ABI reply to ESMA Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata

27 December 2024

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.

We support ESMA approach to streamline the format and sequencing of the prospectuses. However, it should be also taken into consideration that the Growth Prospectus, that is the upper level of disclosure to be considered as provided by amending Regulation 2024/2809, hasn't been yet largely used in some EU countries so far. Then, taking as reference the level of disclosure of the EU Growth Prospectus, it couldn't be sufficient to gather all the information that market participants consider relevant to take their investment decisions.

In this vein and based on anecdotal evidence, the EU Growth Prospectus (with particular reference to equity issuances) might not necessarily obtain the clearance and comfort for the finalization of the prospectus documentation.

Moreover, in our view, the simplification, introduced throughout recent years, of the disclosure of some informational items (this is the case, for example, of the business plan) has turned out into an overall reduction of both the informational quality and the degree of comprehensiveness of the disclosed information, thereby diminishing the value of the prospectus disclosure for end investors.

These dynamics appear even more worrying when it considers that the securities listed and traded become also accessible to retail investors who risk being excessively penalized by the drawbacks of the disclosure

The search of a maximum balance between different needs (standardization vs. flexibility of the disclosure for investors protection) could take time and not have a certain outcome, while there is a clear urgency to boost IPO activity in Europe to compete globally.

Thus, it would be useful to start from the disclosure standards already known to international investors, adapting them to the needs of European markets and investors (e.g. US Form 1S).

We also support ESMA proposals to limit changes to the standard equity and non-equity annexes, as these formats refer to transactions, such IPO or plain vanilla non-equity issuances, that seem to be more suitable to a standardized and sequencing disclosure approach.

However, such changes should take into consideration the differentiation provided here below.

We deem useful to differentiate between the standardization aiming at streamlining and therefore simplifying the format of the Prospectus and its annexes. We are fully supportive of that, as mentioned above. Whereas, we deem the standardization of the content of each building block counterproductive, as it risks taking out relevant information for the investor/the issuer. Thus, as stated below, a certain level of discretionality and flexibility should be granted to issuers.

With regards to ESMA's invitation in point 22 to comment on the changes provided on the CDR on scrutiny and disclosure, we would like to confirm that we deem the provisions of articles 24.5 and 24.6 (which correspond to Articles 22.5 and 22.6 in the revised CDR on scrutiny and disclosure proposed by ESMA together with those in Article 25.6 and 25.7, which correspond to Articles 23.6 and 23.7 in the Revised CDR on scrutiny and disclosure proposed by ESMA), together with those in art. 25.6 and 25.7 (regarding the table of contents, that have not been amended by ESMA) as vital.

While the aim is to standardize the format of the prospectuses as much as possible, it is necessary to ensure a certain level of flexibility giving the right to every issuer to evaluate on its own terms to embed (or not) any element of the relevant annex in a different order (as per the reasons provided by the CDR). The table of content being a useful tool for the NCAs to better understand the reasons to such deviation from the standard.

Such flexible approach to the standardized format would be preferable when considering the period of time for which financial information is to be included. Please see comment to Q2 below.

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 proposal to reduce from two to one year the time period of the financial information for non-equity issuances, mostly if the issuers have already tapped the market.

Instead, we consider that in cases such as but not limited to an IPO, where the issuer isn't still known to the market or where the issuer acts in high volatile industry sectors, two financial information years couldn't be sufficient to provide a full information to the market. In such cases, we support a flexible approach which would leave the issuer the discretionality to decide whether to provide or not an additional financial year information to the market.

We deem it particularly important to ensure as much alignment as possible with the US regulation and market practice (International Offering Circular).

Namely, this alignment is key in order to ensure that the information provided in the US-style Offering Circulars and in the EU-style Prospectuses are mutually consistent. The 3-years rule would be in line with the US regulation and market practice. A misalignment would generate difficulties in obtaining, for example, the required legal and accounting comfort for prospectus documentation.

Should the alignment on the 3-years rule not be accepted, an alternative solution could be to allow issuers to refer, as an option, to a 3-years period for financial information.

Constraints on including financial information greater than two years old may be prejudicial to members capacity to accurately substantiate the equity story, including trends where two years' financial information may be insufficient, in certain scenarios.

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

We support the ESMA assessment to not introduce in the standard equity registration document a new disclosure requirement on sustainability for the issuers, as they are already obliged to disclose this information under the CSDR Directive.

