its own functions) to avoid that eventuality, including, without prejudice to the generality of the foregoing, a restriction that no action may be taken by that person in pursuance of such functions without the consent of the Operator.

(3) Restrictions may, by notice given in writing or in any other manner, be imposed under the preceding paragraph with immediate effect and without any reasons being given at the time they are imposed; but a restriction which is not imposed by written notice shall, unless confirmed in writing, cease to have effect at the end of the working day next following the day on which it was imposed and, if no reasons are given at the time a restriction is imposed, reasons shall be given in writing not more than 2 working days after the imposition of the restrictions.

The Operator may in the exercise of its discretion publicise the making of a restriction.

(4) It shall be the duty of the person on whom restrictions are imposed to comply with the restrictions.

(5) Section 29 of the 1986 Act shall apply to a refusal to admit, and to termination, as it does to a proposed refusal or withdrawal under that section with the substitution, if relevant functions are delegated to the Operator, of references to the Operator for references to the Secretary of State and (subject to paragraph (3)) sections 69 and 70(2) to (6) of the 1986 Act shall likewise apply to the giving of a notice imposing restrictions under paragraph (2) as they do in relation to prohibitions or requirements under Chapter VI of Part I of that Act.

(6) For the purposes of paragraph (5) the transfer of entitlements from a commercial controller under regulation 14 other than at the request of that controller shall be treated as the imposition of restrictions.

(7) Chapter IX of Part I of the 1986 Act (The Tribunal) shall apply accordingly for the purposes of paragraph (5) with any necessary modifications.

Provision of information

97.—(1) Each of the following, namely

- (a) any participant;

- (b) any person who appears to the Operator to be or to have been in a position to influence or control the activities of a participant, or a person providing to a participant services relevant to participation;
- (c) any person when acting as an insolvency practitioner in relation to any person falling within sub-paragraph (a) or (b); and
- (d) any person who has provided or made any such guarantee, bond, insurance or similar arrangement as is mentioned in regulation 94(7),

shall furnish the Operator with such information as it may reasonably require, at such times and on such occasions as it may specify, to enable it to be satisfied that a participant has met and continues to meet the requirements for participation.

(2) Any participant shall furnish the Operator with such information as it may reasonably require, at such times and on such occasions as it may specify, for the purpose of performing its functions under these Regulations.

(3) Any information to be furnished to the Operator under this regulation shall, if the Operator so requires, be in such form or verified in such manner as the Operator may specify.

(4) For the purposes of this regulation, “participant” shall include not only a participant as defined in regulation 2, but also a past participant and the agent, or apparent agent (whether present or past) of a participant.

Auditors

98. Sections 107, 108, 109(1) and 110 of the 1986 Act shall apply to participants as they apply to authorised persons under that Act, with the substitution, if relevant functions are delegated to the Operator, of references to the Operator for references to the Secretary of State.

PART XIII

INVESTIGATIONS AND COMPLAINTS

Complaints Commissioner

99.—(1) Not later than the time when the Secretary of State gives his consent under regulation 5 and from time to time thereafter as occasion requires (and after consulting the Operator) the Secretary of State shall appoint on such terms as to remuneration and other matters as he thinks fit a person to be known as the Complaints Commissioner and such Assistant Commissioners and other staff to assist the Complaints Commissioner as he thinks necessary for the purpose of investigating complaints under these Regulations.

(2) The Complaints Commissioner, any Assistant Commissioner or any member of his staff may at any time

- (a) be removed from office by notice in writing by the Secretary of State; or
- (b) resign his office by giving such notice to the Secretary of State.

(3) The remuneration of the Complaints Commissioner, any Assistant Commissioner and his staff, and any pension, compensation for loss of office, allowance or gratuity to which he or they may be entitled, or provision for any such benefits, shall be paid by the Operator.

(4) Where the Complaints Commissioner incurs any expense in the performance of his functions, including expenses in the employment of legal, accountancy or other professional services, he shall be entitled to be reimbursed for the costs thereof by the Operator.

Without prejudice to the generality of the foregoing, the Complaints Commissioner may incur reasonable expense in publicising his responsibilities.

(5) The Operator shall provide the Complaints Commissioner with accommodation and other facilities for the performance of his functions.

(6) If any question arises between the Complaints Commissioner and the Operator as to any expenses incurred or proposed to be incurred under this regulation or as to the suitability or sufficiency of the accommodation or other facilities provided or to be provided under this regulation, it shall be referred to and determined by the Secretary of State.

