ICMA
International Capital Market Association

20 December 2024

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

(ESMA32-117195963-1276)

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ICMA response

EXECUTIVE SUMMARY

(A) Standardised format and sequencing are both unnecessary and burdensome, and in this respect their scope should not be extended beyond the 'standard' annexes. Issuers unable to legibly and cost-effectively re-order disclosure according to ESMA's sequencing approach (that respects the well-established and sensible CDR Articles 22/23) can provide a list of cross-references.

(B) The necessity of including "cover note" references in CDR Articles 22/23 is unclear but does not purport to regulate content and length (which was a concern regarding ESMA 2017 proposals).

(C) In non-equity registration document Annex 6, (i) the reduced time periods for financials and optional (non-incorporated) sustainability information hyperlinks are not objectionable, (ii) the retail cashflow statement and taxation disclosure requirements have disincentivised retail offerings and should be deleted and (iii) disclosure of arrangements 'preventing' change of control and retail KPIs are additional burdens inappropriate for non-'growth' issuers and should be limited accordingly.

(D) In non-equity securities note Annex 13, the single disclosure framework (though not conceptually problematic) is confusingly executed – with four possible rectification options. The repetition of other CDR article/annex provisions is superfluous and confusing and should be deleted.

(E) The sustainability-linked and use of proceeds bond definitions should be more closely aligned with the ICMA Principles' definitions (notably regarding "equivalent amounts" to proceeds, which should apply throughout). Though non-equity ESG Annex 21 applies beyond such instruments (which risks trapping evolution of new instruments), one should be clear that it does not apply to conventional issuance by green issuers, green bond repacks and entity-level disclosure on transition plans/strategy. (It is worth noting that green bonds financing green enabling projects should fall within the use of proceeds bond definition.)

(F) Non-equity ESG Annex 21 should not apply to EuGB Regulation issuance, due to different terminology/framing, the risk of stifling a gold standard and it being too early to conclude what EuGB Regulation disclosures are "relevant" in needing a specific prospectus requirement (pending initial experience under Prospectus Regulation Articles 6/16) – with a placeholder for later dedicated (category C) requirements being an option.

(G) In non-equity ESG Annex 21, basing the discrete requirements on the ESMA July 2023 Statement is problematic (though no concerning changes in NCA practices followed the Statement itself) –

notably in terms of overlap/duplication, inconsistent terminology, imprecision, conflation of instrument- and entity-/framework-level disclosure, and occasionally extending beyond EuGB requirements. Detailed suggestions regarding the Annex (and related explanations) are set out in the annex to this response – and in terms of "partial" alignment and "unequivocal" disclosure, the extent to which an instrument does not align with the relevant reference should be clear.

(H) Additional criteria / information requirements and deadlines do not seem to have been issues experienced in the mainstream bond space (though NCAs should not require information beyond the specified Prospectus Regulation articles).

(I) The amendments to the CDR on metadata seem to involve consequential changes and not be obviously concerning.

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1. **Introduction** – ICMA welcomes the opportunity to respond, from the perspective of the international mainstream bond markets, on ESMA's Consultation Paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on metadata.[1]

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[45] CDR on scrutiny and disclosure? Please give reasons for your concerns and suggest alternative approaches.

[45] Articles 22 and 23 in the CP Annex (clean) and CP Annex.

2. **Views on format and sequencing**

   (A) **Unnecessary** – The Prospectus Regulation already involves a degree of standardisation through the use of its disclosure annexes. Standardised prospectus format and sequencing have not generally been cited by issuers or investors as a material need and will not facilitate issuer drafting or investor reading of prospectuses, where the fundamental challenge is (and will necessarily continue to be) the depth and breadth of the substantive information needing to be conveyed. Standardised prospectus format and sequencing is thus unnecessary.

   (B) **Burdensome** – Standardised prospectus format and sequencing will be disruptive and will not reduce administrative burdens (at least initially), as most bond issuers already have established disclosure approaches (under the existing prospectus regime). They will need to invest time and money revising their prospectuses to meet the new format and sequence requirements. This would be unfortunate given the reforms of the Prospectus Regulation are intended to make the prospectus cheaper and less burdensome for issuers. (Furthermore, issuers should be allowed full freedom to discharge their obligations to set out material information in a prospectus as they face very significant civil liability if they do not do so.)

3. **Limiting changes to the 'standard' annexes** – Given the comments in #2 above, ICMA agrees with not widening the standardised prospectus format and sequencing changes beyond the 'standard' equity and non-equity annexes.

