

Draft Regulations laid before Parliament under section 207(9) of the Companies Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.XXXX

COMPANIES

The Uncertificated Securities (Amendment) Regulations 2006

Made - - - - -
Coming into force - - - - - *1st November 2007*

A draft of these Regulations has been approved by resolution of each House of Parliament pursuant to section 207(9) of the Companies Act 1989(1);

The Treasury make the following Regulations in exercise of the powers conferred by section 207 of the Companies Act 1989 and now vested in them(2):

Citation and commencement

1. These Regulations may be cited as the Uncertificated Securities (Amendment) Regulations 2006 and come into force on 1st November 2007.

Amendment of the Uncertificated Securities Regulations 2001

2. In regulation 3, in the definition of “settlement”, after ““settlement,”” insert “except in paragraph 28 of Schedule 1,”.

3. After paragraph 27 of Schedule 1 to the Uncertificated Securities Regulations 2001(3) insert—

“Access to central counterparty, clearing and settlement facilities

28.—(1) The Operator must make transparent and non-discriminatory rules, based on objective criteria, governing access to his settlement facilities.

(2) The rules under sub-paragraph (1) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(1) 1989 c.40. Section 207 was amended by the Bank of England Act 1998 (c.11), section 35, and S.I. 2001/3649. It is prospectively repealed by the Companies Act 2006 (c. 46) and re-enacted at Chapter 2 of Part 21 of that Act.
(2) Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).
(3) S.I. 2001/3755.

(3) The Operator may refuse access to those facilities on legitimate commercial grounds.

(4) In this paragraph—

“banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions⁽⁴⁾;

“branch” in relation to an investment firm has the meaning given in Article 4.1.26 of the markets in financial instruments directive and in relation to a credit institution has the meaning given in Article 4.3 of the banking consolidation directive;

“competent authority”, in relation to an investment firm or credit institution, means the competent authority in relation to that firm or institution for the purposes of the markets in financial instruments directive;

“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive, or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;

“EEA State” has the meaning given by paragraph 8 of Schedule 3 to the 2000 Act⁽⁵⁾;

“financial instrument” has the meaning given by Article 4.1.17 of the markets in financial instruments directive;

“investment firm” has the meaning given by section 424A of the 2000 Act⁽⁶⁾;

“markets in financial instruments directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments⁽⁷⁾;

“regulated activity” has the meaning given by section 22 of the 2000 Act;

“settlement” has the same meaning as in the markets in financial instruments directive;

“UK firm” means an investment firm or credit institution which has a permission given by the Authority under Part 4 of the 2000 Act (or having effect as if so given) to carry on one or more regulated activities.”.

““banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions⁽⁴⁾;

“branch” in relation to an investment firm has the meaning given in Article 4.1.26 of the markets in financial instruments directive and in relation to a credit institution has the meaning given in Article 4.3 of the banking consolidation directive;

“competent authority”, in relation to an investment firm or credit institution, means the competent authority in relation to that firm or institution for the purposes of the markets in financial instruments directive;

“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive, or

(4) OJ No L 177, 30.6.2006, p.1.

(5) [2000 c. 8](#).

(6) Section 424A was inserted by [S.I. 2006/2975](#).

(7) OJ No L 145, 30.4.2004, p.1.

(4) OJ No L 177, 30.6.2006, p.1.

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;

“EEA State” has the meaning given by paragraph 8 of Schedule 3 to the 2000 Act⁽⁵⁾;

“financial instrument” has the meaning given by Article 4.1.17 of the markets in financial instruments directive;

“investment firm” has the meaning given by section 424A of the 2000 Act⁽⁶⁾;

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“UK firm” means an investment firm or credit institution which has a permission given by the Authority under Part 4 of the 2000 Act (or having effect as if so given) to carry on one or more regulated activities.”.

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty’s Treasury

⁽⁵⁾ [2000 c. 8](#).

⁽⁶⁾ Section 424A was inserted by [S.I. 2006/2975](#).

⁽⁷⁾ OJ No L 145, 30.4.2004, p.1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“the Directive”). The Directive is also implemented by other statutory instruments, including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2006 (S.I. 2006/...), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/...) and the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 (S.I. 2006/...), and by the Financial Services Authority using powers under the Financial Services and Markets Act [2000 \(c. 8\)](#).

The Regulations amend Schedule 1 to the Uncertificated Securities Regulations 2001 ([S.I. 2001/3755](#)) which sets out the requirements for approval of a person as an operator of a computer-based system which enables title to units of a security to be evidenced and transferred without a written instrument. They add a new requirement, transposing in part Article 34 of the Directive, for any person approved as an operator to maintain transparent and non-discriminatory rules governing access to any settlement facilities he provides. The rules must grant investment firms (within the meaning of the Directive) and credit institutions (as defined in Directive [2006/48/EC](#) (OJ No L 177, 30.6.2006, p.1)) authorised in other EEA States access to those settlement facilities on the same terms as access is granted to firms and institutions established in the United Kingdom.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing the Directive on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.