

Date: 18 July 2013

Item 7: **Renewal of TfL's Medium Term Note Programme**

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**This paper will be considered in public.**

**1 Summary**

- 1.1 To be in a position to borrow from the bond and commercial paper markets under its existing Euro Medium Term Note (MTN) and Euro Commercial Paper (CP) Programmes, TfL has to ensure that the documentation relating to the MTN and CP Programmes is up to date, as explained in section 3 of this paper. While the MTN Prospectus (as described in paragraph 3.5(a)) (the Prospectus) has to be updated every year, the documentation relating to the CP Programme may be updated at less frequent intervals and TfL considers that an update of such documentation is not currently required. This paper relates to the update of the MTN Programme documentation, including the Prospectus and other related MTN documentation.
- 1.2 Under TfL Standing Orders, the Board has delegated the approval of the MTN Programme documentation to the Finance and Policy Committee.
- 1.3 A paper is included on Part 2 of the agenda, which contains exempt supplemental information and documentation. The information is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from this meeting.

**2 Recommendations**

- 2.1 **That the Committee:**
  - (a) **note the paper;**
  - (b) **approve the update of the Euro Medium Term Note (MTN) Programme documentation;**
  - (c) **approve the substantive terms of the Prospectus (included as Appendix 1 in the paper on Part 2 of the agenda), subject to any changes raised at the meeting and any further amendments that the Commissioner, the Managing Director Finance, General Counsel, the Chief Finance Officer or the Group Treasurer may approve further to the delegation specified in paragraph 2.1(f)(i) below;**
  - (d) **note that the Prospectus needs to be in a form satisfactory to the UK**

**Financial Conduct Authority (FCA) as the authority responsible for the exercise of the functions set out in Part VI of the Financial Services and Markets Act 2000 and that it is important that the Prospectus is complete and accurate and not misleading as it can give rise to legal liability for TfL;**

- (e) note that a verification process is being undertaken by senior TfL officers to ensure the accuracy of the information contained in the Prospectus; and**
- (f) delegate authority to the Commissioner, the Managing Director Finance, General Counsel, the Chief Finance Officer and the Group Treasurer such that any one of them may:**
  - (i) approve any further amendments to the Prospectus and the issuance and content of any Supplemental Prospectus, whether required by the FCA, driven by legislation or otherwise;**
  - (ii) approve, authorise and agree on behalf of TfL the final terms and conditions of any and all documentation relating to the MTN Programme, including the Prospectus, and any amended and restated documentation (including the Trust Deed, Dealer Agreement and the Programme Manual);**
  - (iii) sign, execute (if necessary, by authorising the fixing of the TfL seal) and deliver on behalf of TfL any and all documentation (including the Prospectus, the Trust Deed, the Dealer Agreement, the Programme Manual, any notes issued under the MTN Programme (Notes) and any agreements, deeds, guarantees, announcements, notices, contracts, certificates, letters or other documents) to be entered into by TfL relating to the MTN Programme and to perform the obligations set out within them; and**
  - (iv) subject to the provisions of the Borrowing Strategy for 2013/14 relating to the approval of any new debt issuance having been complied with:**
    - (1) approve, authorise and agree on behalf of TfL the final terms and conditions of any such Note issuance(s) and all documentation relating to them, including the form of the final terms relating to any Notes, any subscription agreement or other agreement, any Supplemental Prospectus, deed, document, or certificate in connection with them; and**
    - (2) approve sign, execute (if necessary, by authorising the fixing of the TfL seal) and deliver on behalf of TfL any and all documentation (including the final terms of any Notes, any subscription agreement, any Supplemental Prospectus and any other agreements, deeds, guarantees, announcements, notices, contracts, certificates, letters or other documents) to be entered into by TfL relating to such Note issuance(s) and to perform the obligations set out within them.**

### 3 Update of MTN Programme Documentation

- 3.1 TfL established its MTN Programme in 2004 and since then has issued seven long term fixed rate interest rate notes and a one year £300m floating rate note, for a total of £2,600m.
- 3.2 Under the rules of the FCA, a prospectus is valid for 12 months after its date of publication for an offer of securities or an admission to trading, provided that it is supplemented if required. The Prospectus must also incorporate the audited accounts of the issuer for the latest two financial years.
- 3.3 The TfL MTN Programme (including the Prospectus) was last updated in August 2012, following the publication of TfL's audited accounts for the year ended 31 March 2012.
- 3.4 In addition, in anticipation of a note transaction<sup>1</sup> prior to the update of the Prospectus in July 2013 a Supplemental Prospectus (Appendix 1) was approved and published in May 2013. This was in order to disclose the downgrade of TfL by the credit rating agencies Moody's (from Aa1 to Aa2 on 25 February 2013) and Fitch (from AA+ to AA on 24 April 2013).