4. **Amending Regulation annexes vs CDR articles** – It is crucial to apply a logical order to standardised prospectus format and sequencing that tries to respect the substance of what is being disclosed (and not, for example, dispersing what would in effect be single disclosure items) – bearing in mind also the overriding Prospectus Regulation requirement that prospectuses be *"in an easily*

[1] ICMA assumes that where there are differences in the drafting of the revised CDR on scrutiny and disclosure, between the excerpts in the body of this consultation paper and the full text in the CP Annex, that the CP Annex prevails.

analysable, concise and comprehensible form". Applying too prescriptive an approach that differs from the historical ordering of a vast majority of prospectuses with which investors are familiar seems an unnecessary burden to capital market issuance in the EU, potentially making it a less attractive option over other sources of capital. CDR Articles 22 and 23 (currently Articles 24 and 25) are well established and create a sensible order for a prospectus. It is understood that ESMA's approach is to respect the order established by Articles 22 and 23, but to redraft the order of information disclosed in CDR Annexes 10 and 13 in line with Annex 1 of the amended Prospectus Regulation. Under this approach our understanding is that issuers unable to achieve re-ordering of prospectus information (in line with the CDR Annexes), in a way which both (i) remains easily analysable, comprehensible, appropriate for the disclosure they need to provide and also (ii) is cost effective, will be able to provide a list of cross-references under Articles 22(5) and 23(6). (See also #10 in response to Q6 regarding cover notes.)

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?

5. **Reduced time periods for financials** – ICMA has no objection to the proposed reduction from two years to one at Item 5.1.1 in Annex 6 (non-equity securities registration document).

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

6. ***No comment***.

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?

7. **Optional electronic link to sustainability information** – ICMA has no objection to the option for an issuer to voluntarily provide an electronic link to the specified sustainability information (without incorporating it into the prospectus) at Item 5.1.1a in Annex 6 (non-equity registration document), bearing in mind this is consistent with established practice of including electronic links in a prospectus to other information without actual incorporation. (ICMA notes actual incorporation of the entirety of the specified sustainability information could present significant challenges, notably bearing in mind liability concerns with forward-looking statements.)

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

8. **Single non-equity disclosure framework / concept** – ICMA notes the Commission mandate that retail disclosure be aligned with wholesale disclosure (except for the additional retail requirements of a summary and offer information). In this respect, the concept of a single nonequity disclosure framework (i.e. a framework where there is no distinction between retail and wholesale disclosure requirements, regardless of whether or not set out in separate Annexes) is not problematic.

9. **Single non-equity disclosure framework / execution**

   (A) **Imperfect/confusing** – The proposed execution of the framework is, however, confusing, notably in the context of Annex 13 (non-equity securities note). This may be unsurprising as ESMA noted that the task was particularly challenging. In particular, the distinction between

retail-only, wholesale-only and shared disclosure is unclear – with apparent duplication of some information items and the dispersal of others. This complicates the disclosure regime rather than simplifying it as intended. (For example, sections 3, 4 and 4a are not currently specified as applying to only retail or wholesale, but sections 3 and 4a are clearly duplicative. The lead-in to Item 3.1 and title of section 4 suggest that section 3 and section 4 should apply to retail only, but this could be much clearer. A further example of the lack of clarity is in the breakdown of expenses in Item 1.7 of Annex 13, which should only apply to offer information in the retail context and not to the admission to trading context.)

(B) **Four options** – There seem to be four options to rectify this situation regarding the securities note requirements in Annex 13: (a) accurately integrating the individual wholesale and retail information items (avoiding duplication and clearly marking all offer-related information as being retail only); (b) clearly marking Sections 3/4 as retail-only and Section 4a as wholesale only; (c) reverting back to separate wholesale and retail annexes (aligning the latter, adding just the offer information); or (d) paring Annex 13 back to the current wholesale disclosure but also including a separate building block containing offer requirements which would be additionally followed in a retail context. (The last of these seems to be the cleanest way to bring the Annexes together in a single disclosure framework but still enabling market participants to clearly understand, without duplication, which additional items apply to retail offerings – though admittedly then not aligning to the EU Growth Prospectus provisions.)

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

10. **Cover note**

(A) **No content / length requirement** – Regarding the inclusion of *"cover note"* references in CDR Articles 22/23 (beyond the retail summary and programme general description requirements), it is expected that this would mean the usual prospectus cover page with issuer name/logo and title of the programme/notes, and which often (but not always) includes information about the notes, prospectus approval, listing and perhaps ratings, benchmark and some selling restriction information. ICMA appreciates that the current proposal does not purport to regulate the content or length of cover notes but queries the necessity of including this as a mandatory requirement when current practice of including a voluntary cover note has not proved problematic. Introducing this as a new mandatory element now risks creating friction and potential confusion for market participants with well accepted market practices relating to the content and order of prospectuses.

(B) **Previous proposal to regulate content / length** – ICMA also generally recalls ESMA's July 2017 consultation (ESMA31-62-532), to make cover notes mandatory (and regulate their content and length). ICMA's response to that consultation (under Q1. at p.10 and also under related Q9 at pp.13-14) set out its concerns regarding the proposal, which was ultimately partly withdrawn by ESMA in its March 2018 final report and residually rejected by the Commission when finalising the CDR in November 2018.

11. **Retail cashflow statement / not apply to general retail** – The current retail non-equity registration document requirement for a cashflow statement (being maintained at Item 5.1.5(c) of Annex 6 - non-equity registration document) has been significantly disincentivising to retail offerings. Given this and since such information is not included in the current wholesale non-equity registration document or in the Commission mandate exceptions to aligning retail disclosure with wholesale disclosure, ICMA suggests the requirement be deleted.

