

**THE FUTURE OF MONEY MARKET INSTRUMENTS**

**A SECOND CONSULTATION ON *PRO FORMA* TERMS OF  
ISSUANCE FOR ELIGIBLE DEBT SECURITIES**



**March 2003**

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## A SECOND CONSULTATION ON *PRO FORMA* TERMS OF ISSUANCE FOR ELIGIBLE DEBT SECURITIES

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## **A: INTRODUCTION**

In November 2002 the Bank issued for consultation, on behalf of the Sterling Money Markets Liaison Group (MMLG), draft standard or *pro forma* terms of issuance for eligible debt securities (EDSs) together with a draft explanatory memorandum about the *pro forma* terms. The drafts reflected discussions with CRESTCo and in the MMLG MMI Reform *Next Steps* Group and in a sub-group of the *Next Steps* Group. The consultation documents were given wide circulation, including to all the main banking organisations, members of MMLG, and all banks whose acceptances are eligible for discount in the Bank's sterling money market operations.

The Bank received comments from four banking trade associations, two banks and the Financial Services Authority.

All responses were broadly supportive of the proposed approach. A number of consultees raised some questions and concerns, and these are summarised below together with some responses to these points.

After further discussion in the sub-group of the MMLG *Next Steps* Group, the Bank has prepared revised versions of the *pro forma* terms and the explanatory memorandum and these are attached to this document. In the light of the responses, the Bank envisages issuing final versions in early May. This should allow the market sufficient time to prepare their own terms of issuance before the issuance of EDSs begins in mid-September 2003.

The Bank would be grateful for comments on the proposals in this paper, and on any points arising, by 18 April. Responses should be addressed to:

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## **B: MAIN COMMENTS**

### *General*

1 One consultee's responses suggested that they considered that the *pro forma* terms were intended to prescribe a standard template for setting out the terms of issuance in *all* cases. However, this is not the intention. It will be up to the individual issuer, working in conjunction with its Issuing and Paying Agent (IPA), to decide whether to use one deed, or several, or many; and what precisely should be covered in the deed and notice and any accompanying documentation, bearing in mind the features of the CREST settlement system. The purpose of the *pro forma* terms is to provide *guidance* to the market on what would need to be covered in the issuance terms, but they are not prescriptive in any rigid sense and issuers can choose to exclude certain provisions which are not relevant to their circumstances or to include additional or modified provisions. Another purpose of circulating *pro forma* terms is to suggest a general market standard for issuance terms so that market participants will have a general understanding of what issuance terms are likely to cover, whilst recognising that there may be variations in particular cases. The agreement of the *pro forma* terms and the achievement of a degree of standardisation should help the transition from the issue of negotiable instruments to the issue of EDSs to proceed more smoothly and should assist the efficient workings of the market more generally.

2 One question which has emerged, however, is whether the deed might be structured such that the main body would contain only the terms necessary for the constitution and issue of EDSs, with any required commercial terms<sup>1</sup> being entered into an annex (i.e. adopting the structure of certain market standard master agreements such as the ISDA Master Agreement). On this model, the main body of the deed would become a fixed standard.

### *Deed*

3 Consultees generally accepted that the current legal position meant that there would have to be a deed (i.e. paper) rather than an electronic equivalent (although issue notices need not be in paper form – see paragraph 8 below). Nevertheless, further consideration can be given to what legal changes could be made to allow a non-material equivalent of a deed.

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<sup>1</sup> E.g. as currently indicated in square brackets in the attached draft terms and possibly also the provision to deal with the situation where a holder ceases to be a CREST member or a security ceases to be CREST eligible.

4 There was a consensus that there should be a separate deed for the equivalent of bankers' acceptances, that is two-name securities, from that for one-name securities, i.e. the equivalents of certificates of deposit (CDs) and commercial paper (CP). The Bank has accordingly prepared two versions of the standard deed for consideration by the market.

5 One bank queried whether it would be necessary to have a separate deed for each "acceptor/drawer" relationship. This could be an option but equally the equivalent of the accepting bank could structure its documentation so as to have a *single* deed for *all* of its equivalents of bankers' acceptances. Such a deed could contain a mechanism under which each drawer would become party to the deed by signing a separate (and much shorter) accession deed. The revised *pro forma* terms for the equivalent of acceptances now contain such a mechanism.

6 It should also be possible for the accepting bank to prepare and sign all the documentation on behalf of the drawer if it had an appropriate power of attorney from the drawer. The equivalent of accepting banks can choose how to approach this, but this must be consistent with the constitution of two-name paper, in the form of an eligible debt security, as a single debt obligation in respect of which both the Primary Issuer (equivalent of the accepting bank) and the Secondary Issuer (equivalent of the drawer) are liable (as against a Holder) as "principal debtors".

#### *Storage of the deed*

7 The general consensus was that deeds should be stored with the relevant issuing agent. The basis upon which the issuing agent would hold the deed (and any associated notices of issue) would be governed by the contractual arrangements put in place between it and the issuer.

#### *Notices to the deed*

8 Some consultees were under the misapprehension that that the notices of issue would have to be in paper form or that there was some uncertainty about this. In fact, the Bank believes that notices can be issued in electronic form only; and, although the notice would have to be in paper form if it included a *guarantee*, this could be avoided if the guarantee were embodied in the deed or another separate document.

9 It has been suggested that the notice could be constituted by the Issuance Message sent from the IPA, as a CREST sponsor for the issuer, to CREST. This message<sup>2</sup> would be protocol independent and could take the form of a SWIFT message and be available through both “GUI” and “File Transfer”. CREST and the IPAs are working to ensure that all of the details that are specified in the notice of issue may be replicated in the data fields of the Issuance Message (and some further work is also likely to be required to ensure that the terminology of the deed can readily be related to the corresponding fields in the Issuance Message). On the basis that IPAs would usually seek to issue a notice by means of an Issuance Message, the *pro forma* terms no longer prescribe the form of the notice but only the information fields which a notice must contain (the relevant fields being listed in a schedule to the terms). Where a notice is issued by way of an Issuance Message, it will clearly be important for issuers and their IPAs to be able to identify the underlying deed to which the notice relates.

10 However, there are (at present at least) some minor limitations on the use of an Issuance Message as a notice of issue. The Bank understands that for floating rate instruments, it will not be possible (at least initially) to use the IPA Issuance Message to specify the basis of the floating rate (e.g. LIBOR) or to identify the calculation agent. It will also not be possible to identify whether, upon an early redemption, a put or call option is to be exercised. This means that in such cases, which the Bank understands are relatively rare, an issuer will have to constitute the EDS either under a notice of issue in a different form, or under a combination of such a notice (containing the terms which cannot be inserted in the IPA Issuance Message) and the IPA Issuance Message.

11 There was also a question about the position of amendments to a notice of issue (e.g. when the nominal amount outstanding is increased in a tap issue or even to correct an error). Where an Issuance Message is sent to CREST in the context of a tap issue, that message supersedes earlier messages (and so the new message would detail the entire outstanding of the relevant stock including the tap). As an evidential matter, it should be possible to identify what is the current notice of issue in these circumstances (and also in circumstances where a notice is issued to correct an error). A discussion on the related CREST system functionality and requirements relevant to this issue is

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<sup>2</sup> The message will be an “issuer-instruction” under the Uncertificated Securities Regulations. As such, it will be required to comply with the specifications as to authentication contemplated by paragraph 5(3) of Schedule 1 to the USRs. Presently there is no ISO15022 issuance message.

contained in the CREST White Book, “Enhancing CREST: July 2003 - Money Market Instruments in CREST” at pages 5-16.

12 A further matter was the addition of the ISIN. This would be allocated to an issue centrally by CREST once they had received the Issuance Message and would not form part of the notice of issue. However, CREST are examining possible solutions to this problem and in any event it was thought that this should not be overly problematic as the ISIN is not a matter going to the constitution of a security; further the original IPA message will include a unique issue reference number which would enable the holder to identify the ISIN in CREST, and the notice of issue now includes the issue reference number.

13 Another consideration is whether the compliance of issues with standard commercial terms might be distinguished on the notice of issue and perhaps in details maintained by CREST. The notice of issue already contemplates a “London CD” option which, if selected, would indicate that the issuer/securities complied with any applicable guidelines for dematerialised CDs and the notice may need to be adapted to reflect compliance with any other applicable guidelines.

#### *Storage of the notice*

14 There was a general consensus that completed notices of issue (whether in the form of an IPA Issuance Message sent by the IPA or otherwise) would be stored with the IPA (see above).

#### *MTNs*

15 There was a strong consensus that the current round of work on the *pro forma* terms should not attempt to cover MTNs. One consultee also made the point that splitting the market between CREST and the ICSDs (i.e. Euroclear and Clearstream) could have a negative impact on the whole MTN market.

