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**The Uncertificated Securities (Guernsey)
Regulations, 2009**

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The Uncertificated Securities (Guernsey) Regulations, 2009

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by sections 1, 2 and 3 of the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005^a and all other powers enabling it in that behalf, and after consultation with the Guernsey Financial Services Commission, hereby makes the following Regulations.

PART I INTRODUCTORY

General purpose of these Regulations.

1. The general purpose of these Regulations is to confirm how title to units of a security may be evidenced and transferred by means of a computerised settlement system without a written instrument.

Particular purposes of these Regulations.

2. (1) The particular purposes of Part II are to provide for the approval or recognition, and the control, of persons who operate computerised settlement systems.

(2) The particular purposes of Part III are -

- (a) to confirm how companies and other persons, by using computerised settlement systems, may permit the holding in uncertificated form of units of securities issued by them,

^a Order in Council No. VI of 2006.

- (b) to allow the transfer, by means of computerised settlement systems, of title to those units, and
 - (c) to establish, in relation to uncertificated units of securities, the duties and obligations of issuers with respect to the keeping of registers, the registration of transfers and other matters.
- (3) The particular purposes of Part IV are -
- (a) to specify circumstances in which persons who are expressed to have sent authenticated computer instructions, and persons on whose behalf those instructions are expressed to have been sent, are not allowed to deny to the persons to whom those instructions are addressed that information relating to them is correct,
 - (b) to specify circumstances in which persons to whom authenticated computer instructions are addressed may accept that information relating to them is correct, and
 - (c) to specify circumstances in which persons suffering loss are to be compensated by authorised operators of computerised settlement systems.

PART II
AUTHORISED OPERATORS OF COMPUTERISED SETTLEMENT SYSTEMS

Application for approval or recognition.

3. (1) A person may apply to the Commission -
- (a) for approval under regulation 4 as an operator of a computerised settlement system, or
 - (b) for recognition under regulation 5 as an operator of a computerised settlement system.
- (2) The application shall be made in such form and manner as the Commission directs.
- (3) The application shall be accompanied -
- (a) by such information and documents as the Commission reasonably requires, and
 - (b) by a copy of any rules and guidance that the applicant intends to issue.
- (4) At any time after receiving an application and before determining it, the Commission may require the applicant to provide such further information and documents as the Commission reasonably requires.
- (5) The Commission may require information and documents to be provided to it under this regulation to be in such form and to be verified in such manner as the Commission specifies.

Approval of operator.

4. (1) The Commission may in writing approve an applicant under regulation 3 as an operator where it appears to the Commission that the requirements of the Schedule are satisfied in relation to him.

(2) The approval may be granted subject to such conditions as the Commission may specify, and the Commission may at any time vary or revoke any condition or impose any new condition provided always that the Commission shall, before doing so and if the circumstances so permit, consult the operator and allow him an opportunity to make representations.

(3) In granting the approval, the Commission shall state when it takes effect, and may state when it ceases to have effect.

(4) Where the Commission refuses the application, it shall inform the applicant in writing, giving its reasons.

(5) The Commission shall refuse the application if not satisfied -

- (a) that the requirements of the Schedule would be satisfied in relation to the applicant,
- (b) that the applicant would comply with the obligations to which he would be subject by virtue of these Regulations, and
- (c) that the interests of the public and the reputation of Guernsey as a finance centre would not in any manner be jeopardised if the application were to be granted.

Recognition of overseas operator.

5. (1) The Commission may in writing recognise an applicant under regulation 3 as an operator in Guernsey where it appears to the Commission that he is for the time being approved by a competent authority to operate a computerised settlement system outside Guernsey.

(2) Recognition may be granted subject to such conditions as the Commission may specify, and the Commission may at any time vary or revoke any condition or impose any new condition provided always that the Commission shall, before doing so and if the circumstances so permit, consult the operator and allow him an opportunity to make representations.

(3) In granting recognition, the Commission shall state when it takes effect, and may state when it ceases to have effect.

(4) Where the Commission refuses the application, it shall inform the applicant in writing, giving its reasons.

(5) The Commission shall refuse the application if not satisfied -

(a) that the applicant is for the time being approved as mentioned in paragraph (1),

(b) that the applicant would comply with the obligations to which he would be subject by virtue of these Regulations, and

(c) that the interests of the public and the reputation of Guernsey as a finance centre would not in any manner be jeopardised if the application were to be granted.

(6) Where a recognised operator's approval is suspended or

revoked by the competent authority referred to in paragraph (1), the operator must inform the Commission in writing of the fact within a period of 7 days beginning on the date of the suspension or revocation.

(7) An operator who fails to comply with paragraph (6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Rules and Guidance.

6. An authorised operator who -

- (a) issues any rules or guidance, or
- (b) changes any rules or guidance issued by him by amending, adding to or revoking them,

shall deliver a copy of the issued rules or guidance or the amendment, addition or revocation (as the case may be) to the Commission within a period of 7 days beginning on the date of the issue or change.

Further information from operator.

7. (1) The Commission may by notice in writing given to an authorised operator require him to provide to it further information and documents, in such form as the Commission may specify, about his operations.

(2) Information may be required under this regulation -

- (a) with respect to a particular matter or occasion,
- (b) at specified times, or

(c) with respect to specified periods.

(3) The Commission may require an authorised operator to verify, in such manner as it specifies, information and documents that he is required to provide under this regulation.

Directions to operator.

8. (1) Where it appears to the Commission at any time -

- (a) that a requirement of the Schedule is not satisfied in relation to an approved operator, or
- (b) that an authorised operator has failed to comply with an obligation to which he is subject by virtue of these Regulations,

the Commission may by notice in writing give the operator concerned such directions as it thinks fit for securing that the requirement is satisfied or the obligation is complied with.

(2) However, before doing so the Commission shall -

- (a) if the circumstances so permit, consult the operator and allow him an opportunity to make representations, and
- (b) so far as it is reasonably practicable to estimate them, have regard to the costs to him of complying with the directions and the costs to other persons resulting from his compliance.

(3) An approved operator who fails to comply with directions

under paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Injunctions.

9. (1) Where it appears to the Commission at any time that -
- (a) a requirement of the Schedule is not satisfied in relation to an approved operator,
 - (b) an authorised operator has failed to comply with an obligation to which he is subject by virtue of these Regulations,
 - (c) there is a reasonable likelihood that a requirement of the Schedule will not be satisfied in relation to an approved operator, or
 - (d) there is a reasonable likelihood that an authorised operator will fail to comply with an obligation to which he is subject by virtue of these Regulations,

the Commission may apply to the Court for an injunction.

- (2) Where the Court is satisfied -
- (a) that the requirement is not satisfied or that the operator concerned has failed to comply with the obligation, or (as the case may be)
 - (b) that there is such a reasonable likelihood as is mentioned in paragraph (1)(c) or (d),

it may grant an injunction ordering the operator to take or to refrain from taking such steps as it directs for securing that (as the case may require) the requirement is or will be satisfied or the obligation is or will be complied with.

(3) An injunction under paragraph (2) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit.

(4) An application by the Commission for an injunction under this regulation against an operator may, with the approval of the Court, and on such terms and conditions as the Court may direct, be made *ex parte*.

(5) The powers conferred on the Court by this regulation are in addition to and not in derogation from -

- (a) the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987^b (and the provisions of Parts I and V of that Law, apart from section 1(1) and (7), apply in relation to injunctions of the Court under this regulation), and
- (b) any other powers of the Court arising otherwise than under this regulation.

Suspension or revocation of approval by Commission.