12. **Retail KPIs / not apply to general retail ('growth' issuers only)** – The inclusion of Item 5.4 in Annex 6 (non-equity registration document) for retail securities is an additional requirement, increasing

administrative burdens rather than simplifying them. The proposed requirement seems to have come from Item 5.4 in current Annex 25 (EU growth registration document for non-equity securities). Whilst KPI metrics might seem relevant for simpler 'growth' issuers (notably in the absence of other, more established metrics), this should not be so for other (established) entities where any of range of references across a complex corporate organisation might then be subject to impromptu prospectus inclusion and related liability risk even where wholly immaterial to investment decisions (the only generally recognised DCM KPIs being in a sustainability-linked bond context) – which would be a significant additional burden and disincentivising to retail offerings. (And in a financial context there are already the provisions on alternatives performance measures.) If ESMA considers such information substantively necessary for 'growth' issuers, it may wish to consider limiting the requirement accordingly (using the definition in Article 15 of the prior Prospectus Regulation) in the same way some information items apply only in the retail context.

13. **Change of control / not include 'prevention' ('growth' issuers only)** – The inclusion in Item 6.1.2 in Annex 6 (non-equity registration document) of arrangements that may "prevent" a change of control is an additional requirement, increasing administrative burdens rather than simplifying them. The proposed requirement seems to have come from Item 6.1.2 in current Annex 25 (EU growth registration document for non-equity securities). Whilst arrangements preventing a change of control might seem relevant for budding 'growth' issuers where perceptions of issuer solvency may depend on the initial managers/owners continuing in their roles, this should not be so for other (established) entities. If ESMA considers such information substantively necessary for 'growth' issuers, it may again wish to consider limiting the requirement accordingly (as per #12 above).

14. **Retail tax treatment / not apply to general retail** – The current retail non-equity securities note requirement for taxation treatment information (being maintained at Item 3.1.14 of Annex 13 - non-equity securities note) has been particularly complex and significantly disincentivising to retail offerings. Given this and since such information is not included in the current wholesale non-equity registration document or in the Commission mandate exceptions to aligning retail disclosure with wholesale disclosure, ICMA suggests the requirement be deleted.

15. **References to CDR articles and annexes / confusing** – The items in Sections 5-8 of Annex 13 (non-equity securities note) that merely repeat the provisions of CDR articles and other annexes are both superfluous and (due to inconsistent drafting) confusing. They should be deleted.

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

16. **Impact on prospectus production costs** – The proposal will add costs since, as noted in #2(B) in response to Q1, most bond issuers already have established disclosure approaches (under the existing prospectus regime) that they will need to invest in having re-modelled. (The additional requirements noted in #12/13 in response to Q6 would also add costs.)

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.

17. **Scope should be more focused** – ICMA notes the scope of the new disclosure requirements in Annex 21 as applying not just to the defined "sustainability-linked bonds" (SLBs) and "use of proceeds bonds" (UoPBs), but more widely to non-equity securities "advertised as taking into account ESG factors or pursuing ESG objectives".

(A) **Corporate/entity-level disclosure** – One should be clear in practice that Annex 21 does not apply to corporate/entity-level disclosure and so e.g. to conventional issuance (i.e. not labelled as SLBs or UoPBs) by naturally green issuers (such as "pure play" issuers), repacks of green bonds and issuers that include entity-level disclosure on their transition plans or strategy – in this respect, ICMA disagrees with this consultation paper's #37 including Annex 6 as one of the Annexes that could be applied together with Annex 21.

(B) **New instruments with instrument-level ESG characteristics** – Furthermore, it should be noted that applying Annex 21 beyond the established bulk of ESG issuance (labelled UoPBs and SLBs) risks uncompetitively trapping market evolution of new instruments with instrument-level ESG characteristics, with requirements that are granular yet potentially inconsistent with the characteristics of such new instruments.

18. **ESMA July 2023 Statement** – ICMA's response to the proposed CDR amendments does not distinguish between (i) Annex 21 items that are consequent to the ESMA's July 2023 Public Statement *Sustainability disclosure in prospectuses* (ESMA32-1399193447-441 / the ESMA July 2023 Statement) and (ii) other Annex 21 items. ICMA did not comment on the Statement itself as there did not seem to be any consequential concerning changes in NCA supervisory practices. In this respect, it seems NCAs were effectively applying the Statement as a whole (rather than as individual discrete provisions) in terms of their disclosure expectations. Transforming the Statement into individual discrete disclosure requirements as per the proposed new Annex 21 is problematic however – notably as many of its provisions often overlap/duplicate each other, some of its terminology differs from the amended Prospectus Regulation (unsurprisingly from a timeline perspective), it lacks the precision necessary to apply it as discrete disclosure requirements and some of its technical details conflate instrument- and entity-/framework-level disclosure. The Statement also occasionally extends beyond what is required in the EuGB context that is intended to represent the 'gold standard'.

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?