#### *Equivalents of bankers’ acceptances*

16 Several consultees commented that there was no need to provide for equivalents which were repayable *on demand*, as in practice all acceptances have a fixed maturity date. Accordingly the current draft does not include an *on demand* provision, although any issuer could add such a provision if it were needed in its case.

17 One consultee wondered whether it would be preferable to call the drawer equivalent the 'primary issuer' and the acceptor equivalent the 'secondary issuer' on the basis of the argument that the drawer of a bill of exchange is its owner until it has been discounted. The counter to this is that most in the market would put greater weight on the name of the acceptor and would see the primary issuer as being the acceptor, given that the holder at maturity looks first to the acceptor for payment and only to the drawer if the acceptor defaults. This analysis reflects the liability chain which, *as between the holder and acceptor/drawer*, exists under a material banker's acceptance; and it is this relationship which is principally governed by the deed. The analysis is not altered by the fact that, *as between the primary issuer and the secondary issuers*, the use of the banker's acceptance as a means for raising short-term funding by the secondary issuer (drawer) requires the secondary issuer (under its separate contract with the primary issuer) to reimburse the primary issuer for payments made by it under the acceptance. Subject to any further comment, it is not currently envisaged that the terminology in this area should be amended.

18 One consultee questioned why the deed did not deal in greater detail with the relationship between the primary issuer and the secondary issuer. The answer to this is that, as explained above, the deed is principally concerned with the relationship between the holder and the primary issuer/secondary issuer. It is intended to replicate the issue of a banker's acceptance to a holder and constitute rights and obligations as between the issuers and the holder which, as far as practicable, correspond to those which arise under a material banker's acceptance. The relationship between the issuers themselves is a matter primarily for the separate contract between them.

19 Another matter which arose in the course of the consultation concerns interest/expenses payable to a holder in the event of a failure of the issuer to pay the principal amount on the maturity date. So far as the Bank is aware, current CP/CD programmes do not generally include express provision for a holder to be compensated for loss in the event of a late payment at maturity. However, the Bills of Exchange Act does provide for a holder to be compensated (albeit that the court has a discretion as to whether or not to award interest, and as to the interest to be awarded). This raises a question as to whether EDS issued under the *pro forma* terms should carry a corresponding right (and if so there does not seem to be any reason why this should be limited to acceptance equivalents). However, since this is a commercial matter, the Bank takes the view that it will be for the market to determine whether EDS terms should provide for a holder to be compensated in this way in the event of a late payment at maturity.

### *Unit value and minimum trading amounts*

20 The *pro forma* terms now contemplate both a “unit value” (this is the minimum denomination of the security) and a *minimum trading amount* (which is the “minimum transfer value” field in the terms and which could be the same as but not less than the unit value). Issuers must specify a unit value but it will be for issuers to decide whether to specify a minimum trading amount taking account of any market conventions (which could be captured in the revised BBA guidelines), and the notice of issue now provides for this possibility. Accordingly, an issuer could specify a unit value of £100,000 and a minimum transfer value of say, £300,000, permitting a transfer of £300,000 or £400,000 but not of £100,000 or £200,000.

21 Absent any applicable market convention, the issuer need not specify a minimum trading amount and in theory the unit value could be set at 1 penny (allowing the security to be traded and settled in multiples of 1 penny) but an issuer may be influenced in setting the unit value (and any minimum trading amount):

- by the practical implications of issuing physical instruments in the event of ‘re-materialisation’ on the compulsory cancellation of an eligible debt security under the deed;
- and possibly also by the terms of deposit-taking exclusion for short term debt securities in article 9(2) of the FSMA Regulated Activities Order, if it intends to rely on this exclusion. In particular, it will be necessary to comply with the requirement that “no part of [the security] may be transferred unless the redemption value of that part is not less than £100,000”<sup>3</sup>.

### *Issuing and paying agents*

22 One consultee queried the references to IPAs, noting that an issuer may use different agents for different instrument types. That should not be problematic as an issuer could deal with such a case by either providing in the deed for a number of IPAs or by issuing a number of deeds as necessary to cater for the range of issuing and paying agents used.

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<sup>3</sup> If the unit value is set at say £10,000, then even if the minimum trading amount is set at £100,000, there may be a technical concern that “part” of the EDS is transferable which has a redemption value of less than £100,000 because the smallest transferable unit of the security as specified under its terms of issue (and as settled as a “unit of transfer” in CREST) is in fact £10,000.

23 One consultee raised a concern about clause 6.2 of the previous draft deed which said that ‘holders of units are deemed to have notice of all the provisions of the Issuing and Paying Agency Agreement a copy of which is available from the Issuing Agent’. It was commented that an agreement may incorporate certain commercial terms and for this reason a copy should not be made available to investors. We have therefore placed this provision of the *pro forma* terms in square brackets so that it can be deleted if required. However, issuers should note that if it is deleted but it is also intended that holders be bound by or otherwise be on notice of any matters covered in the agreement, then some mechanism will be required to achieve this (e.g. the holder could be given separate notice of the relevant terms in the deed).

#### *Warranties on EDSs*

24 It was suggested that the draft deed should be amended so that the issuer would give a warranty that the security was indeed an EDS as defined in the Uncertificated Securities Regulations (as amended to reflect the introduction of EDS). The *pro forma* terms do now contain such a warranty.

## TERMS FOR EDS CORRESPONDING TO CD/CP

**Pro forma deed relating to uncertificated units of a CREST eligible debt security (corresponding to commercial paper and certificates of deposit). The pro forma deed is intended in principle only to include those terms which are required in order for uncertificated units to be issued. The terms will therefore need to be adapted to include any required commercial terms relevant to particular types of security.**

***[Insert date]***

***[Insert details of issuer]***

**as Issuer**

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**DEED**  
**relating to a *[insert details]***

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### **Legal notice**

This pro forma deed has been published by the Bank of England on behalf of the Sterling Money Markets Liaison Group (MMLG) [, a market group chaired by the Bank of bankers and other practitioners, also including representatives of the Financial Services Authority and CRESTCo Limited]. Whilst every care has been taken in its preparation, neither the Bank nor any other member of the MMLG warrants that the pro forma deed is suitable for any particular transaction and accept no responsibility or liability for any loss which may arise in connection with the use of the pro forma deed and any person proposing to use the pro forma deed should seek separate legal advice.

**THIS DEED** is made on [insert date] by [insert name, place of incorporation/establishment, registered number (if any) and registered address of issuer] (the **Issuer**) in favour of the persons who are from time to time Holders (as that term is defined in this Deed).

**WHEREAS:**

(A) The Issuer proposes, from time to time, to issue units of debt securities which are eligible debt securities the rights and obligations in respect of which correspond, so far as practicable, with those which would arise if the Issuer issued commercial paper, certificates of deposit or other similar debt instruments in material form on substantially the same terms as those set out in this Deed.

(B) Units of eligible debt securities will be issued only in uncertificated form in the CREST relevant system and only pursuant to an Issuing and Paying Agency Agreement between the Issuer and [identify Issuing Agent and Paying Agent] dated [insert date] (the **Issuing and Paying Agency Agreement**)<sup>4</sup>.

(C) The purpose of this Deed is to provide for the constitution of uncertificated units of eligible debt securities of the Issuer. Subject to and in accordance with the terms and conditions of this Deed, each Holder will acquire against the Issuer the rights constituted or acknowledged by and under this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. INTERPRETATION**

1.1 In this Deed, the following expressions shall have the following meanings:

**Business Day** means any day, other than a Saturday or a Sunday which is both (a) a CREST Business Day and (b) either (i) if the Specified Currency is any currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in both London and the principal financial centre of the country of the relevant Specified Currency or (ii) if the Specified Currency is euro, a day which is a TARGET Business Day;

**CREST Business Day** means a day on which the CREST relevant system is operational;

**CRESTCo** means CRESTCo Limited, a company incorporated in England and Wales under number 2878738 whose registered office is at 33 Cannon Street, London EC4M 5SB;

**CREST Manual** means the document entitled the “CREST Manual” issued by CRESTCo;

**CREST member** means a person who has been admitted by CRESTCo as a system-member;

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<sup>4</sup> This may need to be amended if there is more than one agency agreement (e.g. where the Issuer uses different IPAs for different products or where there are separate issuing agents and paying agents for the same product).

