

---

STATUTORY INSTRUMENTS

---

**1992 No. 225**

**The Uncertificated Securities Regulations 1992**

**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instruction to register or other communication to a company if the proper instruction or other communication has been superseded by a later instruction or communication or, in the case of a proper instruction to register, it (together with other instructions to register issued at the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 pro-visions 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.