(7) The Secretary of State may delegate either wholly or in part, and subject to such conditions as he thinks fit, to the Complaints Commissioner his functions of appointing staff (other than an Assistant Commissioner), of determining their remuneration and other matters under paragraph (1) and his functions in relation to such staff under paragraph (2).

Functions of the Complaints Commissioner

100.—(1) Subject to the following provisions of this regulation, the Complaints Commissioner shall investigate any complaint made to him in writing by or on behalf of, or the successor in title to, any investor claiming to have suffered in that capacity loss to which paragraph (2) applies in consequence of a failure on the part of any person to perform his functions under these Regulations (other than any functions within regulation 116(2)).

(2) This paragraph applies to loss which in the opinion of the Complaints Commissioner would on the balance of probabilities be the subject of a successful claim before a civil court, being loss which consists of lost units, new units or lost benefits, or which flows from such loss.

(3) A complaint under paragraph (1) need not identify the person alleged to have caused the loss but must contain sufficient particulars for the Complaints Commissioner to form a view as to whether there is sufficient likelihood that any loss was in consequence of such a failure as is mentioned in paragraph (1) to warrant investigation under this Part.

(4) Before considering a complaint, the Complaints Commissioner may in his discretion require that the person making the complaint refer it to the person who is the subject of it, and that the latter have a specified period in which to respond to the complainant.

(5) The Complaints Commissioner may suspend or terminate his investigation without making a report if litigation is commenced, or is in prospect, whether in the United Kingdom or elsewhere, which, in his opinion, relates to the same or substantially the same matters as he is investigating, and if he does so he shall inform the Secretary of State, the Operator, the complainant and any person against whom allegations have been made, giving his reasons.

(6) The Complaints Commissioner may decline to carry out an investigation or may limit or terminate an investigation he is carrying out, if it appears to him that the complaint, wholly or in part:

- (a) raises issues of fact or law which should more properly be dealt with by a court;
- (b) imputes criminal conduct which he considers it would be inappropriate for him to investigate; or
- (c) is not appropriate for him to investigate bearing in mind the amount of the apparent loss and the resources of the complainant.

If he does so decline, limit or terminate an investigation the Complaints Commissioner shall inform the Secretary of State, the Operator, the complainant, and any other person against whom allegations have been made, giving his reasons. The Complaints Commissioner may exercise his discretion under this paragraph in relation to part only of a complaint.

(7) The Complaints Commissioner may co-ordinate the conduct of his investigation with that of any other relevant regulatory enquiry.

(8) Subject only to regulation 113(1), it shall be the duty of the Operator, any participant within the meaning of regulation 97(4), and any company whose securities are involved (including the agents of such persons and any person acting as an insolvency practitioner in relation to any of them) to co-operate with the Complaints Commissioner and to provide him with such information, access to records and other assistance as he may reasonably require.

(9) The Complaints Commissioner shall afford any person against whom allegations are made in the complaint, and any other person whom he is disposed to conclude may have been at fault, an opportunity to comment on the allegations or, as the case may be, the conclusion he is disposed to reach.

(10) The Complaints Commissioner shall carry out his investigation as expeditiously as possible and on completion of his investigation shall make a report which he shall send to the complainant, any person whose conduct is referred to adversely in the report, any person against whom any allegations have been made, the Operator and the Secretary of State.

(11) The report produced under paragraph (10) shall state whether, in the opinion of the Complaints Commissioner, the complainant (or any person on whose behalf the complaint was made) has suffered loss within paragraphs (1) and (2) in consequence of such a failure as is mentioned in paragraph (1), and, if so, to such extent as he is able to do so, state what in his opinion was the nature and amount of the loss and the identity of any person whose act or omission caused or contributed to the loss and may also, having regard to any election made under regulation 104, include a recommendation as to what in his view would be the appropriate remedy (if any).

(12) In forming an opinion on the identity of persons responsible for loss, in accordance with paragraph (11), the Complaints Commissioner may regard as relevant any failure to co-operate in accordance with paragraph (8).

(13) If the Complaints Commissioner is unavailable, and at other times with the approval of the Secretary of State, the function of making a report may be performed by an Assistant Commissioner, and any other function may be performed by an Assistant Commissioner, or with the authority of the Complaints Commissioner or an Assistant Commissioner by any member of the Complaints Commissioner's staff.