10. The Commission may, by notice in writing given to an approved operator, suspend or revoke his approval in any of the following circumstances -

^b Ordres en Conseil Vol. XXX, p. 145.

- (a) at his written request,
- (b) where he has failed, within 12 months after the date from which the approval took effect, to commence to operate a computerised settlement system,
- (c) where, having commenced to operate a computerised settlement system, he has ceased its operation for any continuous period exceeding six months,
- (d) where the operator is being wound up, or is insolvent, under Guernsey law or under the law of any other jurisdiction to which he is subject,
- (e) where any requirement of the Schedule is not satisfied in relation to him,
- (f) where he has not complied with any obligation to which he is subject by virtue of these Regulations,
- (g) where the interests of the public or the reputation of Guernsey as a finance centre are in any manner jeopardised, whether by the manner in which he is conducting or proposes to conduct his affairs or for any other reason,
- (h) where it is expedient to do so in the interest of the proper and orderly regulation of the participants (or any of them) in a computerised settlement system of the operator, or in order to protect investors,

- (i) where he has been convicted of a serious offence against the Law or involving fraud, dishonesty or breach of trust,
- (j) where he has obtained the approval by knowingly or recklessly making a false or misleading statement, or by knowingly or recklessly using false or misleading information,
- (k) where he has been directed by the Commission to comply to a material degree with a requirement of these Regulations, and has thereafter failed to do so,
- (l) where he has failed to comply with a condition on which the approval was granted,
- (m) where he is unable to meet his obligations to his creditors, or in the opinion of the Commission he is likely to become unable to meet those obligations, or
- (n) where he has suspended payments which are lawfully due, or in the opinion of the Commission is likely to do so.

Suspension or withdrawal of recognition by Commission.

11. (1) The Commission shall, by notice in writing given to a recognised operator, suspend his recognition where the competent authority by whom he was approved as an operator has suspended that approval.

(2) The Commission shall, by notice in writing given to a recognised operator, withdraw his recognition where the competent authority by

whom he was approved as an operator has revoked that approval.

(3) The Commission may, by notice in writing given to a recognised operator, suspend or withdraw his recognition in any of the following circumstances -

- (a) at his written request,
- (b) where he has failed, within 12 months after the date from which his recognition took effect, to commence to operate a computerised settlement system,
- (c) where, having commenced to operate a computerised settlement system, he has ceased its operation for any continuous period exceeding six months,
- (d) where the operator is being wound up, or is insolvent, under Guernsey law or under the law of any other jurisdiction to which he is subject,
- (e) where he has not complied with any obligation to which he is subject by virtue of these Regulations,
- (f) where the interests of the public or the reputation of Guernsey as a finance centre are in any manner jeopardised, whether by the manner in which he is conducting or proposes to conduct his affairs or for any other reason,
- (g) where it is expedient to do so in the interest of the proper and orderly regulation of the participants (or any

of them) in a computerised settlement system of the operator, or in order to protect investors,

- (h) where he has been convicted of a serious offence against the Law or involving fraud, dishonesty or breach of trust,
- (i) where he has obtained the recognition by knowingly or recklessly making a false or misleading statement, or by knowingly or recklessly using false or misleading information,
- (j) where he has been directed by the Commission to comply to a material degree with a requirement of these Regulations, and has thereafter failed to do so,
- (k) where he has failed to comply with a condition on which the recognition was granted,
- (l) where he is unable to meet his obligations to his creditors, or in the opinion of the Commission he is likely to become unable to meet those obligations, or
- (m) where he has suspended payments which are lawfully due, or in the opinion of the Commission is likely to do so.

Other provisions as to suspension, revocation, etc.

12. (1) Before acting under regulation 10, 11(1), 11(2) or 11(3), the Commission shall -

- (a) inform the authorised operator in writing of its intention, giving its reasons, and
- (b) if circumstances so permit, allow him an opportunity to make representations.

(2) In suspending or revoking its approval of an operator under regulation 10, and in suspending or withdrawing its recognition of an operator under regulation 11, the Commission shall specify a date on which the suspension, revocation or (as the case may be) withdrawal shall take effect.

Duties of operator whose authorisation is suspended or terminated.

13. (1) Paragraph (2) applies where an operator's approval is suspended or revoked under regulation 10, or where his recognition is suspended or withdrawn under regulation 11, even though he is not authorised to continue to operate a computerised settlement system.

(2) Where an operator to whom paragraph (1) refers is not a company that is being wound up -

- (a) the participants in each of his computerised settlement systems shall remain subject to the duties and obligations imposed by these Regulations until all of his liabilities, duties and obligations have been discharged to the satisfaction of the Commission, and
- (b) as soon as possible after the suspension, revocation or withdrawal he shall inform the Commission, and the other participants in each of his computerised settlement systems and such other persons (if any) as the Commission stipulates, of the measures that are

being taken to discharge his liabilities, duties and obligations without delay.

Appeals.

14. (1) The following persons have a right of appeal to the Court under these Regulations -

- (a) an applicant for approval or recognition as an authorised operator, against the refusal of his application by the Commission, or against any condition imposed by the Commission in granting such approval or recognition,
- (b) an approved operator, against a decision by the Commission to suspend or revoke his approval under regulation 10,
- (c) a recognised operator, against a decision by the Commission to suspend or withdraw his recognition under regulation 11, except where his recognition was suspended or withdrawn under regulation 11(1) or (2) by reason of the suspension or revocation of his approval by the competent authority outside Guernsey by whom he was approved,
- (d) an authorised operator, against a condition imposed, varied or revoked by the Commission after the granting of his approval or recognition, and
- (e) an authorised operator, against a direction given by the Commission under regulation 8.

(2) An appeal shall be brought within a period of 28 days immediately following the date of notice in writing to the appellant of the decision to which the appeal relates, or within such further time as the Court may allow.

(3) An appeal shall be brought by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(4) The grounds of an appeal shall be that -

(a) the decision was ultra vires or there was some other error of law,

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(5) Pending the determination of the appeal, the Court may make such orders providing for interim or interlocutory relief as it thinks fit.

(6) On an appeal under this regulation the Court may -

(a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court

thinks fit, or

- (b) confirm the decision, in whole or in part.

(7) The Commission may, where an appeal under this regulation has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the Commission's application the Court may -

- (a) dismiss the appeal or dismiss the Commission's application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this paragraph are without prejudice to the inherent powers of the Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007^c.

(8) An appeal from a decision of the Court under this regulation lies to the Court of Appeal on a question of law.

Publication of decisions.

15. (1) The Commission shall publish notice of each of the following decisions on its website within a period of 21 days beginning on the date of the decision -

- (a) a decision by the Commission to approve or recognise a person as an operator,

^c O.R.C. No. IV of 2007.

- (b) a decision by the Commission to suspend or revoke its approval of an operator, or to suspend or withdraw its recognition of an operator,
 - (c) a decision of the Court on an appeal under regulation 14, and
 - (d) a decision on any further appeal.
- (2) In doing so, the Commission shall specify -
- (a) the date from which the decision has effect, and
 - (b) in the case of a decision to approve or recognise a person as an operator for a specified period, the period for which the approval or recognition will have effect.

PART III PARTICIPATION BY ISSUERS

Participation in respect of shares.

16. (1) Where -

- (a) the authorised operator of a computerised settlement system permits a class of shares to which this regulation applies to be a participating security in the computerised settlement system, and
- (b) shares of that class are recorded on a register of company members as being held in

uncertificated form,

title to shares that are so recorded may be transferred by means of that computerised settlement system.

