Finance Denmark response to ESMA consultation on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

FINANCE DENMARK

Memo

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General comments

Finance Denmark[1] welcomes the opportunity to respond to ESMA consultation on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata.

Finance Denmark acknowledges and supports some positive proposals in the consultation paper from ESMA, which we support. However, we must emphasize the importance of level playing field for issuers when it comes to the scrutiny and approval procedures of prospectuses by national competent authorities (NCA). It is essential that there is alignment and convergence in how NCAs assess the completeness, comprehensibility, and consistency of draft prospectuses for approval.

Specific comments

Q1: What are your views in relation to format and sequencing? Do you agree with ESMA's approach to limit changes to the 'standard' equity and non-equity annexes? And do you have any concerns relating to a potential tension between Annexes II and III in the Amending Regulation and Articles 24 and 25 CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

In general Finance Denmark acknowledge the changes in relation to format and sequencing.

Q2: Do you have specific comments about the reduced time periods which financial information should cover which need to be considered as part of this work?

We support the clarification in relation to financial information meaning that it is not to be understood as calendar year. We would also like to highlight that it is necessary for the issuers to be able to include the information in accordance with Article 19, 1(a).

To avoid any misunderstandings, we recommend ESMA to provide some illustrative examples.

We understand that issuers may decide to include financial information for additional historic financial years in the prospectus e.g. 3 years for equity securities to comply with Article 22, 3 in cases where advertisements include historic financial information for several previous financial years.

Q3: Do you agree with ESMA's sustainability-related assessment in relation to the 'standard' equity registration document? If not, please explain why?

We agree with the assessment in relation to the "standard" equity registration document and do not have any further comments.

[1] Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark. EU Transparency Register – registration number 20705158207-35.

Q4: With respect to sustainability aspects, do respondents have concerns about the proposal which offers non-equity issuers who fall under the Accounting Directive or Transparency Directive an option to provide an electronic link to their relevant sustainability information?

We support the option to provide an electronic link to relevant sustainability information. However, we emphasize that this should remain optional and not mandatory, and it should be clear that linking to such information shall not mean that the information in the sustainability report is deemed incorporated by reference into the prospectus, unless it is expressly stated that such incorporation by reference is intended, as the language used in sustainability information may not always be suitable for inclusion in prospectuses.

Q5: What are you views in relation potential implications of the proposed single non-equity disclosure framework?

Finance Denmark support the proposed framework at this stage. We would like to stress the importance that the "wholesale market" disclosure framework i.e. the current annexes 7 and 15 of Regulation 980/2019 form the basis for the new single non-equity disclosure framework since the EMTN wholesale funding market has worked well for corporates and financial institutions raising funding cross border in the European Union. We would also appreciate if ESMA could clarify which sections of the proposed Annex 13 (the securities note for non-equity securities) that apply to retail targeted offerings and admissions to trading and which sections that apply to the whole sale market issuances to be admitted to trading on a regulated market as that is not currently clear in the way the sections in Annex 13 are set up.

Q6: Do you have any other concerns about the disclosure items as proposed? If so, please explain.

We support the proposals in relation to equity issues. Concerning non-equity issues a cash flow statement should not be mandatorily required in case an issuer offers non-equity securities to retail investors and reports under local GAAP, since information about cash flow is not necessary information material to an investor for making an informed investment assessment of the issuer's financial position.

Q7: In your view, will these proposals add or reduce costs? Please explain your answer.

Changing to new templates will add costs for the issuers and this will be most significant in the transition period (two to three years). This process is complex and requires issuers to conduct extensive cross-checking to ensure that all information is accurately included and correctly placed in the appropriate fields. This could involve additional cost due to the need of external advisors.

Q8: Do you agree with ESMA's approach to the disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives? Please explain your answer and provide any suggestions for amendments.

We can support the building block method of combining Annex 13 and 21 with

respect to the issuance of such securities. We note that many of the items in Annex 21 leave room for interpretation and accordingly that NCAs practice regarding disclosure requirements may vary substantially from NCA to NCA.