Reports on complaints to be evidence

101. Section 101(5) of the 1986 Act shall apply to a report by the Complaints Commissioner under regulation 100 as it applies to a report mentioned in that section.

Periodic reports

102.—(1) The Complaints Commissioner shall prepare a report on his activities not less often than once a year and submit it to the Secretary of State and the Operator and shall publish it.

(2) In a report under this regulation, the Complaints Commissioner may express views as to any matter relevant to the system which appears to him appropriate in the light of his activities.

Reference to the tribunal

103.—(1) Any person aggrieved by any finding of the Complaints Commissioner may, within 28 days of receiving a copy of the report require the Operator to refer the matter to the tribunal established under Chapter IX of Part I of the 1986 Act.

The body responsible for administering the scheme to be established under regulation 103 may, if it is not satisfied with a report of the Complaints Commissioner on a matter in respect of which a claim for compensation has been made, also require the Operator to refer the matter to the tribunal.

(2) Where a case is referred to the tribunal, the tribunal shall investigate the case and determine whether any person has suffered loss such as is mentioned in regulation 100(1) and (2), and, if so, the

amount recoverable under paragraph (5) and (so far as possible) the person or persons who caused or contributed to the loss.

(3) The tribunal shall not determine an amount recoverable under paragraph (5) which exceeds an amount equal, in the case of a person who has made an election under regulation 104, to the value of any lost units, lost benefits and new units lost before the date of the election, together with interest thereon from that date and, in any other case, to the value, at the date of the tribunal's determination, of all relevant lost units, lost benefits and new units.

(4) The determination of the tribunal shall be contained in a report made to the Secretary of State in accordance with Chapter IX of Part I of the 1986 Act and the tribunal shall send a copy of the report to any person who it has found to have suffered loss or to have been responsible for the loss as well as to the person (if different) at whose request the case was referred to it.

(5) Where the tribunal determines that the Operator or any participant in the system was responsible for any loss, the amount determined by the tribunal shall be recoverable as a debt due from that person by the person who has suffered the loss.

(6) Schedule 6 to the 1986 Act shall apply to the tribunal and its proceedings under this regulation as it applies for the purposes of that Act.

Elections with respect to compensation and amounts recoverable

104.—(1) Any person making a complaint may make an election that any compensation payable to him and any amount recoverable by him in respect of lost units, lost benefits or new units with respect to which he has made an election should be by reference to the value, at the date of the election, of:

- (a) the relevant lost units being units lost before the date of the election and the relevant lost benefits being benefits which should have been received before that date; and
- (b) the relevant new units, after taking account of any consideration that the claimant would have had to give for the new units, being units to which the claimant was or would have been entitled before the date of the election,

together with interest thereon as from the date of the election.

(2) An election may be made at any time before the payment of compensation; but an election made after a determination by the tribunal under regulation 103 shall not have effect except for the purpose of calculating the amount of compensation which may be paid under the scheme established under regulation 105 and determining the extent of any right of recovery which the body administering the scheme has in respect of such a payment.

(3) An election shall be made in writing to the Complaints Commissioner and once made shall be irrevocable.

PART XIV

COMPENSATION

The compensation scheme

105.—(1) The Operator shall make provision for a scheme for compensating investors falling within regulation 100(1) who have suffered loss (other than loss arising as a result of a failure to perform functions as a company, company's agent or company controller) such as is mentioned in regulation 100(1) where:

- (a) the Complaints Commissioner has recommended a payment or transfer of units of a security to any person and 20 working days have elapsed since the sending of the report

under regulation 100 without the recommendation being acted on in full or the matter referred to the tribunal; or

- (b) the tribunal has determined an amount recoverable and 20 working days have elapsed since the determination without the determination being acted on in full or proceedings being started in respect of the payment; or
- (c) a court of competent jurisdiction has awarded an amount and 20 working days have elapsed since the order of the court without the award being paid in full

and in any other case provided for in the rules of the scheme.

(2) Subject to the following paragraphs the amount of compensation payable shall be such amount as is equal to the value, at the date when compensation is paid (or such date not more than 5 working days before that date as may be fixed to allow for the efficient administration of the scheme) of the lost units and any lost benefits which are the subject of the claim together with the value, at the relevant date and after taking into account any consideration that the claimant would have had to give, of any new units which are the subject of the claim and also taking into account any amount received in respect of the loss.

