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

2001 No.

COMPANIES

The Uncertificated Securities Regulations 2001

Made - - - -	*2001*
Coming into force - -	*26th November 2001*

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(**1**) and now vested in them(**2**), and of all other powers enabling them in that behalf, 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.

(**1**) 1989 c. 40; section 207 was amended by the Bank of England Act 1998, section 35.
(**2**) By the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

Interpretation

3.—(1) In these Regulations—

"the 1985 Act" means the Companies Act 1985(**3**);

"the 1986 Act" means the Financial Services Act 1986(**4**);

"the 2000 Act" means the Financial Services and Markets Act 2000(**5**);

"the 1986 Order" means the Companies (Northern Ireland) Order 1986(**6**);

"the 1965 Regulations" means the Government Stock Regulations 1965(**7**);

"the 1974 Regulations" means the Local Authority (Stocks and Bonds) Regulations 1974(**8**);

and "local authority" has the same meaning as it has in those Regulations;

"the 1995 Regulations" means the Uncertificated Securities Regulations 1995(**9**);

"the Authority" means the Financial Services Authority referred to in section 1 of the 2000 Act;

"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 735(1) of the 1985 Act;

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

"designated agency" has the meaning given by regulation 11(1);

"enactment" includes an enactment comprised in any subordinate legislation within the meaning of the Interpretation Act 1978(**10**), 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 any 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 depositary;

"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);

(**3**) 1985 c. 6.
(**4**) 1986 c. 60.
(**5**) 2000 c. 8.
(**6**) S.I. 1986/1032 (N.I. 6).
(**7**) S.I. 1965/1420; amended by S.I. 1981/1004; S.I. 1982/670; S.I. 1985/1146; S.I. 1990/2253; S.I. 1997/1709; S.I. 1998/1749; S.I. 1999/1410 and S.I. 2000/1681.
(**8**) S.I. 1974/519; amended by S.I. 1983/529; S.I. 1985/1148; S.I. 1986/345; S.I. 1991/2000; S.I. 1999/1409 and S.I. 2000/1680.
(**9**) S.I. 1995/3272; amended by S.I. 1996/2827; S.I. 1997/251; S.I. 1999/506; S.I. 2000/311; S.I. 2000/1682 and S.I. 2000/2952.
(**10**) 1978 c. 30.

"issuer register of securities"—

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

(b) in relation to units of a security other than shares, means a register of persons holding the units, maintained by or on behalf of the issuer or, in the case of public sector securities, by or on behalf of the person specified in regulation 21(3);

"local authority security" means a security which, when held in certificated form, is transferable in accordance with regulation 7 of the 1974 Regulations and title to which must be registered in accordance with regulation 5 of those Regulations;

"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 744 of the 1985 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 approved by the Treasury under these Regulations as Operator of a relevant system (and in Schedule 1 includes a person who has applied to the Treasury under regulation 4 for their approval of him as an Operator);

"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 members" has the meaning given by regulation 20(1)(b);

"Operator register of public sector securities" has the meaning given by regulation 21(1)(a);

"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 public sector securities or, as the case may be, a register maintained by an Operator by virtue of 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;

"public sector securities" means UK Government securities and local authority securities;

"record of uncertificated public sector securities" has the meaning given by regulation 21(2)(a);

"record of securities" means any of a record of uncertificated corporate securities, a record of uncertificated shares and a record of uncertificated public sector securities;

"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;

"record 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(**11**), 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;

"UK Government security" means a security issued by Her Majesty's Government in the United Kingdom or by a Northern Ireland department;

"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—

(**11**) 1993 c. 36.

(a) a strip, in relation to any stock or bond, within the meaning of section 47(1B) of the Finance Act 1942(**12**); 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 1985 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.

(3) In respect of a participating security which is a public sector security, references in these Regulations to the participating issuer shall, other than in Regulation 41, be taken to be references—

(a) in the case of a local authority security—

(i) to the relevant local authority; or

(ii) if the local authority has appointed another person to act as registrar for the purpose of the 1974 Regulations in respect of that security, to the person so appointed; and

(b) in the case of any other public sector security, to the Bank of England.

PART 2

THE OPERATOR

APPROVAL AND COMPLIANCE

Applications for approval

4.—(1) Any person may apply to the Treasury for their approval of him as Operator of a relevant system.

(2) The application shall be made in such manner as the Treasury may direct and shall be accompanied by—

(a) a copy of the rules and any guidance to be issued by the applicant; and

(b) such other information as the Treasury may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the Treasury may require the applicant to provide such further information as they reasonably consider necessary to enable them to determine the application.

(4) Information which the Treasury require under this regulation shall, if they so require, be provided in such form, or verified in such manner, as they may direct.

(**12**) 1942 c. 21; section 47(1B) was inserted by the Finance Act 1996 (c. 8), section 202(2)