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Guidelines

Guidelines specifying the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus under the Prospectus Regulation



Table of Contents

1 Scope 4

2 Legislative references, abbreviations and definitions 5

2.1 Legislative references 5

2.2 Acronyms and Abbreviations 6

2.3 Definitions 6

3 Purpose 7

4 Compliance and reporting obligations 7

4.1 Status of the guidelines 7

4.2 Reporting requirements 7

5 Guidelines specifying the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus 8

5.1 Overview 8

5.2 The Guidelines 8

1 Scope

Who?

1. These Guidelines apply to competent authorities, as defined in the Prospectus Regulation, and financial market participants, including the persons responsible for a prospectus under Article 11(1) of the Prospectus Regulation.

What?

2. These guidelines are to assist competent authorities and financial market participants, in identifying when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation. These Guidelines have been drafted pursuant to Article 23(8) of the Prospectus Regulation and Article 16(1) of the ESMA Regulation.

When?

3. These Guidelines apply from two months after the date of their publication on ESMA's website in all official languages of the EU.

2 Legislative references, abbreviations and definitions

2.1 Legislative references

CDR on financial information, supplements, advertisements, and metadata	Commission Delegated Regulation 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301[1]
CDR on scrutiny and disclosure	Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Commission Regulation (EC) No 809/2004[2]
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[3]
Listing Act	Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises[4]
Prospectus Regulation or PR	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC[5]

[1] OJ L 166 21.6.2019, p. 1.
[2] OJ L 166 21.6.2019, p. 26.
[3] OJ L 331, 15.12.2010, p. 84.
[4] OJ L 2024/2809, 14.11.2024
[5] OJ L 168, 30.6.2017, p. 12.

2.2 Acronyms and Abbreviations

CP	Consultation Paper
EC	European Commission
EEA	European Economic Area
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
EU	European Union

2.3 Definitions

Competent authority	an authority designated under Article 31 of the Prospectus Regulation
Product supplement	an abridged term to refer to a “supplement that is to be considered to introduce a new type of security that is not already described in a base prospectus.”

3 Purpose

4. These Guidelines are based on Article 23(8) of the Prospectus Regulation and Article 16(1) of the ESMA Regulation. The objective of these Guidelines is to clarify when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation and to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of the provisions in Article 23(8) of the Prospectus Regulation.

4 Compliance and reporting obligations

4.1 Status of the guidelines

5. This document contains guidelines issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

6. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practice, including where particular guidelines within the document are directed primarily at financial market participants.

4.2 Reporting requirements

7. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA to cfr@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

8. Financial market participants are not required to report whether they comply with these guidelines.

5 Guidelines specifying the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus

5.1 Overview

9. Considering Articles 23(4a) and 23(8) of the Prospectus Regulation, these Guidelines aim to clarify when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation.

5.2 The Guidelines

10. To ensure investor protection and foster regulatory convergence across the EU, guidance is necessary to clarify the circumstances in which an assessment as to whether a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus because a supplement should not add information about new types of securities into a base prospectus. These Guidelines clarify those circumstances and are designed to help financial market participants and national competent authorities make such assessment.

11. **Guideline 1: If a supplement involves disclosure from the following securities note annexes or building blocks that did not apply to the securities included in the base prospectus, the supplement should be treated as introducing a new "type" of security, and a new base prospectus should be required:**

    - **Annex 17 – Securities giving rise to payment or delivery obligations linked to an underlying asset**
    - **Annex 18 – Underlying share**
    - **Annex 19 – Asset-backed securities**
    - **Annex 21 – Guarantees**

12. This means that if the base prospectus was prepared under Annex 14 – Securities note for non-equity securities – a supplement should not be used to add disclosure from Annexes 17, 18, 19 or 21.

13. Additionally, concerning Annex 21 - Guarantees - if a guarantee is included in the base prospectus, the details of that guarantee can be amended through a

supplement. However, any amendment aimed at introducing a new guarantor can only be introduced by the incorporation by reference of an approved and valid registration document. Such amendment should not lead to the approval of a new registration document via the supplement.

14. **Guideline 2: In relation to Annex 14 – Securities note for non-equity securities – and Annex 17 – Securities giving rise to payment or delivery obligations linked to an underlying asset – the assessment should be refined based on the type of underlying as per Item 3.1.7 (a)[6] of Annex 14 and Item 2.2.2 of Annex 17. This means that a supplement may include disclosure about the following types of underlying if the same type of underlying was included in the base prospectus:**

    - **The underlying is an equity security**
    - **The underlying is a non-equity security**
    - **The underlying is a reference entity or reference obligation (for credit-linked securities)**
    - **The underlying is an index**
    - **The underlying is an interest rate**
    - **The underlying is a commodity**
    - **The underlying is a crypto-asset**
    - **The underlying is a basket of underlying**
    - **The underlying does not fall within the categories specified above.**

15. For instance, if a base prospectus includes “index” as a possible type of underlying, disclosure on new proprietary indices may be added via a supplement as this is not a new type of underlying based on this approach. However, a supplement should not include a commodity if the base prospectus does not include commodities as a type of underlying.

16. Additionally, in line with paragraph 13 of these Guidelines (with reference to Annex 21 – Guarantees), a supplement should not be used to introduce disclosure in relation to a new entity or issuer as referred to in Item 2.2.2 (a)(i) of Annex 17, unless the relevant disclosure is incorporated by reference using an approved and valid registration document.

17. **Guideline 3: In relation to Annex 19 – Asset-backed securities – the assessment should be refined based on whether a supplement involves Items 2.2.11 (a), 2.2.16 or 3.6 that were not previously included in the base prospectus. This means that a supplement should not be used to introduce disclosure in relation**

[6] "Where the rate is not fixed:"

to a new obligor or entity guaranteeing the obligations as referred to in item 2.2.11 (a), new equity disclosure as referred to in item 2.2.16, or new disclosure for the reference asset or underlying as required by items 3.6 (a) or (c).

18. Additionally, in line with paragraph 13 of these Guidelines (with reference to Annex 21 – Guarantees), if such information is contained in a previously approved registration document or securities note then it could be included using a supplement. Otherwise, it should not.

19. **Guideline 4: In relation to Annex 23 – Non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives – the assessment should focus on whether the security amounts to a Sustainability-linked non-equity security as per Section 3 of that Annex. This means that a supplement should not be used to add disclosure in relation to Sustainability-linked non-equity securities if they were not previously included in the base prospectus.**

20. However, in the context of Annex 23, disclosure in relation to (i) non-equity securities with ESG-related use of proceeds or (ii) structured non-equity securities advertised as having an ESG component or pursuing an ESG objective, may be added to the base prospectus using a supplement.

21. For the avoidance of doubt, the approaches laid down in preceding paragraphs also apply to EU-Follow on and EU Growth issuances base prospectuses.