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PRIVATE & CONFIDENTIAL
Consultation Paper 142
Primary Markets and Wholesale Conduct Supervision Division
Central Bank of Ireland
New Wapping Street
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Dublin 1
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By e-mail to: markets@centralbank.ie

16 July 2021

Re: Consultation Paper 142; Consultation on Prospectus Fees and Service Standards

Dear Sirs,

Arthur Cox Listings Services Limited ("ACLSL"), as Prospectus Advisor, welcomes the opportunity to respond to the Central Banks's Consultation Paper 142.

We have responded to the two questions posed in the Consultation Paper 142 ("CP142") issued by the Central Bank of Ireland ("Central Bank"):

1 Question on Funding the Cost of the Central Bank's Prospectus Approval Activities and
2 Question on Prospectus Approval Service Standards.

More generally it is important to highlight the environment for and context of the proposals included in CP142. In this respect, Ireland is an acknowledged global leader in the listing of debt securities and the sector is an important and integral part of the international financial services ecosystem.

One of the most important facts is that Issuers have a choice as to where to list their transaction. Their decision can be dependent on many factors, including ease of process, certainty of timing and costs involved.

CP142 is assuming clients will continue to list in Ireland and will not move to other jurisdictions. This is a commoditized market which is sensitive to cost bases in competing jurisdictions. The publication of CP142 has in itself already caused a considerable amount of concern and unwelcome uncertainty and Issuers will move jurisdiction if they feel that the listing environment is compromised. Prior to 2000, the Irish listing industry was negligible but has developed rapidly as a result of a number of factors, but primarily, the level of service (including quick guaranteed review times) and cost. The fact that this industry grew so quickly demonstrates the fluidity of the market and the lack of client loyalty to a jurisdiction. If Irelands offering becomes less attractive for any reason, whether it cost, timing and/or services, there is no doubt that the listing will move to another jurisdiction.

We also believe that neither of these questions posed can be addressed in isolation and must be addressed on a combined basis.

Question on Funding the Cost of the Central Bank's Prospectus Approval Activities:

Do you agree with the Central Bank's proposals for funding the cost of its prospectus approval activities? If not, what alternative fee structure would you propose recognising that the Central Bank must implement its strategy of moving toward fully recovering the costs associated with its financial regulation activities?

1.1 Costs are a deciding factors for many issuers when choosing where to list. We have an immediate concern that it has been made known within the international market that there is a possibility that there could be a fee increase on the regulated market in Ireland. For example, Issuers may not consider updating their programme document in Ireland or consider Ireland for new listings due to increased costs, increased timeframes and uncertainties in the process.

1.2 Any fall in volume of listings on the regulated market as a result of CP142 will adversely affect approval fees payable to the Central Bank. This will have a corresponding detrimental effect on the Central Banks funding model to become 100% funded and will also have a negative effect for the debt industry as a whole. It will also have an impact on a wide range of businesses including legal, listing, corporate servicings, trustee and audit firms.

1.3 Page 9 of CP142 states "*Based on information available, the Central Bank understands that the current prospectus approval fee generally represents less than 5% of the total cost of a securities issuance (which include fees charged by professional services firms such as Prospectus Advisors and law firms*)"

We disagree with the Central Banks reference to the current prospectus approval fees generally representing less than 5% of the total cost of a securities issuance, which includes fees such as Prospectus Advisors and law firms as a basis for an increase in approval fees. Legal fees are separate to listing/CBI approval fees and legal fees should not be relevant in this context. To include legal fees would be entirely arbitrary and, if this were to the case, it would be necessary to analyse what fees a range of financial services provided including trustee fees and paying agency fees. Prospectus Advisors fees are not significant in the overall context of the transaction.

2. We appreciate that the Central Bank wish to move towards a 100% industry funding, however such significant increases in fees will not be palatable at this time, particularly during this current environment where Issuers are already dealing with the consequences of the current pandemic. A very slight marginal increase in fees may be more palatable on the basis the Central Bank improve their service and turnaround times and move back to a more consistent and reasonable approach, thus making a slight marginal fee increase more amenable.