**CREST payment** means a payment which is made by means of the CREST relevant system by way of debit to the cash memorandum account of the Paying Agent (and a corresponding credit to the cash memorandum account of the relevant Holder);

**CREST relevant system** means the relevant system of which CRESTCo has been approved under the Regulations as Operator;

**CREST Rules** means rules within the meaning of the Regulations or the Financial Services and Markets Act 2000 made by CRESTCo and any rules made by CRESTCo as Operator of a designated system under or pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999 No. 2979);

**Holder** means a CREST member whose name is entered in the relevant Operator register of eligible debt securities as holder of units and, where the context admits, a Holder shall include a former Holder;

**interest payment record date** means, in relation to units bearing interest, the CREST Business Day before the relevant Interest Payment Date or, if the relevant Interest Payment Date is not a Business Day, the CREST Business Day before the Business Day on which the payment of interest is to be made under clause 3.4;

**IPA Issuance Message** means an issuer-instruction which is sent to CRESTCo by the Issuing Agent, as a sponsoring system-participant acting on behalf of the Issuer of an eligible debt security, and which in accordance with the CREST Manual is to be used to create the security details of that eligible debt security within the CREST relevant system;

**Issuing Agent** means the person appointed from time to time by the Issuer to act as Issuing Agent under the Issuing and Paying Agency Agreement, and is at the date of this Deed, [*insert details of Issuing Agent*];

**Maturity Date** means the date on which units are to be redeemed as specified in a Notice of Issue;

**Notice of Issue** means a notice given pursuant to clause 6.1 constituting units of an eligible debt security as amended or superseded from time to time;

**Paying Agent** means the person appointed from time to time by the Issuer to act as Paying Agent under the Issuing and Paying Agency Agreement, and is at the date of this Deed, [*insert details of Paying Agent*];

**Principal Amount** means the principal sum payable in respect of units of an eligible debt security as specified in a Notice of Issue;

**Regulations** means the Uncertificated Securities Regulations 2001 (SI 2001 No. 3755), as amended by the Uncertificated Securities (Amendment)(Eligible Debt Securities) Regulations 2003 (SI 2003 No. [ ]), and such other regulations made under section 207 of the Companies Act 1989 as are applicable to CRESTCo and/or the CREST relevant system and are from time to time in force;

**Specified Currency** means the currency in which units are denominated as specified in a Notice of Issue;

**TARGET Business Day** means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) System, or any successor thereto, is operating credit or transfer instructions in respect of payments in euro;

**unit** means, in relation to an eligible debt security of the Issuer, the smallest possible transferable uncertificated unit of the eligible debt security as specified in a Notice of Issue.

1.2 In this Deed, unless otherwise specified:

- (a) headings to clauses are for convenience only and do not affect the interpretation of this Deed;
- (b) references to any statute or statutory instrument or any provision thereof shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (c) terms defined or used in the Regulations which are used in this Deed shall have the meanings given to them in the Regulations;
- (d) terms relating to the CREST relevant system which are used in this Deed and which are not defined in this Deed or in the Regulations shall have the meaning given to them in the CREST Manual;
- (e) words importing one gender shall (where appropriate) include any other gender and words importing the singular shall (where appropriate) include the plural and vice versa;
- (f) references to the Issuer include any successor in title to such party;
- (g) any reference to “the CREST Manual” or “the CREST Rules” or any other agreement or document shall be construed as a reference to the CREST Manual or the CREST Rules or such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered pursuant to or in accordance with, the CREST Manual or the CREST Rules or, as the case may be, such other agreement or document; and
- (h) the exhibit to this Deed and any schedules completed pursuant to the provisions of this Deed shall form part of this Deed.

## **2. PAYMENT OBLIGATION OF THE ISSUER**

2.1 Upon the issue of units and subject to the terms and conditions of this Deed, the Issuer:

- (a) acknowledges, in relation to units issued in respect of a deposit made with it, that a sum has been deposited with it on terms that the Principal Amount is payable on the Maturity Date and any interest on the units is payable at the rate and at the times (if any) specified in or under this Deed; and
- (b) promises, in relation to any other units, to pay the Principal Amount on the Maturity Date and any interest thereon at the rate and at the times (if any) specified in or under this Deed.

### **3. PAYMENTS**

3.1 All payments under this Deed shall be made in accordance with the Issuing and Paying Agency Agreement and [shall be made in the Specified Currency] subject to and in accordance with the terms and conditions of this Deed and the facilities and requirements of the CREST relevant system. The Issuer shall, or shall procure that the Paying Agent shall, maintain appropriate records of all payments made under this Deed.

3.2 Payment of principal by an Issuer shall be made by means of a CREST payment in respect of each unit against the system-transfer of the unit to such stock account of the Paying Agent maintained in the CREST relevant system as may be specified by or on behalf of such Issuer to the person who is the Holder immediately before the time at which the unit is credited to the stock account of the Paying Agent.

3.3 Payments of interest by the Issuer shall be made on the relevant Interest Payment Date by means of a CREST payment in respect of each unit:

- (a) subject to paragraph (b), to the person who is identified in the CREST relevant system on the relevant interest payment record date, in accordance with the CREST Manual, as the Holder of such unit for the purposes of interest payment; or
- (b) to the person to whom the payment of principal is due under clause 3.2 in respect of any interest which is due on an Interest Payment Date which coincides with the Maturity Date.

3.4 If the Maturity Date or, if applicable and subject to clause 4.2, the relevant Interest Payment Date, is not a Business Day, payment of principal under clause 3.2 and payment of interest under clause 3.3 shall be made by the Issuer on the next following Business Day<sup>5</sup> and no person shall be entitled to any interest or other sums in respect of such postponed payment.

3.5 *[Include any appropriate provisions relating to restrictions on deductions from payments – e.g. set-off, counterclaim etc or deduction for withholding tax (and gross up provision).]*<sup>6</sup>

3.6 Payment by the Issuer in accordance with the provisions of this clause 3 shall discharge all obligations of the Issuer to the Holder in respect of such payment.

### **4. INTEREST**

4.1 If units are issued which bear fixed interest, the interest shall be calculated on the Principal Amount as follows:

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<sup>5</sup> Include as appropriate provision for adjusting the payment date to the preceding business day where the payment date is not a business day and the next business day would fall in the next calendar month.

<sup>6</sup> Under CREST Rule 7, paragraph 5, provisions as to payment must be compatible with CREST payment arrangements. Such arrangements will not accommodate any right of set-off or counterclaim to be exercised against a CREST payment. Failure to comply with this condition will make the security ineligible for CREST settlement.

[Insert required calculation provisions using as appropriate terms defined in a Notice of Issue]

4.2 If units are issued which bear a floating rate of interest, the interest shall be calculated on the Principal Amount as follows:

[Insert required calculation provisions]

## **5. STATUS**

5.1 The payment obligations of the Issuer under this Deed constitute and at all times shall constitute direct and unsecured obligations of the Issuer ranking *pari passu* without any preference with all present and future unsecured and unsubordinated indebtedness of, and including any guarantees given by, the Issuer, other than obligations which are preferred in the liquidation or insolvency of the Issuer by virtue of mandatory provisions of law.

## **6. CONSTITUTION, ISSUE AND TRANSFER OF UNITS**

6.1 The constitution, issue and transfer of units shall be in accordance with and subject as provided in the Regulations, the CREST Rules and the terms of the Issuing and Paying Agency Agreement. When the Issuer proposes to constitute and issue units it shall:

- (a) constitute the units by completing, or by procuring the completion on its behalf of, a Notice of Issue which shall form a schedule to this Deed, such Notice of Issue to contain information corresponding to such of the fields as are specified in the Schedule to this Deed as may be appropriate for the relevant units and to take such form as the Issuer deems appropriate (including without limitation the form of an IPA Issuance Message) [and any terms used in a Notice of Issue shall be deemed to be defined as such for the purposes of this Deed];
- (b) effect the issue of such units by entering or procuring the entry in the relevant Operator register of eligible debt securities of such particulars as are required by the Regulations and the CREST Rules.

6.2 The issuer may:

- (a) constitute and issue further units of an outstanding eligible debt security by following the procedure set out in clause 6.1, and the Notice of Issue in such a case shall supersede any earlier Notice of Issue relating to that security but without prejudice to the constitution and issue of units under any such earlier Notice of Issue; or
- (b) amend from time to time the terms of any Notice of Issue issued under clause 6.1,

provided in either such case that the completion of any such new Notice of Issue or the making of any such amendment (and the consequences of the completion of any such further Notice of Issue or the making of any such amendment) are consistent with the facilities and requirements of the CREST relevant system.

6.3 [Holders of units are deemed to have notice of all of the provisions of the Issuing and Paying Agency Agreement a copy of which is available from the Issuing Agent.]<sup>7</sup> The Issuer reserves the right at any time to vary or terminate the appointment of a person as an Issuing or Paying Agent, provided that there will at all times be at least one person appointed who is permitted by CRESTCo to perform the functions of an issuing and paying agent in the CREST relevant system in relation to units, or to approve any change in the office through which a person acts as an Issuing or Paying Agent.

6.4 Units of eligible debt securities constituted under this Deed:

- (a) may only be held in uncertificated form and title to units shall be transferable only by means of the CREST relevant system in accordance with the Regulations;
- (b) shall be in issue only upon the entry in the relevant Operator register of eligible debt securities of such particulars as are required by the Regulations and the CREST Rules;
- (c) shall be transferable free from any equity, set-off or counterclaim between the Issuer and the first or any intermediate Holder provided that any transfer shall be only in amounts which are an integral number of units, in each case in accordance with the facilities and requirements of the CREST relevant system (including those facilities and requirements described and set out in the CREST Manual and the CREST Rules).