#### Key Documents to MTN Programme

- 3.5 The key documents to the MTN programme are:
- (a) the **Prospectus**, which describes to investors the terms and conditions of the Notes, the business description of TfL and its subsidiaries, key risk factors and incorporates by reference the audited annual accounts. TfL will be required to update/supplement this document with any relevant information: (i) if prior to the issue of any Notes a material change has occurred or (ii) on an annual basis (whichever occurs first);
  - (b) the **Dealer Agreement**, between TfL and the various investment banks that are involved in the MTN Programme as dealers, which sets out the key terms and conditions relating to issues of Notes under the MTN Programme and representations and warranties of TfL;
  - (c) the **Paying Agency Agreement** between TfL and the Paying Agent, which sets out, among other things, the mechanics for payment in respect of the Notes. The Paying Agent acts as the conduit for monies between TfL and the Noteholders at the time of any drawdown or interest and principal payments;
  - (d) the **Trust Deed**, which documents the relationship between TfL and the Trustee (the representative of the Noteholders). TfL covenants to the Trustee to make debt service payments. The Trustee holds the benefit of the covenant of trust for the Noteholders; and

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<sup>1</sup> Subsequent to the publication of a Supplemental Prospectus in May 2013, TfL issued a 32-year £400m bond under the MTN Programme.

(e) the **Programme Manual**, which outlines the administrative steps which need to be taken by all the relevant parties to effect an issue of Notes under the Programme and includes the form of Final Terms relating to the Notes. The Programme Manual is not a legally binding document, but it is signed by TfL, the Trustee and the Paying Agents for identification purposes.

### **Update of Prospectus and Other documentation**

- 3.6 An updated Prospectus, appended to the paper on Part 2 of the agenda, has been prepared with the advice of TfL's external legal adviser and in discussion with Morgan Stanley and HSBC (joint arrangers of the MTN Programme). Verification notes have been prepared whereby statements in the updated Prospectus (Business Description and Litigation) are being verified by the appropriate senior TfL Officer to ensure accuracy. A copy of the draft prospectus will be sent to the Financial Conduct Authority (FCA) for its comments but will not be submitted for final approval until the audited TfL accounts for the financial year 2012/13 (which are incorporated by reference in the Prospectus) are signed and published. The current expectation is that the accounts will be signed and published by early August 2013.
- 3.7 The proposed updates to the Prospectus described in paragraph 2.1(c) of the paper on Part 2 of the agenda are subject to further review owing to the fact that the FCA's approach in its interpretation and application of the amendments introduced by the Prospectus Directive Regulation on 1 July 2012 are still in flux. As such, certain sections of the draft of the Prospectus may be affected by comments received from the FCA. The sections which are not affected by the changes in legislation (Description of TfL and its Subsidiaries, Litigation) will substantially be in final form, subject to comments from the FCA and the Dealers.
- 3.8 An oral update on any substantive changes to be made to the draft Prospectus will be given at the meeting of the Committee.

### **Comments from Committee Members**

- 3.9 Members of the Committee are asked to provide any comments they may have on the draft Prospectus at, or prior to, the meeting of the Committee. Subject to those comments, it is proposed that any further amendments to the Prospectus required by the FCA, or requested by the Dealers or not considered to be substantive, will be approved by the Commissioner, the Managing Director Finance, General Counsel, the Chief Finance Officer or the Group Treasurer and notified to the Members at the next meeting of the Committee on 17 October 2013.
- 3.10 The Trust Deed will also be amended and restated in order to make certain amendments to the terms and conditions of the Notes, which it is expected that the FCA will require as a result of its changing interpretation and application of the amendments to the Prospectus Directive Regulation EC 809/2004 which came into effect on 1 July 2012.

- 3.11 The Programme Manual will also be updated in order to make certain amendments to the Final Terms relating to the Notes, again as a result of the FCA's interpretation and application of the legislative changes described above.
- 3.12 The Dealer Agreement will be amended in order to reflect the new Dealer panel following consideration by TfL of whether it wishes to maintain the appointment of all of the financial institutions currently appointed as Dealers for the Programme and to make some other legal updates.

