
STATUTORY INSTRUMENTS

1992 No. 225

The Uncertificated Securities Regulations 1992

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.