## **7. COMPULSORY CANCELLATION OR TRANSFER**

7.1 If it shall come to the notice of the Issuer, or if the Issuer shall have reason to believe, that any units:

- (a) are held by a Holder who has ceased at any time to be a CREST member for any reason;  
or
- (b) cease to be capable of being held in the CREST relevant system,

then the Holder or, as the case may be, the Holders concerned shall be deemed as the Issuer shall elect to have requested either:

- (i) the cancellation of his or their units in accordance with clause 7.2; or
- (ii) provided that only clause 7.1(a) applies, their transfer in accordance with clause 7.3.

7.2 On the Holder(s) being deemed, at the election of the Issuer, to have requested the cancellation of his or their units pursuant to clause 7.1, the Issuer shall make such arrangements to the extent practicable and permitted by applicable law and regulation for the prompt replacement of the units by a physical instrument or instruments on substantially the same terms and which confer on the Holder(s) materially the same rights against the Issuer immediately after such cancellation as were conferred by the units immediately before such cancellation. In particular but without prejudice to the generality of the foregoing, the Issuer shall:

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<sup>7</sup> Delete if not applicable.

- (a) execute a physical instrument or instruments (which may be in global or definitive form) in the same capacity as that in which it is party to the cancelled units, in such form and complying with such conditions as to material, printing and other matters as may be reasonably necessary to conform with such requirements as may be specified by any relevant guidance issued from time to time by the Bank of England and/or the British Bankers' Association or other trade association or representative body and in particular:
  - (i) in the case of commercial paper, the requirements for "London Good Delivery for the Printing, Issuing and Handling of Commercial Paper" as set out in London Market Guidelines issued from time to time by the British Bankers' Association; and
  - (ii) in the case of certificates of deposit, the requirements for "London Good Delivery for the Printing and Issuing of Certificates of Deposit" as set out in London Market Guidelines issued from time to time by the British Bankers' Association;
- (b) deliver up such physical instrument or instruments to the Holder(s) or to his or their order; and
- (c) maintain an appropriate record of the cancellation.

Upon the execution and delivery of such physical instrument or instruments to the Holder(s) concerned (or to his or their order), the Issuer shall have no further obligations under this Deed in respect of the cancelled units.

7.3 On the Holder(s) being deemed, at the election of the Issuer, to have requested the transfer of his or their units pursuant to clause 7.1, the Issuer shall arrange for the units concerned to be transferred (or cancelled and re-issued) to a CREST member selected by the Issuer who shall hold the units concerned as nominee for such Holder(s) on such terms as the Issuer or that CREST member shall think fit.

7.4 *[Include appropriate provisions to allocate costs of cancellation or transfer]*

## **8. CONSISTENCY WITH THE REGULATIONS**

8.1 No provision of this Deed (or any other current term of issue of units) shall apply or have effect to the extent that it is in any respect inconsistent with:

- (a) the holding of units in uncertificated form;
- (b) the transfer of title to units by means of the CREST relevant system;
- (c) the Regulations.

8.2 Any unit may be held by one or more persons jointly (who are together the "Holder" of the unit for the purpose of this Deed).

## **9. WARRANTIES**

9.1 The Issuer hereby warrants, represents and covenants with each Holder that it has all corporate power, and has taken all necessary corporate or other steps, to enable it to execute,

deliver and perform this Deed, and that this Deed constitutes a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, liquidation or other laws affecting generally the enforcement of creditors' rights.

9.2 The Issuer warrants and confirms to each Holder that any units constituted and issued under this Deed will be uncertificated units of an eligible debt security within the meaning of the Regulations.

## **10. BENEFIT OF DEED**

10.1 This Deed shall enure to the benefit of the Holders from time to time and for the time being and their (and any subsequent) successors and assigns. This Deed shall be deposited with and held by the Issuing Agent for the time being until all the obligations of the Issuer hereunder have been discharged in full and shall be held by the Issuing Agent to the exclusion of the Issuer.

10.2 The Issuer acknowledges and covenants that the obligations binding upon it contained in this Deed are owed to, and shall be for the account of, each and every Holder, and that each Holder shall be entitled severally to enforce those obligations against the Issuer.

10.3 *[Insert appropriate provisions for making copy of deed available to Holders].*

## **11. EVIDENCE OF ENTRIES ON CREST REGISTERS**

11.1 A certificate issued by CRESTCo (as Operator of the CREST relevant system) as to any matters which are or were at any one time inserted in an Operator register of eligible debt securities in accordance with the Regulations, shall be conclusive evidence that such matters are or were at that time so recorded save in the case of manifest error. This clause 11.1 is without prejudice to any other means of producing evidence of an Operator register of eligible debt securities.

## **12. BOILERPLATE PROVISIONS**

12.1 *[Include appropriate boilerplate provisions, e.g. notices and cost allocations (including stamp duty)]*

## **13. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

13.1 No person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Deed.

## **14. LAW AND JURISDICTION**

14.1 This Deed and units of eligible debt securities constituted pursuant to it are governed by, and shall be construed in accordance with, English law.

14.2 *[Insert appropriate jurisdiction provisions]*

IN WITNESS WHEREOF this Deed has been executed by the Issuer and is intended to be and is hereby delivered on the date first above written.

[EXECUTED [and DELIVERED] )  
as a DEED by [Issuer] )  
acting by two directors/a )  
director and the secretary: )]<sup>8</sup>

[EXECUTED as a DEED [and DELIVERED] )  
on behalf of [Issuer ] a company )  
incorporated in [territory in which Issuer )  
*is incorporated*] by [Insert name] and )  
[Insert name], being [a] person[s] who, )  
in accordance with the laws of that )  
territory, [is or are] acting under the )  
authority of the company )]<sup>9</sup>

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<sup>8</sup> Use this wording when a UK company executes not using a common seal. Amendments to the execution clause will be required if the Deed is to be executed in another manner (e.g. under seal or under a power of attorney).

<sup>9</sup> Wording for use by a foreign corporation. The wording should be in a form accepted by the laws of the territory in which the foreign corporation is incorporated.

## SCHEDULE

### Information fields relating to a Notice of Issue (dematerialised CP/CD)

Issue Reference.....	Issuer ID.....
Instrument type: <sup>1</sup> .....	Unit value <sup>2</sup> :.....
London CD            Yes/No	ISIN No. <sup>3</sup> :.....
Issuing Agent ID:.....	Minimum transfer amount: <sup>4</sup> .....
Paying Agent ID:.....	Discount Rate <sup>5</sup> :        % per annum
Issued on <sup>6</sup> : .....	Maturity Date: .....
Specified Currency: .....	Calculation Agent <sup>7</sup> :.....
Principal Amount <sup>8</sup> :.....	Interest Payment Date(s) <sup>9</sup> : .....
Fixed Interest Rate <sup>10</sup> :    % per annum	Interest Periods <sup>11</sup> :.....months
Floating Interest Rate <sup>12</sup> : .....	Guarantor <sup>13</sup> :.....

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<sup>1</sup> Insert “CD” or “CP”.

<sup>2</sup> Insert the smallest possible transferable unit in the Specified Currency (e.g. 1p). Not to be less than £100,000 if (i) the maturity date is less than 365 days from the issue date and (ii) it is intended to rely on the commercial paper exemption in article 9(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

<sup>3</sup> Complete if ISIN available before issue of Notice.

<sup>4</sup> Issuers may choose to specify a minimum transfer amount in addition to the unit value (i.e. the minimum denomination).

<sup>5</sup> Complete for EDS issued at a discount.

<sup>6</sup> Insert date on which the holders of the new units are to be entered on the relevant Operator register of securities.

<sup>7</sup> Complete for floating rate interest bearing instruments only.

<sup>8</sup> For a tap issue, the principal amount should be the total outstanding (including the tap).

<sup>9</sup> Complete for interest bearing instruments if interest is payable before and (when applicable) on the Maturity Date.

<sup>10</sup> Complete for fixed rate interest bearing instruments only.

<sup>11</sup> Complete for floating rate instruments corresponding to CDs.

<sup>12</sup> Complete for floating rate interest bearing instruments only.

<sup>13</sup> Enter name of guarantor if applicable. Note that if it is envisaged that units will be guaranteed, appropriate guarantor provisions will need to be added to main body of the deed (with the guarantor a party to the deed) or in a separate document and, in either case, such as to satisfy the requirements for writing established by Section 4 of the Statute of Frauds 1677.