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 ESMA proposal to allow issuers, providing sustainability reporting documentation pursuant to the CSRD and the Transparency Directive, to include, together with related assurance opinion, a link to such information in the Registration Document for standard non-equity issuances, with a disclaimer specifying that the information on the website does not form part of the prospectus. Referring to a link would mark a positive step toward simplification, considering that information which falls outside the prospectus do not require obtaining comfort.

Indeed, even though it is a further fulfillment that EU Commission requests only to equity issuers, we consider useful that such information is provided at entity level also for non-equity issuances.

However, since the sustainability reporting is part of the financial statements (being included in the management report), if the CSRD applies to the issuer, this information will on average already be included in the prospectus itself.

Therefore, granting the issuer discretionality and adopting a flexible approach would be preferable in this instance too.

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

We support a streamline of the standard prospectus for non-equity issuances on condition that it uses the wholesale disclosure framework as the basis and provides additional requirements for retail From a general point of view, we also agree with the proposal to set up a single format of disclosure for retail and wholesale non-equity offerings, having as upper limit of disclosure the EU Growth Prospectus. However, as we noted in Q1, Growth Prospectus has not yet been largely used in some countries so far. Thus, it is not clear what could be the potential implication of the proposal to join different prospectuses under a single format. And finally, it would be useful to revise annex 13 as it appears that some sections are duplicated and others are not clearly attributed to retail or wholesale.

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

We would recommend keeping the cover note as an optional as its length and content (which are not prescribed in detail) may give rise to confusion/different interpretations. If ESMA deems appropriate that such cover note be included, we would suggest embedding a format and/or clarifying its maximum length (e.g. 1 page).

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

We expect that to align current prospectuses to the new standardized format and sequence issuers will bear additional costs, mainly in terms of the time necessary to revise the prospectuses and to embed the new requirements.

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

Our point of view is that including any non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives in the disclosure requirements has the upside of avoiding greenwashing but the downside of risking to limit the issuance of new instruments with such features because of the stringent requirements of disclosure.

We are not sure that applying Annex 21 which has not been yet tested on a market level to these instruments will have a positive outcome.

Indeed the proposed disclosure requirements in Annex 21 extend beyond the established categories of 'sustainability-linked bonds' and 'use of proceeds bonds' under the EuGB Regulation.

This approach could create challenges and potentially hinder the development of the ESG market as emerging instruments with unique instrument-level ESG characteristics could become subject to disclosure requirements that do not align with their specific features.

Moreover, it should be clear that Annex 21 does not apply to entity-level sustainability disclosures and therefore we disagree with ESMA's suggestion in Paragraph 37 of the Consultation that Annex 21 may be applied in conjunction with Annex 6 (RD for non-equity securities).

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?

We support the definition of "sustainability-linked non-equity securities" proposed by ESMA as it includes also social and governance objectives that aren't currently covered in the article 2, par 6 of the EU Green Bond Regulation that is only focused on environmental sustainability objectives.

Moreover, in relation to the definition of 'use of proceeds bonds', we would suggest substituting references to 'green' with 'environmental' projects or activities, better reflecting diverse environmental objectives (including in particular blue issuances).

Finally, the reference to the EU Green Bond Regulation ensures regulatory harmonization/coordination and helps to better interpret EU legislation.

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

We support ESMA approach to consider for the purposes of the investor information test pursued by Art 6, Par 1, of Prospectus Regulation, prospectus under EUGBs regulation and prospectus used by issuers opting for voluntary pre issuance disclosures as defined in the European Green Bond Disclosure.

However, we also note that the interaction between the disclosure in prospectus and the pre-issuance disclosure relating to EU GB/voluntary disclosure should not increase the regulatory burden for the issuers. Therefore, it is useful to continue monitoring such disclosure to address any issues especially to avoid duplication of disclosure requirements. Moreover if the use of voluntary disclosure entails the same level of information in

comparison with the factsheet of the EU GB we can assume that issuers prefer to use the latter.

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

We agree with the proposal to disapply Annex 21 of the Commission Delegate Regulation where the issuer uses the prospectus referred to EUGB or a prospectus drawn with templates for voluntary pre-issuance disclosure, as the information requested in these prospectuses can be used to satisfy the requirements mentioned in Annex 21.

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

Yes, we consider the disclosure requirements proposed in Annex 21 proportionate.