(3) Where an election has been made under regulation 104, the amount of compensation payable shall, subject to paragraph (4) below, be calculated on the basis described in that regulation taking account of any amount received in respect of the loss from any person who caused it.

(4) Notwithstanding the provisions of paragraphs (2) and (3) above, the amount payable or the value on the relevant date of the securities to be transferred pursuant to a recommendation, determination or award made as mentioned in paragraph (1) above shall, if less than the amount otherwise payable under paragraph (2) or (3) above, be the amount or value of the compensation to be paid.

(5) The scheme may make provision for claims to be satisfied, where no election has been made under regulation 104, either wholly by a monetary payment or by the transfer to the person concerned of equivalent units of a security to the lost units, together with a monetary payment in respect of any lost benefits and references in this regulation to the payment of compensation shall be construed accordingly.

(6) Subsections (1), (2) and (6) of section 54 of the 1986 Act shall apply to the Operator for and in connection with the carrying out of its functions under this regulation:

- (a) with the substitution for references to the Secretary of State of references to the Operator;
- (b) with the substitution for references to authorised persons of references to participants;
- (c) with the substitution for the words following “investors” in subsection (1) of a reference to investors falling within regulation 100(1); and
- (d) with the insertion after the words “payable and” in subsection (2)(d) of the following words: “any class of investor for whom or any”.

(7) The Operator may not make rules imposing a limit on the compensation payable to any person eligible for compensation which is less than £250,000 in respect of a claim or claims arising from the failure of any one participant to perform functions and duties under these Regulations.

(8) The Secretary of State may from time to time direct that a higher figure should be substituted for the figure in paragraph (7) provided that the first amount by which the figure may be increased shall not be greater than is necessary to reflect any change in the value of money since the date on which these Regulations were made and that each subsequent increase shall not be greater than is necessary to reflect any change in the value of money since the last such increase.

(9) Provision shall be made in the scheme for compensation to abate if, and to the extent, that it is necessary for abatement to take place in order to ensure that the total amount of compensation paid in respect of claims made in any period of twelve months commencing on the date on which the

Secretary of State gives his consent under regulation 5 or any anniversary thereof does not exceed £100 million.

PART XV

MISCELLANEOUS AND GENERAL PROVISIONS

Fees

106.—(1) Subject to the provisions of this regulation a person may require, for the performance of any functions of that person under these Regulations, the payment of a fee from the person for whom, or in respect of whom, the functions are performed.

In particular (without prejudice to the generality of the foregoing):

- (a) the Secretary of State may charge a fee to the Operator in respect of his approval for the commencement of operation of the system under regulation 5 or the performance of his supervisory functions under these Regulations;
- (b) the Operator may charge a fee:
 - (i) to a company in respect of the admission of a security of the company into the system and the operation of the Operator's part thereof with respect to the security;
 - (ii) to an applicant for participation in the system; and
 - (iii) to a participant in connection with his or its continued participation and supervision;
- (c) a commercial controller may charge a fee where he or it provides his or its functions other than by an agreement for the purposes of regulation 13(1) (paragraph (6)(b) being applicable to such functions performed by such agreement).

(2) A company or company controller may not charge any fee under paragraph (1) (the appointment of a company controller by a company being an appointment to which paragraph (6)(b) applies), save (in the case of a company controller) in respect of the administrative costs of dealing with an instruction received under regulation 10(6) or 34.

(3) The fees chargeable by a person under this regulation shall not exceed an amount which appears to him or it to represent a reasonable estimate of the costs incurred by him or it in performing his or its functions under these Regulations.

(4) For the purposes of determining the costs incurred by a person in performing a function for the purposes of paragraph (3), such costs shall include (in addition to any other matter to be taken into account in determining the costs concerned) the proportion of the following matters fairly attributable to the performance of the function:

- (a) expenditure on staff, equipment, premises, facilities, research and development connected (directly or indirectly) with the performance of that function;
- (b) provisions for bad debts or contingent liabilities;
- (c) the allocation, over a period of years, of any initial expenditure incurred wholly and exclusively in order to perform the function;
- (d) any notional interest incurred on any capital initially expended on, or otherwise expended in connection with, the performance of the function or duty, as well as actual interest payable on any sums borrowed which have been so expended; and
- (e) any other matter which, in accordance with generally accepted accounting practice, may be properly taken account of in ascertaining the costs properly attributable to the performance of the function.

