

DSW's POSITION to ESMA CONSULTATION PAPER „Supplements“ to base prospectus

Q1: Do you agree with draft Guideline 1 proposed by ESMA and ESMA's reasoning? If not, please explain why.

DSW fully supports the approach by ESMA to develop Guidelines to specify the circumstances in which a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus. In order to avoid national competent authorities to make their own individual judgements which can lead to inconsistent outcomes, ESMA should harmonize all of these approaches to establish the necessary level playing field. Furthermore this harmonization can avoid divergent and inconsistent analyses which can be seen as undesirable in the context of the Listing Act. In general firms should not be able to introduce new product types via a supplement. This keeps the purpose of supplements focused on updating and not expanding the product scope. At the same time it protects investors from being sold complex or risky products without the prior disclosure. Furthermore this will promote the regulatory consistency across the EU.

Q2: Do you agree with draft Guideline 2 proposed by ESMA and ESMA's reasoning? If not, please explain why.

In case of a supplement this should be as closely as possible linked to the prospectus in order to avoid any misinterpretations. This will require firms to plan ahead and include all expected product types in the original base prospectus. In the view of the investors this will minimize uncertainty for all parties and encourage full and comprehensive disclosure upfront. Also it will help supervisors and investors to clearly understand what kind of products are within the scope.

Q3: Do you believe draft Guideline 2 will lead to longer and less comprehensible prospectuses? If yes, please explain why and describe how you would solve this issue.

Not necessarily. We should recognize that a more detailed disclosure helps investors to make better-informed decisions and include important safeguards in areas involving complex or structured products.



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Q4: The explanatory text under draft Guideline 2 identifies ‘green bonds’ and ‘sustainability-linked notes’ as distinct securities for the purpose of these Guidelines. Do you agree with that, or do you think they are the same as ‘regular’ bonds or ‘regular’ structured products? To the extent you consider ‘green bonds’ and ‘sustainability-linked notes’ to be the same as ‘regular’ bonds or ‘regular’ structured products, please explain why. In particular, make clear why, for example, a currency-linked note, or index-linked note, should be treated differently to a ‘sustainability-linked note’ for the purpose of these Guidelines. Please also consider factors such as the oncoming Annex [21] in your response.

Green bonds or sustainability-linked notes should be treated as separate from regular bonds since these products include distinct commitments and risks such as environmental targets. Therefore investors need to clearly understand how these differ from regular bonds.

Q5: Is there another way to approach the subject of these Guidelines in your opinion? If yes, please explain what it is and provide arguments to support your suggested approach. Please also provide examples to illustrate the issue(s) you are solving and how your proposed approach facilitates that end.

A unified guideline with clearer definitions and clear product categories can help to avoid misinterpretations by different NCAs and lead to a more harmonized approach.

Q6: Can you provide an estimation of the costs/benefits of these proposed Guidelines?

As DSW we see a clear benefit in the clarity of information for the investors. It will diminish the risk that firms use supplements to introduce complex or riskier products without full disclosure. This could help to increase investor protection and avoid that investors in one country may be better protected than in another due to divergent NCA interpretations. Therefore, the proposed guidelines will close this gap and thereby ensure fairer and a more predictable treatment across the EU.