## TERMS FOR EDS CORRESPONDING TO BANKERS' ACCEPTANCES

**Pro forma deed relating to uncertificated units of a CREST eligible debt security (corresponding to bankers' acceptances). The pro forma deed is intended in principle only to include those terms which are required in order for uncertificated units to be issued. The terms will therefore need to be adapted to include any required commercial terms.**

*[Insert date]*

*[Insert details of acceptor equivalent]*

**as Primary Issuer**

**Each of the persons listed in Schedule 1**

**as Secondary Issuers**

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**DEED**

**relating to a *[insert details]***

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### **Legal notice**

This pro forma deed has been published by the Bank of England on behalf of the Sterling Money Markets Liaison Group (MMLG) [a market group chaired by the Bank of bankers and other practitioners, also including representatives of the Financial Services Authority and CRESTCo Limited]. Whilst every care has been taken in its preparation, neither the Bank nor any other member of the MMLG warrants that the pro forma deed is suitable for any particular transaction and accept no responsibility or liability for any loss which may arise in connection with the use of the pro forma deed and any person proposing to use the pro forma deed should seek separate legal advice.

**THIS DEED** is made on [*insert date*] by [*insert details of bank which would be acceptor under an equivalent physical instrument*] (the **Primary Issuer**) and each of the persons whose names are set out in Schedule 1 as amended from time to time (each a **Secondary Issuer**)<sup>1</sup> in favour of the persons who are from time to time Holders (as that term is defined in this Deed).

**WHEREAS:**

(A) The Primary Issuer and, separately, each Secondary Issuer (together the **Issuers** and each an **Issuer**) propose, from time to time, to issue units of debt securities which are eligible debt securities the rights and obligations in respect of which correspond, so far as practicable, with those which would arise if the Issuers issued bankers' acceptances or other similar debt instruments in material form on substantially the same terms as those set out in this Deed.

(B) Units of eligible debt securities will be issued only in uncertificated form in the CREST relevant system and only pursuant to an Issuing and Paying Agency Agreement between the Issuers and [*identify Issuing Agent and Paying Agent*] dated [*insert date*] (the **Issuing and Paying Agency Agreement**)<sup>2</sup>.

(C) The purpose of this Deed is to provide for the constitution of uncertificated units of eligible debt securities of the Issuers. Subject to and in accordance with the terms and conditions of this Deed, each Holder will acquire against each Issuer the rights constituted by and under this Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. INTERPRETATION**

1.1 In this Deed, the following expressions shall have the following meanings:

**Business Day** means any day, other than a Saturday or a Sunday which is both (a) a CREST Business Day and (b) either (i) if the Specified Currency is any currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in both London and the principal financial centre of the country of the relevant Specified Currency or (ii) if the Specified Currency is euro, a day which is a TARGET Business Day;

**CREST Business Day** means a day on which the CREST relevant system is operational;

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<sup>1</sup> These are the drawer equivalents. The acceptor could execute the Deed at a time when there are no drawers (so that all drawers would accede to the Deed by means of the Deed of Adherence mechanism) in which case no names would be entered into Schedule 1 initially.

<sup>2</sup> This may need to be amended if there is more than one agency agreement (e.g. where there are separate issuing and paying agents).

**CRESTCo** means CRESTCo Limited, a company incorporated in England and Wales under number 2878738 whose registered office is at 33 Cannon Street, London EC4M 5SB;

**CREST Manual** means the document entitled the “CREST Manual” issued by CRESTCo;

**CREST member** means a person who has been admitted by CRESTCo as a system-member;

**CREST payment** means a payment which is made by means of the CREST relevant system by way of debit to the cash memorandum account of the Paying Agent (and a corresponding credit to the cash memorandum account of the relevant Holder);

**CREST relevant system** means the relevant system of which CRESTCo has been approved under the Regulations as Operator;

**CREST Rules** means rules within the meaning of the Regulations or the Financial Services and Markets Act 2000 made by CRESTCo and any rules made by CRESTCo as Operator of a designated system under or pursuant to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999 No. 2979);

**Deed of Adherence** means a deed substantially in the same form as Schedule 2;

**Holder** means a CREST member whose name is entered in the relevant Operator register of eligible debt securities as holder of units and, where the context admits, a Holder shall include a former Holder;

**IPA Issuance Message** means an issuer-instruction which is sent to CRESTCo by the Issuing Agent, as a sponsoring system-participant acting on behalf of the Issuers of an eligible debt security, and which in accordance with the CREST Manual is to be used to create the security details of that eligible debt security within the CREST relevant system;

**Issuing Agent** means the person appointed from time to time by the Issuers to act as Issuing Agent under the Issuing and Paying Agency Agreement, and is at the date of this Deed, *[insert details of Issuing Agent]*;

**Maturity Date** means the date on which units are to be redeemed as specified in a Notice of Issue;

**Notice of Issue** means a notice given pursuant to clause 6.1 constituting units of an eligible debt security as amended or superseded from time to time;

**Paying Agent** means the person appointed from time to time by the Issuers to act as Paying Agent under the Issuing and Paying Agency Agreement, and is at the date of this Deed, *[insert details of Paying Agent]*;

**Principal Amount** means the principal sum payable in respect of units of an eligible debt security as specified in a Notice of Issue;

**Regulations** means the Uncertificated Securities Regulations 2001 (SI 2001 No. 3755), as amended by the Uncertificated Securities (Amendment)(Eligible Debt Securities) Regulations 2003 (SI 2003 No. [ ]), and such other regulations made under section 207 of the Companies Act 1989 as are applicable to CRESTCo and/or the CREST relevant system and are from time to time in force;

**Specified Currency** means the currency in which units are denominated as specified in a Notice of Issue;

**TARGET Business Day** means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) System, or any successor thereto, is operating credit or transfer instructions in respect of payments in euro;

**unit** means, in relation to an eligible debt security of the Issuers, the smallest possible transferable uncertificated unit of the eligible debt security as specified in a Notice of Issue.

(a) In this Deed, unless otherwise specified:

- (i) headings to clauses are for convenience only and do not affect the interpretation of this Deed;
- (ii) references to any statute or statutory instrument or any provision thereof shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (iii) terms defined or used in the Regulations which are used in this Deed shall have the meanings given to them in the Regulations;
- (iv) terms relating to the CREST relevant system which are used in this Deed and which are not defined in this Deed or in the Regulations shall have the meaning given to them in the CREST Manual;
- (v) words importing one gender shall (where appropriate) include any other gender and words importing the singular shall (where appropriate) include the plural and vice versa;
- (vi) references to an Issuer include any successor in title to such party;
- (vii) references to the Issuers are, in the context of particular units, references to the Primary Issuer and to the Secondary Issuer of those units but to no other Secondary Issuer and references to the Issuer shall be construed accordingly; any reference to “the CREST Manual” or “the CREST Rules” or any other agreement or document shall be construed as a reference to the CREST Manual or the CREST Rules or such other agreement or document as the same may from time to time be amended, varied, supplemented, novated or replaced and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered pursuant to or in accordance with, the CREST Manual or the CREST Rules or, as the case may be, such other agreement or document; and

(viii) the Schedules and exhibit to this Deed and any schedules completed pursuant to the provisions of this Deed shall form part of this Deed.

## **2. PAYMENT OBLIGATIONS OF THE ISSUERS**

2.1 Upon the issue of units and subject to the terms and conditions of this Deed, the Primary Issuer promises to pay the Principal Amount on the Maturity Date.

2.2 The Secondary Issuer promises that, if the Primary Issuer fails to pay the Principal Amount on the Maturity Date in accordance with its obligation under clause 2.1 or otherwise repudiates any of its obligations under this Deed, the Secondary Issuer will perform that obligation in accordance with the terms of this Deed.

2.3 The Secondary Issuer is, as against any Holder (but not as against the Primary Issuer), liable as principal debtor under this Deed.

2.4 If the Secondary Issuer pays any debt constituted under this Deed in accordance with the terms and conditions of this Deed, it shall be entitled to recover that amount from the Primary Issuer.

## **3. PAYMENTS**

3.1 All payments under this Deed shall be made in accordance with the Issuing and Paying Agency Agreement and [shall be made in the Specified Currency] subject to and in accordance with the terms and conditions of this Deed and the facilities and requirements of the CREST relevant system. The Issuers shall, or shall procure that the Paying Agent shall, maintain appropriate records of all payments made under this Deed.

3.2 Payment of principal by an Issuer shall be made by means of a CREST payment in respect of each unit against the system-transfer of the unit to such stock account of the Paying Agent maintained in the CREST relevant system as may be specified by or on behalf of such Issuer to the person who is the Holder immediately before the time at which the unit is credited to the stock account of the Paying Agent.

3.3 If the Maturity Date is not a Business Day, payment of principal under clause 3.2 shall be made by the Issuer on the next following Business Day and no person shall be entitled to any interest or other sums in respect of such postponed payment.

3.4 [Include any appropriate provisions relating to restrictions on deductions from payments – e.g. set-off, counterclaim etc or deduction for withholding tax (and gross up provision).]<sup>3</sup>

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<sup>3</sup> Under CREST Rule 7, paragraph 5, provisions as to payment must be compatible with CREST payment arrangements. Such arrangements will not accommodate any right of set-off or counterclaim to be exercised against a CREST payment. Failure to comply with this condition will make the security ineligible for CREST settlement.