(2) This regulation applies to a class of shares in a company if its articles of incorporation are consistent in all respects with -

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

(3) A company may permit the holding in uncertificated form of shares in a class to which this regulation applies, and the transfer of title to any such shares, by means of a computerised settlement system.

(4) A class of shares which before the CREST effective date has been admitted to settlement by means of the CREST system shall, on the CREST effective date, be taken to be a class of shares in relation to which this regulation applies and any holding of shares in that class through the CREST system shall be regarded as a holding in uncertificated form in the computerised settlement system for the purposes of these Regulations.

On the CREST effective date a company's articles of incorporation 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.

Participation in respect of securities other than shares.

17. (1) Where -

- (a) the authorised operator of a computerised settlement system permits a security (other than a share) to be a participating security in the computerised settlement system, and
- (b) units of that security are recorded in a register of securities as being held in uncertificated form,

title to those units may be transferred by means of that computerised settlement system.

(2) In relation to any security other than a share, if the law under which it is constituted is not the law of Guernsey, 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,

the issuer 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 computerised settlement system.

(3) On the CREST effective date 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 and any holding of any relevant participating security through the CREST system shall be regarded as a holding in uncertificated form in the computerised system for the purposes of these Regulations.

(4) For the purposes of this regulation -

- (a) a relevant participating security is a security (other than a share) which, before the CREST effective date, has been admitted to settlement by means of the CREST system, 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.

Entries on registers.

18. (1) An issuer that is a company shall enter on its register of company members, in respect of each class of shares that is a participating security-

- (a) the number of shares that each company member holds in uncertificated form, and
- (b) the number of shares that each company member holds in certificated form.

(2) An issuer who (apart from this regulation) is required by or under an enactment or instrument to maintain in Guernsey a register of persons holding securities (other than shares) issued by it shall enter on that register in respect of each class of security that is a participating security -

- (a) the names and addresses of the persons holding units of securities of that class,
- (b) the number of units of such securities that each person holds in uncertificated form, and
- (c) the number of units of such securities that each person holds in certificated form.

(3) An issuer who (apart from this regulation) is not required by or under any enactment or instrument to maintain in Guernsey, in respect of a participating security issued by it, a register of persons holding units of that security shall maintain in Guernsey such a register, in which shall be recorded -

- (a) the names and addresses of the persons holding units of that security in uncertificated form, and
- (b) the number of units of that security that each person holds in that form.

(4) Where an issuer fails to comply with paragraph (1), (2) or (3), the issuer and its officers are liable to the same criminal and civil sanctions as apply to a company and its officers in the event of a default in complying with section 123 of the Law (obligation of company to keep register of members), but this paragraph is subject to regulation 46.

(5) Liability that is incurred by an issuer and arises -

- (a) from the making or deletion of an entry in a register of securities pursuant to paragraph (1), (2) or (3), or

- (b) from a failure to make or delete any such entry,

is not enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of a failure, on which the failure first occurred.

(6) Paragraph (5) is without prejudice to any lesser period of limitation and to any rule as to the prescription of rights.

Effect of entries on registers.

19. (1) An entry that -

- (a) is made on a register to which regulation 18(1) or (2) refers, and
- (b) records a person as holding units of a security in uncertificated form,

is evidence of such title to the units as would be evidenced if the entry on the register related to units of that security held in certificated form.

(2) An entry made on a register to which regulation 18(3) refers is prima facie evidence that the person to whom the entry relates has such title to the units of that security as he is recorded as holding in uncertificated form as he would have if he held the units in certificated form.

(3) This regulation is subject to regulation 25.

Changes to registers of securities.

20. (1) An issuer shall not rectify a register of securities in relation to uncertificated units of a security held by a member of a computerised settlement

system except -

- (a) with the consent of the authorised operator, or
- (b) when required to do so by an order of the Court.

(2) An issuer who rectifies or otherwise changes an entry on a register of securities in relation to uncertificated units of securities shall immediately -

- (a) notify the authorised operator, and
- (b) inform the members of the computerised settlement system who are concerned,

of the change to the entry.

(3) Paragraph (2) does not apply if the change is made in response to an operator's instruction.

Restrictions on registration of transfers of securities.

21. (1) An issuer shall not register a transfer of title to uncertificated units of a security on a register of securities, unless he is required to do so -

- (a) by an operator's instruction,
- (b) by an order of the Court, or
- (c) by or under an enactment.

(2) Paragraph (1) does not prevent an issuer from entering, on a register of securities, a person to whom title to uncertificated units of a security has

been transmitted by operation of law.

Obligatory registration of transfers of securities.

22. (1) An issuer shall register a transfer of title to uncertificated units of securities on a register of units of securities in accordance with an operator's instruction, unless -

- (a) the transfer is prohibited by an order of the Court that has been served on the operator,
- (b) the transfer is prohibited by or under an enactment,
- (c) the issuer has actual notice that the transfer is avoided by or under an enactment,
- (d) the issuer has actual notice that the transfer is to a deceased person,
- (e) the circumstances described in paragraph (2) apply, or
- (f) the issuer may under regulation 23 refuse to register the transfer.

(2) The circumstances to which paragraph (1)(e) refers are -

- (a) that the transfer is one of two or more transfers in respect of which the operator has notified the issuer in accordance with regulation 26(1), and
- (b) that, by virtue of regulation 26(5), regulation 26(3) does not apply to those transfers.

(3) Where an issuer fails to comply with paragraph (1), the issuer and its officers are liable to the same criminal and civil sanctions as apply to a company and its officers in the event of a default in complying with section 123 of the Law (obligation of company to keep register of members).

(4) Paragraph (3) is subject to regulation 46.

Discretion to refuse registration.

23. An issuer may refuse to register a transfer of title to units of uncertificated securities in accordance with an operator's instruction if the instruction requires -

- (a) a transfer of units to an entity that is not a natural or legal person,
- (b) a transfer of units to a minor,
- (c) a transfer of units to be held jointly in the names of a greater number of persons than is permitted under the terms of the issue of the securities, or
- (d) a transfer of units where, in relation to the operator's instruction, the issuer has actual notice from the operator of a matter specified in regulation 34(1)(a), (b) or (c).

Duty of issuer to notify operator.

24. An issuer who is required by an operator's instruction to register a transfer of title to uncertificated units of a security shall notify the authorised operator, by an issuer's instruction in response, whether or not he has done so.

Consequences of irregular registration.

25. A purported registration of a transfer of title to an uncertificated unit of a security otherwise than in accordance with the requirements of regulations 21 and 22 is of no effect.

Registration of linked transfers.

26. (1) Where an authorised operator sends two or more instructions requiring an issuer to register two or more transfers of title to uncertificated units of securities, and it appears to the operator that the conditions in paragraph (2) are satisfied, the operator may notify the issuer that the transfers are linked transfers.

(2) The conditions to which paragraph (1) refers are -

(a) either -

(i) that there are fewer units of the security registered in the name of a person identified in any one of the operator's instructions as a transferor than the number of units to be transferred from him, or

(ii) that any one of the transfers taken alone is one in relation to which it has not been established in accordance with paragraph 15(1)(c) of the Schedule that a settlement bank has agreed to make a payment,

(b) that registration of all of the transfers would result in each of the persons identified in the operator's instructions as a transferor having title to a number of

units of securities equal to or greater than nil, and

- (c) that the combined effect of all the transfers taken together would result in paragraph 15(1)(c) of the Schedule being satisfied.