19. **Sustainability-linked bonds / Principles alignment** – We would suggest that the defined term for SLBs is aligned more closely with the definition from the ICMA Sustainability-Linked Bond Principles definition[2] (that was also followed in the ESMA July 2023 Statement, at footnote 12) rather than introduce new terminology. The reference to the EuGB Regulation seems redundant and is also inconsistent with the proposed definition of use of proceeds bonds. Consequently, CDR Article 1(f) should be amended to read:

    << *'sustainability-linked bond' means non-equity securities for which the financial and/or structural characteristics can vary depending ~~are conditional~~ on whether the issuer achieves predefined sustainability/ESG objectives~~, including bonds defined in point (6) of Article 2 of Regulation (EU) 2023/2631~~;* >>

20. **Use of proceeds bonds / Principles alignment ("Environmental" and "equivalent amount")** – Reference in the definition of use of proceeds bonds to "green" projects/activities can be read to include blue issuance, but referencing "environmental" projects/activities would be better. Also the definition does not align with the recognition, in the ICMA Green Bond Principles' definition[3], of an "equivalent amount" to the proceeds being applied. The importance of the fungibility of cash is explained in the ICMA Principles' Guidance Handbook / November 2024, notably for

[2] See p.2 of ICMA's Sustainability-Linked Bond Principles / Voluntary Process Guidelines / June 2024.

[3] See page 3 of ICMA's Green Bond Principles / Voluntary Process Guidelines for Issuing Green Bonds / June 2021 (with June 2022 Appendix 1).

(re)financing of long-dated green assets through multiple consecutive use of proceeds bonds (at Question 2.1.7) and liability management such as buybacks and reissuing as long as an amount equivalent to the net proceeds of the new bond is earmarked to fund existing and/or future eligible projects (at Question 2.2.4). Consequently, CDR Article 1(g) should be amended to read:

<< *'use of proceeds bond' means non-equity securities whose proceeds or an equivalent amount are applied to finance or re-finance environmental ~~green~~ and/or social projects or activities.* >>

(Furthermore, all references to "proceeds" in CDR Article 21a and Annex 21 should be read as including an equivalent amount unless indicated otherwise by the context.)

21. **Use of proceeds bonds / Green enabling projects** – Incidentally, it is worth noting that green bonds financing green enabling projects should fall within the proposed "use of proceeds bond" definition. In this respect, the ICMA Principles' Green Enabling Projects Guidance document / June 2024 notes a number of green enabling projects, key to the value chain of green projects, are not themselves explicitly considered green but remain critical to such eligible green projects and provides issuers may "count the Green Enabling Project in full towards a Green Bond, or to use a pro-rata approach dependent on end-use (either known or estimated)." (It also requires alignment with the Green Bond Principles in this respect, notably the project evaluation/selection process in terms of disclosures being within the context of the issuer's overarching objectives, strategy, policy and/or processes relating to environmental sustainability.)

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.

22. **Prospectus Regulation Article 6(1)** – There is a terminology mismatch between Annex 21 and the EuGB factsheet (and also perhaps the pending voluntary disclosure provisions that remain subject to consultation) that makes it difficult to identify which 'relevant' factsheet information items could be used to address the Annex 21 requirements (and this in turn would mean friction for EuGB issuance). In this respect, the key aspect is application (beyond the risk factors) of the overriding Article 6(1) of the Prospectus Regulation (all the more so given the timing mismatch between the EuGB regime and the amended prospectus regime). See further #25 in response to Q11.

23. **CDR Article 21a(1) technical inconsistency** – It is confusing in CDR Article 21a(1) to explicitly reference only issuance using the EuGB voluntary disclosure templates and not also European Green Bonds. Bearing in mind both forms of issuance would anyway fall within the scope of Annex 21 (by satisfying either the SLB or UoPB definitions), either both forms of issuance, or neither, should be cited.

24. **Other aspects** – See also #25 in response to Q11 and #31 in response to Q15.

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.

25. **Yes** – The current Annex 21 should not apply to EuGB Regulation issuance.
    (A) **Different terminology/framing** - As noted in #22 in response to Q10, the Annex 21 disclosure requirements are framed differently, so it is hard to identify what factsheet information could be used to meet each Annex 21 disclosure requirement – which is likely to cause friction in

new issuance transactions inconsistent with the overriding policy aim of avoiding duplication (and the voluntary disclosure templates still remain subject to pending proposal/consultation).

(B) **Risk of stifling a gold standard** – The EuGB Regulation is already a gold standard, with its own detailed disclosure requirements (albeit through the factsheet and other required disclosures rather than the prospectus) and it would be better not to stifle any developing EuGB Regulation market by requiring separate, specific prospectus disclosure requirements (particularly when framed differently as noted above) when issuers will already be meeting the EuGB Regulation requirements.

(C) **Too early to conclude** – It is perhaps too early for ESMA to accurately assess whether EuGB Regulation disclosure needs a specific, accompanying prospectus requirement (to reflect the "relevant" information from the factsheet / voluntary pre-issuance disclosure) and it may be better to wait to see how EuGB Regulation issuance prospectus disclosure initially develops (based around the overriding Articles 6 and 16 Prospectus Regulation).

