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Consultation Paper 142
Primary Markets and Wholesale Conduct Supervision Division
Central Bank of Ireland
New Wapping Street
North Wall Quay
Dublin 1
D01 F7X3

By e-mail to: markets@centralbank.ie

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

Dear Sir or Madam,

Arthur Cox LLP welcomes the opportunity to contribute to the Central Bank's Consultation Paper 142; Consultation on Prospectus Fees and Service Standards ("**CP 142**").

As one of the major Irish law firms advising both domestic and international clients on debt securities issuances, we believe that we can make a valuable contribution to the consultation.

As set out in further detail below, whilst we very much appreciate the aim of the proposals set forth in the CP 142, we do caution that the proposals in our view very much risk being self-defeating.

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. **Our position regarding the Central Bank's proposals**

1.1 We recognise the Central Bank's goal to increasingly recover costs from industry. However, we are firmly of the view that the funding proposals are counterproductive to the Central Bank's objectives. There is a very real risk that the funding proposals (and steps to implement, even if not finally implemented or if subsequently modified) will, very significantly, reduce the volume of debt issuers who seek prospectus approval and listing in Ireland. This will irreparably erode the Central Bank's revenue position as compared with its existing cost structure.

1.2 On a daily basis we speak with issuers and intermediaries (in Ireland, London, New York and elsewhere) in relation to their prospectus approval requirements. It is with this informed perspective on the domestic and international debt markets that we can confirm that costs are a deciding factor for many issuers when choosing where to have a prospectus approved.

1.3 In terms of EU prospectus approval options, issuers have a choice of many jurisdictions (which also operate in the English language). It is clear from our vantage point that issuers (including domestic Irish financial institutions) will not default to Ireland or continue to renew programmes in Ireland in the face of the funding proposals.

1.4 Historically, issuers have been attracted to prospectus approval in Ireland as against other jurisdictions such as Luxembourg on the basis of a perception (historically justified) of increased responsiveness and greater certainty of turnaround times on prospectus review in Ireland. Our market intelligence is clearly that this perception (and so the competitive advantage held by Ireland) is increasingly being eroded. Our very certain expectation is that the funding proposals will irrevocably drive issuers (including Irish issuers) away from seeking prospectus approval in Ireland.

1.5 Any fall in the volume of listings on the regulated market as a result of implementation of the CP 142 funding proposals will adversely impact prospectus approval revenue. This will have a corresponding detrimental effect on the Central Bank's funding model to become 100% funded over the next 5 years.

1.6 We do question the reference on page 9 of the CP 142 which states as follows: "*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 respectfully submit that benchmarking prospectus approval fees by reference to legal fees is, in our view, a false equivalence. The legal fees and other professional fees (e.g. for tax advisory and audit) in a securities issuance for the most part do not relate to the prospectus approval aspects.

In addition, any pricing by reference to a percentage of the costs of an issuance is, we submit, simplistic. In the context of a securities issuance, the only participants whose fees are determined by reference to a percentage of costs are the arrangers/underwriters, without whom an issuance is not possible and whose capital and reputation may be at risk as part of the primary issuance process.

2. Alternative fee structure suggestions

2.1 We strongly suggest that the Central Bank does not implement a charge for the filing of final terms. We are not aware of any other Competent Authority charging for the filing of final terms. Final terms are simply filed with the Central Bank. The necessary ESMA forms are handled by the Prospectus Adviser. In this context, a charge on final terms will be very poorly received in the market, particularly given the frequency with which final terms are issued off a base prospectus, and will almost certainly cause issuers to look to other jurisdictions for base prospectus approval.

2.2 We question why the Central Bank is removing the current fee of EUR 250 per document approved. Might this be reinstated and applied to all entities submitting a debt transaction to the Central Bank for approval?

2.3 We ask the Central Bank to reconsider its proposal to remove the concept of a series/drawdown prospectus. It is a well-recognised market concept. We do not fully understand the reference on page 10 of the CP 142 to the Central Bank reviewing the terms of a base prospectus which is incorporated by reference. In circumstances where a base prospectus has already been approved (and associated costs paid to the Central Bank by the issuer), this will likely be very poorly received in the market.

2.4 The CP 142 refers to the aim that this function become fully funded over the next 5 years. With that in mind, we suggest a marginal increase in fees and on a phased basis approach only. Proceeding to implementation of the proposed increases in fees will very likely have the effect of reducing significantly and permanently the funding base of the Central Bank.

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?

3. **Our position regarding the Central Bank's proposals**

3.1 We do not endorse these proposals. As mentioned above, the market perception (which we regularly hear from our clients) is that Ireland's reputation for being an extremely efficient and reliable listing venue is slipping. Further extending turnaround times (especially if combined with material cost increases) will remove any advantage Ireland has held over other jurisdictions. This will inevitably result in a "negative feedback loop" of significantly fewer prospectuses being approved in Ireland, resulting in less prospectus approval revenue, which will result in less funding for the Central Bank, resulting in less resources available to the Central Bank to efficiently conduct its prospectus approval functions, and in turn even longer turnaround times and less prospectus approval revenue, and so on.

3.2 When compared to equally active jurisdictions such as Luxembourg, Ireland will be uncompetitive in terms of timing. Luxembourg has adapted its prospectus approval turnaround times to meet Ireland's previous timeframes, that is, 3 working 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.

3.3 The CP 142 notes in several places (and correctly) that the Central Bank reviews prospectuses in timeframes shorter than those set out in the Prospectus Regulation. However, we respectfully submit that this a misplaced comparison in the context of what is regarded in the debt markets as an efficient turnaround time. Issuers, in choosing a prospectus approval venue, do not benchmark against the minimum requirements that the Prospectus Regulation imposes on Member States. Rather, they choose a prospectus approval venue in a Member State which has the most attractive process, and efficiency and certainty of review times (as compared with other venues) are, together with costs, the determining factors.

4. **Proposed alternative measures**

4.1 We suggest reverting to the previous turnaround times of 3 working days on the initial submission and 2 working days on each subsequent submission for all debt transactions submitted for review, with the exception of retail transactions, so that Ireland can remain competitive with its competing jurisdictions.

4.2 To reintroduce certainty of timing, we suggest that the Central Bank moves to a 100% commitment on timeframes as opposed to the 90% as suggested in the CP 142.

5. Conclusion

There is a very real risk that an increase in prospectus approval costs, together with the extended turnaround times, will cause clients who require a listing on a regulated market to choose Luxembourg or another EU jurisdiction for prospectus approval. 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:

CP142@arthurcox.com

Yours faithfully,

Arthur Cox

ARTHUR COX LLP