3.5 Payment by an Issuer in accordance with the provisions of this clause 3 shall discharge all obligations of both Issuers to the Holder in respect of such payment.

#### **4. ADHERENCE OF OTHER SECONDARY ISSUERS**

4.1 Other persons (each a “relevant person”) may hereafter accede to this Deed as Secondary Issuers by executing a Deed of Adherence (which, upon execution by the Primary Issuer and the relevant person in accordance with clauses 4.2 and 4.3, shall form part of this Deed).

4.2 On execution of a Deed of Adherence by the Primary Issuer and the relevant person, the relevant person shall acquire the rights and benefits and become subject to the obligations of a Secondary Issuer with effect from the date of the relevant Deed of Adherence and with effect from such date the expression Secondary Issuer shall include the relevant person which thenceforth shall be and be deemed to have become a party to this Deed accordingly.

4.3 Each Secondary Issuer hereby irrevocably authorises the Primary Issuer to enter into a Deed of Adherence, for its own behalf and on behalf of that Secondary Issuer and of every other Secondary Issuer for the time being, with each relevant person seeking to adhere to this Deed under this clause 4.

#### **5. STATUS**

5.1 The payment obligations of each Issuer under this Deed constitute and at all times shall constitute direct and unsecured obligations of such Issuer ranking *pari passu* without any preference with all present and future unsecured and unsubordinated indebtedness of, and including any guarantees given by, such Issuer, other than obligations which are preferred in the liquidation or insolvency of such Issuer by virtue of mandatory provisions of law.

5.2 No Secondary Issuer is responsible for the obligations of any other Secondary Issuer in respect of units of an eligible debt security constituted and issued by that other Secondary Issuer in accordance with clause 6.1<sup>4</sup>.

#### **6. CONSTITUTION, ISSUE AND TRANSFER OF UNITS**

6.1 The constitution, issue and transfer of units shall be in accordance with and subject as provided in the Regulations, the CREST Rules and the terms of the Issuing and Paying Agency Agreement. When the Issuers propose to constitute and issue units they shall:

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<sup>4</sup> Where, however, it is proposed that two (or more) persons are to act as Secondary Issuer for the same security (the equivalent of material three-name paper), then an express provision should be included to the effect that each such person is jointly and severally liable in respect of the obligations of a Secondary Issuer under the Deed.

- (a) constitute the units by completing, or by procuring the completion on its behalf of, a Notice of Issue which shall form a schedule to this Deed, such Notice of Issue to contain information corresponding to such of the fields as are specified in Schedule 3 to this Deed as may be appropriate for the relevant units and to take such form as the Issuer deems appropriate (including without limitation the form of an IPA Issuance Message) [and any terms used in a Notice of Issue shall be deemed to be defined as such for the purposes of this Deed];
- (b) effect the issue of such units by entering or procuring the entry in the relevant Operator register of eligible debt securities of such particulars as are required by the Regulations and the CREST Rules,

6.2 The Issuers may amend from time to time the terms of any Notice of Issue issued under clause 6.1, provided that the making of any such amendment (and the consequences of making any such amendment) are consistent with the facilities and requirements of the CREST relevant system.

6.3 [Holders of units are deemed to have notice of all of the provisions of the Issuing and Paying Agency Agreement a copy of which is available from the Issuing Agent.]<sup>5</sup> The Issuers reserve the right at any time to vary or terminate the appointment of a person as an Issuing or Paying Agent, provided that there will at all times be at least one person appointed who is permitted by CRESTCo to perform the functions of an issuing and paying agent in the CREST relevant system in relation to units, or to approve any change in the office through which a person acts as an Issuing or Paying Agent.

6.4 Units of eligible debt securities constituted under this Deed:

- (a) may only be held in uncertificated form and title to units shall be transferable only by means of the CREST relevant system in accordance with the Regulations;
- (b) shall be in issue only upon the entry in the relevant Operator register of eligible debt securities of such particulars as are required by the Regulations and the CREST Rules;
- (c) shall be transferable free from any equity, set-off or counterclaim between either Issuer and the first or any intermediate Holder provided that any transfer shall be only in amounts which are an integral number of units, in each case in accordance with the facilities and requirements of the CREST relevant system (including those facilities and requirements described and set out in the CREST Manual and the CREST Rules).

## **7. COMPULSORY CANCELLATION OR TRANSFER**

7.1 If it shall come to the notice of either or both of the Issuers, or if either or both of the Issuers shall have reason to believe, that any units:

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<sup>5</sup> Delete if not applicable.

- (a) are held by a Holder who has ceased at any time to be a CREST member for any reason; or
- (b) cease to be capable of being held in the CREST relevant system,

then the Holder or, as the case may be, the Holders concerned shall be deemed as the Issuers shall elect to have requested either:

- (i) the cancellation of his or their units in accordance with clause 7.2; or
- (ii) provided that only clause 7.1(a) applies, their transfer in accordance with clause 7.3.

7.2 On the Holder(s) being deemed, at the election of the Issuers, to have requested the cancellation of his or their units pursuant to clause 7.1, the Issuers shall make such arrangements to the extent practicable and permitted by applicable law and regulation for the prompt replacement of the units by a physical instrument or instruments on substantially the same terms and which confer on the Holder(s) materially the same rights against the Issuers immediately after such cancellation as were conferred by the units immediately before such cancellation. In particular but without prejudice to the generality of the foregoing, the Issuers shall:

- (a) execute a physical instrument or instruments (which may be in global or definitive form) in the same capacity as that in which it is party to the cancelled units, in such form and complying with such conditions as to material, printing and other matters as may be reasonably necessary to conform with such requirements as may be specified by any relevant guidance issued from time to time by the Bank of England and/or the British Bankers' Association or other trade association or representative body; and
- (b) deliver up such physical instrument or instruments to the Holder(s) or to his or their order; and
- (c) maintain an appropriate record of the cancellation.

Upon the execution and delivery of such physical instrument or instruments to the Holder(s) concerned (or to his or their order), the Issuers shall have no further obligations under this Deed in respect of the cancelled units.

7.3 On the Holder(s) being deemed, at the election of the Issuers, to have requested the transfer of his or their units pursuant to clause 7.1, the Issuers shall arrange for the units concerned to be transferred (or cancelled and re-issued) to a CREST member selected by the Issuers who shall hold the units concerned as nominee for such Holder(s) on such terms as the Issuers or that CREST member shall think fit.

7.4 *[Include appropriate provisions to allocate costs of cancellation or transfer]*

## **8. CONSISTENCY WITH THE REGULATIONS**

8.1 No provision of this Deed (or any other current term of issue of units) shall apply or have effect to the extent that it is in any respect inconsistent with:

- (a) the holding of units in uncertificated form;
- (b) the transfer of title to units by means of the CREST relevant system;
- (c) the Regulations.

8.2 Any unit may be held by one or more persons jointly (who are together the “Holder” of the unit for the purpose of this Deed).

## **9. WARRANTIES**

9.1 Each Issuer hereby warrants, represents and covenants with each Holder that it has all corporate power, and has taken all necessary corporate or other steps, to enable it to execute, deliver and perform this Deed, and that this Deed constitutes a legal, valid and binding obligation of such Issuer enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, liquidation or other laws affecting generally the enforcement of creditors’ rights.

9.2 Each Issuer warrants and confirms to each Holder that any units constituted and issued under this Deed will be uncertificated units of an eligible debt security within the meaning of the Regulations.

## **10. BENEFIT OF DEED**

10.1 This Deed shall enure to the benefit of the Holders from time to time and for the time being and their (and any subsequent) successors and assigns. This Deed shall be deposited with and held by the Issuing Agent for the time being until all the obligations of the Issuers hereunder have been discharged in full and shall be held by the Issuing Agent to the exclusion of the Issuers.

10.2 Each Issuer acknowledges and covenants that the obligations binding upon it contained in this Deed are owed to, and shall be for the account of, each and every Holder, and that each Holder shall be entitled severally to enforce those obligations against each Issuer.

10.3 *[Insert appropriate provisions for making copy of deed available to Holders].*

## **11. EVIDENCE OF ENTRIES ON CREST REGISTERS**

11.1 A certificate issued by CRESTCo (as Operator of the CREST relevant system) as to any matters which are or were at any one time inserted in an Operator register of eligible debt securities in accordance with the Regulations, shall be conclusive evidence that such matters are or were at that time so recorded save in the case of manifest error. This clause 11.1 is without prejudice to any other means of producing evidence of an Operator register of eligible debt securities.

