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31 March 2021

Róisín Shortall TD
Dáil Éireann
Leinster House
Kildare Street
Dublin 2

Re: Enforcement outcome in relation J&E Davy (Davy) for breaches of the European Communities (Markets in Financial Instruments) Regulations 2007 (the MiFID Regulations)

Dear Deputy Shortall,

I refer to your letter dated 4 March 2021 addressed to the Governor. The Governor has asked me to respond to you on his behalf.

As you are aware, the Central Bank reprimanded and fined Davy €4,130,000 in respect of four breaches of the MiFID Regulations that occurred over different intervals between July 2014 and May 2016 (the **Davy Enforcement Outcome**).

The Central Bank published details of the Davy Enforcement Outcome on our website on 2 March 2021 (the **Public Statement**). As outlined in the Public Statement, the Central Bank's investigation found that in permitting a group of employees to pursue a personal investment opportunity, Davy prioritised the potential for those individuals to make a personal financial gain over ensuring that Davy complied with its regulatory obligations. In particular, the Central Bank's investigation found weaknesses in Davy's internal control framework in relation to conflicts of interest management and personal account dealing. Furthermore, Davy's compliance function was not consulted about the transaction and as the details of the transaction were recorded on a system that the compliance function did not monitor, compliance was in effect circumvented. All of this served to create an elevated risk of investor detriment. The serious issues identified in the Central Bank's investigation required the imposition of a significant financial penalty on Davy.

We have sought to put the fullest possible information about the investigation into the public domain through the detailed public statement and the legal pathways available to us, including through extensive engagement with the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach. In the same way, we have sought to answer your questions as fully as we can at this point in time, given the strict confidentiality obligations that apply to our work and the fact that Davy remains under live, intrusive supervision. Additionally, as you aware, we have a legal obligation not to prejudice any current or future investigations of the Central Bank or any other relevant agency.



1. What happened to the money that was made from the transaction involved?

The Central Bank's investigation concerned breaches of the MiFID Regulations by Davy in relation to conflicts of interest, personal account dealing and provision of information to the compliance function.

It is a matter of public record that the transaction that prompted the Central Bank's investigation was the subject of civil proceedings between Davy and its client. It has been widely reported that those proceedings were settled between the parties. It is not a matter for the Central Bank to comment on the terms of that settlement.

2. Is it the intention to publicly name all 16 of the individuals concerned?

The Central Bank has not named any individuals in the context of the Davy Enforcement Outcome. The investigation was into breaches of the MiFID Regulations by Davy, the regulated entity not any individuals.

As noted above, the Central Bank is subject to legal obligations of confidentiality under the Central Bank Act, 1942 with regard to its enforcement investigation of Davy.

3. What, in your view, is the appropriate action now for the NTMA to take, considering that Davy is the only Irish-owned primary dealer of Irish bonds and in light of their appalling behaviour and breach of trust?

This is a matter solely for the NTMA. The Central Bank notes the NTMA's public statement in that regard.

4. Can you confirm that any individual who currently holds a pre-approved controlled functions (PCF) role within Davy continues to meet the Central Bank's standards for fitness and probity?

All regulated firms have an ongoing obligation under Section 21 of the Central Bank Reform Act, 2010 to satisfy itself that any individual who is engaged to carry out a controlled function (CF) or PCF role has the requisite fitness and probity to do so. Where a firm becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF or PCF role, the Central Bank expects the firm to investigate such concerns and take action as appropriate without delay.

The Central Bank cannot comment on the PCF status of any specific individual as to do so would breach our confidentiality obligations.

5. Can you explain why, when these events came to light in 2016, it took until 2021 for the Central Bank to impose sanctions?

The Central Bank's investigations under the Administrative Sanctions Procedure are often highly complex, involving a vast amount of data, the conduct of a significant number of interviews and requiring specialist expertise. This was the case in relation to our investigation into Davy.

As outlined in the Public Statement, during its initial engagement with the Central Bank, Davy withheld key information and failed to disclose the full extent of the wrongdoing as was known to Davy at the time. This was treated as an aggravating factor.

The Central Bank expects firms to be open and co-operative in terms of providing information that is timely, accurate and reliable.



6. **There have been reports in the media that the original message from the CEO of Davy to staff subsequently had to be changed as it may have been in conflict with an agreement reached between Davy and the Central Bank. Will you publish in full any such agreement?**

The Central Bank does not publish settlement agreements entered into under the Administrative Sanctions Procedure. Section 4.6.3 of the Central Bank's Outline of Administrative Sanctions Procedure 2018 sets out the general terms contained in a settlement agreement.

Any firm that settles with the Central Bank under its Administrative Sanction Procedure agrees to the publication of a detailed public statement, the contents of which is agreed with the firm as part of the settlement agreement. It should be noted that, in relation to commentary on an enforcement outcome by a sanctioned firm or individual, the Central Bank guards against any misrepresentation, inadvertent or otherwise, of the enforcement investigation and settlement agreement.

7. **I would like to understand the relative severity of the fine. In that context, could you provide me with the total income of Davy in its last audited accounts and, if available, the total profit made by the individuals involved following the sale of their bonds?**

The Central Bank cannot provide Davy's financial information.

The Public Statement outlines the sanctioning factors that the Central Bank took into account in deciding the appropriate penalty to impose.

8. **Has the Central Bank raised any issues with the Office of the Director of Corporate Enforcement in light of what happened? Specifically, is the Central Bank of the view that all individuals who have served as Directors and/or Secretaries of Davy since 2014 have complied with their responsibilities under the Companies Act?**

The Central Bank will, within the confines of the confidentiality obligations contained in Section 33AK of the Central Bank Act, 1942, engage with any relevant agency that identifies matters that warrant consideration in the context of that agency's mandate. Any consideration of whether directors and/or secretaries have complied with their responsibilities under the Companies Act, 2014 is a matter for the Office of the Director of Corporate Enforcement.

9. **Did the activity that these 16 people at Davy engaged in constitute criminal activity in 2014, and does that activity currently constitute criminal activity?**

Davy admitted to four breaches of the MiFID Regulations. Those breaches are not designated as criminal offences under the MiFID Regulations. However, the breaches were very serious regulatory breaches and the public reprimand and financial sanction imposed reflect that.

10. **Davy effectively runs the Irish Stock Exchange. What is the Central Bank's view of whether it is appropriate for this arrangement to continue?**

Davy has no shareholding in the Irish Stock Exchange since March 2018.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Derville Rowland".

Derville Rowland
Director General, Financial Conduct