

## Uncertificated Securities Regulations 2001

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(2001 No. 3755)

Whereas a draft of these Regulations has been approved by resolution of each House of Parliament

Now, therefore, the Treasury, in exercise of the powers conferred by section 207 of the Companies Act 1989 and now vested in them, and of all other powers enabling them in that behalf, hereby make the following Regulations:

[*In the Queen's Printer's copy, the final words of the preamble are 'hereby to make the following Regulations'.*]

### PART 1 CITATION, COMMENCEMENT, AND INTERPRETATION

#### Citation and commencement

1. These Regulations may be cited as the Uncertificated Securities Regulations 2001 and shall come into force on 26th November 2001.

#### Purposes and basic definition

2.–(1) These Regulations enable title to units of a security to be evidenced otherwise than by a certificate and transferred otherwise than by a written instrument, and make provision for certain supplementary and incidental matters; and in these Regulations 'relevant system' means a computer-based system, and procedures, which enable title to units of a security to be evidenced and transferred without a written instrument, and which facilitate supplementary and incidental matters.

(2) Where a title to a unit of a security is evidenced otherwise than by a certificate by virtue of these Regulations, the transfer of title to such a unit of a security shall be subject to these Regulations.

#### Interpretation

3.–(1) In these Regulations—

... 'the 2000 Act' means the Financial Services and Markets Act 2000;

'the 2006 Act' means the Companies Act 2006; . . .

'the 1995 Regulations' means the Uncertificated Securities Regulations 1995; . . .

'certificate' means any certificate, instrument or other document of, or evidencing, title to units of a security;

'company' means a company within the meaning of section 1(1) of the 2006 Act;

'CSD regulation' means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;

'dematerialised instruction' means an instruction sent or received by means of a relevant system;

'eligible debt security' means—

(a) a security that satisfies the following conditions—

(i) the security is constituted by an order, promise, engagement or acknowledgement to pay on demand, or at a determinable future time, a sum in money to, or to the order of, the holder of one or more units of the security; and

(ii) the current terms of issue of the security provide that its units may only be held in uncertificated form and title to them may only be transferred by means of a relevant system; . . .

'enactment' includes an enactment comprised in any subordinate legislation within the meaning of the Interpretation Act 1978, and an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; . . .

'generate', in relation to an Operator-instruction, means to initiate the procedures by which the Operator-instruction comes to be sent;

'guidance', in relation to an Operator, means guidance issued by him which is intended to have continuing effect and is issued in writing or other legible form, which if it were a rule, would come within the definition of a rule;

'instruction' includes any instruction, election, acceptance or other message of any kind;

'interest in a security' means any legal or equitable interest or right in relation to a security, including—

(a) an absolute or contingent right to acquire a security created, allotted or issued or to be created, allotted or issued; and

(b) the interests or rights of a person for whom a security is held on trust or by a custodian or depository;

'issue', in relation to a new unit of a security, means to confer title to a new unit on a person;

'issuer-instruction' means a properly authenticated dematerialised instruction attributable to a participating issuer;

'issuer register of members' has the meaning given by regulation 20(1)(a);

'issuer register of securities'—

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

(b) in relation to units of securities other than—

(i) shares,

(ii) securities in respect of which regulation 22(3) applies, or

(iii) wholly dematerialised securities,

means a register of persons holding the units, maintained by or on behalf of the issuer; . . .

'officer', in relation to an Operator or a participating issuer, includes—

- (a) where the Operator or the participating issuer is a company, such persons as are mentioned in section 1173(1) of the 2006 Act;
- (b) where the Operator or the participating issuer is a partnership, a partner; or in the event that no partner is situated in the United Kingdom, a person in the United Kingdom who is acting on behalf of a partner; and
- (c) where the Operator or the participating issuer is neither a company nor a partnership, any member of its governing body; or in the event that no member of its governing body is situated in the United Kingdom, a person in the United Kingdom who is acting on behalf of any member of its governing body;

'Operator' means a person operating or proposing to operate a relevant system subject to these Regulations, who is—

- (a) a recognised CSD within the meaning of section 285(1)(e) of the 2000 Act,
- (b) an EEA CSD within the meaning of section 285(1)(f) of the 2000 Act, or
- (c) a third country CSD within the meaning of section 285(1)(g) of the 2000 Act;

'Operator-instruction' means a properly authenticated dematerialised instruction attributable to an Operator;

'Operator register of corporate securities' has the meaning given by regulation 22(2)(a)(i);

'Operator register of eligible debt securities' has the meaning given by regulation 22(3A)(a); . . .

'Operator register of members' has the meaning given by regulation 20(1)(b);

'Operator register of securities'—

- (a) in relation to shares, means an Operator register of members;
- (b) in relation to units of a security other than shares, means an Operator register of corporate securities, . . . an Operator register of eligible debt securities or, as the case may be, a register maintained by an Operator in accordance with regulation 22(3)(a);

'Operator's conversion rules' means the rules made and practices instituted by the Operator in order to comply with paragraph 18 of Schedule 1;

'Operator-system' means those facilities and procedures which are part of the relevant system, which are maintained and operated by or for an Operator, by which he generates Operator-instructions and receives dematerialised instructions from system-participants and by which persons change the form in which units of a participating security are held;

'participating issuer' means (subject to paragraph (3)) a person who has issued a security which is a participating security;

'participating security' means a security title to units of which is permitted by an Operator to be transferred by means of a relevant system; . . .

'record of securities' means any of a record of uncertificated corporate securities, a record of uncertificated shares . . . ;

'record of uncertificated corporate securities' has the meaning given by regulation 22(2)(b)(ii);

'record of uncertificated shares' has the meaning given by regulation 20(6)(a);

'register of members' means either or both of an issuer register of members and an Operator register of members;

'[register] of securities' means either or both of an issuer register of securities and an Operator register of securities;

'relevant system' has the meaning given by regulation 2(1); and 'relevant system' includes an Operator-system;

'rules', in relation to an Operator, means rules made or conditions imposed by him with respect to the provision of the relevant system;

'securities' means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of section 235 of the 2000 Act, rights under a depositary receipt within the meaning of paragraph 4 of Schedule 2 to the Criminal Justice Act 1993, and other securities of any description, and interests in a security;

'settlement', in relation to a transfer of uncertificated units of a security between two system-members by means of a relevant system, means the delivery of those units to the transferee and, where appropriate, the creation of any associated obligation to make payments, in accordance with the rules and practices of the Operator; and 'settle' shall be construed accordingly;

'settlement bank', in relation to a relevant system, means a person who has contracted to make payments in connection with transfers of title to uncertificated units of a security by means of that system;

'share' means share (or stock) in the share capital of a company;

'system-member', in relation to a relevant system, means a person who is permitted by an Operator to transfer by means of that system title to uncertificated units of a security held by him, and shall include, where relevant, two or more persons who are jointly so permitted;

'system-member instruction' means a properly authenticated dematerialised instruction attributable to a system-member;

'system-participant', in relation to a relevant system, means a person who is permitted by an Operator to send and receive properly authenticated dematerialised instructions; and 'sponsoring system-participant' means a system-participant who is permitted by an Operator to send properly authenticated dematerialised instructions attributable to another person and to receive properly authenticated dematerialised instructions on another person's behalf;

'system-user', in relation to a relevant system, means a person who as regards that system is a participating issuer, a system-member, system-participant or settlement bank; . . .

'uncertificated', in relation to a unit of a security, means (subject to regulation 42(11)(a)) that title to the unit is recorded on the relevant Operator register of securities, and may, by virtue of these Regulations, be transferred by means of a relevant system; and 'certificated', in relation to a unit of a security, means that the unit is not an uncertificated unit;

'unit', in relation to a security, means the smallest possible transferable unit of the security (for example a single share);

'wholly dematerialised security' means—

- (a) a strip, in relation to any stock or bond, within the meaning of section 47(1B) of the Finance Act 1942; or
- (b) a participating security whose terms of issue (or, in the case of shares, where its terms of issue or the articles of association of the company in question) provide that its units may only be held in uncertificated form and title to them may only be transferred by means of a relevant system;

and other expressions have the meanings given to them by the Companies Acts (as defined by section 2 of the 2006 Act).

(2) For the purposes of these Regulations—

- (a) a dematerialised instruction is properly authenticated if it complies with the specifications referred to in paragraph 5(3) of Schedule 1; or if it was given, and not withdrawn, before these Regulations came into force and was properly authenticated within the meaning of regulation 3(2)(a) of the 1995 Regulations;
- (b) a dematerialised instruction is attributable to a person if it is expressed to have been sent by that person, or if it is expressed to have been sent on behalf of that person, in accordance with the rules and specifications referred to in paragraph 5(4) of Schedule 1; and a dematerialised instruction may be attributable to more than one person. . . .

(4) In respect of a security which is an eligible debt security, references in these regulations to the issuer or the participating issuer of that security (or units of that security) shall be taken to be references to—

- (a) a person ('P') who undertakes as principal to perform the payment obligation constituted by the security in accordance with its current terms of issue; and
- (b) any other person who undertakes as principal to perform that obligation in accordance with those terms in the event that P fails to do so.

(5) For the purposes of paragraph (4)(b), a person who undertakes to perform an obligation under a contract of guarantee or other contract of suretyship is not to be regarded as undertaking to perform it as principal.

(6) For the purposes of paragraph (a) of the definition of 'eligible debt security' in paragraph (1), a sum of money—

- (a) is to be regarded as payable at a determinable future time if it is payable—
  - (i) at a future time fixed by or in accordance with the current terms of issue of the security; or
  - (ii) at the expiry of a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain; and
- (b) is not to be regarded as payable at a determinable future time if it is payable on a contingency.

[In reg. 3(1) in the Queen's Printer's copy the term that is defined after 'register of members' is mistakenly given as 'record of securities' instead of 'register of securities'.]

## PART 2 THE OPERATOR

### *Approval and compliance*

#### **Operating conditions for relevant system**

5. Schedule 1 contains the requirements which must be satisfied with respect to the Operator, the Operator's rules and practices and the relevant system.

. . .

## PART 3 PARTICIPATING SECURITIES

### *Participation by issuers*

#### **Participation in respect of shares**

14. Where—

- (a) an Operator permits title to shares of a class in relation to which regulation 15 applies, or in relation to which a directors' resolution passed in accordance with regulation 16 is effective, to be transferred by means of a relevant system; and
- (b) the company in question permits the holding of shares of that class in uncertificated form and the transfer of title to any such shares by means of a relevant system,

title to shares of that class which are recorded on an Operator register of members may be transferred by means of that relevant system.

15. This regulation applies to a class of shares if the company's articles of association are in all respects consistent with—

- (a) the holding of shares of that class in uncertificated form;
- (b) the transfer of title to shares of that class by means of a relevant system; and
- (c) these Regulations.

16.–(1) This regulation applies to a class of shares if a company's articles of association in any respect are inconsistent with—

- (a) the holding of shares of that class in uncertificated form;
- (b) the transfer of title to shares of that class by means of a relevant system; or
- (c) any provision of these Regulations.

