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ESMA
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Via ESMA website

Prot. n. 72/24

Re: AMF Italia contribution to ESMA "*Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata*"

AMF Italia[1] welcomes the opportunity to provide comments on the ESMA Consultation Paper in subject as better detailed here below.

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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's approach to streamline the format and sequencing of the prospectuses. However, we deem useful to differentiate between the standardization aiming to streamline and therefore simplify the format of the Prospectus and its annexes towards which we are fully supportive; whereas, we deem counterproductive the standardization of the content of each building block, as it risks not including relevant information for the investor/the issuer. Thus, a certain level of discretionality and flexibility should be granted to issuers. With regards to ESMA's invitation in point 24 to comment on the changes provided on the CDR on scrutiny

[1] AMF Italia – *Associazione Intermediari Mercati Finanziari* is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian markets.

and disclosure we would like to confirm that we deem the provisions of art 24(5) and 24(6) (together with those in art. 25(6) and 25(7) regarding the table of contents (that have not been amended by ESMA) as vital: every issuer should have the right to evaluate - on its own terms - and 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 is to be intended as 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 also 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 generally support the proposal to reduce from two to one year the time period of the financial information to be provided for non-equity issuances; mostly if the issuers have already tapped the market. 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 could be insufficient to provide a full informative 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.

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

We have no additional comments on ESMA's assessment in relation to the disclosure of sustainability information. Having all requirements set out in the Commission Delegated Regulation (EU) 2019/980 will help to achieve a smoother transition process.

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 have no additional comments on ESMA's proposal to allow issuers the option to provide an electronic link to entity-level sustainability information, without incorporating it by reference in the prospectus. This is consistent with current market practice for non-equity issuers.

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 have the following concerns regarding ESMA's proposed approach to the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives:

(i) 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.

(ii) 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).

(iii) With respect to transforming ESMA's July 2023 Public Statement on Sustainability Disclosure in Prospectuses into the disclosure requirements under Annex 21, we note that (i) many provisions of Annex 21 overlap, (ii) certain terminology differs from that used in the amended Prospectus Regulation, (iii) the Statement often combines instrument-level and entity-level sustainability disclosure (which should instead be kept separate), and (iv) some provisions extend beyond the requirements of the EuGB Regulation, which should instead be considered as the 'standard' of disclosures to be provided even for non-EuGBs.

(iv) Please also see our detailed comments to Annex 21 which are set out as Appendix 1 to this response.

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?

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

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.

We note that the terminology and framing of the requirements under Annex 21 differ from the EuGB factsheets, which would make it difficult for issuers to match the requirements under Annex 21 with the ones provided by the EuGB factsheets. This could create uncertainties and duplication of requirements in the context of new issuances, leading to increased costs and administrative burdens.

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

We believe that the Annex 21 should not apply to issuances under the EuGB Regulation for the following reasons:

(i) As noted in our response to Question 10 above, the use of terminology and framing of the requirements under Annex 21 differs from the EuGB factsheets, making it difficult to match the requirements and creating potential duplications in the context of new issuances.

(ii) The EuGB Regulation already includes comprehensive requirements and in order to avoid hindering the development of the EuGB market no additional disclosure requirements should be imposed on issuers who already comply with the EuGB Regulation.

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.

As mentioned in our response to Question 8 above, we note that (i) many provisions of Annex 21 overlap, (ii) terminology differs from that used in the Prospectus Regulation, (iii) instrument-level and entity-level sustainability disclosure should be kept separate, and (iv) some provisions extend beyond the requirements of the EuGB Regulation, which should instead be considered as the 'standard' of disclosures.

Please also see our detailed comments to Annex 21 set out as Appendix 1 to this response.

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?

In relation to the requirement "*state that [the criteria of the EU Taxonomy or of the standard or label] are significant in relation to the ESG features or objective of the non-equity securities*", this goes beyond the requirements of the EuGB Regulation which should be treated as the standard also for non-EuGBs.

We suggest also to include a requirement to disclose non-alignment with the EU Taxonomy criteria or the relevant standard/label in order to cover ESMA's concerns under Paragraph 48 of the Consultation.