(D) **Annex 21 place-holder** – ESMA could however consider including a new, distinct section in Annex 21 that just applies to EuGB Regulation issuance, into which any finalised requirements could be added as and when ready (being Category C information, this would not cause supplement-related disruptions[4]).

(E) **Consequential change** – As a technical consequence (since distinct requirements will apply), CDR Article 21a(2) should be deleted along with the references Art 21(a)(1) to the securities using the voluntary templates within.

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.

26. **Background** – See #17 in response to Q8 by way of general background regarding the ESMA July 2023 Statement.

27. **Detailed comments** – Detailed (including streamlining) comments regarding unsuitable, confusing and/or duplicative provisions in Annex 21 are set out in the **annex to this response**, together with related narrative explanations.

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.

28. **Agreed** – ICMA agrees with the proposal.

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?

29. **'Partial' alignment and 'unequivocal' disclosure in context** – There should be clear disclosure of the extent to which an instrument does not align with the relevant reference. See item 2.1 in the **annex to this response**.

[4] All the more significant to the extent EuGB issuance may anyway be challenging for many and so the flourishing of this EU flagship initiative is uncertain.

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.

[46] Category A', 'Category B' and 'Category C' information are referred to in the current Article 26 CDR on scrutiny and disclosure.

30. **Generally agreed** – ICMA generally agrees with the proposed category classifications. (Some of the information items proposed as category 'C' may in practice be included in the base prospectus rather than in final terms.) This is however subject the detailed comments on Annex 21 noted in #27 in response to Q12.

31. **EuGBs in CDR Article 24(4a)** – See #33 in response to Q17.

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.

32. **Passing, generic comments** – ICMA is responding from the mainstream bond context, and so has just set out some passing, generic suggestions in section 5 in the **annex to this response**.

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.

33. **EuGBs in CDR Article 24(4a)** – In the context of #25(D) in response to Q11, ICMA notes all EuGB factsheet-related information is categorised as 'C' (excluding risk factors), but CDR Article 24(4a) should explicitly reference Annex 21 in this respect (i.e. stating at the beginning "For the purposes of this Article and Annex 21, the information included in…").

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.

34. **Less significant costs/burdens** – Incorporation via final terms will intrinsically involve less significant costs/burdens than incorporation via other means (directly in the base prospectus or via a supplement).

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

35. ***No comment***.

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.

36. **No substantive comment** – ICMA members in the mainstream bond space have not experienced systemic issues involving additional criteria / information requirements, so ICMA makes no substantive comment. It seems however helpful that the NCA decision about additional information is proposed to be *"in consultation with the issuer"*. (Incidentally there seems to be a typographic error in CDR Article 21b(1)'s repetition of *"not the same"*.)

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.

37. **No substantive comment** – See #36 in response to Q20.

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.

38. **Agreed** – NCAs should not require information beyond these Prospectus Regulation articles. (And see point B at p.4 of ICMA's September 2017 response to ESMA's Consultation Paper on scrutiny and approval: << *Although not addressed specifically in the Questions in this Consultation, there is a point to raise on paragraphs under heading 3.1.6 (Proportionate approach to prospectus scrutiny). On one reading, it would that the approach suggested in paragraphs 60 – 64 appears to give individual NCAs the flexibility effectively to 'gold plate' the Prospectus Regulation by requesting additional disclosure items which are not in the Annexes. This would appear to: (i) run counter to the aims of the CMU; (ii) further propagate the complaints about the operation of the current PD that it allows an unlevel playing field to be created; and (iii) allow for NCAs to 'compete for business' and unfairly punishes those who may not be in a position to choose a more favourable home member state.* >>.)

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.

39. **No substantive comment** – ICMA members in the mainstream bond space have not experienced systemic issues involving deadlines (and individual NCA practices are well-known to market participants), so ICMA makes no substantive comment. (Incidentally there seems to be a typographic error in CDR Article 36(5), where we suspect the intended drafting is *"An issuer … shall not submit any changes … to the draft prospectus in ~~preceding~~ the last ten working days preceding ~~of~~ the deadlines mentioned in paragraphs 3 and 4."*.)

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.

40. **No substantive comment** – See #39 in response to Q23.

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.

41. **No concerns** – The proposal seems to just involve consequential changes (notably related to the EuGB Regulation issuance context as well as to account for the new types of alleviated regime prospectuses in the Amending Regulation) and ICMA sees no obvious concerns in this respect.

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.

42. **No concerns** – See #41 in response to Q25.

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.

43. **No concerns** – The ESAP-related proposal seems sensible and does not seem to create an issuer burden.

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.

44. **No substantive comment** – Simultaneous admission is not relevant in the mainstream bond context (where single-listings dominate), so ICMA makes no substantive comment.

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.

45. **No comment** – ICMA makes no comment on the other changes given its prior responses.

