

ESMA Statement on Expected Sustainability Disclosures in Prospectuses

On 11 July 2023, the European Securities and Markets Authority ("ESMA"), the EU's financial markets regulator and supervisor, issued a Public Statement (the "Statement") on how issuers should fulfil the specific disclosure requirements under the Prospectus Regulation¹ ("PR") in relation to sustainability-related matters. The Statement covers both equity and non-equity prospectuses. In this update, we focus on the impact of the Statement on non-equity prospectuses.

Expected Standard of Sustainability Disclosures

ESMA emphasised that, although the PR disclosure requirements do not explicitly refer to sustainability-related matters, issuers and their advisors should consider these when preparing prospectuses where the effects of those matters are 'material'. Whether a matter is material will depend on if it is necessary to an investor for making an informed assessment of:

- (a) the assets and liabilities, profits and losses, financial position and prospects of the issuer and any guarantor;
- (b) the rights attaching to the securities; and
- (c) the reasons for the issuance and its impact on the issuer².

The Statement further clarifies that the prospectus should provide the basis for any statements concerning the sustainability profile

of the issuer or of the securities issued. Disclosures should be provided in an easily analysable, concise and comprehensible form, and any technical terminology relating to sustainability should be adequately defined.

Furthermore, the Statement confirms that sustainability-related disclaimers seeking to excuse non-performance for factors over which the issuer has control should not be included.

Non-Equity Securities with Environmental, Social and Governance Components or Objective

In relation to non-equity securities that take into account environmental, social and governance ("ESG") components or that pursue ESG objectives, the relevant disclosures will need to comply with Article 6(1) of the PR (as previously set out) and the PR annexes.

ESMA refers to ESG-focused "*use of proceeds*" bonds (bonds whose proceeds are applied to finance or re-finance green and / or social projects or activities) and sustainability-linked bonds (the financial and / or structural characteristics can vary depending on whether the issuer achieves predefined sustainability / ESG objectives). In prospectuses concerning such bonds, ESMA recommends that the prospectus discloses whether the issuer

¹ Regulation (EU) 2017/1129 as amended by Commission Delegated Regulation 2019/980

² Article 6 PR

intends to provide post-issuance information to investors.

The Statement does not specify how such post-issuance information should be provided, but the disclosure should indicate what information will be provided and where it can be obtained. For instance, the prospectus may include a link to a page on the issuer's website where investors will be able to access the post-issuance information.

Consistency of Sustainability-Related Disclosure in Prospectuses and Advertisements

The Statement notes that ESMA has observed some issuers including sustainability-related information in their advertisements without including the relevant disclosures in their prospectuses. ESMA re-emphasised that if a disclosure is material within the meaning of Article 6(1) PR, it must be included in the prospectus to allow investors to make informed investment decisions.

Consistency between the content of the information provided in the advertisement and the prospectus is also a requirement under Articles 22(3) and (4) PR.

Overall, the Statement gives welcome clarity regarding disclosure in a very topical area, and we will follow with interest the market's reaction.

Green Bond Standard

It is worth noting the relevance of the green bond standard ("GBS") to the content and expectations of the Statement. As mentioned in our recent GBS update³, the GBS will only be available where the issuer has published a prospectus in accordance with the PR. Therefore, the Statement is relevant to the GBS regime in addition to the existing GBS requirements thereunder.

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

Dublin

Stephen McLoughlin
+353 1 619 2736
stephen.mcloughlin@maples.com

Callaghan Kennedy
+353 1 619 2716
callaghan.kennedy@maples.com

Rory Beasley
+353 1 619 2084
rory.beasley@maples.com

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³ <https://maples.com/en/knowledge-centre/2023/6/is-ireland-the-future-hub-for-eu-green-bonds-and-securitisation>