For the purpose of sub-paragraph (d):

- (i) “notional interest” means any interest that that person would reasonably have been expected to be liable to pay had the sums expended been borrowed at arms length; and
 - (ii) “actual interest” payable means the actual interest paid on such sums borrowed, provided that, where any sums concerned have not been borrowed in a transaction at arms length, no account shall be taken of any interest payable which would not have been payable had the transaction been at arms length.
- (5) Any fee received by the Secretary of State under this regulation shall be paid into the consolidated fund.
- (6) Nothing in this regulation:
- (a) shall preclude a person from charging such sums as the person sees fit for any services provided by him or it otherwise than in pursuance of an obligation imposed. on him or it by these Regulations;
 - (b) (without prejudice to (a)) shall preclude a person (other than the Operator) who has voluntarily consented to being appointed or authorised by another person to perform any function under these Regulations (whether on behalf of that other person or on behalf of others) from charging that other person any sums that other person has contracted to pay as consideration for that consent or its continuance; or
 - (c) shall preclude a company charging any fee which it may charge by virtue of any enactment in connection with the inspection or provision of copies of a register applied by these Regulations.

Financial provision by a company to company controllers

107. It shall be lawful (if it would not otherwise be) for a company or a subsidiary company of it to pay a company controller appointed by it the amount chargeable by the controller as consideration for consenting to the appointment or the continuance of that consent.

Competition scrutiny

108.—(1) It shall be the duty of the Director General of Fair Trading to keep under review:

- (a) the performance by the Operator of its functions under these Regulations and any fees payable for the performance of any such functions; and
- (b) the system,

and if he is of the opinion that the performance by the Operator of its functions, any fee charged or the system, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, he shall report his opinion to the Secretary of State, stating what in his opinion that effect is or is likely to be.

(2) For the purpose of investigating any matter with a view to its consideration under paragraph (1) the Director General of Fair Trading may by a notice in writing require the Operator, and any person who appears to be in a position to influence or control the activities of the Operator, to furnish to him such information as he may require, in such form, and at such times and on such occasions, as he may specify.

(3) Without prejudice to paragraph (2), it is the duty of the Operator to notify the Secretary of State and the Director General of Fair Trading in writing as soon as practicable after the commencement of operation of the system of the fees to be charged by it for the performance of its functions under these Regulations and thereafter to notify the Secretary of State and the Director General of any change in any fee as soon as practicable after the revised fee becomes effective.

(4) The Director General of Fair Trading may, if he thinks fit, publish any report made by him under this regulation but shall exclude from a published report, so far as practicable, any matter

which relates to the affairs of a particular person (other than the Operator) the publication of which would or might in his opinion seriously and prejudicially affect the interests of that person.

Competition directions

109.—(1) If it appears to the Secretary of State, after receiving and considering a report under regulation 108, that any such matters as are mentioned regulation 110(1) have or are intended or likely to have to any significant extent the effect of restricting, distorting or preventing competition, and that that effect is greater than is reasonably justifiable having regard to the purposes of these Regulations, he may direct the Operator to take such steps as he may specify for securing that those matters do not have that effect.

(2) It shall be the duty of the Operator to comply with any direction given under this regulation.

(3) It shall be unlawful for the Operator to charge any fee under regulation 106 which is in excess of any figure specified in any direction applicable to it that may be issued under this regulation.

Investigations

110. Sections 105 and 106 of the 1986 Act shall apply with appropriate modifications in relation to participants as it applies in relation to persons carrying on investment business.

Indemnity rules

111. Section 53 (other than subsection (2)) of the 1986 Act shall apply with the substitution of a reference to a participant in connection with the performance of his functions under these Regulations for the reference to an authorised person in connection with his investment business.

Power to make rules

112.—(1) The Secretary of State may make rules for the regulation of:

- (a) the procedures for recording and transferring title to securities set out in these Regulations; and
- (b) the persons responsible for or involved in their operation.