(2) A company may resolve, subject to paragraph (6)(a), by resolution of its directors (in this Part referred to as a 'director's resolution') that title to shares of a class issued or to be issued by it may be transferred by means of a relevant system.

(3) Upon a directors' resolution becoming effective in accordance with its terms, and for as long as it is in force, the articles of association in relation to the class of shares which were the subject of the directors' resolution shall not apply to any uncertificated shares of that class to the extent that they are inconsistent with—

- (a) the holding of shares of that class in uncertificated form;
- (b) the transfer of title to shares of that class by means of a relevant system; or
- (c) any provision of these Regulations.

(4) Unless a company has given notice to every member of the company in accordance with its articles of association of its intention to pass a directors' resolution before the passing of such a resolution, it shall give such notice within 60 days of the passing of the resolution.

(5) Notice given by the company before the coming into force of these Regulations of its intention to pass a directors' resolution which, if it had been given after the coming into force of these Regulations would have satisfied the requirements of paragraph (4), shall be taken to satisfy the requirements of that paragraph.

(6) In respect of a class of shares, the members of a company may by ordinary resolution—

- (a) if a directors' resolution has not been passed, resolve that the directors of the company shall not pass a directors' resolution;
- (b) if a directors' resolution has been passed but not yet come into effect in accordance with its terms, resolve that it shall not come into effect;
- (c) if a directors' resolution has been passed and is effective in accordance with its terms but the class of shares has not yet been permitted by the Operator to be a participating security, resolve that the directors' resolution shall cease to have effect; or
- (d) if a directors' resolution has been passed and is effective in accordance with its terms and the class of shares has been permitted by the Operator to be a participating security, resolve that the directors shall take the necessary steps to ensure that title to shares of the class that was the subject of the directors' resolution shall cease to be transferable by means of a relevant system and that the directors' resolution shall cease to have effect,

and the directors shall be bound by the terms of any such ordinary resolution.

(7) In the event of default in complying with paragraph (4), an offence is committed by every officer of the issuer who is in default.

(7A) A person guilty of such an offence is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(8) A company shall not permit the holding of shares in such a class as is referred to in paragraph (1) in uncertificated form, or the transfer of title to shares in such a class by means of a relevant system, unless in relation to that class of shares a directors' resolution is effective.

(8A) Chapter 3 of Part 3 of the 2006 Act (resolutions affecting a company's constitution) applies to—

- (a) a directors' resolution passed by virtue of paragraph (2), or
- (b) a resolution of a company passed by virtue of paragraph (6) preventing or reversing such a resolution.

(9) This regulation shall not be taken to exclude the right of the members of a company to amend the articles of association of the company, in accordance with the articles, to allow the holding of any class of its shares in uncertificated form and the transfer of title to shares in such a class by means of a relevant system.

17.–(1) A class of shares in relation to which, immediately before the coming into force of these Regulations—

- (a) regulation 15 of the 1995 Regulations applied; or
- (b) a directors' resolution passed in accordance with regulation 16 of the 1995 Regulations was effective,

shall be taken to be a class of shares in relation to which regulation 15 of these Regulations applies or, as the case may be, a directors' resolution passed in accordance with regulation 16 is effective.

(2) On the coming into force of these Regulations a company's articles of association in relation to any such class of shares, and the terms of issue of any such class of shares, shall cease to apply to the extent that they are inconsistent with any provision of these Regulations.

#### Interpretation of regulations 15, 16 and 17

18. For the purposes of regulations 15, 16 and 17 any shares with respect to which share warrants to bearer are issued under section 779 of the 2006 Act shall be regarded as forming a separate class of shares.

#### Participation in respect of securities other than shares

19.–(1) Subject to paragraph (2), where—

- (a) an Operator permits title to a security other than a share to be transferred by means of a relevant system; and
- (b) the issuer permits the holding of units of that security in uncertificated form and the transfer of title to units of that security by means of a relevant system,

title to units of that security which are recorded on an Operator register of securities may be transferred by means of that relevant system.

(2) In relation to any security other than a share, if the law under which it is constituted is not the law of England and Wales, Northern Ireland or Scotland, or if the current terms of its issue are in any respect inconsistent with—

- (a) the holding of title to units of that security in uncertificated form;

- (b) the transfer of title to units of that security by means of a relevant system; or
- (c) subject to paragraph (3), these Regulations,

an issuer of that security shall not permit the holding of units of that security in uncertificated form, or the transfer of title to units of that security by means of a relevant system.

(3) On the coming into force of these Regulations the current terms of issue of a relevant participating security shall cease to apply to the extent that they are inconsistent with any provision of these Regulations.

(4) For the purposes of this regulation—

- (a) a relevant participating security is a participating security (other than a share) the terms of issue of which, immediately before the coming into force of these Regulations, were in all respects consistent with the 1995 Regulations; and
- (b) the terms of issue of a security shall be taken to include the terms prescribed by the issuer on which units of the security are held and title to them is transferred.

### ***Keeping of registers and records***

#### **Entries on registers and records in respect of shares**

20.—(1) In respect of every company which is a participating issuer, there shall be—

- (a) a register maintained by the participating issuer, and such a register is referred to in these Regulations as an 'issuer register of members'; and
- (b) a register maintained by the Operator, and such a register is referred to in these Regulations as an 'Operator register of members'.

(2) A participating issuer which is a company shall keep and enter up the issuer register of members in accordance with paragraph 2 of Schedule 4.

(3) In respect of every company which is a participating issuer, the Operator shall keep and enter up the Operator register of members in accordance with paragraph 4 of Schedule 4.

(4) References in any enactment or instrument to a company's register of members shall, unless the context otherwise requires, be construed in relation to a company which is a participating issuer as referring to the company's issuer register of members and Operator register of members.

(5) Paragraph (4) does not apply in relation to a company's issuer register of members to the extent that any of the particulars entered in that register in accordance with paragraph 2(1) of Schedule 4 are inconsistent with the company's Operator register of members.

(6) A participating issuer which is a company shall—

- (a) maintain a record of the entries made in its Operator register of members; and such a record is referred to in these Regulations as a 'record of uncertificated shares'; and
- (b) keep and enter up that record in accordance with paragraph 5 of Schedule 4.

(7) Such sanctions as apply to a company and its officers in the event of a default in complying with section 113 of the 2006 Act shall apply to—

- (a) a company which is a participating issuer and its officers in the event of a default in complying with paragraph (1)(a) or (6)(a), or
- (b) an Operator and his officers in the event of a default in complying with paragraph (1)(b). . . .

#### **Entries on registers and records in respect of other securities**

22.—(1) Paragraph (2) applies where a participating issuer is required by or under an enactment or instrument to maintain in the United Kingdom a register of persons holding securities (other than shares . . . or eligible debt securities) issued by him.

(2) Where this paragraph applies, then in so far as the register in question relates to any class of security which is a participating security—

- (a) the Operator shall—
  - (i) maintain a register, and such a register is referred to in these Regulations as an 'Operator register of corporate securities'; and
  - (ii) keep and enter up the Operator register of corporate securities in accordance with paragraph 14 of Schedule 4.
- (b) the participating issuer—
  - (i) shall not maintain the register to the extent that it relates to securities held in uncertificated form;
  - (ii) shall maintain a record of the entries made in any Operator register of corporate securities, and such a record is referred to in these Regulations as a 'record of uncertificated corporate securities'; and
  - (iii) shall keep and enter up that record in accordance with paragraph 15 of Schedule 4.

(3) Where a participating issuer is not required by or under an enactment or instrument to maintain in the United Kingdom in respect of a participating security (other than an eligible debt security) issued by him a register of persons holding units of that participating security, the Operator shall—

- (a) maintain a register in respect of that participating security; and
- (b) record in that register—
  - (i) the names and addresses of the persons holding units of that security in uncertificated form, and
  - (ii) how many units of that security each such person holds in that form.

(3A) In respect of every participating security which is an eligible debt security, the Operator shall—

- (a) maintain a register, and such a register is referred to in these Regulations as an 'Operator register of eligible debt securities'; and
- (b) record in that register—
  - (i) the names and addresses of the persons holding units of that security; and
  - (ii) how many units of that security each such person holds.

(4) Such sanctions as apply to a company and its officers in the event of a default in complying with section 113 of the 2006 Act shall apply to an Operator and his officers in the event of a default in complying with paragraph (2)(a)(i), (3) or (3A).

(5) Such sanctions as apply in the event of a default in complying with the requirement to maintain a register imposed by the relevant enactment or instrument referred to in paragraph (1) shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (2)(b)(ii).

#### General provisions concerning keeping registers and records

23.—(1) The obligations of an Operator to maintain and to keep and enter up any register of securities, imposed by these Regulations—

- (a) shall not give rise to any form of duty or liability on the Operator, except such as is expressly provided for in these Regulations or as arises from fraud or other wilful default, or negligence, on the part of the Operator;
- (b) shall not give rise to any form of duty or liability on a participating issuer, other than where the Operator acts on the instructions of that participating issuer, in the absence of fraud or other wilful default, or negligence, on the part of that participating issuer; and
- (c) shall not give rise to any form of duty or liability enforceable by civil proceedings for breach of statutory duty.

(2) Without prejudice to paragraph (1) or to any lesser period of limitation and to any rule as to the prescription of rights, liability incurred by a participating issuer or by an Operator arising—

- (a) from the making or deletion of an entry in a register of securities or record of securities pursuant to these Regulations; or
- (b) from a failure to make or delete any such entry,

shall not be enforceable more than 10 years after the date on which the entry was made or deleted or, in the case of a failure, the failure first occurred.

(3) No notice of any trust, expressed, implied or constructive, shall be entered on an Operator register of securities, or a part of such a register, or be receivable by an Operator.

(4) Schedule 4 (which provides for the keeping of registers and records of participating securities, and which excludes, or applies with appropriate modifications, certain provisions of the 2006 Act) shall have effect.

(5) Section 120 of the 2006 Act shall not apply with respect to a company which is a participating issuer.

#### Effect of entries on registers

24.—(1) Subject to regulation 29 and to paragraphs (2) and (3) below, a register of members is prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of any matters which are by these Regulations directed or authorised to be inserted in it.

(2) Paragraph (1) does not apply to a company's issuer register of members to the extent that any of the particulars entered in that register in accordance with paragraph 2(1) of Schedule 4 are inconsistent with the company's Operator register of members.

(3) The entry of a person's name and address in a company's issuer register of members shall not be treated as showing that person to be a member of the company unless—

- (a) the issuer register of members also shows him as holding shares in the company in certificated form;
- (b) the Operator register of members shows him as holding shares in the company in uncertificated form; or
- (c) he is deemed to be a member of the company by regulation 32(6)(b).

(4) Section 127 of the 2006 Act shall not apply with respect to a company which is a participating issuer. . . .