(3) Where an authorised operator notifies an issuer that transfers are linked transfers, the issuer may -

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

(4) Paragraph (3) applies even though that there may be fewer uncertificated units of securities registered in the name of a person identified in any one of the operator's instructions as a transferor than the number of uncertificated units to be transferred from him.

(5) However, paragraph (3) does not apply in any case in which -

- (a) registration of the combined effect of the linked transfers or simultaneous registration of all the transfers (as the case may be) would not result in each of the persons identified in the operator's instructions as a transferor having title to a number of uncertificated units of securities equal to or greater than nil,
- (b) one or more of the transfers constituting the linked transfers may not be registered by virtue of the circumstances specified in regulation 22(1) (a), (b), (c)

or (d), or

- (c) one or more of the transfers constituting the linked transfers are to be refused registration by virtue of regulation 23.

Position of transferee before entry on register.

27. (1) At the time when an operator's instruction is generated that will require an issuer to register on a register of securities a transfer of title to any uncertificated units of securities constituted under the law of Guernsey -

- (a) the transferee shall acquire a beneficial interest in the requisite number of uncertificated units of securities of the kind specified in the operator's instruction in which the transferor has a beneficial interest by virtue of this regulation, or in relation to which the transferor is recorded on the relevant register of securities as having title, and
- (b) the beneficial interest shall subsist until the time specified in paragraph (3).

(2) For the purposes of paragraph (1)(a), it shall not be denied, solely by reason of the fact that the transferor acquired his beneficial interest by virtue of that paragraph at the same time as the transferee's beneficial interest arose in that interest, that the transferee has obtained the beneficial interest to which that paragraph refers.

(3) An interest acquired under paragraph (1) shall subsist until the time when the transferee is entered on the register of securities in respect of the transfer of units to him, except in a case in which under regulation 26(3)(a) an issuer

registers the combined effect of linked transfers.

(4) In a case in which under regulation 26(3)(a) an issuer does register the combined effect of linked transfers, an interest acquired under paragraph (1) shall subsist until the time when the combined effect of all the linked transfers is registered.

(5) Paragraphs (3) and (4) are subject to any enactment or rule of law to the contrary.

(6) This regulation has effect even though the securities to which the operator's instruction relates or in which an interest arises by virtue of paragraph (1), or any of those units, may be unascertained.

(7) However, this regulation does not in any other respect confer a proprietary interest (whether of the kind to which paragraph (1) refers, or any other kind) in units of securities where the conferring of such an interest at the time specified in these regulations would otherwise be void by or under an enactment or rule of law.

(8) In this regulation -

"A" means the number of uncertificated units in relation to which the transferor is recorded on the register of securities as having title,

"B" means the number in which the transferor has an interest by virtue of paragraph (1),

"C" means that number of units in which such interests subsist in favour of a third party by virtue of an earlier operator's instruction requiring an issuer to register, on a register of securities, a transfer of title to those

securities,

"the requisite number" means -

- (a) the number of units specified in the operator's instruction, or
- (b) $A+B - C$,

whichever is lower at the time when the operator's instruction is sent,

"the transferee" means the person identified in the operator's instruction as the transferee,

"the transferor" means the person identified in the operator's instruction as the transferor.

Conversion of securities into certificated form.

28. (1) An issuer shall not change a unit of a participating security from uncertificated form to certificated form except in one of the circumstances specified in paragraph (2).

(2) The circumstances to which paragraph (1) refers are -

- (a) where it is permitted by the rules made and practices instituted by an authorised operator in order to comply with paragraph 13 or 19(2) or (3) of the Schedule,
- (b) following receipt of an operator's instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name

of a member of the computerised settlement system, or

- (c) subject to regulations 21 and 22, following receipt of an operator's instruction requiring the registration of a transfer of title to uncertificated units of a security to a person who is not a member of the computerised settlement system.

(3) In the circumstances specified in paragraph (2)(a), (b) or (c) -

- (a) an issuer shall record on the register of securities that the units of the security are held in certificated form,
- (b) if a certificate can be issued for the security, he shall issue a certificate in respect of the units of the security to the relevant person, and
- (c) he shall in any event notify the authorised operator that the units are no longer held in uncertificated form.

(4) Where an issuer fails to comply with paragraph (1) or (3), the issuer and its officers are liable to the same criminal and civil sanctions as apply to a company and its officers in the event of a default in complying with section 123 of the Law (obligation of company to keep register of members).

(5) Paragraph (4) is subject to regulation 46.

Conversion of securities into uncertificated form.

29. (1) An issuer shall not change a unit of a participating security from certificated form to uncertificated form except in one of the sets of circumstances specified in paragraphs (3) and (4).

(2) Paragraphs (3) and (4) are subject to paragraphs (5) and (6).

(3) The first set of circumstances to which paragraph (1) refers is where the unit of the participating security is held by a member of the computerised settlement system, and -

(a) the issuer has received a request in writing, in the form required by the rules made and practices instituted by the authorised operator in order to comply with paragraph 13 of the Schedule, to register the member as holding the unit in uncertificated form, and

(b) the issuer has also received the certificate relating to the certificated unit that is to be converted into uncertificated form.

(4) The second set of circumstances to which paragraph (1) refers is where the unit of the participating security is to be registered on a register of securities in the name of a member of the computerised settlement system following a transfer of the unit to him from another person, and -

(a) the issuer has received by means of the authorised operator's system (unless the operator's conversion rules permit otherwise) an instrument of transfer in favour of the member relating to the unit to be transferred,

(b) the issuer has also received by means of the operator's system (unless the operator's conversion rules permit otherwise) the certificate relating to the certificated unit

of the security that is to be transferred and converted into uncertificated form, and

- (c) the issuer may accept, by virtue of the rules made and practices instituted by the operator in order to comply with paragraph 13 of the Schedule, that the member to whom the unit is to be transferred wishes to hold it in uncertificated form.

(5) The requirements in paragraphs (3) and (4) that the issuer shall have received a certificate relating to the unit of the participating security does not apply in a case where the member or transferor (as the case may be) does not have a certificate in respect of the unit of the security to be converted into uncertificated form because no certificate has yet been issued to him.

(6) The requirement in paragraph (4) that the issuer shall have received an instrument of transfer relating to the unit of the participating security shall not apply in a case in which, for a transfer of a unit of that security, no instrument of transfer is required.

(7) In the set of circumstances specified in paragraph (3), on receiving the document or documents required for that set of circumstances to apply, the issuer shall within two months -

- (a) enter on the register of securities that the member holds the unit in uncertificated form, and
- (b) send the authorised operator his instruction informing him of the entry on the relevant register of securities.

(8) In the set of circumstances specified in paragraph (4), on

receiving the document or documents required for that set of circumstances to apply-

- (a) the issuer shall record that the member holds the unit, and enter on the register of securities that he holds the unit in uncertificated form, and
- (b) he shall then, within two months, send the authorised operator an instruction informing him of the entry on the register of securities.

(9) Where an issuer fails to comply with paragraph (7) or (8), the issuer and its officers are liable to the same criminal and civil sanctions as apply to a company and its officers in the event of a default in complying with section 123 of the Law (obligation of company to keep register of members), but this paragraph is subject to regulation 46.

New issues in uncertificated form.

30. (1) An issuer may issue units of a participating security in uncertificated form to a person if, but only if, that person is a member of the computerised settlement system.

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

(3) On the issue in uncertificated form of new units of a participating security, the issuer shall by his instruction notify the authorised operator

- (a) of the persons to whom the uncertificated units have

been issued, and

- (b) of the number of those units issued to each of those persons.

PART IV

COMPUTER INSTRUCTIONS

Authenticated computer instructions.