## **12. BOILERPLATE PROVISIONS**

12.1 *[Include appropriate boilerplate provisions, e.g. notices and cost allocations (including stamp duty)]*

### 13. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

13.1 No person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Deed.

### 14. LAW AND JURISDICTION

14.1 This Deed and units of eligible debt securities constituted pursuant to it are governed by, and shall be construed in accordance with, English law.

14.2 *[Insert appropriate jurisdiction provisions]*

**IN WITNESS WHEREOF** this Deed has been executed by each Issuer and is intended to be and is hereby delivered on the date first above written.

**[EXECUTED [and DELIVERED]** )  
as a **DEED** by [*Primary Issuer*] )  
acting by two directors/a )  
director and the secretary: )]<sup>6</sup>

**[EXECUTED as a DEED [and DELIVERED]** )  
on behalf of [*Primary Issuer* ] a company )  
incorporated in [*territory in which Issuer* )  
*is incorporated*] by [*Insert name*] and )  
[*Insert name*], being [a] person[s] who, )  
in accordance with the laws of that )  
territory, [is or are] acting under the )  
authority of the company )]<sup>7</sup>

**[EXECUTED [and DELIVERED]** )  
as a **DEED** by [*Secondary Issuer*] )  
acting by two directors/a )  
director and the secretary: )]<sup>8</sup>

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<sup>6</sup> Use this wording when a UK company executes not using a common seal. Amendments to the execution clause will be required if the Deed is to be executed in another manner (e.g. under seal or under a power of attorney).

<sup>7</sup> Wording for use by a foreign corporation. The wording should be in a form accepted by the laws of the territory in which the foreign corporation is incorporated.

<sup>8</sup> Execution clause not required if no drawer equivalents will enter into the Deed initially (i.e. if all drawers are made party to the Deed under the adherence mechanism). In any event, the acceptor can sign for the drawers subject to appropriate powers of attorney.

**[EXECUTED as a DEED [and DELIVERED]** )  
on behalf of [**Secondary Issuer** ] a company )  
incorporated in [*territory in which Issuer* )  
*is incorporated*] by [*Insert name*] and )  
[*Insert name*], being [a] person[s] who, )  
in accordance with the laws of that )  
territory, [is or are] acting under the )  
authority of the company )]

## **SCHEDULE 1**

*[Insert details of drawer equivalents entering into this Deed]*

## SCHEDULE 2

**THIS DEED OF ADHERENCE** is made on [*insert date*] by [*insert details of bank which would be acceptor under an equivalent physical instrument*] (the **Primary Issuer**) (for itself and on behalf of all the persons whose names are set out in Schedule 1 as amended from time to time to the Master Deed (as defined below) (each a **Secondary Issuer**)) and [*name of new drawer equivalent*] (**XYZ**)

This Deed of Adherence is supplemental to a deed dated \_\_\_\_\_ made by the Primary Issuer and each Secondary Issuer (the **Master Deed**).

### NOW THIS DEED WITNESSES AS FOLLOWS:

#### 1. ADHERENCE

1.1 The Primary Issuer (for itself and on behalf of each Secondary Issuer) hereby irrevocably undertakes to XYZ, and XYZ hereby irrevocably and severally undertakes to the Primary Issuer and each Secondary Issuer that on and after the date of this Deed of Adherence they will each adhere to and comply with and be subject to and bound by all of the provisions of the Master Deed in all respects as if XYZ were party hereto as a Secondary Issuer and the Primary Issuer and each Secondary Issuer and XYZ agree that XYZ will thenceforth be deemed to be a party to the Master Deed accordingly.

#### 2. LAW AND JURISDICTION

2.1 This Deed of Adherence shall be governed by and construed in accordance with English law.

2.2 XYZ warrants that the execution of this Deed of Adherence will not violate any law, regulation, by-law or rule applicable to XYZ.

2.3 [*Insert appropriate jurisdiction provisions*].

**IN WITNESS WHEREOF** this Deed of Adherence has been executed and is intended to be and is hereby delivered on the date first above written.

[EXECUTED [and DELIVERED] )  
as a DEED by [**Primary Issuer**] for )  
itself and on behalf of each Secondary )  
Issuer and acting by two directors/a )  
director and the secretary: )]<sup>1</sup>

[EXECUTED [and DELIVERED] )  
as a DEED by [**XYZ**] )  
acting by two directors/a )  
director and the secretary: )]

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<sup>1</sup> Use this wording when a UK company executes not using a common seal. Amendments to the execution clause will be required if the Deed is to be executed in another manner (e.g. under seal or under a power of attorney). Adapt as appropriate for a foreign corporation.

### SCHEDULE 3

#### Information fields relating to a Notice of Issue (dematerialised Banker's Acceptance)

Issue Reference.....	Primary Issuer ID:.....
Instrument type <sup>1</sup> : .....	Secondary Issuer ID:.....
Issuing Agent ID:.....	Unit value <sup>2</sup> :.....
Paying Agent ID:.....	Minimum transfer amount <sup>3</sup> :.....
ISIN No. <sup>4</sup> : .....	Maturity Date: .....
Issued on <sup>5</sup> : .....	Specified Currency: .....
Principal Amount:.....	

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<sup>1</sup> Insert BB.

<sup>2</sup> Insert the smallest possible transferable unit in the Specified Currency (e.g. 1p). Not to be less than £100,000 if (i) the maturity date is less than 365 days from the issue date and (ii) it is intended to rely on the commercial paper exemption in article 9(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

<sup>3</sup> Issuers may choose to specify a minimum transfer amount in addition to the unit value (i.e. the minimum denomination).

<sup>4</sup> Complete if ISIN available before issue of Notice.

<sup>5</sup> Insert date on which the holders of the new units are to be entered on the relevant Operator register of securities.

## DRAFT

### ANNEX 3 – DRAFT EXPLANATORY NOTES ON DEED RELATING TO ELIGIBLE DEBT SECURITIES

#### 1. Introduction

1.1 These explanatory notes relate to two *pro forma* deeds pursuant to which uncertificated units of CREST eligible debt securities are constituted, the terms of which broadly speaking correspond to certain material money market instruments (one deed covers the equivalent of commercial paper and certificates of deposit and the other deed covers the equivalent of bankers' acceptances). Unless otherwise stated, the following notes apply to both *pro forma* deeds.

1.2 The deeds refer to units of an eligible debt security (a unit being the smallest transferable amount of the security, for instance 1p, as determined in accordance with its terms of issue) and that terminology is adopted in these notes. The term eligible debt security has the meaning given in the amended Uncertificated Securities Regulations 2001 (*USRs*). This is as follows:

““eligible debt security” means a security that satisfies the following conditions-

- (i) the security is constituted by an order, promise, engagement or acknowledgement to pay on demand, or at a determinable future time, a sum in money to, or to the order of, the holder of one or more units of the security; and
- (ii) the current terms of issue of the security provide that its units may only be held in uncertificated form and title to them may only be transferred by means of a relevant system;”

The phrase “determinable future time” must itself be interpreted in accordance with regulation 3(6) of the USRs which provides that a sum of money “is to be regarded as payable at a determinable future time if it is payable-

- “(i) at a future time fixed by or in accordance with the current terms of issue of the security; or

- (ii) at the expiry of a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain”

but “is not to be regarded as payable at a determinable future time if it is payable on a contingency”.

1.3 The deeds are intended to be used in respect of the issue of units of a single eligible debt security or a programme of such securities which may include eligible debt securities corresponding to different types of money market instruments, for example, commercial paper or certificates of deposit under one of the *pro forma* deeds (although the second *pro forma* deed is intended only to cover securities corresponding to bankers’ acceptances). Where the deed is used for the issue of units under a programme of eligible debt securities, the issuer will not need to enter into a separate deed for each issue but simply complete a notice of issue on each occasion that it proposes to constitute EDSs under the programme. As explained below, the deed together with a notice of issue, are the instruments which constitute the units of the eligible debt security. It is intended that the deed be issued in conjunction with such other documents as may be customary for a particular type of money market instrument, for example an information memorandum for commercial paper. It is anticipated that existing standard programme documentation could be used, albeit with certain consequential amendments to reflect the issue of EDSs.

1.4 The *pro forma* deeds are intended in principle only to include those terms which are required in order for uncertificated units to be constituted and issued. The terms will therefore need to be adapted to include any required commercial terms. In some cases the document contemplates that a particular term will need to be inserted (e.g. to deal with any withholding tax on a payment by the issuer), but in other cases the issuer may need to add provisions to accommodate terms specific to a particular issue or programme (e.g. a guarantee provision).