(2) In particular the Secretary of State may make rules with respect to the following matters:

- (a) as to the steps to be taken by a company and participants upon, or prior to, the conversion of a certificated security into, or issue of units of a security in, uncertificated form or the conversion of an uncertificated security into certificated form;
- (b) as to the form and manner in which any instruction (including a proper instruction to register), notification, election, consent, confirmation or other message (together referred to in this paragraph as an “instruction”) is to be given or treated as given for the purposes of any provision of these Regulations and the manner (if any) in which an instruction is to be authenticated;
- (c) as to the form and manner, or circumstances, in which any instruction may be cancelled, amended or withdrawn or treated as cancelled, amended or with-drawn;
- (d) as to the content of an instruction and whether any and if so what other messages to, or existing information already known or likely to be known to, the recipient are to be treated as relevant to or associated with an instruction so as to form part of the instruction in order that any information required to be conveyed by the instruction or otherwise requisite for the operation of the procedures under these Regulations may be conveyed;
- (e) as to the form and manner in which any communication contemplated by these Regulations is to be made if it is to be regarded as a valid communication;

- (f) as to the circumstances in which an instruction may be given to a company controller on conditions or on terms that an act is not to be done rather than done or as to the circumstances in which a company controller is to refuse to act on an instruction from an approved person;
 - (g) (where an instruction may be communicated by a person acting on behalf of another) as to the persons who may communicate a given instruction by means of a valid communication;
 - (h) where an act is required by these Regulations to be done on a day or by reference to a day, as to the time on that day or by reference to which on that day the act is to be done;
 - (i) as to the periods of time within which any of the procedures or duties set out in these Regulations must be completed or complied with;
 - (j) as to the information or records to be kept by the persons responsible for or involved in the operation of the procedures set out in these Regulations and the period of their retention;
 - (k) governing the keeping of a record of entitlements or account holders, including the procedures to be followed to reconcile the records one with another and the occasions on which the reconciliation is to take place;
- (1) governing the form and manner in which statements of account must be issued by company controllers;
- (m) as to any circumstances in which any participant should act through the agency of the Operator in connection with the procedures rather than act directly;
 - (n) governing the performance of the functions of a controller by the Operator under regulation 62;
 - (o) as to any procedures to be followed or requirements complied with by the Operator, a company or participant where a unit of an uncertificated security is cancelled, redeemed, sub-divided or consolidated;
 - (p) as to supplementary procedures or requirements in relation to an offer for all or any units of an uncertificated security, including in relation to the transfer of uncertificated shares to an offeror where an offeror is entitled and bound to acquire such shares under section 430(2) or section 430B(2) of the 1985 Act; and
 - (q) as to any supplementary procedures or requirements relating to the admission or continued participation of any person as a participant in the system or the resignation, restriction, suspension or withdrawal of such participation.
- (3) No person shall be taken to have contravened a rule if he shows that at the time of the alleged contravention the rule had not been published as required by (in the case of rules made by the Secretary of State) paragraph (6) or (where power to make rules under this regulation is delegated to the Operator) paragraph 8 of Schedule 9 to the 1986 Act as applied by regulation 3(8).
- (4) Where power to make rules under this regulation is delegated to the Operator, no rules made by it shall come into effect unless approved by the Secretary of State.
- Without prejudice to any other ground on which the Secretary of State may withhold his approval, the Secretary of State shall not give his approval unless he is satisfied that the Operator has complied with the requirements of paragraph 12 of Schedule 9 to the 1986 Act as applied by regulation 3(8) (consultation).
- (5) The following provisions of this regulation have effect where rules are made under this regulation by the Secretary of State**(13)**.
- (6) The rules shall be made by an instrument in writing and may make different provision for different cases. Immediately after an instrument is made it shall be printed and made available to the public with or without payment.

(13) Regulation 3(10) makes equivalent provision where power to make rules under this regulation is delegated to the Operator.

(7) The production of a printed copy of an instrument purporting to be made under this regulation on which is endorsed a certificate signed by the Secretary of State and stating:

- (a) that the instrument was made by the Secretary of State;
- (b) that the copy is a true copy of the instrument; and
- (c) that on a specified date the instrument was made available to the public as required by paragraph (3) above,

shall be *prima facie* evidence or, in Scotland, sufficient evidence of the facts stated in the certificate.

Any certificate purporting to be signed as mentioned in this paragraph shall be deemed to have been duly signed unless the contrary is shown.

