



BULLETIN – 190729/46

Process for paying agent changes (pre and/or post issuance) for securities issued within the ICSDs

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Introduction

The ICSDs (Euroclear Bank SA/NV and Clearstream Banking S.A.) regularly undertake reviews of their respective new issue acceptance processes. This is not only linked to the eligibility assessment of the indicative terms and conditions of a proposed new issue – but also encompasses the review and approval of the appointed paying agent(s)¹ for each transaction that is submitted for eligibility review and acceptance.

Background

In the first instance, a minimum set of instrument attributes are required to perform the eligibility assessment at the time the indicative terms are provided to the ICSDs for review. This process is well embedded into the day to day activities of the ICSDs and other international primary market actors and should be in line with the ISMAG market practices that apply.

As is the case with all new issues (irrespective of being fungible with another financial instrument or not), the ICSDs have an obligation to undertake a formal review of the indicative terms and conditions to ensure that all aspects of the proposed issuance structure meet their acceptance criteria. This includes, but is not limited to, assessing the proposed structure of the transaction from legal, operational, tax and compliance perspectives.

An assessment of the designated paying agent(s), that are proposed to act as a representative of the issuer vis-a-vis the ICSDs, is included in the scope of this eligibility assessment. It is only following the completion of the ICSDs' due diligence checks that an admission decision can be taken regarding the acceptance of the issuance – and only then is an ISIN number validly assigned to that product.

Each issuance and programme facility is assessed independently.

For stand-alone issuances

The ICSDs must be advised of the appointed paying agent(s) in the pre-issuance stage to allow this approval assessment; thus, making it a mandatory criterion that an approved paying agent (at a minimum the agent must be a regulated financial institution with a banking license or equivalent) is appointed on each instrument that is proposed to be issued through the ICSDs. The ICSDs have encountered situations where the paying agent changed during the lifecycle of the issue i.e. post issuance. This change of paying agent is often not advised to the ICSDs in a sufficiently timely manner to allow the ICSDs to re-assess the proposed new paying agent before the execution of new agency agreement documentation, amended terms etc.

¹ In this context, paying agent means principal paying agent or issuing and paying agent or fiscal agent



For issues under programmes

In relation to Issuing and Paying Agency appointments under existing programmes, should a change be contemplated in these roles, then the ICSDs must be consulted about the proposed change(s) before any new appointments are agreed and documented.

Process when proposing to change paying agent(s) (pre & post issuance)

The ICSDs must be informed of any change of agent (regardless of this change being proposed in the pre or post-issuance stage) to allow for a validation of the new proposed agent. It has been noted in the preparation of this bulletin that the paying agent can change in the post-issuance stage for a number of reasons. In all scenarios, the ICSDs must be informed (as soon as possible) of the intended replacement of the existing paying agent(s); to allow for a re-assessment of the eligibility of the proposed replacement agent to be made prior to the official appointment.

Thus, a change of paying agent(s) at any stage following the issue date of the financial instrument, must be communicated to both ICSDs in advance of such change being agreed between the issuer and the new paying agent. This must be communicated to the corporate actions teams of both ICSDs, thus triggering an assessment of the proposed new entity, provide approval (where applicable) of the newly appointed entity and thus allow continued eligibility of the security to which the proposed change of paying agent(s) applies.

Note: should the paying agent(s) proposed to be appointed not meet the ICSDs eligibility criteria (at a minimum a regulated entity with a banking licence), this may adversely affect the eligibility (or continued eligibility) of the financial instrument within the ICSDs.