Q9: Do you agree with the definitions proposed for 'use of proceeds bonds' and 'sustainability-linked non-equity securities'? If not, what changes to the definition would you suggest?

It is not entirely clear why a common legislative definition is required in terms of "use of proceeds bonds" and "sustainability-linked non-equity securities". We would prefer that the issuers have discretion to use their own definitions of the securities which is the case now and is what the market is used to. However, and in relation to "use of proceeds bonds" it is necessary with a common definition it should refer to an issuer's framework governing the bonds, for example "(g) 'use of proceeds bond' means non-equity securities whose proceeds are applied in accordance with the issuers framework governing the issuance of the bonds."

ICMA definition of Green Bonds: Green Bonds are any type of bond instrument where the proceeds or an equivalent amount will be exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible Green Projects (see Use of Proceeds section below) and which are aligned with the four core components of the GBP.

The proposed definition of "Use of proceeds bond" is overly restrictive in its wording. . In terms of a definition of both "use of proceeds bonds" and "sustainability-linked non-equity securities" it is important that the definitions do not conflict with how the financing is structured and that the definitions do not conflict with e.g. ICMA's Green Bond Principles. In terms of the definition of "use of proceeds bonds" issuers would refer to a Green Bond Framework (GBF) which would contain information about the issued "use of proceeds bonds". In terms of "use of proceeds bonds" the GBF would stipulate that an amount equal to the net proceeds of the issued bonds shall be used to finance and/or re-finance, in whole or in part, loans or other assets which meet the requirements of a GBF. However, issuers are not in all cases able to guarantee the specific proceeds from a specific green bond issuance will be used to finance or re-finance the eligible assets Generally, the above position applies to issues related to predefined projects.

Q10: Do you agree with ESMA's approach to dealing with (i) prospectuses relating to EuGBs and ii) prospectuses from issuers who have opted to use the templates for voluntary pre-issuance disclosures, as referred to in European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate the regulatory burden.

Given that the Commission has until 21 December 2024 to publish guidelines establishing templates for voluntary pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds, it is premature for ESMA to request input on this matter. Once the templates are published, we would appreciate the opportunity to provide our feedback.

As a general comment we support an approach whereby an issuer either issuing EUGBs or opting to use the voluntary pre-issuance disclosure under the European Green Bond Regulation would be able to "tick as many boxes" as possible in relation to Annex 21 via its compliance with the European Green Bond Regulation's

disclosure obligations.

Q11: Should Annex 21 be disapplied in relation to prospectuses relating to European Green Bonds and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

See our comments above.
Depending on the templates for voluntary pre-issuance disclosure and how practice around EUGBs develop, we see some merit in issuers only having to take one regulation into account when preparing prospectuses relating to green bonds.

Q12: Are the proposed disclosure requirements in Annex 21 proportionate? If not, please (i) identify disclosure requirements that could be alleviated and (ii) provide a (quantitative) description of the costs of compliance.

Please see below specific comments to Annex 6:

Item 6.1.2: We note that the description of arrangements known to the issuer with respect to change of control has been expanded with disclosure requirements regarding a description of any arrangements, known to the issuer, the operation of which may prevent a change of control of the issuer. We see a risk to issuers in relation to such disclosure in case a change of control happens despite the description of such corporate law or shareholder agreement take-over defenses and investors claiming that the description was misleading as a result of the change of control. Disclosing such preventive arrangements may also require information from shareholders which the issuer may not be able to procure leaving the issuer at risk of having omitted information in the prospectus.

Please see below specific comments to Annex 13:

Item 1.7. We do not see any need for the additional cost and use of proceeds disclosure requirements in particular not in wholesale market targeted issuances where the prospectuses are only prepared for a subsequent admission to trading. The large majority of issuances of non-equity securities are issued under EMTN programmes and within a very short timetable of 4-6 business days leaving little time for collecting costs from all involved stakeholders involved and not just as currently the case, an estimate of the listing expenses which is in much cases publicly known via public fee lists available on the websites of the stock exchanges. Requiring issuers to disclose other sources of financing in case the use of proceeds of the non-equity securities are not sufficient to fund all proposed uses could led issuers to have to disclose otherwise confidential information regarding loans and equity transactions for no value for investors in respect of their investment decision. An issuer may not know on the date of issuance what the proceeds will be used for in detail so requiring a break down into principal use may not be possible to included and we see a risk of some NCAs requiring very detailed breakdowns leading to different practices among NCAs.