Information required to be given by these Regulations

113.—(1) A person shall not be required under any provision of these Regulations to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(2) Subject to paragraph (4) section 179 and 180 of the 1986 Act shall apply as if:

- (a) the information referred to in section 179(2) was information relating to the business or other affairs of any person obtained by a person mentioned in paragraph

(3) for the purposes of, or in the discharge of his functions under, these Regulations or provisions made under them (whether or not by virtue of any requirement to supply it made under these Regulations or those provisions);

- (b) the persons mentioned in section 179(3) were those mentioned in paragraph (3);
- (c) the references in section 180(1)(b), (h) and (m) to the 1986 Act included reference to these Regulations or provisions made under them;
- (d) the reference in section 180(1)(b) to proceedings before the Tribunal included a reference to proceedings on a matter referred to it under or by virtue of these Regulations;
- (e) the reference in section 180(1)(e)(iii) to the body administering a scheme established under section 54 of the 1986 Act included a reference to any person administering a scheme established under regulation 10 1;
- (f) the reference in section 180(1)(p) to a person appointed under section 106 of the 1986 Act included a reference to a person appointed under that section as it applies by virtue of regulation 110; and
- (g) the reference in section 180(1)(q) to an auditor of an authorised person or a person approved under section 108 of the 1986 Act included reference to an auditor of a participant or a person approved under section 108 of the 1986 Act as it applies by virtue of regulation 98.

(3) The persons mentioned in paragraph (2) are:

- (a) the Secretary of State;
- (b) the Operator;
- (c) the Director General of Fair Trading;
- (d) any person administering a scheme established under regulation 105;
- (e) any member of the tribunal;
- (f) the Complaints Commissioner;
- (g) any person appointed to exercise functions under section 106 of the 1986 Act as it applies by virtue of regulation 110;

- (h) any designated agency; and
- (i) any officer or servant of such a person.

(4) Section 179 of the 1986 Act as it applies by virtue of paragraph (2) shall not preclude the disclosure by any person of information for the purposes of enabling or assisting a person to discharge functions under these Regulations, or in compliance with the lawful requirements of an insolvency practitioner or the official receiver; nor shall section 179 itself preclude the disclosure of information by any person for the purposes of enabling or assisting a person to discharge functions under these Regulations.

(5) Section 181 of the 1986 Act shall apply to information relating to the business or other affairs of any person which was obtained (whether or not by virtue of any requirement to supply it) directly or indirectly by the Operator or any person appointed to exercise any powers under section 106 of the 1986 Act as it applies by virtue of regulation 110 (or any officer or servant of the Operator or any such person) for the purposes of or in the discharge of any functions under these Regulations or provisions made under them as it applies to information of the kind mentioned in section 181(3) of the 1986 Act.

Data protection

114. Section 190 of the 1986 Act shall apply as if in subsection (a) the reference to a self-regulating organisation included a reference to the Operator, and as if the reference to the functions there mentioned included a reference to functions relating to admission to the system, termination of participation, the imposition of restrictions, and the replacement and supervision of participants.

Restriction of Rehabilitation of Offenders Act 1974

115. Section 189 of the 1986 Act shall apply as if in Schedule 14 to that Act:

- (a) Part I (exempted proceedings) included a reference to proceedings with respect to admission to the system, termination of participation, the imposition of restrictions, and the replacement and supervision of participants;
- (b) Part II, first column (exempted questions) included a reference to the Operator, and the second column thereof included a reference to a participant an applicant for participation and an individual who is an associate of such participant or applicant (whether or not an individual);
- (c) Part III, paragraph 1, first column (exempted actions) included a reference to the Operator; and
- (d) Part II, paragraph 4, first column (exempted questions) and Part III, paragraph 2, first column (exempted actions) included a reference to a participant and an applicant for participation.

Duties to be actionable

116.—(1) Unless otherwise provided in these Regulations (and in particular subject to paragraph (2)) any duty imposed on a person (other than the Secretary of State or the Director General of Fair Trading) by virtue of these Regulations is a duty owed by him:

- (a) to any person to whom the duty is stated as being owed, or
- (b) failing any such statement, to any person who may be affected by a failure to perform the duty,

and a breach of the duty is actionable (subject to the defences and other incidents applying to actions for breach of statutory duty and to paragraph (3)).

(2) A duty imposed on the Operator by, or relating to the matters dealt with in, the following provisions of these Regulations shall not be actionable under paragraph (1): Parts II (other than regulation 4(a)), IX, X, XII and XIV.

(3) No person shall be regarded as being in breach of any duty imposed on that person by virtue of these Regulations if and to the extent that compliance by that person with the duty is, in all the circumstances, impossible.

(4) Where any duty imposed by virtue of these Regulations on a person, being a body corporate, has been breached, and it is established that any officer of the body or any person who was purporting to act in that capacity knowingly and wilfully participated in the breach, that person shall be jointly and severally liable with the body corporate for the breach.