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ANNEX
Annex 21 detailed comments

Annex 21

Please note that cross-references within the Annexes will need to be reviewed and possibly updated

Non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives~~, including European Green Bonds~~

SECTION 1	RISK FACTORS	
Item 1.1	Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the risks associated with the ESG factors taken into account or ESG objectives pursued by the ~~ESG profile of these~~ securities and the market risk in the section headed 'Risk Factors'. The risk factors should disclose the possible impact of the materialisation of such ~~the~~ risks ~~on the ESG profile of the securities and the likely financial effect~~. [*This aims to track the wording of Level 1 and title of the Annex and to clarify that the risks relate to the securities note rather than the registration document aspects (i.e. so this is better understood to relate to features of the securities rather than issuer level risks). Suggest deleting "and the likely financial effect" as this goes beyond Article 16 requirements, which are not as specific.*]	Category A
SECTION 2	INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING	
Item 2	Information concerning the securities.	
Item 2.1	~~(a) If the non-equity securities offered to the public or admitted to trading on a regulated market are 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 and of the Council[5], or a third country Taxonomy, unequivocally state how the criteria in Article 3 of the Taxonomy~~	Category A

~~[5] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).~~

	Regulation or third country taxonomy are met and that they are significant in relation to the ESG features or objective of the non-equity securities and, where relevant, identify the third country taxonomy. [*Disclosure about taxonomy alignment (EU Taxonomy (EU 2020/852) or third country taxonomy) is relevant to use of proceeds for non-equity securities. See item 3.1.3 below for suggested disclosure requirements in this regard. Any disclosure requirements with respect to taxonomy alignment (including identifying elements that are not met) should be addressed in the Use of Proceeds section and, in relation to the EU Taxonomy should go no further than the disclosures required in the EU GB Factsheet or voluntary pre-issuance templates under the EU GB Regulation.*] If the non-equity securities offered to the public or admitted to trading on a regulated market are advertised as complying with, aligned with, eligible under or otherwise adhering to a specific market standard or label relating to the ESG factors taken into account or ESG objectives pursued [*tracking the wording of Level 1 and title of the Annex to avoid introducing a new concept of 'ESG features'*] by the securities: (i) identify that market standard or label; and , unequivocally[Some labels *are voluntary market standards so an unequivocal statement does not seem appropriate given in particular that certain aspects are recommendations only.*] (ii) state how the criteria in that standard or label are met and, where relevant, identify any elements that are not met. (b) and that they are significant in relation to the ESG features or objective of the non-equity securities and identify that market standard or the label relating to the ESG features of the securities.	
Item 2.2	A clear and comprehensive explanation to help investors understand the ESG factors taken into account by the securities and/or ESG objectives pursued by the securities. [*Suggest deleting. This overlaps with the requirements of 2.1 above (it being hard to conceive of*	Category A

	bonds that would not fall within 2.1 in practice), or the requirements under Section 3 applicable to Use of Proceeds Bonds (see for example 3.1.2 and 3.1.3) or Section 4 applicable to Sustainability-Linked Bonds. The rationale for this item 2.2, contained in paragraph 48 of the Consultation Paper, suggests it is an alternative to item 2.1 in circumstances where an issuer cannot comply with 2.1. Since we suggest identifying any elements of a taxonomy, standard or label that are not met, then this alternative is no longer necessary. *It could be retained perhaps in a pared down format to be applicable where Sections 3 or 4 don't apply and refer to a summary of the key elements of the framework under which the bonds will be issued, if there is such a framework applicable to the bonds?]*	
Item 2.3	~~The basis for any statements concerning the sustainability profile of the securities being offered and/or admitted to trading, including any material underlying data or material assumptions.~~ *[This goes further than the EU GB Regulation Factsheet which is expected to be the 'gold standard' for the EU green bond market and overlaps with 2.1 above (see paragraph 46 of the Consultation Paper).]*	Category A
Item 2.4	~~Material information about any specific market standard, label or third country taxonomy relating to the ESG features of the securities.~~ *[This overlaps with 2.1, but might be a boilerplate explanation of, for example, what the ICMA Principles for Green Use of Proceeds bonds are. Suggest that information on such market standard or label would be better provided through an electronic link to the website of that market standard or label, which can be included in the prospectus, together with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus.]*	Category A
SECTION 3	USE OF PROCEEDS BONDS	
Item 3.1	In relation to use of proceeds bonds:	
Item 3.1.1	Disclosure of the material risks regarding the allocation, management of proceeds as well as risks concerning the viability and achievement of the sustainable project(s). *[Essentially this just gives more detail on 1.1., as that*	Category A