31. The rights and obligations of persons to whom authenticated computer instructions are attributable, and of persons to whom authenticated computer instructions are addressed, when such instructions relate -

- (a) to an uncertificated unit of a security,
- (b) to a right, benefit or privilege attaching to or arising from such a unit, or
- (c) to the details of a holder of such a unit,

shall be determined in accordance with this Part.

Obligations arising from authenticated computer instructions.

32. (1) Where an authenticated computer instruction is expressed to have been sent on behalf of a person by a sponsor or the authorised operator, the person on whose behalf the instruction is expressed to have been sent shall not be allowed to deny to the addressee -

- (a) that the instruction was sent with his authority, or
- (b) that the information contained in it is correct.

(2) Where an authenticated computer instruction is expressed to be sent on behalf of a person by a sponsor or the authorised operator, that sponsor or operator shall not be allowed to deny to the addressee -

(a) that he has authority to send the instruction, or

(b) that he has sent it.

(3) Where an authenticated computer instruction is expressed to have been sent by a person, and it is not expressed to have been sent on behalf of another person, the first person shall not be allowed to deny to the addressee -

(a) that the information contained in the instruction is correct, or

(b) that he has sent it.

(4) Where an authenticated computer instruction in respect of a security to which regulation 16(4) or 17(4) applies has entered the CREST system before the CREST effective date and is not settled or otherwise cancelled before that date, such instruction shall be taken to be an authenticated computer instruction for the purposes of these Regulations and paragraphs (1) to (3) of this regulation shall apply.

Right of addressees to rely on instructions.

33. (1) An addressee who receives an authenticated computer instruction (whether directly, or by means of the facilities of a sponsor acting on his behalf) may at the time when it was sent or at any time thereafter accept that -

(a) the information contained in the instruction was correct,

- (b) the user or authorised operator identified in the instruction as having sent the instruction did send it, and
- (c) if the instruction was expressed to have been sent on behalf of a person, it was sent with the authority of that person.

(2) This regulation is subject to regulation 34.

Restrictions on right to rely on instructions.

34. (1) An addressee is not allowed to accept any of the matters specified in regulation 33 where, at the relevant time, he was neither an issuer nor a sponsor receiving (in either case) authenticated computer instructions on behalf of an issuer, and he had actual notice -

- (a) that any information contained in it was incorrect,
- (b) that the user or authorised operator expressed to have sent the instruction did not send it, or
- (c) if the instruction was expressed to have been sent on behalf of a person, that the person had not given to the operator or sponsor identified in the instruction as having sent it his authority to send the instruction on his behalf.

(2) An addressee is not allowed to accept any of the matters specified in regulation 33 where, at the relevant time, he was either an issuer or a sponsor receiving authenticated computer instructions on behalf of an issuer, and -

- (a) he had actual notice from the authorised operator of any of the matters specified in paragraph (1), or
- (b) the instruction was an operator's instruction requiring the registration of title in the circumstances specified in regulation 22(1)(a), (b), (c), (d) or (e).

(3) An addressee is not allowed to accept any of the matters specified in regulation 33 where, at the relevant time -

- (a) he was an authorised operator, and
- (b) the instruction related to a transfer of units of a security that was in excess of any limit imposed by virtue of paragraph 12 of the Schedule.

(4) However, where an addressee has received actual notice of a kind to which this regulation refers in respect of an authenticated instruction, he may accept the matters specified in regulation 33 if at the time when he received the actual notice it was not practicable for him to halt his processing of the instruction.

Liability in respect of acceptance of instructions.

35. (1) A person who is permitted by regulation 33 or 34(4) to accept any matter is not liable in damages or otherwise to any person by reason of his having relied on the matter that he was permitted to accept.

(2) Paragraph (1) does not affect -

- (a) any liability of the authorised operator to pay compensation under regulation 37, or

(b) any liability of an issuer under regulation 43 by reason of a contravention of regulation 21(1).

(3) Except as provided in paragraph (1), this regulation does not affect any liability of a person for causing or permitting a computer instruction -

(a) to be sent without authority,

(b) to contain information that is incorrect, or

(c) to be expressed to have been sent by a person who did not send it.

Hackers' instructions and induced operator's instructions.

36. (1) For the purposes of regulation 37, a computer instruction is a "hacker's instruction" if -

(a) it was not sent from the computers of a user in the computerised settlement system or the computers comprising the authorised operator's system, or

(b) it was not sent from the computers of the user or the computers comprising the authorised operator's system (as the case may be) from which it is expressed to have been sent.

(2) For the purposes of regulation 37, an act is a causative act if, not being a computer instruction and not being an act that causes a computer instruction to be sent from the computer of a user, it unlawfully causes the authorised operator to send an instruction to an issuer.

(3) For the purposes of regulation 37, an operator's instruction is an "induced operator's instruction" if it is an instruction to an issuer that results from a causative act or hacker's instruction.

Liability for hackers' instructions and induced operator's instructions.

37. (1) Where, as a result either of a hacker's instruction that does not result in an induced operator's instruction or of an induced operator's instruction, any one of the following events occurs, namely -

- (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 or reduced, or remains unaltered, or
- (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 authorised operator compensate him for his loss.

(2) It is immaterial for the purposes of paragraph (1) whether the event is permanent or temporary.

(3) The Court shall not make an order under paragraph (1) where the authorised operator identifies a person as being responsible (whether alone or with others) -

- (a) for the hacker's instruction (in any case in which it does not result in an induced operator's instruction), or
- (b) for the causative act or hacker's instruction (in any case in which it does result in an induced operator's instruction),

as the case may be, even if it is impossible (for whatever reason) for the applicant to obtain satisfactory compensation from that person.

(4) The Court shall not award compensation under this regulation where the authorised operator shows that an issuer would be liable under regulation 43 to compensate the applicant for the loss in respect of which the application is made by reason of the issuer's contravention of regulation 21(1).

(5) The Court may award to an applicant compensation for -

- (a) each hacker's instruction (not being one resulting in an induced operator's instruction), and
- (b) each induced operator's instruction,

that result in the occurrence of an event to which paragraph (1) refers.

(6) However, the Court shall not award to an applicant more than £50,000 in compensation for each hacker's instruction or induced operator's instruction.

(7) In respect of liability arising under this regulation, the Court shall act as follows -

- (a) in awarding compensation, it shall only order the authorised operator to pay such amount of compensation as appears to the Court to be just and equitable in all the circumstances, having regard to the loss sustained by the applicant as a result of the hacker's instruction or induced operator's instruction,
- (b) in ascertaining the loss, it shall apply the same rules concerning the duty of a person to mitigate his loss as apply to damages recoverable at law, and
- (c) if it finds that the loss was to any extent caused or contributed to by any act or omission of the applicant, it shall 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 this regulation does not affect any right of the authorised operator to recover any sum from a third party.

(9) This regulation does not affect any liability or right that a person may incur or have apart from this regulation provided always that in the circumstances described in paragraph (1)(a), (b) and/or (c) the authorised operator shall not be liable other than as expressly provided for in this regulation except for any liability that may arise from the operator's fraud, wilful default or negligence.

(10) Where an application is made under paragraph (1), and the authorised operator receives from the applicant a request for information or documents relating to -

- (a) a hacker's instruction,
- (b) an induced operator's instruction,

in respect of which the application is made, the operator shall, in so far as he is able to do so and the request is reasonable, furnish the applicant with the information and documents within one month.