(6) Subject to regulation 29, an entry on an Operator register of corporate securities which records a person as holding units of a security in uncertificated form shall be evidence of such title to the units as would be evidenced if the entry on that register—

- (a) were an entry on the part maintained by the participating issuer of such register as is mentioned in regulation 22(1); and
- (b) where appropriate, related to units of that security held in certificated form.

(7) Subject to regulation 29, an entry on a register maintained by virtue of regulation 22(3)(a) shall (where the units are capable of being held in certificated form) be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, that the person to whom the entry relates has such title to the units of the security which he is recorded as holding in uncertificated form as he would have if he held the units in certificated form.

(8) Subject to regulation 29, an entry on an Operator register of eligible debt securities shall be prima facie evidence, and in Scotland sufficient evidence unless the contrary is shown, of any matters which are by these Regulations directed or authorised to be inserted in it.

#### Rectification of registers of securities

25.—(1) Unless the circumstances described in paragraph (2) apply, a participating issuer shall not rectify an issuer register of securities if such rectification would also require the rectification of an Operator register of securities.

- (2) The circumstances referred to in paragraph (1) are that the rectification of an issuer register of securities is effected—
- (a) with the consent of the Operator; or
  - (b) by order of a court in the United Kingdom.

(3) A participating issuer who rectifies an issuer register of securities in order to give effect to an order of a court in the United Kingdom shall immediately give the Operator written notification of the change to the entry, if any rectification of the Operator register of securities may also be required (unless the change to the issuer register is made in response to an Operator-instruction).

- (4) An Operator who rectifies an Operator register of securities shall immediately—
- (a) generate an Operator-instruction to inform the relevant participating issuer of the change to the entry (unless the change is made in response to an issuer-instruction); and
  - (b) generate an Operator-instruction to inform the system-members concerned of the change to the entry.

### Closing registers

26. Notwithstanding any other enactment, a participating issuer shall not close a register of securities relating to a participating security without the consent of the Operator.

### Registration by an Operator of transfers of securities

27.—(1) Except where relevant units of a security are transferred by means of a relevant system to a person who is to hold them thereafter in certificated form (and subject to paragraphs (2) and (4))—

- (a) upon settlement of a transfer of uncertificated units of a security in accordance with his rules;
- (b) following receipt of an issuer-instruction notifying him that the circumstances specified in regulation 33(2)(b) have arisen in respect of a transfer of units of a participating security; or
- (c) following receipt of an issuer-instruction given under Regulation 42(8)(b),

an Operator shall register on the relevant Operator register of securities the transfer of title to those units of that security.

(2) An Operator shall refuse to register a transfer of title to units of a participating security in accordance with a system-member instruction or an issuer-instruction (as the case may be) if he has actual notice that the transfer is—

- (a) prohibited by order of a court in the United Kingdom;
- (b) prohibited or avoided by or under an enactment;
- (c) a transfer to a deceased person; or
- (d) where the participating issuer is constituted under the law of Scotland, prohibited by or under an arrestment.

(3) Notwithstanding that an Operator has received, in respect of a transfer of title to units of a participating security, actual notice of the kind referred to in paragraph (2), the Operator may register that transfer of title on the relevant Operator register of securities if at the time that he received the actual notice it was not practicable for him to halt the process of registration.

(4) Without prejudice to his rules, an Operator may refuse to register a transfer of title to units of a participating security in accordance with a system-member instruction or an issuer-instruction (as the case may be) if the instruction requires a transfer of units—

- (a) to an entity which is not a natural or legal person;
- (b) to a minor (which, in relation to a participating issuer constituted under the law of Scotland, shall mean a person under 16 years of age);
- (c) to be held jointly in the names of more persons than is permitted under the terms of the issue of the security; or
- (d) where, in relation to the system-member instruction or the issuer-instruction (as the case may be), the Operator has actual notice of any of the matters specified in regulation 35(5)(a)(i) to (iii).

(5) An Operator shall not register a transfer of title to uncertificated units of a security on an Operator register of securities otherwise than in accordance with paragraph (1) unless he is required to do so by order of a court in the United Kingdom or by or under an enactment.

(6) Paragraph (5) shall not be taken to prevent an Operator from entering on an Operator register of securities a person who is a system-member to whom title to uncertificated units of a security has been transmitted by operation of law.

(7) Subject to paragraph (7A), immediately upon—

- (a) the registration by an Operator of the transfer of title to units of a participating security in accordance with—
  - (i) paragraph (1);
  - (ii) an order of a court in the United Kingdom; or
  - (iii) a requirement arising by or under an enactment; or
- (b) the making or deletion by an Operator of an entry on an Operator register of securities—
  - (i) following the transmission of title to uncertificated units of a security by operation of law; or
  - (ii) upon the transfer of uncertificated units of a security to a person who is to hold them thereafter in certificated form,

the Operator shall generate an Operator-instruction to inform the relevant participating issuer of the registration, or of the making or deletion of the entry (as the case may be); and where appropriate the participating issuer shall register the transfer or transmission of title to those units on an issuer register of securities in accordance with regulation 28.

(7A) Paragraph (7) does not apply in relation to units of an eligible debt security.

(8) If an Operator refuses to register a transfer of securities in any of the circumstances specified in paragraphs (2) and (4), the Operator shall, within 2 months of the date on which the relevant system-member instruction or issuer-instruction (as the

case may be) was received by the Operator, send an Operator-instruction, or written notification, informing the relevant system-member or participating issuer (as the case may be) of the refusal.

(9) Such sanctions as apply to a company and its officers in the event of a default in complying with subsections (1) and (2) of section 771 of the 2006 Act shall apply to an Operator and his officers in the event of a default in complying with that subsection as applied by paragraph (8).

#### Registration by a participating issuer of transfers of securities upon conversion into certificated form

28.—(1) Paragraphs (2) to (5) apply where relevant units of a security are transferred by means of a relevant system to a person who is to hold them thereafter in certificated form.

(2) Subject to paragraphs (3) and (4), a participating issuer shall (where appropriate) register a transfer of title to relevant units of a security on an issuer register of securities in accordance with an Operator-instruction.

(3) A participating issuer shall refuse to register a transfer of title to relevant units of a security in accordance with an Operator-instruction if he has actual notice that the transfer is—

- (a) prohibited by order of a court in the United Kingdom;
- (b) prohibited or avoided by or under an enactment;
- (c) a transfer to a deceased person; or
- (d) where the participating issuer is constituted under the law of Scotland, prohibited by or under an arrestment.

(4) A participating issuer may refuse to register a transfer of title to relevant units of a security in accordance with an Operator-instruction if the instruction requires a transfer of units—

- (a) to an entity which is not a natural or legal person;
- (b) to a minor (which, in relation to a participating issuer constituted under the law of Scotland, shall mean a person under 16 years of age);
- (c) to be held jointly in the names of more persons than is permitted under the terms of the issue of the security; or
- (d) where, in relation to the Operator-instruction, the participating issuer has actual notice from the Operator of any of the matters specified in regulation 35(5)(a)(i) to (iii).

(5) A participating issuer shall notify the Operator by issuer-instruction whether he has registered a transfer in response to an Operator-instruction to do so.

(6) A participating issuer shall not register a transfer of title to relevant units of a security on an issuer register of securities unless he is required to do so—

- (a) by an Operator-instruction;
- (b) by an order of a court in the United Kingdom; or
- (c) by or under an enactment.

(7) A unit of a security is a relevant unit for the purposes of this regulation if, immediately before the transfer in question, it was held by the transferor in uncertificated form.

(8) If a participating issuer refuses to register under paragraph (2) a transfer of securities in any of the circumstances specified in paragraphs (3) and (4), the participating issuer shall, within 2 months of the date on which the Operator-instruction was received by the participating issuer, send to the transferee notice of the refusal.

(9) Such sanctions as apply to a company and its officers in the event of a default in complying with subsections (1) and (2) of section 771 of the 2006 Act shall apply to a participating issuer and his officers in the event of a default in complying with that subsection as applied by paragraph (8).

[*In reg. 28(4)(d) the Queen's Printer's copy mistakenly has a full point instead of a comma after 'in relation to the Operator-instruction'.*]

#### Registration to be in accordance with regulations 27 and 28

29. Any purported registration of a transfer of title to an uncertificated unit of a security other than in accordance with regulation 27 or 28 shall be of no effect.

#### Registration of linked transfers

30.—(1) Paragraph (2) applies where an Operator receives two or more system-member instructions requesting him to register two or more transfers of title to uncertificated units of a security, and it appears to the Operator—

- (a) either—
  - (i) that there are fewer units of the security registered on an Operator register of securities in the name of a person identified in any of the system-member instructions as a transferor than the number of units to be transferred from him under those system-member instructions; or
  - (ii) that it has not been established in accordance with paragraph 21(1)(c) of Schedule 1, in relation to any of the transfers taken without regard to the other transfers, that a settlement bank has agreed to make a payment; and
- (b) that registration of all of the transfers would result in each of the persons identified in the system-member instructions as a transferor having title to a number of uncertificated units of a security equal to or greater than nil; and
- (c) that the combined effect of all the transfers taken together would result in paragraph 21(1)(c) of Schedule 1 being satisfied.

(2) Where this paragraph applies, the Operator may either—

- (a) register the combined effect of all the transfers taken together; or
- (b) register all the transfers simultaneously,

unless one or more of those transfers may not be registered by virtue of the fact that the Operator has actual notice of any of the circumstances specified in regulation 27(2), or is to be refused registration by virtue of regulation 27(4).

(3) Notwithstanding that an Operator has received, in respect of two or more such system-member instructions as are referred to in paragraph (1), actual notice of the kind referred to in paragraph (2), the Operator may register all the transfers in question or their combined effect if at the time that he received the actual notice it was not practicable for him to halt the process of registration.

#### Position of a transferee prior to entry on an issuer register of securities

31.–(1) Paragraph (2) applies when an Operator deletes an entry on an Operator register of securities in consequence of which—

- (a) the Operator must generate an Operator-instruction in accordance with regulation 27(7); and
- (b) by virtue of that instruction a participating issuer must register, on an issuer register of securities, a transfer of title to units of a participating security constituted under the law of England and Wales or Northern Ireland.

(2) Where this paragraph applies—

- (a) subject to—
  - (i) sub-paragraph (b); and
  - (ii) any enactment or rule of law,the transferor shall, notwithstanding the deletion of the entry in the Operator register of securities, retain title to the requisite number of units of the relevant participating security until the transferee is entered on the relevant issuer register of securities as the holder thereof; and
- (b) the transferee shall acquire an equitable interest in the requisite number of units of that security.

(3) Paragraph (4) applies when an Operator deletes an entry on an Operator register of securities in consequence of which—

- (a) the Operator must generate an Operator-instruction in accordance with regulation 27(7); and
- (b) by virtue of that instruction a participating issuer must register, on an issuer register of securities, a transfer of title to units of a participating security constituted under the law of Scotland.

