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ESMA Outlines Expected Sustainability Disclosures in Prospectuses

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On July 11, 2023, the European Securities and Markets Authority (ESMA) issued a [Public Statement](#) outlining its expectations for sustainability-related disclosures to be incorporated into prospectuses. In its statement, ESMA recognized that sustainability-related matters are of importance to investors but as it currently stands, incoming legislation is either too far from being implemented (i.e., the Listing Act) or “is not expected to give details of the sustainability-related disclosures that should be included in prospectuses drawn up under the Prospectus Regulation.” The clarifications seek to promote a more coordinated and informative approach to sustainability reporting under the Prospectus Regulation for both equity and non-equity transactions.

ESMA’s primary objective is to promote harmonized and coordinated action by national competent authorities (NCAs) concerning the inclusion of sustainability-related disclosures in prospectuses under the current legislative framework. ESMA recognizes the evolving landscape of sustainability disclosures and aims to bridge the gap between the present disclosure requirements under the Prospectus Regulation and the anticipated future requirements, such as those of the Listing Act and the regulation on European green bonds.

- **Material Disclosure in Prospectuses:** ESMA underscores the importance of including “material sustainability-related disclosures” in both equity and non-equity prospectuses, aligning with [Article 6\(1\) of the Prospectus Regulation](#), which provides that prospectuses shall contain the necessary information which is material to investors. This requirement seeks to ensure that investors have access to pertinent information necessary for making informed investment assessments.

- **Basis for Sustainability Profile Statements:** Issuers are advised to provide a clear basis for any statements regarding their sustainability profile or that of the securities they issue. This could involve referencing market standards, underlying data, assumptions, research, or analysis by third parties, while ensuring a balanced presentation of positive and negative information.
- **Sustainability-Related Disclaimers:** While issuers may acknowledge potential differences in sustainability expectations between themselves and investors, ESMA cautions against using sustainability-related disclaimers to excuse non-performance of factors under issuer control, highlighting the need for accountability and transparency.
- **Comprehensible Disclosure:** ESMA emphasizes the importance of complying with [Article 37\(1\) of Commission Delegated Regulation 2019/980 \(CDR 2019/980\)](#) to ensure the comprehensibility of sustainability disclosures. Issuers should provide clear definitions of technical terminology and transparently describe mathematical formulas and product structures.
- **Incorporation of Non-Financial Reporting:** ESMA encourages issuers to integrate material sustainability-related disclosures from their non-financial reporting, in line with the Non-Financial Reporting Directive and future [Corporate Sustainability Reporting Directive](#), into equity prospectuses.
- **Non-Equity Securities with ESG Components:** ESMA outlines expectations for prospectuses related to non-equity securities that consider specific ESG components or objectives, such as “use of proceeds” bonds and “sustainability-linked” bonds. Detailed disclosure requirements are provided for these and ESMA urges issuers and advisers to reach out to them if there are any uncertainties.
- **Consistency Across Advertisements and Prospectuses:** ESMA highlights the importance of consistency between sustainability-related disclosures in advertisements and prospectuses. If sustainability disclosure is material under the Prospectus Regulation, it should be included in the prospectus to ensure alignment and transparency.

Taking the Temperature: Regulatory authorities are increasingly acknowledging the importance of alignment and harmonization of non-financial reporting and disclosure across the EU. The timing of this move to publish guidelines as to what ESMA expects to find in prospectuses reinforces this since it is a measure aimed to plug the gap while issuers and investors await incoming regulations. This coordinated effort is aiming to minimize inconsistent standards across EU Member States and, ideally, create a more a level playing field for issuers across the EU and enhance transparency for investors.

ESMA is engaged in further studies on a number of other key topic areas. ESMA published Progress Reports in June 2023, with other EU supervisory authorities, to the European Commission on [greenwashing in the financial sector](#). The Progress Reports define greenwashing and outline mitigation efforts companies can take to avoid greenwashing claims. Final greenwashing reports are due in May 2024. Separately, [ESMA is working with the European Commission](#) to address shortcomings related to “how ESG factors are incorporated into methodologies and disclosures of how ESG factors impact credit ratings.”