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STATUTORY INSTRUMENTS

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**1992 No. 225**

**The Uncertificated Securities Regulations 1992**

**PART VIII**

**FURTHER PROVISIONS WITH RESPECT TO THE  
PROCEDURES, RECORDS AND REGISTERS**

**THE PROCEDURES**

**No notice of trusts**

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

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

**Priority between communications**

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

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

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

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

Where paragraph (1) does not apply:

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

### **Powers of attorney (England and Wales and Northern Ireland)**

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

(2) Where this regulation applies, an acceptance communicated by a commercial controller to which regulation 13(5) applies shall have the effect, without more, of creating an irrevocable power of attorney given by the person accepting the offer to which section 4 of the Powers of Attorney Act 1971<sup>(1)</sup> applies in favour of the offeror or a person nominated by the offeror in the terms set out in the terms of the offer, unless the offeror or the person nominated by him had, at the time of its receipt, actual notice that the purported acceptance was unauthorised. This paragraph is without prejudice to the liability of a controller for the making of the communication without authority, but it applies whether or not the person accepting the offer is identified in the communication, provided that the identity of that person is, within such period as the recipient of the communication may reasonably require, notified to the recipient by the controller concerned.

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

## **RECORDS AND REGISTERS**

### **Use of codes in records and messages &c**

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

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

### **Maintenance of records**

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

### **Rectification of errors in records and registers**

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

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(1) 1971 c. 27.

### **Rectification of record or register by the court**

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

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

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

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

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

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

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

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

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

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