3. Alternative Fee Suggestions:

3.1 We strongly suggest that the Central Bank do not implement a charge for the filing of Final Terms. This will be completely out of sync with other jurisdictions. We are not aware of any other Competent Authority charging for the filing of final terms. Final terms are field only with the Central Bank, the Prospectus Advisor already completes the necessary ESMA form for onward filing with ESMA. The form of final terms has already been approved in the Base Prospectus. Issuance by way of final terms can be very active and such costs will drive Programme business, which includes Final terms, away from Ireland. Once this business moves, it is not easy to win the business back and will take some time.

3.2 We ask the Central Bank to reconsider its proposal to remove the concept of series/drawdown prospectus. We disagree that such series/drawdown prospectus should be considered as a standalone prospectus therefore incurring standalone fees or series/drawdown Prospectus. Series/drawdown Prospectus is a volume based activity and to treat as a standalone from a review and a fee perspective will likely drive this business to other jurisdictions such as Luxembourg. We are curious to know why the CBI scrutinises the approved Base Prospectus once the series/drawdown is submitted as referred to on page 10 of CP142.

3.3 CP142 refers to this function should become fully funded over 5 years. With that in mind we suggest a marginal increase in fees and on a phased basis approach only. The significant increases suggested by CP142 could result in significant shortfall for the Central Bank. However costs cannot be looked upon in isolation. Services standards need to also be considered and revised. It should be noted that Prospectus Approval Service Standards is not limited to turnaround times but to other aspects of the services provided and it is an opportune time for the Central Bank to consider the non-timeframe aspects of the service standards.

Question on Prospectus Approval Service Standards
Do you agree with the Central Bank's proposals regarding the revision of the current prospectus approval service standards? If not, what alternative measures would you propose, including having regard to the Central Bank's reasons for revising the current service standards?

4. One of the most important facts again to note is that Issuers have a choice as to where to list their transaction. Certainty of timing plays a major factor in issuer's decision to list particularly whilst markets remain as volatile as they are. Issuers can have a limited space of time to achieve a listing. Previously Issuers knew that Ireland understood this and if they chose to list in Ireland, they could be certain their timetable will be met. Ireland is already losing out in this area and Issuers have lost confidence in the CBI approval process and in particular timing, in Ireland. There is no certainty of timing, no flexibility in relation to timing, and very little service levels even when notified that the deal is urgent.

5. CP142 repeats on a number of occasions, that the Central Bank scrutinise documents in timeframes shorter than those set out in the Prospectus Regulations. Whilst this is true, it is the same for competing Competent Authorities who are also very active in this space. Issuers choosing a prospectus venue do not benchmark against the minimum requirements that the Prospectus Regulation impose on Member States. There is a very real risk that extended turnaround times plus an increase in listing costs combined with the lack of consistency and negative services levels, will cause clients to move their listing business elsewhere as clients are extremely sensitive in the current economic environment. We have already experience this shift away from the regulated market in Ireland.

6. Given the reputational issues that listings on the regulated market in Ireland has been dealing with on an ongoing basis, further negative news regarding fee increase together with an increase in turnaround times will be exploited by our international competitors.

7. The Central Bank state on page 9 of CP142 that one of the reasons for having to increase turnaround times is as a result of "*Poorly drafted or incomplete applications needlessly result in a lengthening of the scrutiny process*" We disagree with this, all documents submitted are in good draft stage prior to submission and prepared by law firms specialising in debt prospectus drafting.