It is not clear how Section 3 (Terms and Conditions of the Securities), Section 4 (Details of the Offer/Admission to Trading) and 4a (Information concerning the Securities to be admitted to Trading) are intended to work together and which sections are for retail targeted offer only. We would like ESMA to clarify this point.

3.1.7(d) regarding information about past and further performance of underlying. We think such information should be limited to retail only.

Item 3.1.9(b): A detailed description of how the yield is calculated is not in our opinion material information necessary for an investor. At least the item should be limited to retail targeted offerings.

Item 3.1.14: We would like to limit the tax legislation disclosure to be expressly limited to a summary of the tax legislation of the jurisdiction of the issuer and any guarantor(s) and limit the requirement to retail targeted offerings only.

Please see below specific comments to Annex 21:

Item 1.1.: The wording of item 1.1. is not so straight forward. ESG risk factors are Risk Factors as other risk factors. The point must be the same as for other risk factors, if there are risk factors that are material to non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives such risk factors should be disclosed.

Suggested revised wording for item 2.1(a) and 2.1(b)

Item 2.1 (a) "If the non-equity securities offered to the public or admitted to trading on a regulated market are advertised as complying with, aligned with, eligible under or otherwise adhering to the EU Taxonomy, in accordance Regulation (EU) 2020/852 of the European Parliament and of the Council1, or a third country Taxonomy, unequivocally state which and how the criteria in Article 3 of the Taxonomy Regulation or third country taxonomy are met and that they are significant in relation to the ESG features or objective of the non-equity securities and, where relevant, identify the third country taxonomy."

Item 2.1 (b) "If the non-equity securities offered to the public or admitted to trading on a regulated market are advertised as complying with, aligned with, eligible under or otherwise adhering to a specific market standard or label, unequivocally state which and how the criteria in that standard or label are met and that they are significant in relation to the ESG features or objective of the non-equity securities and identify that market standard or the label relating to the ESG features of the securities."

Item 2.2.: We acknowledge the proposal in item 2.2 and would like to emphasize that it is crucial for the issuer to solely assess their ability to provide the statement in item 2.1. This assessment should not be conducted by the NCAs.

Item 2.3.: Which data are required to fulfill this requirement? Please note that such wording may lead to varying interpretations among the NCAs.

The information required in item 1.1 and item 3.1.1 will to a large extent be the same information.

Q13: Do you agree with the proposal to require disclosure about whether post-issuance shall be provided and the scope of this disclosure in items 6.3 and 6.4 of Annex 21? If not, what changes would you propose? Please explain your answer.

We agree with the proposal and the flexibility it provides issuers with.
We would like to raise the attention to a discrepancy in the wording of this question compared to item 6.3 and 6.4 of Annex 21. In the Annex "will" is used whereas in this question "shall" is used.

Q14: Do you agree with ESMA's proposal in item 2.1 of Annex 21 concerning unequivocal statements about how the criteria or standard are met and that they are significant in relation to the ESG features or objectives of the security?

We agree with the proposal, but we would also like to emphasize the importance of ensuring level playing field between the countries and the NCAs. The term "unequivocal" can lead to varying interpretations among the different NCAs. When does an NCA consider a statement unequivocal? Therefore, it must be clearly stated that it is a statement and the issuer that holds the responsibility for the wording in the statement, a NCA should not impose additional requirements. It should be possible to state that an issuer partially complies with e.g. the ICMA Green Bond Principles as long as the issuer clearly states what parts and where the issuer does not comply with such principles for the purpose of granting issuers flexibility to tailormade their frameworks in a way that suits each individual issuer.

Q15: Do you agree with the 'Category A', 'Category B' and 'Category C' classification of the items included in Annex 21, in particular in relation to items 2.1, 2.2 and 2.3? Please provide any suggestions for alternative categorisations and explain your answer.