Operator's exemption from liability for damages

117.—(1) Section 187(4) of the 1986 Act shall apply to the Operator and to its officers, servants and agents in the exercise of their regulatory functions under these Regulations as it does to the functions mentioned in that section.

(2) In this regulation “regulatory functions” means any functions under, or relating to the matters dealt with in, Parts II (other than regulation 4(a)), IX, X, XII and XIV.

Breach of duty not to avoid transactions

118. The breach of any duty imposed on any person by these Regulations does not, unless otherwise provided, of itself invalidate any transfer of a unit of a security (or the entitlement to it) effected or other act done in contravention of, or as a consequence of the contravention of, that duty.

Memorandum and articles of a company to be subject to the provisions of Regulations

119.—(1) For the purposes of section 14 of the 1985 Act (Effect of memorandum and articles) the provisions of these Regulations, in so far as they concern members of the company, shall be regarded as provisions of the 1985 Act and accordingly the provisions of the memorandum and articles of association of a company shall have effect subject to the provisions of these Regulations, so far as applicable.

(2) Where the shares, or any class of shares, of a company have been converted into, or issued in, uncertificated form under the provisions of Part IX of these Regulations the board of directors of the company may by resolution alter the memorandum and articles of association of the company in so far as may be necessary to remove any inconsistency between the memorandum or those articles of association and these Regulations.

(3) Where any alteration is made in a company's memorandum or articles under this regulation, a copy of the resolution of the directors concerned, together with a copy of the memorandum or articles as amended, shall be delivered to the registrar of companies for registration not later than 10 working days after the resolution of the board of directors concerned is passed.

Subsection (3) of section 18 of the 1985 Act shall have effect in relation to a breach of the requirement in this paragraph as it applies in relation to a breach of that section.

Terms of issue of securities

120.—(1) The terms of issue of a security may make additional provision with respect to the holding and transfer of units of the security under these Regulations and in relation to the holding and transfer of entitlements to such units.

This regulation is without prejudice to regulation 81(2).

(2) The holder of an entitlement to a unit of an uncertificated security and a person for whom it is held shall be bound by the terms of issue of the security applicable to such holder or person respectively.

In particular the holder of an entitlement to a share in a company and the person for whom it is held shall be bound by the terms of the memorandum and articles of the company applicable to such holder or person respectively.

Consequential provisions

121. Schedule 8 to these Regulations has effect so as to make provision consequential on and further to these Regulations.

Transitional provisions

122. Schedule 9 to these Regulations shall have effect with respect to the transitional matters therein mentioned.

Application to Northern Ireland

123. In the application of these Regulations to Northern Ireland:

- (a) in regulations 16, 84(5), 119(1) and paragraph 1 of Schedule 8 references to the 1985 Act include references to the 1986 Order;
- (b) in regulation 18(2):
 - (i) for the reference to section 53(1)(c) of the Law of Property Act 1925 there is substituted a reference to section 6 of the Statute of Frauds (Ireland) 1695(**14**);
 - (ii) for the reference to section 136 of the Law of Property Act 1925 there is substituted a reference to section 87 of the Judicature (Northern Ireland) Act 1978(**15**);
- (c) in regulation 2(1), in the definitions of “insolvency practitioner” and “official receiver”, the references respectively to sections 388 and 399 of the Insolvency Act 1986 include a reference respectively to Articles 3 (disregarding paragraph thereof) and 2 of the Insolvency (Northern Ireland) Order 1989(**16**) and in regulation 47 the reference to that Act includes a reference to that Order;
- (d) in regulation 69(2) for the reference to section 4 of the Powers of Attorney Act 1971 there is substituted a reference to section 3 of the Powers of Attorney Act (Northern Ireland) 1971(**17**);
- (e) in regulation 64(4) the reference to the Interpretation Act 1978 included a reference to the Interpretation Act (Northern Ireland) 1954;
- (f) references to provisions of the 1985 Act are references to the equivalent provisions of the 1986 Order and in particular for the references to the 1985 Act listed in column 1 of Schedule 10 to these Regulations in the provisions of these Regulations listed in column 2 of that Schedule there is substituted the references to the 1986 Order listed in column 3 of that Schedule; and
- (g) references to the Companies Acts include references to the Companies Orders.

(14) 1695 c. 12 (Ir.).

(15) 1978 c. 23.

(16) S.I. 1989/2405 (N.I. 19).

(17) 1971 c. 33 (N.I.).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Department of Trade and Industry
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John Redwood
Minister for Corporate Affairs,