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Consultation Paper 142
Primary Markets and Wholesale Conduct Supervision Division
Central Bank of Ireland
New Wapping Street
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About BNY Mellon

BNY Mellon is a global investments company helping its clients manage and service their financial assets throughout the investment lifecycle. For 237 years, clients have looked to us as trusted stewards of their assets and businesses. We have global reach and scale with more than 48,000 employees across 35 countries, offering settlement in more than 100 markets. As of March 31, 2021, we had $41.7 trillion in assets under custody and/or administration and $3.6 trillion average tri-party collateral management balances.

BNY Mellon operates in Europe through: (i) branches of The Bank of New York Mellon (a New York-incorporated financial institution) and (ii) directly established and duly authorised subsidiaries established in several EU jurisdictions and branches of those entities operating in most of the core EU member states, including Ireland.

Our clients in Ireland include traditional and alternative asset managers, banks, pension funds, insurance companies and sovereign wealth funds. In Ireland, BNY Mellon operates through a number of legal entities. This submission is on behalf of the Dublin Branch of **The Bank of New York Mellon SA/NV,** which is a Belgian credit institution providing services including custody.

BNY Mellon has a physical presence in Dublin, Cork and Wexford and employs over 1,200 people in Ireland: the Dublin Branch of The Bank of New York Mellon SA/NV employs 362 people. We are active participants in our communities with a focus on empowering our employees to address key societal challenges that they care about through our Community Partnership, Diversity, Equity & Inclusion programmes.

BNY Mellon's Response to Consultation Paper 142; Consultation on Prospectus Fees and Service Standards

BNY Mellon welcomes the opportunity to respond to the Central Bank of Ireland's public consultation on funding the cost of prospectus approval activities and prospectus approval service standards. We recognise the timeliness of this consultation given the Central Bank's long-term commitment to increase the proportion of costs chargeable to industry and the enormous pressure on public finances and consequent need to limit subvention of costs which ultimately increases the burden on the taxpayer.

Our guiding principle for the responses below is the critical importance of maintaining Ireland's competitiveness with other jurisdictions to ensure its continued success and sustainable growth, and deliver resultant benefits to Ireland's financial ecosystem and the broader economy.

Question 1

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?

We acknowledge that following the 2015 consultation, the Central Bank set an ultimate objective of regulated firms paying the full cost of financial regulation activity. However, we believe that any move to substantially recover the cost of prospectus approval activities at this time is premature and the timetable for change too short. The scale and timeframe of the proposed changes risks endangering Ireland's unique attraction as a location for capital markets activity.

Our belief is driven by the scale of the change, which could be onerous for the financial services industry, especially following a period of uncertainty and higher costs as a result of the COVID-19 pandemic. The proposal to introduce a new fee for the filing of Final Terms would be of particular concern to many issuers; those with active programmes could quickly amass significant filing fees. Our calculations suggest that many other categories of fees will more than double and one category will increase by more than 500% compared to current levels. Such a sharp increase could act as a deterrent to issuers from choosing Ireland as a location for their capital markets activity.

While some other key jurisdictions that compete with Ireland for capital markets activity have fully industry-funded models, we believe these are not directly comparable. As importantly, we believe that the funding model deployed by Ireland for prospectus approval (and other financial regulation activity) is a valuable competitive differentiator for the country.

More generally, we believe industry should contribute to the funding of regulation and that adequately resourcing the financial regulator with competent and effective people is important. However, 100% industry funding is not necessarily advantageous and could undermine accountability and competitiveness. The use of taxpayer funds (in any form) is more likely to increase accountability to the public through the involvement of elected representatives, and discourage the passing on of additional costs to the industry (and thereby the end consumer) without sufficient consideration of 'value for money' of such additional expenditure. A mixed funding model supports both accountability and competitiveness.

If an increase in fees is deemed essential at this time, we would propose a more gradual increase – perhaps rising by no more than 10-15% per year over a number of years – as an alternative to the Central Bank proposals. Any change should be clearly signposted to allow time for it to be accommodated and communicated to the market. As outlined above, we believe that a fully industry-funded model is not in Ireland's best interests in the foreseeable future. Maintaining a model funded by both the taxpayer and industry will help to ensure that Ireland's capital market offering remains attractive and differentiated from other jurisdictions.

Question 2

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?

BNY Mellon recognises that Ireland has become an attractive capital markets hub within the European Union based on the quality of service of its prospectus approval service and the relative speed at which documents are reviewed.

We greatly endorse the need to maintain high standards of review and welcome any reforms that will help to achieve such a goal. We accept that extended timeframes have been necessary during the COVID-19 pandemic.

We are therefore concerned about some aspects of the Central Bank proposals. For example, while we support the Central Bank's increased focus on challenging and investigating regulatory, investor protection or market integrity issues, the proposal that the time taken to scrutinise most documents could be doubled may be perceived negatively by market participants.

Similarly, we welcome the decision to scrutinise prospectuses in timeframes shorter than those set out in the Prospectus Regulation. However, the proposal that 90% of initial submissions would be assessed within six working days rather than the current three business days for Prospectus Advisors (and 90% of subsequent submissions to be assessed within four working days rather than the current two business days for Prospectus Advisors) is a retrograde development in terms of the credibility of Ireland's capital markets offering. We acknowledge the proposed shorter timeframes for other parties in both these instances but do not think the additional delay for Prospectus Advisors is a reasonable trade-off.

In relation to debt non-financial supplements, the proposed new public service standard of two working days as opposed to the current practice of one business day is, we believe, an equally unhelpful development in terms of issuers' perception of the merits of Ireland as a capital markets centre.

Overall, we do not agree with the Central Bank's proposed extension of timeframes for prospectus approval, as we believe the timely business practices of the Central Bank in relation to this service have been an important factor in establishing Ireland's reputation as an efficient jurisdiction in which to conduct capital markets operations. In addition, any lengthening of current (pre-COVID-19) timetables – whether stipulated in guidelines or achieved in practice – would be especially unwelcome were costs to increase simultaneously.

We are available to discuss our submission with the Department of Finance and the Central Bank.

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