20 December 2024

Euronext's Response to the ESMA Consultation on technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

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 2545 CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

Yes Euronext agrees this is the best approach as it is essential that for standard equity prospectus, further standardisation is achieved in order to achieve consistency and easier comparability for investors. This was mandated in the Level 1 text and it is essential that it follows through into the Level 2 details. That said, we fully support ESMA's view that for non-equity, the current framework of building blocks works well and we would not support material changes to this framework.

Regarding the specific amendments, we are unsure as to the purpose of introducing a cover note as it is not clear what it is trying to achieve. We believe it could result in differing approaches taken and some may end up including too much detail, and this would run contrary to the aim of trying to standardise and simplify the approach. Therefore we do not think it is necessary to include.

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?

In relation to the proposal for equity to reduce the financial information time period from 3 years to 2 years, this seems a reasonable approach and reduces the burden for issuers**.**

Regarding the proposal for non-equity to reduce it from 2 years to 1 year, while we agree this will reduce the burden on issuers, we wonder how sufficient comparisons could be made as it is a very short time period and we are not aware that the current approach has been raised as a problematic area.

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

Yes, this seems a reasonable approach.

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 this proposal as long as it remains an option for issuers and does not become a hard and mandatory requirement.

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

Overall, we have no strong views regarding the proposed new framework as it does not seem to be making any fundamental changes to the requirements, but instead the requirements are being moved around somewhat. That said it is essential that where both retail and wholesale requirements are included in the same Annex, that the existing carve outs are included for wholesale and that there is no risk that the retail disclosure requirements end up applying to all issuances; otherwise we would be concerned that this could lead to negative consequences for the wholesale market. Regarding the Securities Note Annex, this appears to capture a lot more and it is not fully clear what is trying to be achieved and may cause some confusion. We are of the view it may be better to have two distinct Annexes covering the Securities Note, which distinguish between retail and wholesale to make it clearer.

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

In general, we believe ESMA has taken the right approach and strikes a good balance in terms of ensuring sufficient disclosure while not overly burdening issuers.

With regards to annex 6 item, 5.4.1, we are unclear as to the objective of including this disclosure. An issuer could publish a wide range of KPIs both operational and financial. The additional disclosure could be restrictive for issuers and provide too much non relevant disclosure for investors.

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

As a general comment, any improvement in standardising and streamlining of requirements should result in less costs, and any increase in disclosure requirements will increase costs for issues. It seems that ESMA has taken a proportionate approach which should be well received by the market.

Q8: Do you agree with ESMA's approach to the disclosure requirements for nonequity 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 agree with ESMA's approach as it makes sense to formalise the Statement but it is important that there is a level playing field so that NCAs take the same approach.

We also believe it would be helpful if ESMA should clarify how EU GB factsheets and other sustainable bond frameworks can co-exist within the same prospectus.

Regarding items 3.1.1 and 4.1.1 of Annex 21, it would be cleaner if these items were included in section 1, Risk Factors. This would be in line with disclosure items in other annexes.

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?

Yes we agree with these definitions and believe these should already be well understood in the market.

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.

Yes, we agree with ESMA's approach.

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.

Yes we agree.

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.

Overall it seems a proportionate approach but the requirements regarding unequivocal statements may be seen as more challenging. In addition, it may be worth re-considering whether the risk factor disclosure could be reduced.

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.

Yes, this seems reasonable.

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?

This seems quite challenging as could be potentially burdensome. Requirements for 'unequivocal' statements will lead to divergence across members states. It is paramount that we have consistency in review and comments on this key annex.

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.

We have not identified any major issues with the proposed approach.

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.

The approach seems proportionate and in line with other requirements.

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.

Yes, this make sense as simplifies it.

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.

No, we don't believe so.

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

Yes, we generally support this assessment.

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.

Yes we agree with the proposal to delete Article 40 and introduce Article 21b. It is essential that more is done to ensure supervisory convergence so that entities are treated in a fair and consistent manner. Article 21b seeks to limit the circumstances where NCAs can require additional criteria or additional information so that there will be less opportunity to seek extra information beyond the harmonised requirements of the PR, however para (2) still seems quite broad and we believe there is a risk it could lead to divergences in interpretation and practice.

We strongly suggest that this is monitored very carefully and while ESMA refers to peer reviews that will support this approach, we suggest a specific requirement should be introduced for NCAs. We believe it is appropriate that when an NCA avails of this Article and requires additional information, they should have to notify ESMA with the relevant details including the rationale for seeking the additional information. This would expedite the process of ensuring convergence as

ESMA will be equipped with real-time information on how this is being utilised. In our view, this will help ensure NCAs only use this when it is absolutely required and should result in a much more harmonised approach.

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.

Yes, we agree no additional information should be required. The Prospectus Regulation sets out clearly the necessary information and this should apply across all jurisdictions. This is very important, particularly given the civil liability attached. There should not be cases where different information is requested which could give rise to different civil liability. It is critical a harmonised approach is taken to ensure fair and equal treatment across the EU.

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 maximum harmonisation in relation to the NCA approval process but believe these timelines are far too long. We suggest that instead of 120 working days, that this should be replaced with 90 working days. In addition, we would highlight that it is important that any extension should be upon the issuer's request so we support this in the approach set out in the proposal.

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.

Yes

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.

Yes

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.

This approach seems reasonable.

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.

We suggest the issuer should specify the venue of first admission so that there is no ambiguity in such cases.

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

Yes