



PCP5 Issued on 5 September 2001

THE PANEL ON TAKEOVERS AND MERGERS

**CONSULTATION PAPER ISSUED BY
THE CODE COMMITTEE OF THE PANEL**

ELECTRONIC ACCEPTANCES IN CREST

**REVISION PROPOSALS RELATING TO RULES
10 AND 31.6 OF THE
TAKEOVER CODE**

Before it introduces or amends any Rules of the Takeover Code or the Rules Governing the Substantial Acquisitions of Shares, the Code Committee of the Takeover Panel is required under its consultation procedures to publish the proposed Rules and amendments for public consultation and to consider responses arising from the public consultation process.

The Code Committee is therefore inviting comments on this Consultation Paper. Comments should reach the Code Committee by **5 October 2001**.

Comments may be sent by email to:

consultation@disclosure.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee
The Panel on Takeovers and Mergers
P.O. Box No. 226
The Stock Exchange Building
London
EC2P 2JX

Telephone: 020 7382 9026

Fax: 020 7638 1554

It is the Code Committee's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

1. Introduction

1.1 The Code is concerned not only with ensuring that the bid process is conducted properly before the outcome is known, but also in ensuring that the possibility of error in determining the outcome is minimised. To this end, a number of Notes on Rule 10, as well as Appendix 4, relate to the role of the receiving agent. Particular emphasis is placed on the procedures which receiving agents must follow to ensure that there is no double counting of acceptances or purchases.

1.2 The recent CREST initiative on electronic acceptances has therefore been followed with interest by the Panel. The CREST proposals will enable acceptances to be made electronically without the need for a paper acceptance form. In discussing these proposals with CREST, the Executive has made it clear that offeree company shareholders should enjoy as much flexibility as they do under the present system in their ability to accept varying forms of consideration and in whatever ratio is appropriate to an individual shareholder, subject to the terms and conditions of the offer. This may mean that, in some offers, electronic acceptance will not be appropriate but that is a matter for the offeror and its receiving agent to determine.

2. Background

CREST has already issued a consultation document dealing with the proposals for electronic acceptances. There was general agreement from respondents that, in appropriate cases, this procedure would produce a number of benefits for all relevant parties to an offer in terms of speed and security and, in Code terms, would reduce still further the risk of double counting. The Code Committee accepts that there should be benefit to shareholders who hold their shares in CREST, provided that the approach to be adopted is made clear in offer documents. It also recognises that for those shareholders who do not hold their shares in CREST there will be no change to current practice. In such circumstances, it is difficult to see any disadvantage in the new approach.

3. Proposals

3.1 The proposed changes to the Code are:

3.1.1 Rule 10

Note 4

Insert a new NB as follows:-

"NB 2. It is a matter for the offeror and its advisers, in particular the receiving agent, to determine whether, for shareholders within CREST, an offer can be accepted (and the acceptance withdrawn) electronically without the need for an acceptance form. If so, the procedure to be adopted must be made clear in the offer document."

The current NB becomes NB 1.

Insert a new paragraph (a) as follows:

(a) " if it is to be effected by means of CREST without an acceptance form, the transfer to the relevant member's escrow account has settled in respect of the relevant number of shares on or before the last time for acceptance set out in the offeror's relevant document or announcement; or,"

Existing paragraphs (a) and (b) become (b) and (c) respectively.

Before new (b), insert:

"if it is to be effected by means of an acceptance form, both:"

In new Note (c)(iii), replace (b) in the last line with (c)

Note 5

In Note 5, paragraph (b), replace the reference to "*paragraph b(i) of Note 4*" with "*paragraph c(i) of Note 4*"

Note 6

The existing wording is deleted, to be replaced with the following (the reference to paragraph c(iii) refers to new paragraph c(iii), i.e. existing paragraph b(iii)).

"In determining whether an acceptance condition has been fulfilled before the final closing date, all acceptances and purchases that comply with the requirements of Notes 4 and 5 on Rule 10 may be counted, other than those which fall within paragraph c(iii) of Note 4."

3.1.2 **Rule 31.6**

In Rule 31.6(b) in lines 3 and 10, insert "**electronic instructions or**" between "**relevant**" and "**documents**".

3.1.3 **Rule 31.6, Note 1**

In the last sentence of this Note, insert "**electronic instructions or**" between "**relevant**" and "**documents**".

Question: Do you agree that the Code should be amended as proposed?