(4) Where this paragraph applies—

- (a) subject to—
  - (i) sub-paragraph (b); and
  - (ii) any enactment or rule of law,the transferor shall, notwithstanding the deletion of the entry in the Operator register of securities, retain title to the requisite number of units of the relevant participating security until the transferee is entered on the relevant issuer register of securities as the holder thereof; and
- (b) the transferor shall hold the requisite number of units of that security on trust for the benefit of the transferee.

(5) The requisite number for the purposes of this regulation is the number of units which are to be specified in the Operator-instruction which the Operator must generate in accordance with regulation 27(7).

(6) This regulation has effect notwithstanding that the units to which the deletion of the entry in the Operator register of securities relates, or in which an interest arises by virtue of paragraph (2)(b) or (4)(b), or any of them, may be unascertained.

(7) In Scotland—

- (a) this regulation has effect notwithstanding that the requirements relating to the creation of a trust under any enactment or rule of law have not been complied with; and
- (b) as from the time the trust referred to in paragraph (4)(b) arises, any holder, or any holder thereafter, of a floating charge over any part of the property of the transferor shall be deemed to have received notice of the trust's existence and of the property to which it relates.

(8) Subject to paragraphs (6) and (7), this regulation shall not be construed as conferring a proprietary interest (whether of the kind referred to in paragraph (2)(b) or (4)(b), or of any other kind) in units of a security if the conferring of such an interest at the time specified in these Regulations would otherwise be void by or under any enactment or rule of law.

(9) In this regulation—

- (a) 'the transferee' means the person to be identified in the Operator-instruction as the transferee; and
- (b) 'the transferor' means the person to be identified in the Operator-instruction as the transferor.

#### **Conversions and new issues**

##### Conversion of securities into certificated form

32.–(1) Except as provided in regulation 42, a unit of a participating security shall not be converted from uncertificated form into certificated form unless an Operator generates an Operator-instruction to notify the relevant participating issuer that a conversion event has occurred; and in this regulation such an Operator-instruction is referred to as a 'rematerialisation notice'.

(2) A conversion event occurs—

- (a) where such a conversion is permitted by the Operator's conversion rules; or
- (b) following receipt by an Operator of a system-member instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name of the system-member; or

- (c) following receipt by an Operator of written notification from a participating issuer which is a company requiring the conversion into certificated form of uncertificated units of a participating security, issued by that participating issuer and registered in the name of a system-member, and which contains a statement that the conversion is required to enable the participating issuer to deal with the units in question in accordance with provisions in that participating issuer's memorandum or articles or in the terms of issue of the units in question.
- (3) An Operator—
- (a) may generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(a);
  - (b) shall generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(b) unless the participation in the relevant system, by the system-member in whose name the uncertificated units in question are registered, has been suspended pursuant to the Operator's rules; and
  - (c) shall generate a rematerialisation notice following a conversion event occurring in the circumstances specified in paragraph (2)(c).
- (4) On the generation of a rematerialisation notice, the Operator shall delete any entry in an Operator register of securities which shows the relevant system-member as the holder of the unit or units specified in the rematerialisation notice.
- (5) On receipt of a rematerialisation notice, the participating issuer to whom the rematerialisation notice is addressed shall, where relevant, enter the name of the system-member on an issuer register of securities as the holder of the unit or units specified in the rematerialisation notice.
- (6) During any period between the deletion of any entry in an Operator register of securities required to be made by paragraph (4) and the making of the entry in an issuer register of securities required to be made by paragraph (5)—
- (a) the relevant system-member shall retain title to the units of the security specified in the rematerialisation notice notwithstanding the deletion of any entry in the Operator register of securities; and
  - (b) where those units are shares, the relevant system-member shall be deemed to continue to be a member of the company.
- (7) Following—
- (a) the making of an entry in an issuer register of securities in accordance with paragraph (5); or
  - (b) registration of a transfer of title to units of a security in accordance with regulation 28,
- the relevant participating issuer shall, where the terms of issue of the security in question provide for a certificate to be issued, issue a certificate in respect of the units of the security to the relevant person.
- (8) Subsection (1) of section 776 of the 2006 Act shall apply in relation to the issue of a certificate by a participating issuer pursuant to paragraph (7) as it applies in relation to the completion and having ready for delivery by a company of share certificates, debentures or certificates of debenture stock; and in that subsection as it so applies the reference to the date on which a transfer is lodged with the company shall be a reference to the date on which the participating issuer receives the relevant rematerialisation notice in accordance with this regulation, or the relevant Operator-instruction in accordance with regulation 27(7).
- (9) Such sanctions as apply to a company and its officers in the event of a default in complying with subsections (1) and (2) of section 771 of the 2006 Act shall apply—
- (a) to an Operator and his officers in the event of a default in complying with paragraph (4); and
  - (b) to a participating issuer and his officers in the event of a default in complying with paragraph (5).
- (10) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (1) of section 771 of the 2006 Act shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (7) in accordance with the requirements laid down in paragraph (8).

#### Conversion of securities into uncertificated form

33.–(1) A unit of a participating security shall not be converted from certificated form into uncertificated form unless the participating issuer notifies the Operator by means of an issuer-instruction that any of the circumstances specified in paragraph (2) have arisen; and in this regulation such an issuer-instruction is referred to as a 'dematerialisation notice'.

(2) The circumstances referred to in paragraph (1) are—

- (a) where the unit of the participating security is held by a system-member, that the participating issuer has received—
  - (i) a request in writing from the system-member in the form required by the Operator's conversion rules that the unit be converted from certificated form to uncertificated form; and
  - (ii) subject to paragraph (4), the certificate relating to that unit; or
- (b) where the unit of the participating security is to be registered on an Operator register of securities in the name of a system-member following a transfer of the unit to him, that the participating issuer—
  - (i) subject to paragraph (3), has received (by means of the Operator-system unless the Operator's conversion rules permit otherwise) a proper instrument of transfer in favour of the system-member relating to the unit to be transferred;
  - (ii) subject to paragraph (4), has received (by means of the Operator-system unless the Operator's conversion rules permit otherwise) the certificate relating to that unit; and
  - (iii) may accept by virtue of the Operator's conversion rules that the system-member to whom the unit is to be transferred wishes to hold it in uncertificated form.

(3) The requirement in paragraph (2)(b)(i) that the participating issuer shall have received an instrument of transfer relating

to the unit of the participating security shall not apply in a case where for a transfer of a unit of that security no instrument of transfer is required.

(4) The requirements in paragraphs (2)(a)(ii) and (2)(b)(ii) that the participating issuer shall have received a certificate relating to the unit of the participating security shall not apply in a case where the system-member or transferor (as the case may be) does not have a certificate in respect of the unit to be converted into uncertificated form because no certificate has yet been issued to him or is due to be issued to him in accordance with the terms of issue of the relevant participating security.

(5) Subject to paragraphs (3) and (4), a participating issuer shall not give a dematerialisation notice except in the circumstances specified in paragraph (2).

(6) Upon giving a dematerialisation notice, a participating issuer shall delete any entry in any issuer register of securities which evidences title to the unit or units of the participating security in question.

(7) Following receipt of a dematerialisation notice, an Operator shall enter the name of the relevant system-member on an Operator register of securities as the holder of the relevant unit or units of the participating security in question, provided that this obligation shall be subject to regulation 27 if the notice was given in the circumstances specified in paragraph (2)(b).

(8) When a dematerialisation notice is given, the relevant system-member, or the transferor of the unit or units of the security in question, as the case may be, shall (without prejudice to any equitable interest which the transferee may have acquired in the unit or units in question)—

(a) retain title to the units of the security specified in the dematerialisation notice notwithstanding the deletion of any entry in any issuer register of securities required to be made by paragraph (6); and

(b) where those units are shares, be deemed to continue to be a member of the company.

(9) Where a dematerialisation notice is given in the circumstances specified in paragraph (2)(b), such title shall be retained, and (where appropriate) such membership shall be deemed to continue, until the time at which the Operator enters the name of the relevant system-member on an Operator register of securities in accordance with paragraph (7).

(10) Within 2 months of receiving a dematerialisation notice, an Operator shall generate an Operator-instruction informing the participating issuer whether an entry has been made in an Operator register of securities in response to the dematerialisation notice.

(11) Such sanctions as apply to a company and its officers in the event of a default in complying with subsections (1) and (2) of section 771 of the 2006 Act shall apply—

(a) to a participating issuer and his officers in the event of a default in complying with paragraph (6); and

(b) to an Operator and his officers in the event of a default in complying with paragraph (7) or (10).

#### New issues in uncertificated form

34.—(1) For the purposes of an issue of units of a participating security, a participating issuer may require the Operator to enter the name of a person in an Operator register of securities as the holder of new units of that security in uncertificated form if, and only if, that person is a system-member; and provided that compliance with any such requirement shall be subject to the rules of the Operator.

(2) For the purposes of calculating the number of new units to which a system-member is entitled a participating issuer may treat a system-member's holdings of certificated and uncertificated units of a security as if they were separate holdings.

(3) A requirement made by a participating issuer under paragraph (1) may be made by means of an issuer-instruction and shall specify the names of the persons to be entered in the Operator register of securities as the holders of new uncertificated units of the security, and the number of such units to be issued to each of those persons.

(4) An Operator who receives a requirement made by a participating issuer under paragraph (1) shall notify the participating issuer, by Operator-instruction or in writing, if he has not entered the name of any one or more of the persons in question in the Operator register of securities as the holder of new units of the security.

## PART 4 DEMATERIALISED INSTRUCTIONS ETC.

#### Properly authenticated dematerialised instructions, etc.

35.—(1) This regulation has effect for the purpose of determining the rights and obligations of persons to whom properly authenticated dematerialised instructions are attributable and of persons to whom properly authenticated dematerialised instructions are addressed, when such instructions relate to an uncertificated unit of a security, or relate to a right, benefit or privilege attaching to or arising from such a unit, or relate to the details of a holder of such a unit.

(2) Where a properly authenticated dematerialised instruction is expressed to have been sent on behalf of a person by a sponsoring system-participant or the Operator—

(a) the person on whose behalf the instruction is expressed to have been sent shall not be able to deny to the addressee—

(i) that the properly authenticated dematerialised instruction was sent with his authority; or

(ii) that the information contained in the properly authenticated dematerialised instruction is correct; and

(b) the sponsoring system-participant or the Operator (as the case may be) shall not be able to deny to the addressee—

(i) that he has authority to send the properly authenticated dematerialised instruction; or

(ii) that he has sent the properly authenticated dematerialised instruction.

(3) Where a properly authenticated dematerialised instruction is expressed to have been sent by a person, and the properly authenticated dematerialised instruction is not expressed to have been sent on behalf of another person, the person

shall not be able to deny to the addressee—

- (a) that the information contained in the properly authenticated dematerialised instruction is correct; or
- (b) that he has sent the properly authenticated dematerialised instruction.

(4) An addressee who receives (whether directly, or by means of the facilities of a sponsoring system-participant acting on his behalf) a properly authenticated dematerialised instruction may, subject to paragraph (5), accept that at the time at which the properly authenticated dematerialised instruction was sent or at any time thereafter—

- (a) the information contained in the instruction was correct;
- (b) the system-participant or the Operator (as the case may be) identified in the instruction as having sent the instruction sent the instruction; and
- (c) the instruction, where relevant, was sent with the authority of the person on whose behalf it is expressed to have been sent.