8. On page 16 of CP142, the Central Bank state "*ESMA Guidelines on risk factors and increased disclosure requirements under the Prospectus Regulation require a more in-depth scrutiny of disclosures, including risk factors, in a prospectus is being conducted which has increased the time taken to scrutinise a prospectus"*. Whilst this may have been the case when the change to how risk factors should be catered for in a Prospectus in July 2019, this is now very much settled language within the industry and has resulted in less comments being raised on this section of the Prospectus. As noted by the Central Bank on many reviews, the Issuer is ultimately responsible for risk factors disclosure. We do not see this as a reason to increase timeframes.

9. The Central Bank state on page 16 of CP142 "*In considering the revision of our service standards, we have focussed on the area of highest volume, namely debt25 prospectus submissions*". This is assuming this volume will continue in Ireland. We wish to highlight to the Central Bank that Issuer confidence in seeking approval on the Regulated Market in Ireland is at a low level and Issuers are already considering if Ireland is their choice of venue going forward. Moving to their suggested turnaround times will put the CBI at an immediate disadvantage in terms of timing: CBI suggested times are as follows:

   9.1 6 days on initial submissions (rather than 3 days)

   9.2 4 days on subsequent submissions (rather than 2 days)

   9.3 2 days for supplements (rather than 1 day)

   When compared to equally active jurisdictions, Ireland will be uncompetitive in terms of timing. Luxembourg adapted their turnarounds times to meet Ireland previous timeframes, that is 3 days on the initial submission and 2 working days on each subsequent submission. Indeed Luxembourg will also speed up the process when reaching the end of the approval stage which Issuers very much welcome. 3:2 days is standard for other jurisdictions.

10. Whilst many clients list on the regulated market there is often no reason why they cannot list on an unregulated market such as the Global Exchange Market ("GEM"). We have already experienced Issuers moving their business to GEM and other competing MTFs. By listing on GEM they have consistent, guaranteed timesframes, reduced costs and excellent services. This will have a direct impact on the Central Banks aim to become fully funded.

11. In addition, a listing is often sought in order for the securities to qualify for the quoted Eurobond withholding tax exemption. As this exemption can be claimed by securities listed on the GEM as well as the regulated market, this will not deter clients from potentially moving their listing to the GEM. From the Central Bank's perspective, the above would presumably have a serious impact on the self-funding model as this would result in loss of document fees.

Alternative Measures:

(a) We suggest reverting to the previous turnaround times of 3 days and 2 days on all debt transactions submitted for review, with the exception of retail transactions, so that Ireland can remain competitive with its competing jurisdictions.

(b) We suggest reverting to the previous turnaround times for supplements, financial and non financial supplement.

(c) Not all documents require the same level of scrutiny. As mentioned above, perhaps a longer review of 4 days could be considered for the initial submission of retail transaction and then followed by 2 days on each subsequent submission.

(d) To re-introduce certainty of timing, we suggest the CBI move to a 100% commitment on timeframes as opposed to the 90% as suggested in the CP142.This will provide Issuers with more certainty when trying to map out their timetable.

(e) We suggest the Central Bank engage earlier and more frequently on transactions so that less comments can be raised particularly comments where the Central Bank are querying how the mechanics of a transaction may work or how formulae may be calculated. This may reduce the Central Banks time spent on certain reviews.

(f) Perhaps the Central Bank could consider refraining from raising new comments on settled language as the transaction advances and after a number of submissions have been made. This could reduce the Central Banks time spent on transaction as it would reduce the number of submissions required.

(g) The Central Bank could place comfort on repetitive transactions and which are submitted marked up against a recently approved transaction. To place some level of comfort on precedence on repetitive deals and this may also reduce the Central Banks time spend on certain transactions.

There is a very real risk that an increase in listing costs together with the extended turnaround times, lack of consistency and negative services levels, will cause clients to move their listing business elsewhere as clients are extremely sensitive in the current economic environment.

We welcome the opportunity to engage with and provide any further insights which may be helpful for the Central Bank in relation to the matters under consultation.

In this regard, to contact us please do so by email to:

CP142Listings@arthurcox.com

Yours faithfully,

Arthur Cox Listing Services Limited

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PROSPECTUS ADVISOR