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, we agree with the proposal to require issuers to make post issuance disclosure, if it will be, following the content of the items 6.3 and 6.4 of Annex 21 as these proposals are aligned with the EuGB regulation.

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 to introduce in case of i) non equity securities 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 or a third country Taxonomy; ii) non-equity securities advertised as complying with, aligned with, eligible under or otherwise adhering to a specific market standard or label, statements about how those criteria or standard are met. In the latter case, as alternative, a Green Bond Framework could be also incorporated by reference.

Moreover, please consider that an "unequivocal" statement seems to go further than disclosure requirements under the EUGB Regulation Factsheet which should be considered the gold standard. The question is whether referring to a "statement", as per the aforementioned regulation, is enough

or a requirement to disclose non alignment with Taxonomy criteria could also be used.

Q15: Do you agree with the 'Category A', 'Category B' and 'Category C'46 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

Yes, we agree with the ESMA proposal of categorization of the items included in Annex 21.

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

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, we 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, as it will simplify and reduce the burden on issuers. With a view to further harmonizing/coordinating EU legislation, it could be helpful to specify at the end of 4.a paragraf that the category also applies to disclosure under Annex 21.

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 consider that 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 not impose significant costs or burden on issuers as the relevant costs will be born when drawing up such factsheet and such template.

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

-

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

We agree with ESMA's proposal to delete Article 40 CDR on scrutiny and disclosure and introduce Article 21b into CDR on scrutiny and disclosure, as it better defines the cases when NCA's can apply disclosure requirements set by Annexes related to other securities or when to use additional criteria in relation to new types of securities not sufficiently covered by those already existing. Moreover it's fundamental to have very clear and well defined criteria avoiding continuous supplementary disclosures from the issuers and/or an extension of the scrutiny period.

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

We don't expect that the deletion of Article 40 CDR on scrutiny and disclosure and/or the inclusion of Article 21b in CDR on scrutiny and disclosure, will lead to additional administrative burden or costs for issuers. However, it's fundamental to have very clear and well-defined criteria avoiding continuous supplementary disclosures from the issuers and/or an extension of the scrutiny period.

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 with ESMA to limit circumstances in which a NCA should require additional information in a prospectus over and above what is required under Articles 6, 13, 14a and 15a PR. Indeed, these articles already contain the necessary information that is relevant for an investor to be able to make an informed investment decision.

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 ESMA approach to keep the deadlines of the scrutiny as simple as possible in order to streamline the process approval of the prospectuses and make it more consistent and predictable across all the National Competent Authorities/all different EU Member States. With respect to equity

capital markets transactions, we would like to underline that, in some instances and regardless of the underlying reasons, significant differences exist in the way different National Competent Authorities assess draft prospectuses. These differences can sometimes be a factor which impinge on the decision of "where" to incorporate or to list securities.

More in detail we consider reasonable the deadline of at least 10 working days for the issuer to respond to the NCA's comments. Instead, the deadline of 120 working days for non-equity and equity prospectuses approval process is too long and puts at risk the outcome of the market transactions. As such, this deadline is disproportionate and, therefore, cannot be accepted by any means

We strongly suggest amending the approval deadline provided under article 36.3 of the CP Annex to 60 working days. As per the extension, provided under art. 36.4 of the CP Annex, we would suggest amending it to 15 maximum 30 working days.

More in detail and especially from an equity perspective the above proposal stems from the consideration that the approval process should follow and be compatible with a favorable market window for the offer, the timeline of the offer is based on the offering documents (latest audited financial statements); where the approval process goes beyond a certain date the whole offer needs to be restructured and based on additional or different audited financial statements and on a different market situation. Hence, the need for a compatible timeline in the approval process.

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

We consider that setting a deadline of 120 working days for the NCAs' final approval process, could also increase the costs and the burdens for the issuers, depending on the additional information requests from NCA's.

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

The Prospectus Regulation provides a key role in equity issuances by guaranteeing that investors obtain fulsome accurate information to support and to adopt their investment decision. In our view, the ESAP (European Single Access Point) could represent a useful repository to hold prospectuses.

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

-

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

As indicated in our answer to question 25 above, we believe that ESAP database could represent a useful repository to hold prospectuses. In this regard, it could promote the development of European capital markets. That said, it is of paramount importance to refrain from any measure which could imply duplications and redundancies in administrative burdens and related costs for listed companies as well as – also with a knock-on effect – for end investors.

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

-

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

-