(5) Subject to paragraph (6), an addressee may not accept any of the matters specified in paragraph (4) if at the time he received the properly authenticated dematerialised instruction or at any time thereafter—

- (a) he was a person other than a participating issuer or a sponsoring system-participant receiving properly authenticated dematerialised instructions on behalf of a participating issuer, and he had actual notice—
  - (i) that any information contained in it was incorrect;
  - (ii) that the system-participant or the Operator (as the case may be) expressed to have sent the instruction did not send the instruction; or
  - (iii) where relevant, that the person on whose behalf it was expressed to have been sent had not given to the Operator or the sponsoring system-participant (as the case may be), identified in the properly authenticated dematerialised instruction as having sent it, his authority to send the properly authenticated dematerialised instruction on his behalf; or
- (b) he was a participating issuer, or a sponsoring system-participant receiving properly authenticated dematerialised instructions on behalf of a participating issuer, and—
  - (i) he had actual notice from the Operator of any of the matters specified in sub-paragraph (a)(i) to (iii); or
  - (ii) if the instruction was an Operator-instruction requiring the registration of a transfer of title, he had actual notice of any of the circumstances specified in regulation 28(3); or
- (c) he was an Operator and the instruction related to a transfer of units of a security which was in excess of any limit imposed by virtue of paragraph 15 of Schedule 1; or
- (d) he was an Operator and he had actual notice of any of the circumstances specified in regulation 27(2) in a case where the instruction was—
  - (i) a system-member instruction requesting him to settle a transfer in accordance with his rules; or
  - (ii) an issuer-instruction given in the circumstances specified in regulation 33(2)(b) requesting him to register a transfer of title.

(6) Notwithstanding that an addressee has received, in respect of a properly authenticated dematerialised instruction, actual notice of the kind referred to in paragraph (5), the addressee may accept the matters specified in paragraph (4) if at the time that he received the actual notice it was not practicable for him to halt the processing of the instruction.

(7) Subject to paragraph (8), this regulation has effect without prejudice to the liability of any person for causing or permitting a dematerialised instruction—

- (a) to be sent without authority; or
- (b) to contain information which is incorrect; or
- (c) to be expressed to have been sent by a person who did not send it.

(8) Subject to paragraph (9), a person who is permitted by this regulation to accept any matter shall not be liable in damages or otherwise to any person by reason of his having relied on the matter that he was permitted to accept.

(9) The provisions of paragraph (8) do not affect—

- (a) any liability of the Operator to pay compensation under regulation 36; or
- (b) any liability of a participating issuer under regulation 46 arising by reason of a default in complying with, or contravention of, regulation 28(6).

(10) For the purposes of this regulation—

- (a) a properly authenticated dematerialised instruction is expressed to have been sent by a person or on behalf of a person if it is attributable to that person; and
- (b) an addressee is the person to whom a properly authenticated dematerialised instruction indicates it is addressed in accordance with the rules and specifications referred to in paragraph 5(5) of Schedule 1.

(11) Nothing in this regulation shall be taken, in respect of any authority, to modify or derogate from the protections to a donee or third person given by or under any enactment or to prohibit a donee or third person so protected from accepting any of the matters specified in paragraph (4).

(12) Paragraphs (2) to (4), (5)(a), (6) to (9) and (11) of this regulation shall apply in relation to a written notification given under regulation 25(3) or 32(2)(c) as if—

- (a) each reference to a properly authenticated dematerialised instruction were to such a notification which has been authenticated by the Operator in accordance with rules made and practices instituted by the Operator in order to comply with paragraph 25(g) of Schedule 1;
- (b) each reference to information contained in the properly authenticated dematerialised instruction being correct (or

- incorrect) included, in the case of written notification given under sub-paragraph (c) of regulation 32(2), a reference to any statement of the sort referred to in that sub-paragraph being true (or untrue, as the case may be);
- (c) each reference to an addressee were a reference to the Operator; and
  - (d) the reference in paragraph (6) to the processing of the instruction were to acting on the written notification.

#### Liability for forged dematerialised instructions, induced amendments to Operator registers of securities, and induced Operator-instructions

36.—(1) For the purpose of this regulation—

- (a) a dematerialised instruction is a forged dematerialised instruction if—
  - (i) it was not sent from the computers of a system-participant or the computers comprising an Operator-system; or
  - (ii) it was not sent from the computers of the system-participant or the computers comprising an Operator-system (as the case may be) from which it is expressed to have been sent;
- (b) an act is a causative act if, not being a dematerialised instruction and not being an act which causes a dematerialised instruction to be sent from the computer of a system-participant, it unlawfully causes the Operator—
  - (i) to make, delete or amend an entry on an Operator register of securities; or
  - (ii) to send an Operator-instruction to a participating issuer;
- (c) an entry on, deletion from, or amendment to an Operator register of securities is an induced amendment if it is an entry on, deletion from, or amendment to an Operator register of securities which results from a causative act or a forged dematerialised instruction; and
- (d) an Operator-instruction is an induced Operator-instruction if it is an Operator-instruction to a participating issuer which results from a causative act or a forged dematerialised instruction.

(2) If, as a result of a forged dematerialised instruction (not being one which results in an induced amendment to an Operator register of securities or an induced Operator-instruction), an induced amendment to an Operator register of securities, or an induced Operator-instruction, any one or more of the following events occurs—

- (a) the name of any person remains on, is entered on, or is removed or omitted from, a register of securities;
- (b) the number of units of a security in relation to which the name of any person is entered on a register of securities is increased, reduced, or remains unaltered;
- (c) the description of any units of a security in relation to which the name of any person is entered on a register of securities is changed or remains unaltered,

and that person suffers loss as a result, he may apply to the court for an order that the Operator compensate him for his loss.

(3) It is immaterial for the purposes of sub-paragraphs (a) to (c) of paragraph (2) whether the event is permanent or temporary.

(4) The court shall not make an order under paragraph (2)—

- (a) if the Operator identifies a person as being responsible (whether alone or with others) for the forged dematerialised instruction (not being one which results in an induced amendment to an Operator register of securities or an induced Operator-instruction) or the causative act or forged dematerialised instruction resulting in the induced amendment to the Operator register of securities or the induced Operator-instruction (as the case may be) notwithstanding that it is impossible (for whatever reason) for the applicant to obtain satisfactory compensation from that person; or
- (b) if the Operator shows that a participating issuer would be liable under regulation 46 to compensate the applicant for the loss in respect of which the application is made, by reason of the participating issuer's default in complying with, or contravention of, regulation 28(6).

(5) Subject to paragraphs (6) and (7), the court may award to an applicant compensation for—

- (a) each forged dematerialised instruction (not being one which results in an induced amendment to an Operator register of securities or an induced Operator-instruction);
- (b) each induced amendment to an Operator register of securities; and
- (c) each induced Operator-instruction,

resulting in an event mentioned in sub-paragraph (a), (b) or (c) of paragraph (2).

(6) The court shall not under paragraph (5) award to an applicant—

- (a) more than £50,000 for each such forged dematerialised instruction, induced amendment to an Operator register of securities, or induced Operator-instruction;
- (b) compensation for both an induced amendment to an Operator register of securities and an induced Operator-instruction if that induced amendment and that induced Operator-instruction resulted from the same causative act or the same forged dematerialised instruction.

(7) In respect of liability arising under this regulation the court shall—

- (a) in awarding compensation only order the Operator to pay such amount of compensation as it appears to it to be just and equitable in all the circumstances having regard to the loss sustained by the applicant as a result of the forged dematerialised instruction, induced amendment to the Operator register of securities, or induced Operator-instruction;
- (b) in ascertaining the loss, apply the same rules concerning the duty of a person to mitigate his loss as apply to damages recoverable under the common law of England and Wales, Northern Ireland, or Scotland, (as the case may be); and
- (c) where it finds that the loss was to any extent caused or contributed to by any act or omission of the applicant, reduce

the amount of the award by such proportion as it thinks just and equitable having regard to that finding.

(8) An application to the court for an order under paragraph (2) shall not prejudice any right of the Operator to recover from a third party any sum that he may be ordered to pay.

(9) An event mentioned in sub-paragraph (a), (b) or (c) of paragraph (2) shall not give rise to any liability on the Operator other than such as is expressly provided for in this regulation, except such as may arise from fraud or other wilful default, or negligence, on the part of the Operator.

(10) Subject to paragraph (9), this regulation does not affect—

- (a) any right which any person may have other than under this regulation (not being a right against the Operator); or
- (b) any liability which any person other than the Operator may incur other than under this regulation.

(11) Where an application is made under paragraph (2), and the Operator receives from the applicant a request for information or documents relating to—

- (a) a forged dematerialised instruction;
- (b) an induced amendment to an Operator register of securities; or
- (c) an induced Operator-instruction,

in respect of which the application is made, the Operator shall, in so far as he is able, and in so far as the request is reasonable, within one month give the applicant the information and documents.

(12) The applicant shall, in so far as he is able, within one month give the Operator such information or documents as the Operator reasonably requests in connection with an application under paragraph (2) with respect to—

- (a) steps taken by the applicant to prevent the giving of any forged dematerialised instruction (whether of the kind referred to in paragraph (2) or of any other kind); and
- (b) steps taken by the applicant to mitigate the loss suffered by him,

provided that the applicant need not give information or documents pursuant to this paragraph until the Operator has complied with any request made by virtue of paragraph (11).

(13) Neither the Operator nor the applicant shall be required to disclose any information by virtue of, respectively, paragraph (11) or (12) which would be privileged in the course of civil proceedings, or, in Scotland, which they would be entitled to refuse to disclose—

- (a) on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session; or
- (b) on grounds of confidentiality of communications made in connection with, or in contemplation of, such proceedings and for the purposes of those proceedings.

(14) The jurisdiction conferred by this regulation shall be exercisable, in the case of a participating security constituted under the law of England and Wales, or Northern Ireland, by the High Court; and in the case of a participating security constituted under the law of Scotland by the Court of Session.

## PART 5 MISCELLANEOUS AND SUPPLEMENTAL

### *Miscellaneous*

#### Construction of references to transfers etc.

37. References in any enactment or rule of law to a proper instrument of transfer or to a transfer with respect to securities, or any expression having like meaning, shall be taken to include a reference to an Operator-instruction to a participating issuer to register a transfer of title on the relevant issuer register of securities in accordance with the Operator-instruction.

#### Certain formalities and requirements not to apply

38.—(1) Any requirements in an enactment or rule of law which apply in respect of the transfer of securities otherwise than by means of a relevant system shall not prevent—

- (a) an Operator from registering a transfer of title to uncertificated units of a security upon settlement of a transfer of such units in accordance with his rules; or
- (b) an Operator-instruction from requiring a participating issuer to register a transfer of title to uncertificated units of a security.