Please also see our detailed comments to Item 2.1 of Annex 21 set out as Appendix 1 to this response.

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 welcome the inclusion of a specific section 5 in Annex 21 addressing ESG disclosures of the underlying component of the structured products. However, not only can structured products have sustainable components as mentioned in the question, but they also can themselves be considered as sustainable products, similar as other products such as funds.

We consider that both components of a structured product — the funding and the exposure obtained through a derivative instrument — participate in the sustainability measure of the product. While the funding component is often the most important contributor, the underlying also plays a role when it is chosen or designed to account for ESG factors or pursue ESG objectives. A clear analysis and quantification of both elements are necessary for evaluating the product's sustainable characteristics and disclosing them truthfully.

Structured products where funds raised are dedicated to green, social, or sustainable projects, or earmarked for specific green, social, or sustainable assets on the issuer's balance sheet, can fall under the "Use of Proceeds" category, where section 3 of Annex 21 applies.

Structured products where funds raised are not allocated to specific activities (projects or assets) can be defined as "non-Use of Proceeds", and section 2 of Annex 21 will apply (on the condition that Sections 2 and 3 are not interpreted cumulatively).

Considering both components together provides a strong incentive for the issuer to examine all aspects of the product and ensure its overall sustainability.

In addition, we agree with the ESMA statement in Section 5.5 concerning the fact that similar disclosures should be required for products with comparable characteristics, mentioning the example of the different treatment between ESG structured products and formula funds just because the first one does not fall under SFDR.

In fact, we strongly support the inclusion of structured products in the scope of SFDR because the fact that SFDR does not cover structured products is a real hindrance for the distribution of these products under MIFID II as today they still need to comply with SFDR framework (which is not adapted to those kinds of products) in order to respond to distributors' requests to meet investors' sustainable preferences.

Finally, we also agree with ESMA's statement concerning the fact that ESG disclosure requirements should be aligned across regulations (including MIFID II definition of sustainability preferences) in order to ensure consistency and improve the usability of the sustainable finance framework as a whole. However, we acknowledge the challenge of fully aligning of the ESG disclosure information required in this consultation with SFDR and MIFID II, given the ongoing review of SFDR Level 1 and the expected review of MIFID II ESG.

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.

The incorporation by reference of relevant information from the EuGB factsheets and templates for voluntary pre-issuance disclosures via final terms is likely to be less burdensome and costly compared to other methods, such as including it directly in the base prospectus or through a supplement. Further, incorporation via final terms provides a streamlined approach that avoids the need for issuers to revise and update the base prospectus, allowing issuers to reference publicly available documents, reducing the need to duplicate information and minimizing administrative efforts.

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 have not encountered any issues with NCAs additional requests, however we agree with ESMA's approach in Article 21b.

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.

We do not believe that the deletion of Article 40 and the inclusion of Article 21b of the CDR should lead to additional administrative burden or costs for stakeholders.

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 agree with ESMA's approach to limit the NCAs additional information requests under the CDR to what is required by the Prospectus Regulation. Please also see our response to Question 20 above.

Q23: Do you agree with ESMA's approach to further harmonizing 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.

While we have no objection to the harmonisation of deadlines in NCAs' approval processes, the timeframes proposed by ESMA under paragraphs 3 and 4 of Article 36 seem too dilated for the market practice. Our suggestion would be to (i) limit the total period for the scrutiny and approval of prospectuses under paragraph 3 to 60 working days from the filing of the initial application for approval, and (ii) allow NCAs to extend this period for a further 30 working days, without prejudice to their right to refuse the issuer's request for extension. From an equity perspective, the above proposal stems from the consideration that the approval process should follow and be compatible with a favourable market window for the offer, bearing in mind that the timeline of the offer is based on the offering documents (latest audited financial statements). Should the approval process go 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 believe that allowing for such long deadlines may prolong processes and impose additional costs and administrative burdens on issuers. Issuers on the market are well aware and comfortable with current NCA practices. Dilated timeframes may give the possibility to NCAs to make further requests and/or otherwise prolong processes which should normally be concluded in a shorter time, risking issuers missing their market window to issue the securities.

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We remain available for any further information or clarification.

Gianluigi Gugliotta
Secretary General

- Annex 1