



# Money Market Instruments in CREST

## Guidance for 'drawers' of dematerialised acceptances

Bankers' acceptances are currently issued (in accordance with the Bills of Exchange Act 1882) in physical form and then 'immobilised' in the Central Moneymarkets Office (CMO) on being deposited by a lodging agent on behalf of the issuers.

These instruments cannot as a legal matter simply be 'dematerialised' in CREST, the legal basis for which is section 207 of the Companies Act 1989 and the Uncertificated Securities Regulations 2001 (the 'USRs'). The process of migrating such instruments into CREST effectively involves the issuers creating a new type of registered security (an 'eligible debt security' or 'EDS') that has rights and obligations that correspond, so far as is practicable, with a banker's acceptance issued in negotiable form under the 1882 Act.

### **What will change?**

- Dematerialised acceptances issued as EDSs will have to be created under a deed made by the drawer and the acceptor. This is a contractual mechanism which in effect replicates the statutory mechanism under the 1882 Act – i.e. the acceptor (as 'primary issuer') covenants to pay the holder at maturity and the drawer (as 'secondary issuer') covenants to pay if the acceptor fails to do so.
- Once the issuers have executed this deed, EDSs can be constituted electronically (through completion of an electronic 'notice of issue') and issued by the Issuing and Paying Agent (IPA) direct to the initial holders in CREST. Legal title to these units will be established by the entry of the holder in the CREST records and will be conferred on the initial holder, against simultaneous final payment of the subscription monies, by book-entry transfer.
- Sterling, euro and US dollar payments facilities are available in CREST, and automated procedures will facilitate the redemption process at maturity.
- Changes to existing law are required to achieve this and in particular to the USRs which currently permit only gilts and equities to be dematerialised. HM Treasury has accepted for the purposes of the USRs that both the drawer and the acceptor of an EDS corresponding to an acceptance should be treated as the 'issuer' of the security.
- The role of the current CMO lodging agent will be replaced by an IPA. Since both the drawer and the acceptor will be 'issuers' of the EDS under the new legislation, it follows that the IPA must act for both.

## Impact on a drawer

Since a drawer is an issuer of an EDS corresponding to an acceptance, it must become a party to the same arrangements which apply to any other issuer of an EDS (e.g. the issuer of an EDS corresponding to commercial paper). In particular a drawer will have to:

- become a 'participating issuer' in CREST (in respect of which it and each acceptor with which it has a relationship must submit to CRESTCo an Issuer Application Form ('IAF') by 1 August and become subject to the CREST rules applicable to issuers of securities admitted to CREST);
- become a party (with the acceptor) to the deed under which dematerialised acceptances can be created and issued into CREST;
- become a party (with the acceptor) to an agreement with the IPA;
- provide a legal opinion in the form specified by CRESTCo, if it is incorporated or established outside the UK; and
- amend any underlying documentation between it and each acceptor with which it has a relationship.

These requirements are similar to the requirements applicable to other issuers whose securities are admitted to CREST, with some modification to lessen the burden of the application procedures applicable to issuers of EDSs to reflect their need for rapid issuance of such securities.

It is acknowledged that these requirements will be new to drawers and that they will want to satisfy themselves as to their legal position under the new structure. However, a drawer can minimise the administrative burden by:

- giving its accepting bank appropriate authority to sign the IAF and the IPA agreement on its behalf; and
- signing up to the EDS deed by signing a one page accession deed or by giving its accepting bank appropriate authority to sign the accession deed on its behalf.

Furthermore, these requirements relate only to start-up and once the arrangements have been put in place, the drawer:

- would be able effectively to operate in the same way as it does now (but without any requirement to complete and lodge physical instruments) – i.e. solely through its accepting bank; and
- will benefit from the increased functionality and security which settlement through CREST will afford over the CMO.

**Note:**

This guide is not intended to be, and should not be relied upon as, a substitute for legal, tax or accounting advice. Any person proposing to issue or hold title to units of an EDS should seek separate advice. Whilst care has been taken in the preparation of this fact sheet, CRESTCo and the Bank of England accept no responsibility or liability for any loss which may arise in connection with its use by any person. **June 2003**