(2) Subject to regulation 32(7), notwithstanding any enactment, instrument or rule of law, a participating issuer shall not issue a certificate in relation to any uncertificated units of a participating security.

(3) A document issued by or on behalf of a participating issuer purportedly evidencing title to an uncertificated unit of a participating security shall not be evidence of title to the unit of the security; and in particular—

- (a) section 768 of the 2006 Act shall not apply to any document issued with respect to uncertificated shares; . . .

(4) Any requirement in or under any enactment to endorse any statement or information on a certificate evidencing title to a unit of a security—

- (a) shall not prohibit the conversion into, or issue of, units of the security in uncertificated form; and
- (b) in relation to uncertificated units of the security, shall be taken to be a requirement for the relevant participating issuer to provide the holder of the units with the statement or information on request by him.

(5) Sections 53(1)(c) and 136 of the Law of Property Act 1925 (which impose requirements for certain dispositions and assignments to be in writing) shall not apply (if they would otherwise do so) to—

- (a) any transfer of title to uncertificated units of a security by means of a relevant system; and
- (b) any disposition or assignment of an interest in uncertificated units of a security title to which is held by a relevant nominee.

(6) In paragraph (5) 'relevant nominee' means a subsidiary undertaking of an Operator designated by him as a relevant nominee in accordance with such rules and practices as are mentioned in paragraph 25(f) of Schedule 1.

(7) Section 772 of the 2006 Act shall not apply in relation to the transfer of uncertificated units of a security by means of a relevant system.

#### Fees charged by Operators

39.—(1) Subject to paragraph (2), nothing in these Regulations prevents an Operator from charging a fee for carrying out any function under Part 3 of these Regulations.

(2) An Operator may not charge a fee to a participating issuer for maintaining or keeping and entering up an Operator register of securities.

#### Trusts, trustees and personal representatives etc.

40.—(1) Unless expressly prohibited from transferring units of a security by means of any computer-based system, a trustee or personal representative shall not be chargeable with a breach of trust or, as the case may be, with default in administering the estate by reason only of the fact that—

- (a) for the purpose of acquiring units of a security which he has the power to acquire in connection with the trust or estate, he has paid for the units under arrangements which provide for them to be transferred to him from a system-member but not to be so transferred until after the payment of the price;
- (b) for the purpose of disposing of units of a security which he has power to dispose of in connection with the trust or estate, he has transferred the units to a system-member under arrangements which provide that the price is not to be paid to him until after the transfer is made; or
- (c) for the purpose of holding units of a security belonging to the trust or estate in uncertificated form and for transferring title to them by means of a relevant system, he has become a system-member.

(2) Notwithstanding sections 750 and 751 of the 2006 Act, a trustee of a trust deed for securing an issue of debentures shall not be chargeable with a breach of trust by reason only of the fact that he has assented to an amendment of the trust deed only for the purposes of—

- (a) allowing the holding of debentures in uncertificated form;
- (b) allowing the exercise of rights attaching to the debentures by means of a relevant system; or
- (c) allowing the transfer of title to the debentures by means of a relevant system, provided that he has given or caused to be given notice of the amendment in accordance with the trust deed not less than 30 days prior to its becoming effective to all persons registered as holding the debentures on a date not more than 21 days before the dispatch of the notice.

(3) Without prejudice to regulation 23(3) or section 126 of the 2006 Act, the Operator shall not be bound by or compelled to recognise any express, implied or constructive trust or other interest in respect of uncertificated units of a security, even if he has actual or constructive notice of the said trust or interest.

(4) Paragraph (3) shall not prevent, in the case of a participating issuer constituted under the law of Scotland, an Operator giving notice of a trust to the participating issuer on behalf of a system-member.

#### Notices of meetings etc.

41.—(1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes such persons may cast, the participating issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Changes to entries on the relevant register of securities after the time specified by virtue of paragraph (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting, notwithstanding any provisions in any enactment, articles of association or other instrument to the contrary.

(3) For the purposes of—

- (a) serving notices of meetings, whether under section 310(1) of the 2006 Act, any other enactment, a provision in the articles of association or any other instrument; or
- (b) sending copies of the documents required to be sent to any person by section 423(1) of the 2006 Act,

a participating issuer may determine that persons entitled to receive such notices, or copies of such documents (as the case may be), are those persons entered on the relevant register of securities at the close of business on a day determined by him.

(4) The day determined by a participating issuer under paragraph (3) may not be more than 21 days before the day that the notices of the meeting, or the copies of the documents as the case may be, are sent.

(5) This regulation is without prejudice to the protection afforded—

- (a) by paragraph 5(3) of Schedule 4, to a participating issuer which is a company; and
- (b) by paragraph 13(4) or 15(3) of Schedule 4, to a participating issuer.

(6) In calculating the period mentioned in paragraph (1) above no account shall be taken of any part of a day that is not a working day.

### Notices to minority shareholders

42.–(1) Paragraphs (2) to (4) shall apply in relation to any uncertificated units of a security (other than a wholly dematerialised security) to which a notice given under section 979 of the 2006 Act relates, in place of the provisions of section 981(7) of that Act.

(2) Immediately on receipt of a copy sent under section 981(6)(a) of the 2006 Act of a notice given under section 979 relating to uncertificated units of a participating security (whether or not it also relates to certificated units of the security), a company which is a participating issuer shall—

- (a) by issuer-instruction—
  - (i) inform the Operator that the copy notice has been received, and
  - (ii) identify the holding of uncertificated units of the participating security to which the notice relates; and
- (b) enter the name of the relevant system-member on an issuer register of securities as the holder of those uncertificated units.

(3) On receipt of an issuer-instruction under paragraph (2)(a), the Operator shall delete any entry in an Operator register of securities which shows the relevant system-member as the holder of the uncertificated units of the participating security to which the notice relates.

(4) On registration on an issuer register of securities (in accordance with paragraph (2)(b)) of the relevant system-member as the holder of the uncertificated units of the participating security to which the notice relates, the participating issuer—

- (a) shall be under the same obligation to enter the offeror on that register as the holder of those units, in place of the relevant system-member, as it would be if it had received an Operator-instruction under regulation 28(2) requiring it to register a transfer of title to those units in that manner; and regulation 28(9) shall have effect accordingly; and
- (b) where the terms of issue of the security in question provide for a certificate to be issued, shall issue to the offeror a certificate in respect of those units.

(5) Subsection (1) of section 776 of the 2006 Act shall apply in relation to the issue of a certificate by a participating issuer pursuant to paragraph (4)(b) as it applies in relation to the completion and having ready for delivery by a company of share certificates, debentures or certificates of debenture stock; and in that subsection as it so applies the reference to the date on which a transfer is lodged with the company shall be a reference to the date on which the participating issuer receives the copy notice sent under section 981(6)(a) of the 2006 Act.

(6) Such sanctions as apply to a company and its officers in the event of a default in complying with subsection (1) of section 776 of the 2006 Act shall apply to a participating issuer and his officers in the event of a default in complying with paragraph (4)(b) in accordance with the requirements laid down in paragraph (5).

(7) Paragraphs (8) to (11) shall apply in relation to any units of a wholly dematerialised security to which a notice given under section 979 of the 2006 Act relates, in place of the provisions of section 981(7) of that Act.

(8) Immediately on receipt of a copy sent under section 981(6)(a) of the 2006 Act of a notice given under section 979 relating to units of a wholly dematerialised security, a company which is a participating issuer shall—

- (a) by issuer-instruction—
  - (i) inform the Operator that the copy notice has been received; and
  - (ii) identify the holding of units of the wholly dematerialised security to which the notice relates; and
- (b) by a further issuer-instruction, inform the Operator of the name of the transferee.

(9) On receipt of an issuer-instruction under paragraph (8)(a), the Operator shall delete any entry in an Operator register of securities which shows the relevant system-member as the holder of the units to which the notice relates.

(10) On receipt of an issuer-instruction under paragraph (8)(b), the Operator shall enter the transferee on the relevant Operator register of securities as the holder of the units to which the notice relates, in place of the relevant system-member.

(11) Where an Operator deletes an entry in an Operator register of securities pursuant to paragraph (9)—

- (a) the units of the wholly dematerialised security to which the notice relates shall notwithstanding that deletion, continue to be regarded as uncertificated units for the purposes of these Regulations until the Operator enters the transferee on the relevant Operator register of securities as the holder of those units;
- (b) subject to—
  - (i) sub-paragraph (c) or (d), as the case may be; and
  - (ii) any enactment or rule of law, the relevant system-member shall, notwithstanding that deletion, retain title to the units of the wholly dematerialised security to which the notice relates until the transferee is entered on the relevant Operator register of securities pursuant to paragraph (10);
- (c) in the case of a security constituted under the law of England and Wales or Northern Ireland, the transferee shall acquire an equitable interest in the units of the wholly dematerialised security to which the notice relates;
- (d) in the case of a security constituted under the law of Scotland, the relevant system-member shall hold the units of the wholly dematerialised security to which the notice relates on trust for the benefit of the transferee.

(12) Such sanctions as apply to a company and its officers in the event of a default in complying with subsections (1) and (2) of section 771 of the 2006 Act shall apply—

- (a) to a participating issuer and his officers in the event of a default in complying with paragraph (2)(b) or (8); and
- (b) to an Operator and his officers in the event of a default in complying with paragraph (3), (9) or (10).

(13) For the purposes of this regulation—

- (a) 'offeror' has the meaning given in section 991(1) of the 2006 Act;
- (b) 'relevant system-member' means the system-member identified in the copy notice sent under section 981(6)(a) of

the 2006 Act as the holder of the uncertificated units, or as the case may be the units of the wholly dematerialised security, to which the notice relates; and

- (c) 'transferee' means the offeror or, if the offeror is not a system-member, the system-member in whose name the units of the wholly dematerialised security to which the notice given under section 979 of the 2006 Act relates are to be registered on the Operator register of securities.

(14) The reference in section 987(8) of the 2006 Act to section 981(7) shall be taken to include a reference to the provisions of paragraphs (4), (8) and (9).

#### Irrevocable powers of attorney

43.—(1) This regulation applies where the terms of an offer for all or any uncertificated units of a participating security provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer.

(2) An acceptance communicated by properly authenticated dematerialised instruction in respect of uncertificated units of a security shall constitute a grant of an irrevocable power of attorney by the system-member accepting the offer in favour of the offeror, or person nominated by the offeror, in the terms set out in the offer.

(3) Where the contract constituted by such offer and acceptance as are referred to in paragraphs (1) and (2) respectively is governed by the law of England and Wales, section 4 of the Powers of Attorney Act 1971 shall apply to a power of attorney constituted in accordance with this regulation.

(4) A declaration in writing by the offeror 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, rule of law, or instrument to produce a copy of the power of attorney, or such a copy certified in a particular manner, shall be satisfied by the production of the declaration or a copy of the declaration certified in that manner.

(5) In the application of this regulation to an offer, acceptance or contract governed by the law of Scotland, any reference to an irrevocable power of attorney shall mean and include reference to an irrevocable mandate, however expressed.

