Svensk Värdepappersmarknad
Swedish Securities Markets Association

Stockholm, 19 December 2024

The Swedish Securities Markets Association (SSMA)[1]

Response to

ESMA´s consultation paper

on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata (CP).[2]

1. General comments

SSMA welcomes the opportunity to respond to the CP and we generally support the proposals from ESMA.

2. Questions

2.1 Draft technical advice on the standardised format and standardised sequence of the prospectus, the base prospectus and the final terms

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 agree with (i) ESMA's approach to limit the changes to 'standard' equity and non-equity annexes and (ii) with the clarification that the format in Articles 24 and 25 shall not be set aside by the standardised sequence prescribed in the Annexes.

Perhaps it could be clarified how inconsistencies (if any) between the format in Articles 24 and 25 and the standardised sequence in the Annexes shall be dealt with.

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 agree that it is important that the reference to 'last financial year' is not understood based on a calendar year or month but rather as the previous financial year for which the issuer has a complete audited annual financial information available.

[1] The SSMA is a trade association representing the interests of investment firms active on the Swedish securities market, hereinafter referred to as "we" or "SSMA".

[2] ESMA32-117195963-1276. The definitions, if any, used in this response have the same meaning as in the CP.

As noted by ESMA it is not possible for an issuer to provide financial information covering the previous financial year when, for example, publishing a prospectus in Q1, as the financial information for the previous financial year most likely is not available at such time.

Perhaps it could be clarified that the requirement relates to previous financial year for which the issuer has complete audited annual financial information available. To avoid any misunderstandings, we also recommend ESMA to provide some illustrative examples.

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

Yes, we agree.

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?

No, we do not have any concerns but rather think it is reasonable to provide non-equity issuers falling under the Accounting Directive or the Transparency Directive such option. However, we emphasize that this should remain optional and not mandatory as the language used in sustainability information may not always be suitable for inclusion in prospectuses.

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

In our view, the proposal to amend the rules for prospectuses relating to non-equity securities by completely removing the dichotomy between (i) prospectuses for securities whose nominal value per unit is less than EUR 100,000 and (ii) prospectuses for securities whose nominal value per unit amounts to at least EUR 100,000, is welcome.

The information requirements prescribed for prospectuses of type (ii) should apply generally, i.e. issuers should not continue to be subject to more extensive information requirements if the nominal value per unit is below EUR 100,000 (as the system is today). This is because our experience is that the nominal value per unit is not what determines which investors invest in a certain debt instrument and that there is therefore no reason to require more information in the prospectus (more protection) just because the value per unit is below EUR 100,000.

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

No, we support the proposal.

In our view a cash-flow statement is useful information in relation to equity securities as well as non-equity securities.

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

We think it will be cost neutral.

Changes to disclosure rules are not material and significant disclosures are already required today but with less details on what is required. Hence, a lot of this information is already being produced and disclosed somewhere.

2.2 Draft technical advice on the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives.

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.

Yes, we agree with ESMA´s approach.

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 see there is a need for such definitions and agree with the definitions.

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 the European Green Bond Regulation? Please explain your answer and provide any additional proposals to alleviate regulatory burden.

Yes, we agree with ESMA´s approach.

Q11: Should **Annex 21 be disapplied** in relation to prospectuses relating to EuGBs24 and/or prospectuses drawn up using the templates for voluntary pre-issuance disclosures? Please explain your answer.

Yes.

To avoid that the issuer is obliged to repeat the same information under different sections throughout the prospectus, would it not be sufficient to let the issuers rely on the EuGB or voluntary pre-issuance disclosure as that is already a regulated format?

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.

The question is somewhat difficult to assess. While we argue under Q11 that it should not be necessary to repeat this information, one could also argue that if this information has already been prepared it could easily be submitted again but in another standardised format for the benefit of any readers of the relevant prospectus.

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.

Typically, this information is already included and regulated through the terms and conditions for non-equity securities, i.e. the issuer has an obligation to post this information on its website.

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?

Yes, we agree.

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.

With the reservation that there may be room for other interpretation, we do not agree with the Category A classification (base prospectus) in relation to items 2.1, 2.2 and 2.3 as new assets may be acquired or new taxonomy statuses may be obtained throughout a year. Instead, items 2.1-2.3 should be Category B/C.

Assets/profiles change over time as they cannot be locked to date of approval of prospectus.

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.

