



## BULLETIN – 121112/20

# ICMSA Bulletin - Policy for the appointment of Issuing & Paying Agents (“IPAs”) in relation to Programme based Issuances

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### Introduction

The ICMSA seeks to draw attention to a number of problems arising in relation to the appointment of several IPAs for programme based issuances.

There is an increasing trend for such programmes to attempt to appoint multiple IPAs on issuances through the International Market (i.e. securities primarily issued through and deposited with the International Central Securities Depositories (“ICSDs”), i.e. Clearstream Banking S.A., Luxembourg and Euroclear Bank S.A./N.V., with associated potential adverse effects for all market players (described in annexe).

Although the bulk of programme issuance is facilitated through the ICSDs, some programmes have expanded to include various domestic markets. In some cases these require the appointment of a domestic IPA as the appointed principal IPA may not have direct access or servicing facilities to those local markets.

The ICMSA recommends that:

The issuer must ensure that only one principal IPA is acting for issues primarily deposited with the ICSDs and if required, only one domestic IPA, per domestic market, should be handling local issuances. The issuer must also ensure that the principal IPA receives issuance details (through the issues lifecycle) from each of the domestic IPAs who are responsible for the agent functions within their own [domestic] markets. In this way the principal IPA can maintain the integrity of the entire programme. Issuers should ensure the documentation clearly reflects the appointment of the additional IPA is only applicable for such domestic issuance.

The ICMSA wishes also to re-confirm the protocol to be adopted in relation to all Programmes which provide for the issuance of all instruments within the International Market (primarily deposited with the ICSDs).

Protocol:

The IPAs and ICSDs will maintain a strict application of the provision of a single principal IPA to administer all issuances effected within the International Market and will not accept any form of appointment which could lead to more than one principal IPA being able to oversee all issuances under the programme. Following these guidelines will therefore ensure that there is a single IPA in place to maintain the protocol of one entity fulfilling such roles per programme and to provide a seamless service for both issuance and asset servicing. The ICMSA appreciates that documentation needs to provide considerations for an additional IPA in the case of a complete IPA successor situation; this scenario is acceptable as long as the documentation is clear.



## Annexe

### Risks:

When agency roles for the ICSDs and domestic markets are decoupled, problems may arise - particularly with bifurcated structures where the international note is primarily deposited with the ICSDs and the domestic note primarily deposited with the local clearing system<sup>1</sup>.

If the sole principle IPA approach is not adopted, a number of risks could affect all parties.

Listed below are some risks for consideration:

- If the domestic sub agent fails to notify the principal IPA of material matters necessary for the latter to maintain the required records relating to the Programme as a whole, such failure would make it very difficult for the principal IPA to comply meaningfully with all its obligations under the Agency Agreement;
- Having more than one agent can lead to operational issues for all parties - i.e. Agents, ICSDs and their common depositories as well as holders of the notes;
- There is a risk of approaching one agent and appointing them for a particular drawdown, requesting an ISIN code, but, inadvertently sending the final terms (which is the IPAs prompt to settle the issue) to the other (incorrect) agent;
- Dealers will request confirmation from whom they are receiving the securities, i.e. which account should be settled against; this will be the IPAs account number. Having a number of agents to notify to dealers could cause a settlement delay, creating confusion for dealers; With whom should they match and settle?
- The incorrect common depository could be allocated by the ICSDs resulting in reconciliation problems;
- Notices could be sent to the wrong agent or common depository which will result in corporate/income events being delayed;

Maintaining a sole principal IPA on a programme provides the following benefits to all parties as that entity:

- Has the knowledge and expertise to manage the entire programme;
- Will safekeep the Master Global Notes in one location;
- Is responsible for regulatory filing and other reporting;
- Is responsible for maintenance of programme records; (such as outstanding amount)
- Is responsible for supply of information/documentation to applicable parties on behalf of the Issuer;
- Maintains relationship with the dealers applicable under the programme;
- Is known to the ICSDs as the main contact point in case of queries.

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<sup>1</sup> It must be noted, however, that in cases where a Reg S note is issued in the ICSDs, and the 144a note is issued in DTCC, the ICSDs usually hold the majority of the 144a note for their customers via sub-custodian links to DTCC. Further, there is usually no reason why both the Reg S and 144a notes may not be issued in the ICSDs and deposited with a Common Depository since the ICSDs accept 144a Common Depository structures.