#### Actual notice

44. For the purpose of determining under these Regulations whether a person has actual notice of a fact, matter or thing that person shall not under any circumstances be taken to be concerned to establish whether or not it exists or has occurred.

#### Participating securities issued in uncertificated form

45. Nothing in these Regulations shall require—

- (a) a participating issuer or its officers to maintain a register which records how many units of a wholly dematerialised security are held in certificated form; or  
(b) an Operator or participating issuer, or their officers, to take any action to change a unit of a wholly dematerialised security from uncertificated form to certificated form or vice versa.

### **Defaults and contraventions**

#### Breaches of statutory duty

46.—(1) A default in complying with, or a contravention of, regulation 16(8), 19(2), 25(1), 26, 28(5) or (6), 32(5), 33(5), or 42(2) or (8) shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise adversely affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) Paragraph (1) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from paragraph (1).

#### Liability of officers for contraventions

47.—(1) In regulation 16(7), 20(7), 21(5), 22(5), 28(9), 32(9) or (10), 33(11) or 42(6) or (12) an officer of a participating issuer shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

(2) In regulation 20(7), 21(4), 22(4), 27(9), 32(9), 33(11) or 42(12) an officer of an Operator shall be in default in complying with, or in contravention of, the provision mentioned in that regulation if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

#### Exemption from liability

48. Regulations 21(5), 28(9), 32(9) and (10), and 33(11) shall not apply to any of the following or its officers—

- (a) the Crown;  
(b) any person acting on behalf of the Crown;  
(c) the Bank of England;  
(d) the Registrar of Government Stock;  
(e) any previous Registrar of Government Stock; or  
(f) in respect of a security which immediately before it became a participating security was transferable by exempt transfer within the meaning of the Stock Transfer Act 1982, a participating issuer.

**Northern Ireland**

**Application to Northern Ireland**

- 49.—(1) In their application to Northern Ireland, these Regulations shall have effect with the following modifications.
- (2) In regulation 38(5)—
- (a) for the reference to section 53(1)(c) of the Law of Property Act 1925 there shall be substituted a reference to section 6 of the Statute of Frauds (Ireland) 1695; and
  - (b) for the reference to section 136 of the Law of Property Act 1925 there shall be substituted a reference to section 87 of the Judicature (Northern Ireland) Act 1978.
- (3) In regulation 43(3) for the reference to section 4 of the Powers of Attorney Act 1971 there shall be substituted a reference to section 3 of the Powers of Attorney Act (Northern Ireland) 1971.
- (4) In Schedule 4—
- (c) in paragraph 6(1), for the words from 'in the case of a company registered in England and Wales' to the end there shall be substituted 'elsewhere than in Northern Ireland';
  - (e) in paragraph 16(2), for subparagraphs (a) and (b) there shall be substituted 'in Northern Ireland'.

**SCHEDULE 1**

**REQUIREMENTS FOR OPERATION OF A RELEVANT SYSTEM**

[Schedule introduced by reg. 5.]

**System security**

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

to hold (whether directly or indirectly) and transfer title to participating securities by means of the Operator's relevant system; and

'exchange' means a body or association—

- (a) which is a recognised investment exchange within section 285(1)(a) of the 2000 Act;
- (b) which is authorised under that Act to provide a facility for the matching and execution of transactions in securities in the United Kingdom; or
- (c) which provides services outside the United Kingdom which are similar in nature to those provided by any such body or association, and which is regulated or supervised in the provision of those services by a regulatory body or agency of government.

[In sch. 1, para. 5(5), the Queen's Printer's copy has "; and" instead of a full point at the end of sub-para. (c).]

### **System capabilities**

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

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

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

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

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

15. A relevant system must—

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

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

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

18. A relevant system must enable system-members—

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

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

### **Operating procedures**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ***Rules and practices***

25. An Operator's rules and practices—

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

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

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

## SCHEDULE 4

### KEEPING OF REGISTERS AND RECORDS OF PARTICIPATING SECURITIES

[Schedule introduced by reg. 23(4).]

#### *Interpretation*

1. In this Schedule—

'uncertificated shares' means shares title to which may be transferred by means of a relevant system; and  
'certificated shares' means shares which are not uncertificated shares; and  
'uncertificated stock' means stock title to which may be transferred by means of a relevant system; and 'certificated stock' means stock which is not uncertificated stock.

#### *Registers of members*

2.—(1) Every participating issuer which is a company shall enter in its issuer register of members—

- (a) the names and addresses of the members;
- (b) the date on which each person was registered as a member; and
- (c) the date at which any person ceased to be a member.

(2) With the names and addresses of the members there shall be entered a statement—

- (a) of the certificated shares held by each member, distinguishing each share by its number (so long as the share has a number) and, where the company has more than one class of issued shares, by its class; and
- (b) of the amount paid or agreed to be considered as paid on the certificated shares of each member.

(3) Where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the issuer register of members shall show the amount and class of the certificated stock held by each member, instead of the amount of shares and the particulars relating to shares specified in sub-paragraph (2).

(4) Subject to sub-paragraph (5), section 113 of the 2006 Act shall not apply to a company which is a participating issuer, other than as respects any overseas branch register.

(5) Section 113(7) and (8) of the 2006 Act shall apply to a participating issuer which is a company which makes default in complying with this paragraph and every officer of it who is in default as if such a default were a default in complying with section 113 of the Act.

(6) An entry relating to a former member of the company may be removed from the issuer register of members after the expiration of 10 years beginning with the day on which he ceased to be a member.

(7) For the purposes of this paragraph references to an issuer register of members shall not be taken to include an overseas branch register.

3. Section 123 of the 2006 Act shall apply to a participating issuer which is a private company limited by shares as if references therein to the company's register of members were references to its issuer register of members.

4.—(1) In relation to every participating issuer which is a company, an Operator of a relevant system shall, in respect of any class of shares which is a participating security for the purposes of that system, enter on an Operator register of members—

- (a) the names and addresses of the members who hold uncertificated shares in the company;
- (b) with those names and addresses a statement of the uncertificated shares held by each member and, where the company has more than one class of issued uncertificated shares, distinguishing each share by its class; and
- (c) where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the Operator register of members shall show the amount and class of uncertificated stock held by each member, instead of the amount of shares and the particulars relating to shares specified in sub-paragraph (b).

(2) An entry relating to a member of a company who has ceased to hold any uncertificated shares in the company may be removed from the Operator register of members after the expiration of 10 years beginning with the day on which he ceased to hold any such shares.

(3) For the purposes of this paragraph references to an Operator register of members shall not be taken to include an overseas branch register.

(4) Members of a company who hold shares in uncertificated form may not be entered as holders of those shares on an overseas branch register.

#### *Records of uncertificated shares*

5.—(1) Every participating issuer which is a company shall enter in its record of uncertificated shares—

- (a) the same particulars, so far as practicable, as are required by paragraph 4(1) to be entered in the Operator register of members; and
- (b) a statement of the amount paid or agreed to be considered as paid on the uncertificated shares of each member.

(2) A company to which this paragraph applies shall, unless it is impracticable to do so by virtue of circumstances beyond its control, ensure that the record of uncertificated shares is regularly reconciled with the Operator register of members.

(3) Provided that it has complied with sub-paragraph (2), a company shall not be liable in respect of any act or thing done or omitted to be done by or on behalf of the company in reliance upon the assumption that the particulars entered in any record of uncertificated shares which the company is required to keep by these Regulations accord with the particulars entered in its

Operator register of members.

(4) Section 113(7) and (8) of the 2006 Act shall apply to a participating issuer which is a company which makes default in complying with this paragraph and every officer of it who is in default as if such a default were a default in complying with section 113 of that Act.

***Location of issuer register of members and records of uncertificated shares, and ancillary matters***

6.–(1) Subject to sub-paragraph (2), a company's issuer register of members and its record of uncertificated shares shall be kept available for inspection at its registered office or at a place specified in regulations made under section 1136 of the 2006 Act but the issuer register of members must not be kept available for inspection, in the case of a company registered in England and Wales, at any place elsewhere than in England and Wales or, in the case of a company registered in Scotland, at any place elsewhere than in Scotland.

(2) A company's issuer register of members and its record of uncertificated shares shall at all times be kept available for inspection at the same place.

(3) Subject as follows, every participating issuer which is a company shall send notice to the registrar of companies of the place where its issuer register of members and its record of uncertificated shares are kept available for inspection, and of any change in that place, provided that any notice sent by such a company in accordance with section 114(2) of the 2006 Act, and which has effect on the coming into force of these Regulations, shall be treated as being a notice sent in compliance with this sub-paragraph.

(4) The notice need not be sent if the issuer register of members and the record of uncertificated shares have at all times since they came into existence been kept available for inspection at the company's registered office.

(5) Subject to sub-paragraph (6), section 114 of the 2006 Act shall not apply to a company which is a participating issuer.

(6) Section 114(6) of the 2006 Act shall apply to a participating issuer which is a company which makes default in complying with sub-paragraph (2) at any time, or makes default for 14 days in complying with sub-paragraph (3), and every officer of it who is in default as if such a default were a default in complying with section 114(2) of that Act.

7.–(1) Every participating issuer which is a company having more than 50 members shall, unless the particulars required by paragraph 2(1) to be entered in the issuer register of members are kept in such a form as to constitute in themselves an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the issuer register of members or the Operator register of members, make any necessary alteration in the index.

(2) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the issuer register of members and, in the case of a member who holds uncertificated shares in the company, in the record of uncertificated shares, to be readily found.

(3) The index shall be at all times kept available for inspection at the same place as the issuer register of members and the record of uncertificated shares.

(4) Subject to sub-paragraph (5), section 115 of the 2006 Act shall not apply to a company which is a participating issuer.

(5) Section 115(5) and (6) of the 2006 Act shall apply to a participating issuer which is a company which makes default in complying with this paragraph and every officer of it who is in default as if such a default were a default in complying with section 354 of that Act.

8. Section 122 of the 2006 Act shall apply to a company which is a participating issuer as if references in that section to the company's register of members were references instead to its issuer register of members.

9. Sections 115 to 118 of the 2006 Act shall apply to a company which is a participating issuer as if—

(a) references in those provisions to the company's register of members were references to its issuer register of members and its record of uncertificated shares; and

(b) references in section 116 to the company's index of members' names were references to the index required to be kept by paragraph 7,

and references to the 2006 Act in the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 and the Companies (Fees for Inspection and Copying of Company Records) Regulations 2008 shall be construed accordingly.

10. Where under paragraph 6(1), a company's issuer register of members and record of uncertificated shares is kept available for inspection at the office of some person other than the company, and by reason of any default of his the company fails to comply with—

paragraph 6(2) (record of uncertificated shares to be kept available for inspection with issuer register of members);

paragraph 6(3) (notice to registrar);

paragraph 7(3) (index to be kept available for inspection with issuer register of members and record of uncertificated shares);

or

section 116 of the 2006 Act (rights to inspect and require copies),

or with any requirement of the 2006 Act as to the production of the register of members or any part thereof, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the court under section 118(3) of the 2006 Act extends to the making of orders against that other and his officers and servants.