	must surely relate to securities related risks (so there is overlap between this and 1.1).]	
Item 3.1.2	A summary of the material provisions of the applicable framework. ~~*or*~~ The issuer may also choose to include an electronic link to the applicable framework, with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus. [*A summary should always be included but a link may also be included at the option of the issuer. A tightening of the disclosure requirement here is proposed in line with what is generally regarded as best disclosure practice (to always require a summary of the framework). However, it is noted that certain competent authorities comment extensively on the framework summary which is very challenging for issuers when the summary they draft is regarded as including appropriate disclosure (and where this is experienced, it would be more straightforward for issuers to just include a link to the framework). See further #10-17 of January 2023 ICMA QR article "European prospectus disclosure for green, social and sustainability bonds" (https://www.icmagroup.org/assets/European-prospectus-disclosure-for-green-social-and-sustainability-bonds.pdf).*] ~~This item does not apply in relation to European Green Bonds.~~ [*This is no longer needed if Annex 21 does not apply to European Green Bonds.*]	Category A
Item 3.1.3	a) If the non-equity securities offered to the public or admitted to trading on a regulated market are advertised as complying with, aligned with, eligible under or otherwise adhering to the EU Taxonomy, in accordance with Regulation (EU) 2020/852 of the European Parliament and of the Council, or a third country taxonomy: (i) state that the EU Taxonomy applies or identify the third country taxonomy; and (i) state how the criteria in Article 3 of the EU Taxonomy or third country taxonomy are met and, where relevant, identify any elements that are not met. *or* b) Where limb (a) is not applicable~~In relation to 'use of proceeds' bonds~~, a description of the goal and	Category B

	characteristics of the relevant sustainable projects or activities and how the sustainable goal is expected to be achieved as well as any permissible ~~terms and conditions for~~ deviations to the minimum use of proceeds, the sustainable projects and activities. If the sustainable projects or activities are not identified at the time of the prospectus approval, issuers shall disclose the criteria which will be used to identify the relevant projects. *[Suggest deletion of reference to terms and conditions as this could cause confusion with terms and conditions of the securities. Incidentally, the ICMA Principles' Guidance Handbook / November 2024[6] states (at Questions 2.1.4 and 2.2.1) that use of proceeds bonds must have an amount equal to 100% of the net proceeds allocated to green and/or social projects with just the possibility of a temporary allocation of funds to liquid assets when ramping up the projects allocation.]* This disclosure should ~~clarify whether the 'use of proceeds' bonds are part of financing the entirety of~~ include information on how the non-equity securities are expected to contribute to the issuer's broader green/sustainability strategy ~~and explain the 'use of proceeds' bonds contribution to that strategy, including, where relevant, the financing of activities eligible and/or aligned with the EU Taxonomy or a third country taxonomy~~. *[Suggest amendments so that this does not go beyond the requirements of the EU GB Factsheet. Suggest deletion of last sentence as have moved down fuller disclosure requirements in relation to taxonomy alignment from 2.1(a) instead.]*	
Item 3.1.4	~~Whether~~ Disclosure on how the proceeds (or an equivalent amount) of the bond are managed by the issuer ~~ringfenced to sustainable projects or assets~~. *[This could be deleted as it appears to go beyond the requirements of the EU GB Factsheet. Alternatively, it could be retained and clarified that it is asking for disclosure on management of the proceeds (or an equivalent amount) until allocation.]*	Category C
Item 3.1.5	If the proceeds ~~of 'use of proceeds' bonds~~ are used or expected to be used to purchase underlying loans or other assets which are considered sustainable, disclosure on the criteria used to determine their sustainability, including whether these loans or assets are eligible and/or aligned with the EU Taxonomy or a third country taxonomy-.	Category C

[6] https://www.icmagroup.org/assets/documents/Sustainable-finance/2024-updates/The-Principles-Guidance-Handbook-November-2024-041124.pdf.

	[Please clarify what is intended by this? Is it the SLLB structure?]	
SECTION 4	SUSTAINABILITY-LINKED BONDS	
Item 4.1	In relation to sustainability-linked bonds:	
Item 4.1.1	Disclosure of the material risks regarding key performance indicators (KPIs) and associated sustainability performance targets (SPTs); including but not be limited to, risks concerning potential conflicts of interest when such KPIs are selected and monitored. Furthermore, owing to the nature of 'sustainability-linked' bonds, the impact of the issuer's overall firm-level sustainability performance on the security should be clear in the risk factors. [Suggest deletion as transparency via an issuer's disclosure on the methodology and rationale for KPI/SPT selection (including the consistency of the KPIs and their associated SPTs with the issuer's sustainability strategy) more appropriately addresses this point – ESMA has already suggested such disclosure (see disclosure item 4.1.2 below, as amended herein).]	Category A
Item 4.1.2	A description of any financial features of the securities such as interest or premium payments which are influenced by the fulfilment or failure to fulfil sustainability or ESG objectives, including the means by which interest payments or redemption amounts are calculated. This disclosure shall include explanations and the calculation methodology of the selected KPIs, and SPTs and also information enabling investors to assessunderstand: (i) whether the consistency of the KPIs and their associated SPTs with the relevantare consistent with sector-specific science-based targets (if any) and (ii) the consistency of the KPIs and their associated SPTs with the issuer's sustainability strategy. [We suggest the amendments to limb (i) as we understand that sometimes KPIs cannot align with sector-specific science-based targets.]	Category B
Item 4.1.3	If advanced amortisation may occurthe securities may be redeemed prior to their scheduled maturity, disclosure about any impact which this may have on the sustainability performance of an investmenton the early redemption amount.	Category BA [To be consistent with Item 4.9(b) in Annex 13.]
SECTION 5	INFORMATION ON THE UNDERLYING [ICMA is responding from the mainstream bond context, and so we have just set out some passing, generic suggestions in this section (deferring to others to respond from the structured product perspective on interaction between this section and Annex 15).]	