(11) In so far as he is able to do so, the applicant shall furnish the authorised operator within one month with such information or documents as the operator reasonably requests in connection with an application under paragraph (1) with respect to -

- (a) steps taken by the applicant to prevent the giving of any hacker's instruction (whether of a kind to which paragraph (1) refers or of any other kind), and
- (b) steps taken by the applicant to mitigate loss suffered by him.

(12) However, the applicant need not furnish information or documents under paragraph (11) until the authorised operator has complied with any request made under paragraph (10).

(13) Neither the authorised operator nor the applicant shall be required to disclose any information under paragraph (10) or paragraph (11) that would be privileged in the course of civil proceedings.

PART V MISCELLANEOUS

Ancillary powers of Commission.

38. (1) The Commission may appoint any person or body to advise or assist it in relation to the exercise of any of its functions under these Regulations.

~~(2) In the event of the Commission making an appointment in accordance with paragraph (1) in respect of the business or affairs of an approved operator, the costs, fees and expenses of the appointment are payable by the approved operator and recoverable from him as a civil debt.~~

(3) No sum in respect of the costs, fees and expenses of an appointment under paragraph (1) may be recovered by the Commission from an operator where the court is satisfied that -

- (a) the sum is not reasonable in amount or was not reasonably incurred, or
- (b) the Commission acted unreasonably, frivolously or vexatiously in incurring that sum.

Relationship of these regulations to other laws.

39. (1) Any reference in any other enactment or rule of law -

- (a) to an instrument of transfer, or
- (b) to a transfer with respect to securities,

or to any expression having like meaning, shall be taken to include a reference to an operator's instruction to an issuer to register a transfer of title on the relevant register of securities in accordance with the operator's instruction.

(2) No requirement in any other enactment or rule of law that applies in respect of the transfer of securities otherwise than by means of a computerised settlement system precludes an operator's instruction from requiring an issuer to register a transfer of title to uncertificated units of a security.

~~(3) Notwithstanding any other enactment, instrument or rule of law, no issuer shall issue a certificate in relation to any uncertificated units of a participating security.~~

(4) Paragraph (3) does not apply to the issue of a certificate in accordance with regulation 28.

(5) Notwithstanding any enactment or rule of law, a document which -

(a) is issued by or on behalf of an issuer, and

(b) purportedly evidences title to an uncertificated unit of a participating security,

is not evidence of title to the unit of the security.

(6) No requirement in or under any enactment to endorse a statement or information on a certificate evidencing title to a unit of a security prohibits -

(a) the conversion of units of the security into uncertificated form, or

(b) the issue of units of the security in uncertificated form.

(7) Any requirement in or under any enactment to endorse a statement or information on a certificate evidencing title to a unit of a security shall be taken, in relation to uncertificated units of the security, to be a requirement to provide the holder of the units with the statement or information on request by him.

Trusts, trustees and personal representatives.

40. (1) Unless he is expressly prohibited from transferring units of a security by means of a computerised settlement system, a trustee or personal representative is not chargeable with a breach of trust or, as the case may be, with default in administering an estate by reason only (in either case) of any of the following facts -

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

(2) A trustee of a trust deed or other instrument for securing an issue of securities is not chargeable with a breach of trust by reason only of the fact that he has assented to an amendment of the trust deed or other instrument for the purposes only of -

- (a) allowing the holding of units of the securities in uncertificated form,
- (b) allowing the exercise of rights attaching to units of the securities by means of a computerised settlement system, or
- (c) allowing the transfer of title to units of the securities by means of a computerised settlement system,

if he has caused notice of the amendment to be given in accordance with the trust deed or other instrument not less than 30 days before its becoming effective, to all persons registered as holding the units of the securities on a date not more than 21 days before the dispatch of the notice.

(3) An authorised operator is not 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 trust or interest.

- (4) No notice of a trust, expressed, implied or constructive -
- (a) may be entered on a register of securities maintained under regulation 18(3), or

(b) is receivable by the registrar of such a register.

Notices of meetings.

41. (1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes they may cast, an issuer may specify ~~in the notice of the meeting a time (being 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) Notwithstanding any provision to the contrary in any enactment, articles of incorporation or other instrument, changes to entries on the relevant register of securities after the time specified under paragraph (1) shall be disregarded in determining the rights of any person to attend or vote at the meeting.

(3) For the purposes of serving notices of meetings, whether under the Law or any other enactment or under a provision in articles of incorporation or any other instrument, an issuer may determine that those persons who are entered on the relevant register of securities at the close of business on a day determined by him shall be persons who are entitled to receive such notices.

(4) The day determined by an issuer under paragraph (3) may not be more than 21 days before the day on which the notices of the meeting are sent.

Irrevocable powers of attorney.

42. (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 that is communicated by an authenticated computer instruction in respect of uncertificated units of a participating security

constitutes a grant of an irrevocable power of attorney by the member of the computerised settlement system accepting the offer in favour of the offeror or person nominated by the offeror in the terms set out in the offer.

(3) A declaration in writing by the offeror stating the terms of a power of attorney and that it has been granted under this regulation, and stating the name and address of the grantor, is prima facie evidence of the grant.

(4) A 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, is satisfied by the production of the declaration or a copy of the declaration certified in that manner.

Actual notice.

43. 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 is correct, exists or has occurred.

Participating securities issued in uncertificated form.

44. Nothing in these Regulations requires -

- (a) an 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 authorised operator or 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.

Breaches of statutory duty.

45. (1) A default in complying with or contravention of regulation 20(1) or (2), 21(1), 24, 28(1) or (3), 29(1) or 30(3) is actionable at the suit of -

(a) a person who suffers loss as a result of the default or
contravention, or

(b) a person who is otherwise adversely affected by it,

subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) This regulation does not affect any liability that a person may incur or have apart from this regulation.

Meaning of "default" of officers.

46. For the purposes of regulations 18(4), 22(3), 28(4) and 29(9), an officer of an issuer is in default in complying with a provision to which those regulations apply if and only if he knowingly authorises or permits the default.

Fees.

47. (1) The Commission may determine after consultation with the Commerce and Employment Department -

(a) the fees payable to the Commission -

(i) on an application for approval under regulation 4 as an operator of a computerised settlement system,

(ii) on an application for recognition under regulation 5 as an operator of a computerised settlement system,

(iii) on the renewal or variation, at the request of the authorised operator, of any such approval or recognition,

(iv) annually, in respect of any continuing such approval or recognition, and

(v) by authorised operators and other persons or bodies in connection with any other function of the Commission under or for the purposes of these Regulations (whether generally or in any particular case),

(b) the interest payable in the event of default in the due payment of fees, and

(c) subject to paragraph (2), the persons by whom such fees and interest are to be payable.

(2) Fees payable pursuant to this regulation -

(a) are recoverable from -

(i) the person making the application for approval or recognition,

(ii) the authorised operator making the request for

renewal or variation of an approval or recognition, or

- (iii) the person or body specified by the Commission for the purposes of the function in connection with which the fee is payable,

as a civil debt due to the Commission,

- (b) are not refundable, and
- (c) shall, where appropriate, be proportioned in such manner as may be determined by the Commission.

Interpretation.

48. (1) In these Regulations, "**computerised settlement system**" means –

- (a) a computer-based system, and
- (b) its related facilities and procedures,

which are provided by an authorised operator and by means of which title to units of a security can be evidenced and transferred, in accordance with these Regulations, without a written instrument.