In general, we agree with ESMA's approach that it is not appropriate to align PR with SFDR, considering the potential amendments to SFDR´s framework and scope.

However, we would also like to highlight that industry urgently requires guidance on how sustainability disclosures should be completed for structured products to fulfil the MiFID II sustainability requirements (e.g. whether to be assessed at the level of the issuer or also taking the underlying assets into account, how "minimum proportion" should be applied throughout the products life cycle etc). The absence of guidance will not ensure aligned market disclosures, making assessments difficult for the distributors and ultimately affecting investors with sustainability preferences.

Finally, depending on the outcome of the revised SFDR, we recommend ESMA to consider development of further practical examples and explanations, through different tools (such as Q&As) as set out in the *Final Report - Guidelines on MiFID II product governance 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, we support the proposal. We consider it the most logical solution.

A proposal may be to include a clarification that no duplicate information is required, i.e. if already included in the base prospectus it does not need to be specifically included in the final terms.

Q18: Do you think that allowing 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 will **impose any significant costs or burden on issuers**? Please explain your answer.

No, we do not think it will not impose any significant cost or burden.

This information will need to be produced anyway for issuers who want to use the EuGB framework.

2.3 Draft technical advice on the content of the URD

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

Yes, we agree with ESMA´s assessment.

We consider it OK to only encompass equities. Issuers of debt securities that are expected to be repeat issuers of this kind will likely rely on the base prospectus regime instead.

2.4 Draft technical advice on the criteria for the scrutiny of the completeness, comprehensibility and consistency of the information contained in prospectuses

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 do not have any strong opinion in this regard.

How is the dialogue between the issuer, offeror or person seeking admission to trading expected to be conducted? What incentives will there be for any issuer to disclose further information? What will be the resources available for NCAs to request additional information?

We would guess that the NCA will decide in each individual case anyway when the relevant threshold is met. The emphasis on dialogue may not actually reflect the reality of how the authority decides upon these matters. Further guidance on what the NCA may do and what issuers should expect will be needed.

Q21: Do you agree with ESMA that the deletion of Article 40 CDR on scrutiny and disclosure and the inclusion of Article 21b in CDR on scrutiny and disclosure should not lead to **additional administrative burden or costs for stakeholders**? If not, please quantify the costs as much as possible.

Yes, we agree with ESMA´s proposal.

We do not expect additional costs as we would expect that same current procedure to be the prevailing one going forward. Regardless of the updated legislation, this is probably how it is already done today but it is done informally. No NCA will or should decide anything without letting the issuer comment.

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´s assessment.

For transparency purposes the range of information that should be presented must be clearly defined. NCAs should not be able to go above and beyond that.

2.5 Draft technical advice on the procedures for the approval of prospectuses

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? If not, please indicate what changes could be made to improve ESMA's advice in this area.

Yes, we agree with ESMA´s approach.

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 would expect no material cost increases. Typically, pro-longed applications tend to be more expensive than faster ones. Transparent timeframes are more likely to create realistic expectations with issuers and for them to follow through. At the same time the added flexibility of 90 days at the will of the issuer will be a cost that the issuer most likely has brought upon itself or was out of its control, i.e. it will not have to do with the NCA's processing and the proposed timeframes.

2.6 Update of the CDR on metadata

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, we agree with ESMA´s proposal.

We think it is a logical consequence of the increased level of details proposed to be included in a prospectus, i.e. with increased details on ESG it is logical to also categorise the prospectuses for easier supervision of 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.

Yes, we agree.

If the EU is moving forward with this type of legislation, then it does make sense to also collect this metadata. Otherwise, the further increased details necessary to disclose in relation to ESG should not have been implemented on a mandatory basis but on a voluntary basis.

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)? Please explain why.

Yes, we agree with ESMA´s proposal.

There is no logical argument against the proposal viable to us.

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.

Yes, we consider it possible. We are not familiar with simultaneous admissions to trading made in so close connection that it would be hard to differentiate.

Issuers should not be obliged to report this data. At the time admission to trading is sought it is not certain that admission to trading may be obtained. It is therefore not logical to force issuers to provide this information in a field 5 upon seeking approval of a prospectus.

An alternative should be that an issuer may report this information at a later stage or that the trading venues are obliged to report this data.

We would also like to highlight that it is of utmost importance that there is one common definitions 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 harmonised.

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, added fields other than field 5 (see Q28) make sense and the NCA/ESMA are already collecting a massive amount of data.

This is an added burden but not unreasonable.

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