1.5 Non-material (uncertificated) units will have different legal characteristics from their paper equivalents. A number of general observations can be made about the terms:

- there is no general provision for a paper interface although, in accordance with the CREST Rules, there are provisions to address the situation where a holder ceases to be a CREST member or where the securities cease to be capable of being held in CREST. In either case, compulsory cancellation/transfer provisions apply (see comment on clause 7 below);
- material MMIs are negotiable (negotiability confers property rights on holders which are superior to those conferred only by contract, in particular the right to take possession free of any preceding equities). However, this concept is not relevant for uncertificated units recorded in CREST in respect of which legal title is provided to the holder by the entry of his name on the relevant CREST records (ie the relevant “Operator register of eligible debt securities”). A change in the register represents a change in legal title (i.e. there is electronic transfer of title for uncertificated units);
- uncertificated units of an eligible debt security are capable of being fungible with other uncertificated units of the same eligible debt security but not with their material equivalent;
- uncertificated units of an eligible debt security are similar to uncertificated units of other debt securities issued into CREST except that there is no provision for the possibility of their being held in certificated form outside CREST (an eligible debt security being a “wholly dematerialised security”) and the issuer has no statutory obligation to maintain a related “record of securities”.

## **2. Legal structure**

2.1 Each of the *pro forma* documents is structured as a deed to ensure that holders of securities issued under it acquire directly enforceable rights against the issuer.

2.2 Each deed contemplates that units are constituted by the completion of a notice of issue which forms a schedule to the deed. Accordingly, no units of a particular eligible debt security are actually constituted by the deed itself until a relevant notice of issue is completed.

## **3. Commentary on the main provisions of the *pro forma* deeds**

### **Parties to deed for acceptances**

3.1 The parties to the acceptance deed are the acceptor equivalent (the Primary Issuer) and one or more drawer equivalents (each a Secondary Issuer). The deed

relating to the issue of EDS equivalent to acceptances contemplates that more than one drawer equivalent (i.e. Secondary Issuer) may be an initial party to the deed and those parties are listed in Schedule 1 to the deed. However, the acceptor could execute the deed at a time when there are no drawers (so that all drawers would accede to the deed by means of a deed of adherence mechanism – on this see the consideration of clause 4 below) and in this case no Secondary Issuer details would be entered into Schedule 1 initially.

## **Clause 2 (Payment obligation of the Issuer)**

### Deed for CD/CP

3.2 Clause 2.1 of the CD/CP deed contains:

- (a) in respect of units corresponding to CDs, the acknowledgement by the issuer that a sum has been deposited with it on terms that the principal amount is payable at maturity and any interest on the units is payable at the rate and at the times (if any) specified in the terms; and
- (b) in respect of other units, the promise of the issuer to pay the principal amount of the units on the relevant maturity date together with any interest at the rate and at the times (if any) specified in the terms.

### Deed for acceptances

3.3 Clause 2.1 of the acceptances deed contains the promise of the primary issuer (equivalent to the acceptor of the bill) to pay the principal amount of the units on the relevant maturity date.

3.4 Clause 2.2 makes provision for a secondary issuer (equivalent to the drawer of a bill) to make these payments if the primary issuer fails to do so. The liability of the secondary issuer in respect of the debt obligation constituted by the deed is expressed to be that of a “principal debtor” (as against each holder).

### **Clause 3 (Payments)**

3.5 Clause 3 of the CD/CP deed provides for the mechanics of payments of principal and interest. All payments are required to be CREST payments. Clause 3.4 provides for the maturity date and interest payment date to be adjusted if it would otherwise not fall on a business day (generally to the next business day but it may be adjusted to the preceding business day where the next business day would fall in the next calendar month).

3.6 Clause 3 of the acceptances deed makes similar provision except that interest is not contemplated in the context of acceptances.

3.7 Any required tax provisions (e.g. gross-up) will need to be inserted in to the relevant deed.

### **Clause 4**

Deed for CD/CP

3.8 Clause 4 of the CD/CP deed contemplates that the issuer will insert the method of calculating interest in the case of interest bearing units (whether fixed or floating rate).

Deed for acceptances

3.9 Clause 4 of the deed for acceptances contains an accession mechanism under which drawer equivalents can become a party to the deed merely by counter-signing a short deed of adherence (set out in Schedule 2 to the *pro forma* deed). The deed provides that the acceptor equivalent (the Primary Issuer) will sign the deed of adherence on its own behalf and on behalf of the other drawers. The acceptor could sign the main deed at a time when there are no drawers party to it (so that all drawers would accede to the deed by means of the deed of adherence which might be executed on their behalf by the acceptor pursuant to powers of attorney granted by the drawers).

## **Clause 5 (Status)**

3.10 Each deed provides that the payment obligations of the issuer (or each issuer in the case of acceptances) are unsecured obligations of the issuer ranking *pari passu* without any preference with all present and future unsecured and unsubordinated indebtedness of the issuer.

## **Clause 6 (Constitution, issue and transfer of units)**

3.11 Under this clause, when the issuer (or issuers in the case of acceptances) proposes to constitute and issue uncertificated units of an eligible debt security it:

- (a) constitutes the units by completing a Notice of Issue (containing the required information but in a form selected by the issuer – which could include an IPA Issuance Message) which then becomes a schedule to the deed and is expressed to be subject to its terms; and
- (b) effects the issue of such units by entering or procuring the entry in the relevant Operator register of securities of the required particulars.

Clause 6.2 permits an issuer to amend a notice from time to time (e.g. to correct errors) and, in the case of units corresponding to CD/CP, to issue notices relating to tap issues.

3.12 Exhibit A sets out the information required in the Notice of Issue and is structured in such a way so as to allow issuers to customise the terms of issue relating to units as required. For instance, to reflect the terms usually associated with a CD, as well as any other relevant boxes, the maturity date would be inserted in the “Interest Payment Date” box.

3.13 Clause 6.3 contains a provision putting holders on notice of the terms of the IPA agreement and entitling them to a copy of that agreement. This provision can be deleted if it is not appropriate. However, issuers should note that if it is deleted but it also intended

that holders be bound by or otherwise be on notice of any matters covered in the agreement, then some mechanism will be required to achieve this (e.g. the holder could be given separate notice of the relevant terms in the deed).

3.14 Clause 6 also provides that units may only be held in uncertificated form and are transferable only in CREST and that they are transferable free from encumbrances.

3.15 Any transfer must be in amounts which are an integral number of units. An individual “unit” is the smallest possible unit which, in accordance with the terms of issue, may be transferred by one holder to another (in relation to an uncertificated unit of an eligible debt security corresponding to commercial paper, such a unit may have a nominal value of £100,000 if the issuer seeks to take advantage of the exemption in article 9(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 for debt securities which must be redeemed before the first anniversary of the date of issue).

#### **Clause 7 (Compulsory cancellation or transfer)**

3.16 As noted above, in accordance with the CREST Rules this clause addresses the situation where a holder ceases to be a CREST member or where uncertificated units of the security cease to be capable of being held in CREST. Although the CREST Rules require appropriate provision to be made in these circumstances to protect the rights and interest of holders (and give cancellation or transfer as possible provisions), the Rules are not prescriptive as to the actual steps to be taken and clause 7 could therefore be amended provided that appropriate provision is made, consistent with the Uncertificated Securities Regulations 2001 and the applicable CREST Requirements.

3.17 As drafted, clause 7 provides that the issuer can elect either:

- (a) to cancel uncertificated units and issue a physical instrument on substantially the same terms and which confer on the holder(s) materially the same rights against the issuer immediately after the cancellation as were conferred by the units immediately before the cancellation; or

- (b) to arrange for the transfer of the units to another CREST member as nominee for the relevant holder (provided that uncertificated units of the security remains capable of being held in CREST).

3.18 Any required provision for the allocation of the costs of cancellation or transfer will need to be inserted.

#### **Clause 10 (Benefit of deed)**

3.19 Clause 10.1 provides that the deed is for the benefit of the holders of uncertificated units from time to time and their successors in title.

#### **Clause 11 (Evidence of entries on CREST registers)**

3.20 Regulation 24 of the USRs provides (insofar as it is relevant to eligible debt securities) that an Operator register of eligible debt securities is prima facie evidence of the matters directed or authorised by the Regulations to be inserted in it (save where any such matters relate to the registration of transfers which were not carried out in accordance with the Regulations).

3.21 Clause 11.1 provides that a certificate from CRESTCo as to the matters which are or were at any one time recorded on such a register (e.g. the details of a holder and of the number of units held in his name) is conclusive evidence that such matters are or were at that time so recorded save in the case of manifest error. The purpose of this provision is to enable a holder to enforce his rights in reliance on a certificate from CRESTCo without the need to produce the register itself in evidence but it does not affect the statutory provision that the register itself is prima facie evidence of the matters recorded in it.

#### **Clause 12 (Boilerplate)**

3.22 Any required boilerplate provisions (e.g. notices) will need to be inserted.

#### **Clause 13 (Law and jurisdiction)**

3.23 Any required jurisdiction provisions will need to be inserted.

### **Execution of deed and notices of issue**

3.24 It is advisable that the deed (and in the context of acceptances, any deed of adherence) be executed in hard copy form. However, notices of issue may if required be created and stored in electronic form only (although it may be appropriate in those circumstances for the notices to be authenticated by some form of electronic signature).