(2) In these Regulations, unless the context requires otherwise -

"approved operator" means a person who is approved by the Commission under regulation 4 as an operator of a computerised settlement system and whose approval is not for the time being suspended,

"authorised operator" means a person who is an approved operator or a recognised operator,

"certificate" means a certificate or other written instrument or document of title to units of a security, or evidencing title to units of a security,

"certificated unit of a security" means a unit of a security that is not an uncertificated unit of a security,

"Commission" means the Guernsey Financial Services Commission,

"company" means a company as defined by sections 1 and 2(3) of the Law,

"competent authority" means a person or body authorised under the laws of the United Kingdom, or of any of the other British Islands, or of any other member state of the European Union, or of any other country or territory recognised for the purposes of these Regulations by the Commission, to approve persons to operate computerised settlement systems. In Guernsey the competent authority is the Commission,

"computer instruction" means an instruction which is sent or received by means of a computerised settlement system,

"Court" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats,

"CREST effective date" means the date on which any decision by the Commission to recognise Euroclear UK & Ireland Limited as an operator for

the purposes of regulation 5 takes effect,

"CREST rules" means the rules made by Euroclear UK & Ireland Limited as the operator of the CREST system,

"CREST system" means the facilities and procedures for the time being of the computer system operated by Euroclear UK & Ireland Limited,

"documents" includes information recorded in any form (including, without limitation, in electronic form) and -

- (a) in relation to information recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of a copy of the information in legible form,
- (b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language,

"enactment" means any Law or Ordinance and any subordinate legislation made thereunder,

"generate", in relation to an operator's instruction, means to initiate the procedures by which the instruction comes to be sent,

"guidance", in relation to an authorised operator, means guidance in respect of the provision of a computerised settlement system which -

- (a) is issued by him,

(b) is issued in writing or in some other legible form, and

(c) is intended to have continuing effect,

"insolvent" includes being subject to a final vesting order in saisie proceedings or the subject of désastre proceedings,

"instruction" includes an election, acceptance or other message of any kind,

"interest in a security" means a legal or beneficial interest or right in relation to a security, and for these purposes a legal or beneficial interest includes -

(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 by a custodian or depositary,

"issue", in relation to new units of a security, means to confer title to a new unit on a person,

"issuer" means a person who has issued a security which is a participating security,

"issuer's instruction" means an authenticated computer instruction which is attributable to an issuer,

"the Law" means the Companies (Guernsey) Law, 2008^d,

"member", in relation to a computerised settlement system, means -

- (a) a person who is permitted by an authorised operator to transfer, by means of that system, title to uncertificated units of a security held by him, or
- (b) two or more persons who are jointly so permitted to do so,

"member's instruction" means an authenticated computer instruction which is attributable to a member of a computerised settlement system,

"officer", in relation to an issuer -

- (a) where the issuer is a company, includes a director, manager or secretary of the company or, where the affairs of the company are managed by its members, includes any member in connection with his functions of management,
- (b) where the issuer is a partnership, includes any of its partners or (in the event that no partner is situated in Guernsey) any person in Guernsey who is acting on behalf of any of its partners (in their capacity as such), and
- (c) where the issuer is neither a company nor a partnership,

^d Order in Council No. VIII of 2008.

includes any member of its governing body or (in the event that no member of its governing body is situated in Guernsey) any person in Guernsey who is acting on behalf of any member of its governing body (in their capacity as such),

"operator's instruction" means an authenticated computer instruction which is attributable to an authorised operator,

"operator's system" means those facilities and procedures which -

- (a) are part of a computerised settlement system, and
- (b) are maintained and operated by or for an authorised operator,

by which he generates his instructions and receives computer instructions from other users of the system and by which persons change the form in which units of a participating security are held,

"participant", in relation to a computerised settlement system, means a person who as regards that system is an authorised operator, issuer, member, settlement bank or user,

"participating security" means a security the title to units of which is permitted by an authorised operator to be transferred by means of a computerised settlement system,

"recognised operator" means a person who is recognised by the Commission under regulation 5 as an operator of a computerised settlement system and whose recognition is not for the time being suspended,

"register of company members" means a register of members kept by a company under section 123 of the Law,

"register of securities" -

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- (a) in relation to shares, means a register of company members, and
 - (b) in relation to units of a security other than shares, means a register maintained by the issuer (under these Regulations or otherwise) of persons holding the units,

"rules", in relation to an authorised operator, means rules which are made or conditions which are imposed by him with respect to the provision of a computerised settlement system,

"serious offence" means one for which the maximum penalty (if it were committed by an individual) would include a term of imprisonment of not less than one year,

"securities" means -

- (a) units in a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of

Guernsey) Law, 1987^e ("*Category 1 : Collective investment schemes*"),

- (b) general securities and derivatives within the meaning of paragraph 2 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 ("*Category 2 : General securities and derivatives*"),

"settlement bank", in relation to a computerised settlement system, means a person who has contracted to make payments in connection with transfers of title to uncertificated units of securities by means of that system,

"shares" means shares (or stock) in the share capital of a company,

"sponsor", in relation to a computerised settlement system, means a user who is permitted by an authorised operator to send authenticated computer instructions that are attributable to another person and to receive authenticated computer instructions on another person's behalf,

"the 2000 Act" means the Financial Services and Markets Act 2000 of the United Kingdom,

"uncertificated" means not recorded by means of a certificate,

"uncertificated unit of a security" means a unit of a security to

^e Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; and by No's XV and XXXII of 2003; also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); and the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008.

which title -

- (a) is recorded on the relevant register of securities as being held in uncertificated form, and
- (b) may be transferred under these Regulations by means of a computerised settlement system,

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^f,

"unit of a security" means the smallest possible transferable unit of the security (for example, a single share),

"user" in relation to a computerised settlement system means a person who is permitted by an authorised operator to send and receive authenticated computer instructions,

"wholly dematerialised security" means a participating security whose terms of issue (or, in the case of shares, where its terms of issue or the articles of incorporation 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 computerised settlement system.

(3) References in these Regulations to an enactment are references thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^f Ordres en Conseil Vol. XXXI, p. 278; amended by Ordinance XXIX of 2006.

- (4) For the purposes of these Regulations -
- (a) a computer instruction is authenticated if it complies with the specifications to which paragraph 5(1)(b) of the Schedule refers,
 - (b) a computer 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 in either case with the specifications to which paragraph 5(1)(c) of the Schedule refers,
 - (c) a computer instruction may be attributed to more than one person, and
 - (d) an addressee is the person to whom an authenticated computer instruction indicates that it is addressed in accordance with the specifications drawn up in order to satisfy paragraphs 5(1)(d), (e) and (f) of the Schedule.

(5) The Interpretation (Guernsey) Law, 1948^g applies to the interpretation of these regulations as it applies to the interpretation of an enactment.

Citation and commencement.

49. These Regulations may be cited as the Uncertificated Securities (Guernsey) Regulations, 2009 and shall come into force on the 30th November, 2009.

^g Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE
REQUIREMENTS FOR APPROVAL OF OPERATORS

Arrangements and resources

1. An operator must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with his rules or, as respects monitoring, arrangements providing for that function to be performed on his behalf (and without affecting his responsibility) by another body or person who is able and willing to perform it.

Financial resources

2. An operator must have financial resources sufficient for the proper performance of his functions as an operator.

Promotion and maintenance of standards

3. An operator must be able and willing to promote and maintain high standards of integrity and fair dealing in the operation of the computerised settlement system and to cooperate, by the sharing of information or otherwise, with the Commission and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

Operation of the computerised settlement system

4. Where an operator causes or permits a part of the computerised settlement system that is not the operator's system to be operated by another person (other than as his agent) -

(a) the operator shall monitor compliance by the person

and that part of the computerised settlement system with the requirements of this Schedule, and

- (b) the operator shall have arrangements to ensure that the person provides him with such information and such assistance as he may require in order to meet his obligations under these Regulations.