#### **Note Issuance under the Borrowing Strategy**

- 3.13 Following approval of the updated MTN Programme documentation, TfL will be able to issue notes in the capital markets for the following twelve months.
- 3.14 Under the Borrowing Strategy for 2013/14, set out in paragraph 6 of the Treasury Management Strategy 2013/14, any new debt issuance under the MTN programme (including the approval of any Supplemental Prospectus that may be required) is permitted subject to the prior written approval of the Managing Director, Finance or Chief Finance Officer provided that the issuance is in accordance with any relevant parameters set out in the Treasury Management Strategy 2013/14. Officers must also consult with as many Members of the Finance and Policy Committee as are available, on the proposed term and amount of such Note issuance in advance of the Note issuance, as well as the need for any Supplemental Prospectus.

### **4 Legal Implications**

- 4.1 TfL has to ensure that it complies with the various legal requirements arising in respect of the Prospectus as the offering document provided to potential investors, and the contractual documentation entered into with the investment banks who distribute the Notes issued by TfL under the MTN Programme.
- 4.2 The risks of non-compliance with the legal requirements can be (and are) mitigated to a great extent by appropriate due diligence and verification carried out by TfL.

### **5 Financial Implications**

- 5.1 TfL chose to opt into the Prospectus Directive requirements. As a result, a delay in the update and approval of the documentation relating to the MTN Programme would result in a delay to TfL's ability to issue notes in the capital markets, thus limiting TfL's sources of borrowing until such time as the MTN Programme is successfully updated.

**List of appendices to this report:**

Appendix 1: Supplemental Prospectus (May 2013)

Exempt supplemental information is included in a paper on Part 2 of the agenda.

**List of background papers:**

Euro Medium Term Note and Euro Commercial Paper Programmes

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**SUPPLEMENT DATED 10 MAY 2013 TO THE BASE PROSPECTUS DATED  
23 AUGUST 2012**



*(established in England)*

**£5,000,000,000**

## **Euro Medium Term Note Programme**

This Supplement (the “**Supplement**”) is supplemental to, forms part of and must be read in conjunction with, the base prospectus dated 23 August 2012 (the “**Base Prospectus**”) prepared by Transport for London (the “**Issuer**” or “**TfL**”) in connection with its £5,000,000,000 Euro Medium Term Note Programme (the “**Programme**”). Terms given a defined meaning in the Base Prospectus shall, unless the context otherwise requires, have the same meaning when used in this Supplement.

This Supplement has been approved by the United Kingdom Financial Conduct Authority (the “**FCA**”), which is the United Kingdom competent authority for the purposes of Directive 2003/71/EC (the “**Prospectus Directive**”) and relevant implementing measures in the United Kingdom, as a base prospectus supplement issued in compliance with the Prospectus Directive and relevant implementing measures in the United Kingdom.

To the extent that there is any inconsistency between (a) any statement in this Supplement or any statement incorporated by reference into the Base Prospectus by this Supplement and (b) any other statement in, or incorporated into, the Base Prospectus, the statements described in (a) above will prevail.

Except as disclosed in this Supplement, no significant new factor, material mistake or inaccuracy relating to information included in the Base Prospectus which is capable of affecting the assessment of Notes issued under the Programme has arisen or been noted, as the case may be, since the publication of the Base Prospectus.

The Issuer accepts responsibility for the information contained in this Supplement. The Issuer declares that, having taken all reasonable care to ensure that such is the case, the information contained in this Supplement is, to the best of its knowledge, in accordance with the facts and contains no omission likely to affect its import.

## AMENDMENTS TO THE BASE PROSPECTUS

This Supplement has been produced in order to disclose a downgrade in the credit rating assigned to TfL by Moody's Investors Service Limited ("**Moody's**") and Fitch Ratings Limited ("**Fitch**"), details of which are set out below.

### *Credit Rating*

- (i) On 25 February 2013, Moody's downgraded the rating of TfL to Aa2 from Aa1; and
- (ii) On 24 April 2013 Fitch downgraded TfL's long-term debt rating to AA from AA+.

Each of Moody's and Fitch cited the recent downgrade of the UK government sovereign credit rating as the principal reason for the downgrade of TfL.

Each of Moody's and Fitch is established in the EEA and registered under Regulation EC No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, as amended.