In the context of base prospectuses which are widely used to issue use of proceeds bonds and sustainability- linked bonds we suggest to make 2,2 and 2.3 of Annex 21 Category B information so that an issuer in final terms for a specific drawdown of e.g. a use of proceeds bond has the option to designate which use out of several potential uses under its green financing framework the bond will be allocated to. Making 2.3 Category B information would also leave issuers with flexibility if e.g. a new second party opinion is granted to the issuer's green financing framework and the issuer then does not have to prepare a supplement for the purpose of including the new date and potentially name of a new second party opinion provider.

Q16: Do you agree with ESMA's approach to disclosure for structured products with a sustainability component? Please explain your answer and include any suggestions to improve the approach.

We support the approach suggested by ESMA.

Q17: Do you support ESMA's proposal to amend Article 26 CDR on scrutiny and disclosure to facilitate the incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms? Please explain your answer and provide any alternative proposals.

Finance Denmark supports the suggested amendment of Article 26.

Q18: Do you think that allowing incorporation by reference of the relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures into base prospectuses via final terms will impose any significant costs or burden on issuers? Please explain your answer.

We support the flexibility that is given by allowing incorporation by reference to relevant information from EuGB factsheets and the templates for voluntary pre-issuance disclosures.

Q19: Do you agree with ESMA's assessment regarding changes to the URD annex?

Finance Denmark does not have any comments to this question.

Q20: Do you agree with ESMA's proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure? Please explain your answer and present any alternative proposals.

Finance Denmark does not have any comments to this question.

Q21: Do you expect the deletion of Article 40 CDR on scrutiny and disclosure and/or the inclusion of Article 21b in CDR on scrutiny and disclosure to lead to additional administrative burden or costs for stakeholders? If so, please quantify the costs as much as possible.

Finance Denmark does not have any comments to this question.

Q22: Do you agree with ESMA's assessment that there are no circumstances in which an NCA should require additional information in a prospectus over and above that which is required under Articles 6, 13, 14a and 15a PR within the context of the scrutiny and approval of a prospectus? Please explain your answer.

We fully agree with ESMA's assessment. It is of utmost important to remember that the issuer that holds the responsibility and are liable for any incorrect information in the prospectuses. NCA shall not interfere with specific wording in the prospectus.

Q23: Do you agree with ESMA's approach to further harmonising the deadlines in NCAs' approval processes, i.e. trying to keep the deadlines as simple as possible and avoiding complicated administrative procedures? In your answer, please indicate what changes could be made to improve ESMA's advice in this area.

We support the approach suggested by ESMA.

Q24: Do you believe ESMA's proposal will impose additional costs and/or burdens for issuers? Please explain your answer and provide an indication of the related costs.

At this point we do not see that the proposal will impose any additional costs for issuers.

Q25: Do you agree with ESMA's proposal to amend CDR on metadata to account for the new types of prospectuses stemming from the Amending Regulation? Please explain your answer and present any alternative proposals.

No comments.

Q26: Do you agree that ESMA requires metadata to identify which securities qualify as EuGB (field 39 of draft Annex to CDR on metadata)? If not, why not? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

No comments.

Q27: Do you agree with ESMA's proposal to streamline the process of submitting information that will need to be submitted by NCAs to ESAP via the Prospectus Register (Article 11a of the draft RTS amending CDR on metadata)? Do you think this will create an unreasonable additional burden on issuers? Please explain why.

No comments.

Q28: With regards to field 5, is it always possible to determine a single venue 'of first admission' in case of simultaneous admission on two or more venues? Please explain why.

Initially we would like to highlight, that it is of utmost importance that there is one common definition of "most relevant market in terms of liquidity" since it is referred to in many other regulations. Therefore, any discussion of this issue in other consultations, such as in the RTS 22 consultation, must be harmonized.
Regarding simultaneous admission on two or more venues, we do not see that it can take place in primary listings.

Q29: Do you agree with the other changes proposed on the list of metadata which are proposed in Table 1 of Annex I of the draft CDR on metadata? Do you think these changes will create an unreasonable additional burden on issuers? Please explain why.

No comments.