Item 5.1	In relation to non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives linked to an underlying other than shares referred to in Article 20(1) and (2) of this Delegated Regulation (if the underlying is relevant for the redemption of the non-equity securities, this will be in addition to Annex 15):	
Item 5.1.1.	A description of the underlying and of the ESG factors taken into account or ESG objectives pursued by~~features of~~ the underlying. An explanation of how the use of an underlying is compatible with the sustainability characteristics that the non-equity securities promote or with the objective of sustainable investment.	Category C
Item 5.3.2	Where the underlying of the securities offered to the public or admitted to trading on a regulated market is an EU Paris-aligned Benchmark or EU Climate Transition Benchmark in accordance with Regulation (EU) 2016/2011 of the European Parliament and of the Council[7], or a benchmark complying with an ESG-related label, state that fact, identify the benchmark administrator and, where applicable, identify the ESG-related label.	Category C
Item 5.3.3	A statement as to whether the sustainability features are material for the assessment of the securities.[*This seems a little circular and repetitive of the requirements in item 5.1.1 – this section 5 would only be complied with if the non-equity securities are advertised as taking into account ESG factors or pursuing ESG objectives and therefore the sustainability features would be material.*]	Category B
Item 5.3.4	If applicable, a warning that the structured product does not represent an investment in a sustainable product or economic activities, including products or economic activities in transition finance. [Query application of this item, as *"structured product" and "sustainable product" are not established concepts in the PR architecture. It is also evident that securities merely linked to an underlying are not a (direct) investment in that underlying (there might or not be some indirect investment impact, e.g. as part of an issuer's hedging processes).*]	Category A
SECTION 6	ADDITIONAL INFORMATION	
Item 6.1	If the issuer chooses to use ESG ratings assigned to it when advertising the non-equity securities subject to this Annex, include such ESG ratings~~the issuer or the securities at the request or the cooperation of the issuer in~~	Category C

[7] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

	the rating process. A brief explanation of the meaning of the ratings, if it has previously been published by the rating provider. [*As a technical point, ESG Ratings tend to relate to the issuer, rather than the securities. More substantively, as acknowledged in recital 12 to the Regulation of ESG rating activities (EU/2024/3005), ESG rating business models vary between issuer-paid and user-paid models. In the latter case, it is recommended that an issuer has an opportunity to engage with the rating provider to fact check the dataset used to determine the ESG rating. This should not count as "co-operation" obliging the issuer to disclose the rating and an explanation in its prospectus with corresponding liability, which would seem unfair. Even if the Issuer has solicited the ESG rating, it may likely be "for the purpose of assessing risks and opportunities within their operations" and we understand that ESG rating providers commonly charge a licence fee to allow the ESG rating to be used publicly (especially for an offer of securities). ESG ratings work differently compared to credit ratings. Issuers don't usually solicit them but may cooperate with the rating provider and may then choose to use the rating for a fee. They only relate to the issuer, rather than the securities. If the issuer chooses to use ESG ratingsthem in an advertisement for non-equity securities taking into account ESG factors or pursuing ESG objectives, information should be disclosed in the prospectus. Otherwise it is inappropriate to require ESG ratingstheir disclosure as this may compel an issuer to incur additional fees for use of a rating which it has not solicited or for a purpose it does not intend (and to also incur the additional license fee in this respect).*]	
Item 6.2	If the issuer chooses to use, when advertising the non-equity securities subject to this Annex, any review, advice or assurances have been provided by advisors or third parties about the ESG profile offactors taken into account or ESG objectives pursued by the security, including any review, advice or assurance in relation to the issuer's framework regarding its compliance with, alignment with, eligibility under or otherwise adherence to a specific market standard or label, the prospectus shall contain disclosure concerning the scope of the review, advice or assurance and by whom they were provided. [*Reviews etc are currently of the issuer's framework and its alignment with the four components of the ICMA Principles rather than of the security itself. If the issuer chooses to use reviews etc in an advertisement for non-equity securities taking into account ESG factors or pursuing ESG objectives, information should be disclosed in the prospectus. Otherwise it is inappropriate to require their*	Category B

	disclosure as this may compel an issuer to use reviews etc for a purpose it does not intend.] An electronic link to the website where investors will be able to access the reports, if any, shall be included in the prospectus, together with a disclaimer that the information on the website does not form part of the prospectus unless that information is incorporated by reference into the prospectus	
Item 6.3	Whether post-issuance information will be provided. This disclosure should include an indication of what information will be reported (if any) and where it can be obtained.	Category B
Item 6.4	If any review, advice or assurances will be provided by advisors or third parties in relation to the post-issuance information, disclosure concerning the scope of those assurances and by whom they are expected to be provided.	Category B