11. Where, under section 125 of the 2006 Act, the court orders rectification of the register of members of a company which is a participating issuer, it shall not order the payment of any damages under subsection (2) of that section to the extent that such rectification relates to the company's Operator register of members and does not arise from an act or omission of the Operator on the instructions of that company or from fraud or other wilful default, or negligence, on the part of that

company. . . .

### ***Registers of corporate securities***

14.–(1) Where an Operator of a relevant system is required to maintain an Operator register of corporate securities, that register shall comprise the following particulars which the Operator shall enter on it, namely—

- (a) the names and addresses of the persons holding units of the relevant participating security in uncertificated form; and
  - (b) how many units of that security each such person holds in that form.
- (2) Sections 743 and 748 of the 2006 Act shall not apply to any part of an Operator register of corporate securities.

### ***Records of uncertificated corporate securities***

15.–(1) A participating issuer shall enter in a record of uncertificated corporate securities the same particulars, so far as practicable, as are required by paragraph 14(1) to be entered in the relevant Operator register of corporate securities.

(2) A participating issuer to which this paragraph applies shall, unless it is impracticable to do so by virtue of circumstances beyond its control, ensure that the record of uncertificated corporate securities is regularly reconciled with the Operator register of corporate securities.

(3) Provided that it has complied with sub-paragraph (2), a participating issuer shall not be liable in respect of any act or thing done or omitted to be done by it or on its behalf in reliance upon the assumption that the particulars entered in any record of uncertificated corporate securities which the participating issuer is required to keep by these Regulations accord with particulars entered in any Operator register of corporate securities relating to it.

(4) In the case of a participating issuer which is a company, the record of uncertificated corporate securities shall be kept at the same place as the part of any register of debenture holders maintained by the company would be required to be kept.

(5) Sections 744(1) to (4) and 746 of the 2006 Act shall apply in relation to a record of uncertificated corporate securities maintained by a participating issuer which is a company, so far as that record relates to debentures, as they apply or would apply to any register of debenture holders maintained by the company; and references to the 2006 Act in the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007 and the Companies (Fees for Inspection and Copying of Company Records) Regulations 2008 shall be construed accordingly.

(6) Any provision of an enactment or instrument which requires a register of persons holding securities (other than shares or public sector securities) to be open to inspection shall also apply to the record of uncertificated corporate securities relating to any units of those securities which are participating securities.

### ***Miscellaneous***

16.–(2) Every register which an Operator is required to maintain by virtue of these Regulations (other than an Operator register of eligible debt securities) which relates to securities issued by a company shall be deemed to be kept—

- (a) in the case of a company registered in England and Wales, in England and Wales; or
- (b) in the case of a company registered in Scotland, in Scotland.

17.–(1) An entry in a register of securities or in a record of securities relating to a person who no longer holds the securities which are the subject of the entry may be removed from the register or the record (as the case may be) after the expiration of 20 years beginning with the day on which the person ceased to hold any of those securities.

(2) Sub-paragraph (1) does not apply in respect of an entry in a register of members.

18. Sections 1134, 1135 and 1138 of the 2006 Act shall apply—

- (a) to any register, record or index required to be kept by any person in accordance with these Regulations as they apply to any register, record or index required by the Companies Acts to be kept by a company; and
- (b) to an Operator and its officers as they apply to a company and its officers.

19.–(1) Such sanctions as apply to a company and its officers in the event of a default in complying with section 113 of the 2006 Act shall apply to an Operator and his officers in the event of a default in complying with paragraph 4, 12 or 14. . . .

(3) Such sanctions as apply in the event of a default in complying with the requirement to maintain a register imposed by the relevant enactment or instrument referred to in Regulation 22(1) shall apply to—

- (a) a participating issuer other than a company; and
- (b) a participating issuer which is a company, in relation to so much of the record of uncertificated corporate securities as does not relate to debentures,

and his officers in the event of a default in complying with paragraph 15.

(4) Sub-paragraphs (2) and (3) shall not apply to any of the following or its officers—

- (a) the Crown;
- (b) any person acting on behalf of the Crown;
- (c) the Bank of England;
- (d) the Registrar of Government Stock;
- (e) any previous Registrar of Government Stock; or
- (f) in respect of a security which immediately before it became a participating security was transferable by exempt transfer within the meaning of the Stock Transfer Act 1982, a participating issuer.

20. An officer of a participating issuer shall be in default in complying with, or in contravention of paragraph 2, 5, 6, 7, 13 or 15, or section 1138 of the 2006 Act as applied by paragraph 18, if, and only if, he knowingly and wilfully authorised or permitted

the default or contravention.

21. An officer of an Operator shall be in default in complying with, or in contravention of, the provisions referred to in paragraph 19(1) of this Schedule, or of section 1138 of the 2006 Act as applied by paragraph 18, if, and only if, he knowingly and wilfully authorised or permitted the default or contravention.

## NOTES ON TEXT

**Reg. 3(1):** 2003/1633, reg. 3; 2007/124, reg. 2; 2009/1889, reg. 2(1) and (2); 2013/472, sch. 2, para. 73(a); 2013/632, reg. 2(1) and (2); 2019/679, regs 4(1) and (2). Definitions of, and references to, terms not used in provisions printed here omitted.

**Reg. 3(3):** omitted (concerns public sector securities).

**Reg. 3(4)–(6):** 2003/1633, reg. 4(2).

**Reg. 4:** revoked by 2019/679, regs 4(1) and (3).

**Reg. 5:** 2019/679, regs 4(1) and (4).

**Reg. 6:** 2019/679, regs 4(1) and (5).

**Reg. 7:** revoked by 2019/679, regs 4(1) and (6).

**Reg. 11:** revoked by 2013/632, reg. 2(1) and (10). **Regs 11A and 11B:** omitted (concern approval and supervision of the Operator).

**Regs 12 and 13:** revoked by 2019/679, regs 4(1), (7) and (8).

**Reg. 16:** 2007/2194, sch. 4, para. 97; 2009/1889, reg. 2(1) and (3).

**Reg. 18:** 2009/1889, reg. 2(1) and (4).

**Reg. 19:** 2003/1633, reg. 5.

**Reg. 20:** 2009/1889, reg. 2(1) and (5).

**Reg. 21:** omitted (concerns public sector securities).

**Reg. 22:** 2003/1633, regs 6(3) and 9; 2009/1889, reg. 2(1) and (7); omitted words concern public sector securities.

**Reg. 23:** 2009/1889, reg. 2(1), (8) and (9).

**Reg. 24(4):** 2009/1889, reg. 2(1) and (10).

**Reg. 24(5):** omitted (concerns public sector securities).

**Reg. 24(8):** 2003/1633, reg. 10.

**Reg. 26:** 2009/1889, reg. 2(1) and (11).

**Reg. 27:** 2003/1633, reg. 11; 2009/1889, reg. 2(1) and (12).

**Reg. 28:** 2009/1889, reg. 2(1) and (13); 2012/917, sch. 2, para. 3(a).

**Reg. 32:** 2009/1889, reg. 2(1) and (14).

**Reg. 33:** 2009/1889, reg. 2(1) and (15).

**Reg. 38(3):** omitted (concerns public sector securities).

**Reg. 38(7):** 2009/1889, reg. 2(1) and (16)(b).

**Reg. 40:** 2009/1889, reg. 2(1) and (17).

**Reg. 41:** 2009/1889, reg. 2(1) and (18).

**Reg. 42:** 2007/1093, sch. 3, para. 9; 2009/1889, reg. 2(1) and (19).

**Reg. 49:** 2009/1889, reg. 2(1) and (20).

**Regs 50, 51 and 52:** omitted (transitory provisions, amendments and revocations).

**Sch 1 heading:** 2019/679, regs 4(1) and (9)(a).

**Sch. 1, paras 1 to 4:** revoked by 2019/679, regs 4(1) and (9)(b).

**Sch. 1, para. 5:** SI 2013/504, reg. 36; 2019/679, regs 4(1) and (9)(c).

**Sch. 1, paras 6 to 8:** revoked by 2019/679, regs 4(1) and (9)(d).

**Sch. 1, paras 10 and 11:** revoked by 2019/679, regs 4(1) and (9)(e).

**Sch. 1, para. 12:** 2003/1633, reg. 12.

**Sch. 1, paras 23 and 24:** revoked by 2019/679, regs 4(1) and (9)(f).

**Sch. 1, para. 25:** 2003/1633, reg. 12; 2019/679, regs 4(1) and (9)(g).

**Sch. 1, paras 27 and 28:** revoked by 2019/679, regs 4(1) and (9)(h).

**Sch. 2:** revoked by 2019/679, regs 4(1) and (10).

**Sch. 3:** omitted.

**Sch. 4, para. 2:** 2009/1889, reg. 2(1) and (21)(a), (b) and (c).

**Sch. 4, para. 3:** 2009/1889, reg. 2(1) and (21)(d) and (e).

**Sch. 4, para. 5:** 2009/1889, reg. 2(1) and (21)(f).

**Sch. 4, para. 6:** 2009/1889, reg. 2(1) and (21)(g) to (k).

**Sch. 4, para. 7:** 2009/1889, reg. 2(1) and (21)(l), (m) and (n).

**Sch. 4, para. 8:** 2009/1889, reg. 2(1) and (21)(o).

**Sch. 4, para. 9:** 2009/1889, reg. 2(1) and (21)(p), (q) and (r).

**Sch. 4, para. 10:** 2009/1889, reg. 2(1) and (21)(s).

**Sch. 4, para. 11:** 2009/1889, reg. 2(1) and (21)(t).

**Sch. 4, paras 12 and 13:** omitted (concern public sector securities).

- Sch. 4, para. 14:** 2009/1889, reg. 2(1) and (21)(u).  
**Sch. 4, para. 15:** 2009/1889, reg. 2(1) and (21)(v).  
**Sch. 4, para. 16:** 2003/1633, reg. 13; 2009/1889, reg. 2(1) and (21)(w) and (x).  
**Sch. 4, para. 18:** 2009/1889, reg. 2(1) and (21)(y).  
**Sch. 4, para. 19(1):** 2009/1889, reg. 2(1) and (21)(z).  
**Sch. 4, para. 19(2):** omitted (concerns local authority securities).  
**Sch. 4, para. 19(2A):** inserted by 2003/1633, reg. 8(4)(c); revoked by 2004/2044, art. 6(3).  
**Sch. 4, para. 19(4):** 2004/1662, art. 29(1) and (6)(c).  
**Sch. 4, para. 20:** 2009/1889, reg. 2(1) and (21)(aa).  
**Sch. 4, para. 21:** 2009/1889, reg. 2(1) and (21)(bb).  
**Sch. 5:** revoked by 2009/1889, reg. 2(1) and (22).  
**Sch. 6 and sch. 7:** omitted (transitory provisions; minor and consequential amendments).