System security

5. (1) A computerised settlement system must be constructed and operate -

- (a) in such a way as to minimise the possibility of unauthorised access to or the unauthorised modification of any program or data held in any computer forming part of the operator's system,
- (b) in such a way that each computer instruction is authenticated -
 - (i) in accordance with the specifications of the operator, which shall provide that each computer instruction is identifiable as being from the computers of a particular user or of the operator, and is also designed to minimise fraud and forgery, or
 - (ii) 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 computer instruction -

(A) is identifiable as being from the computers of the operator or of the depositary, clearing house or exchange which sent it, and

(B) is designed to minimise fraud and forgery,

(c) that each computer instruction expresses, in accordance with the specifications of the operator or the specifications referred to in subparagraph (b)(ii) (as the case may be), by whom it has been sent and (where relevant) on whose behalf it has been sent,

(d) that each computer instruction sent to a user or the operator indicates, in accordance with the specifications of the operator or the specifications referred to in subparagraph (b)(ii) (as the case may be), that it is addressed to that user or the operator,

(e) that each computer instruction sent to a person who is using the facilities of a sponsor to receive computer instructions indicates, in accordance with the specifications of the operator or the specifications referred to in subparagraph (b)(ii) (as the case may be), that it is addressed to that person and the sponsor,

- (f) that each computer instruction sent to the operator in order for him to send an operator's instruction to a user indicates, in accordance with the specifications of the operator or the specifications referred to in subparagraph (b)(ii) (as the case may be), that it is addressed to the operator, to the user and (if the user is acting as a sponsor) to the relevant person on whose behalf the sponsor receives computer instructions, and
- (g) that the possibility for a user to send a computer instruction on behalf of a person from whom he has no authority is minimised.

(2) 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, 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,

"depository" means a body or association carrying on business outside Guernsey with whom an operator has made arrangements-

- (a) to enable system-members to hold (whether directly or indirectly) and transfer title to units of 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 units of participating securities by means of the operator's computerised settlement 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.

System capabilities

6. A computerised settlement system must ensure that the operator's system can send and respond to authenticated computer instructions in sufficient

volume and with sufficient speed.

7. Before an operator's instruction to an issuer to register a transfer of uncertificated units of a security is generated, a computerised settlement system must be able-

- (a) to establish that the transferor is likely to have title to or, by virtue of regulation 27(1), an interest in such number of the units of the security as is in aggregate at least equal to the number to be transferred, or
- (b) to notify the issuer in accordance with regulation 26(1) that the transfer is one of two or more transfers that may be registered in accordance with regulation 26(3).

8. A computerised settlement system must maintain adequate records of all computer instructions.

9. A computerised settlement system must be able -

- (a) to permit each of its members to obtain a copy of any records relating to him as are maintained by the computerised settlement system in order to comply with paragraph 7(a) or 8, and
- (b) to make correcting entries in such records as are maintained in order to comply with paragraph 7(a) and as are inaccurate.

10. A computerised settlement system must be able to establish, where there is a transfer of uncertificated units of a security to a 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.

11. A computerised settlement system must ensure that the operator's system is able to generate -

-
- (a) the operator's instructions requiring issuers to amend the appropriate registers of securities kept by them, and
 - (b) the operator's instructions informing settlement banks of their payment obligations.

12. (1) A computerised settlement system must enable a member -

- (a) to grant authority to a sponsor to send authenticated computer instructions on his behalf, and
- (b) to limit such authority by reference to the net value of the units of securities to be transferred in any one day.

(2) A computerised settlement system must prevent the transfer of units in excess of that limit.

13. (1) A computerised settlement system must enable members -

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

(2) Paragraph 13(1) does not apply to any wholly dematerialised security.

Operating procedures

14. A computerised settlement system must comprise procedures that provide that it responds only to authenticated computer instructions which are attributable to a participant or an operator.

15. (1) A computerised settlement system must comprise procedures that provide that an operator's instruction requiring an 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, is generated only where -

- (a) it has received a member's instruction from the transferor, or it has been required to do so by a court or by or under an enactment,
- (b) it has established -
 - (i) that the transferor is likely to have title to or, by virtue of regulation 27(1), an interest in such number of units of a security as is in aggregate at least equal to the number to be transferred, or
 - (ii) that the transfer is one of two or more transfers that may be notified to the issuer in accordance with regulation 26(1),
- (c) in the case of a transfer to a 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 12(1)(b), the transferor has set on an authority given by him to a sponsor.

(2) A computerised settlement system must also comprise procedures that provide that an operator's instruction requiring an 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 where necessary to correct an error and if in accordance with the rules and practices of the operator instituted in order to comply with this Schedule.

16. (1) A computerised settlement system must comprise procedures that provide that an operator's instruction to an issuer relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security is generated only where -

- (a) it has received an authenticated computer instruction attributable to the member having the right, privilege or benefit requiring the operator to generate an operator's instruction to the issuer, or
- (b) it has been required to do so by a court or by or under an enactment.

(2) A computerised settlement system must also comprise procedures that provide that an operator's instruction to an issuer relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security

may be generated where necessary to correct an error and if in accordance with the rules and practices of the operator instituted in order to comply with this Schedule.

17. A computerised settlement system must comprise procedures that ensure that, if the computerised settlement system maintains records in order to comply with paragraph 15(1)(b)(i), the records are regularly reconciled with the registers of securities maintained by the issuers.

18. A computerised settlement system must comprise procedures that -

- (a) enable users to notify the operator of an error in or relating to a computer instruction, and
- (b) ensure that, where the operator becomes aware of an error in or relating to a computer instruction, he takes appropriate corrective action.

Rules and practices

19. (1) An operator's rules and practices must bind members and issuers -

- (a) so as to ensure the efficient processing of transfers of title to uncertificated units of a security in response to operator's instructions, and
- (b) as to the action to be taken where transfer of title in response to an operator's instruction cannot be effected.

(2) An operator's rules and practices must make provision for an issuer to cease to participate in respect of a participating security so as -

- (a) to minimise so far as practicable any disruption to members in respect of their ability to transfer the relevant security, and
- (b) to provide the issuer with any relevant information held by the operator relating to the relevant uncertificated units of the relevant security held by members.

(3) An operator's rules and practices must make provision for the orderly termination of participation by members and users whose participation is disruptive to other members or users or to issuers.

(4) If an operator's rules and practices make provision for the designation of a subsidiary undertaking as a relevant nominee, they must require that the relevant nominee maintain -

- (a) adequate records of the names of the persons who have an interest in the securities it holds, and
- (b) adequate records of the nature and extent of their interests.

20. (1) An operator's rules and practices must require that each user is able to send and receive authenticated computer instructions.

(2) An operator's rules and practices must require that -

- (a) each member has arrangements for authenticated computer instructions attributable to him to be sent,

- (b) each member has arrangements for authenticated computer instructions to be received by or for him, and
 - (c) each member has arrangements with a settlement bank for payments to be made, where appropriate, for units of a security transferred by means of the computerised settlement system.
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(3) An operator's rules and practices must require that each issuer is able to respond with sufficient speed to operator's instructions.

(4) An operator's rules must require users and former users to provide him with such information in their possession as he may require in order to meet his obligations under these Regulations.

Dated this 8th September, 2009



DEPUTY C.S. MCNULTY BAUER

Minister of the Commerce and Employment Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for title to securities to be evidenced and transferred by means of a computerised settlement system without a written instrument. The power

to make these regulations is set out in the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005.
