

STATUTORY INSTRUMENTS

S.I. No. 693 of 2005

COMPANIES ACT 1990 (UNCERTIFICATED SECURITIES) (AMENDMENT)
REGULATIONS 2005

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S.I. No. 693 of 2005

Companies Act 1990 (Uncertificated Securities) (Amendment) Regulations 2005

I, Michael Ahern, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 4 of the Companies (Amendment) Act 1977 (No. 31 of 1977) and section 239 of the Companies Act 1990 (No. 33 of 1990)(as adapted by the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 305 of 1997) and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) (No.2) Order 2004 (S.I. No. 808 of 2004)), hereby make the following regulations:

1. (1) These Regulations may be cited as the Companies Act 1990 (Uncertificated Securities) (Amendment) Regulations 2005.

(2) These Regulations shall come into operation on the 10th day of November 2005.

2. The Companies Act 1990 (Uncertificated Securities) Regulations 1996 (S.I. No. 68 of 1996) are amended -

(a) in Regulation 3, by inserting, in the appropriate place, the following definition:

“ ‘settlement’, in relation to a transfer of uncertificated units of a security between 2 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;” and

(b) in the Schedule -

(i) by substituting for subparagraph (b) of paragraph 5 the following:

“(b) that each dematerialised instruction is properly authenticated -

(i) in accordance with the specifications of the operator, which shall provide that each dematerialised instruction -

- (I) is identifiable as being from the computers of a particular system-participant, and
- (II) is designed to minimise fraud and forgery,

or

- (ii) if it is sent to the operator by, or by the operator to, a depository, a clearing house or a stock exchange, in accordance with specifications of that depository, clearing house or exchange to which the operator has agreed and which shall provide that each dematerialised instruction -

- (I) is identifiable as being from the computers of the operator or of the depository, clearing house or exchange which sent it, and
- (II) is designed to minimise fraud and forgery;”, and

- (ii) by inserting after paragraph 5 the following:

“5A. For the purposes of paragraph 5 -

‘clearing house’ means a body or association which provides services related to the clearing and settlement of transactions and payments and the management of risks associated with the resulting contracts and which is regulated or supervised in the provision of those services by a regulatory body, or an agency of government, of a Member State;

‘depository’ means a body or association carrying on business outside the State with whom an operator has made arrangements -

- (i) to enable system-members to hold (whether directly or indirectly) and transfer title to securities (other than participating securities) by means

of facilities provided by that body or association; or

- (ii) to enable that body or association to permit persons to whom it provides services in the course of its business to hold (whether directly or indirectly) and transfer title to participating securities by means of the operator's relevant system;

'stock exchange' means -

- (i) a person who has been approved as such under section 9 of the Stock Exchange Act 1995, or
- (ii) a body or association which provides services outside the State which are similar in nature to those provided by a person referred to in paragraph (i) and which is regulated or supervised in the provision of those services by a regulatory body, or an agency of government, of a Member State."

GIVEN under my hand,

this 9th day of November
2005.

MICHAEL AHERN
Minister of State at the
Department of Enterprise, Trade
and Employment.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations amend the Companies Act, 1990 (Uncertificated Securities) Regulations, 1996 in order to facilitate the introduction of a Central Counterparty (CCP) system for the Irish securities market.

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