European Securities and Markets Authority

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Final Report

Guidelines on supplements which introduce new securities to a base prospectus

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1 Executive Summary

Reasons for publication

Article 23(8) of the Prospectus Regulation (PR) requires 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". This is related to Article 23(4a) of the PR which states that "a supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus [...]"[1].

ESMA is issuing these Guidelines to align EU-wide supervision on this subject, which has been characterised by longstanding divergence and can lead to different supervisory outcomes, which is recognised in Recital 54[2] of the Listing Act. A significant benefit of the final Guidelines is that their straightforwardness and ease of application are likely to reduce the risk of divergence. This, in turn, should reduce the risk of inconsistent requirements across jurisdictions, such as a scenario where an issuer in one jurisdiction is required to prepare a new base prospectus, while an issuer in another jurisdiction needs only produce a supplement. Overall, ESMA thus considers these Guidelines align with the political goals of the Listing Act.

The Guidelines in this Final Report were drafted taking into account the substantial feedback provided to the Consultation Paper published on 18 February 2025 and, notably, the overarching request for clear criteria concerning this subject. The publication of this Final Report was delayed following the conclusion of the consultation on 19 May 2025 due to adjustments made in response to market feedback. These revisions led to a new approach, dependent on the disclosure annexes outlined in Commission Delegated Regulation 2019/980, which were only recently amended.

Content

The *Background and consultation* section of this Final Report provides additional commentary about divergence in the supervision of so-called "product supplements" and information about the consultation feedback. The *Feedback statement* section provides summaries of stakeholder feedback to the consultation and ESMA's response to all feedback received. The Guidelines themselves are set out in Annex III.

Next Steps

The Guidelines in Annex III will be translated into the official EU languages and published on ESMA's website. They will become effective two months after their publication on ESMA's website in all the official languages.

2 Background and consultation

1. Recital 36 of the PR states supplements should not be used to include a type of security not already described in a base prospectus[3]. There have been longstanding discussions with national competent authorities about when that occurs. At a high-level, National Competent Authorities agree that a supplement which would include a structured product in a base prospectus that only catered for plain vanilla non-equity securities should not be approved. However, there is no widely agreed written guidance to identify different types of securities. This can create issues with supplements relating to non-equity securities in general but is quite problematic regarding supplements that introduce variations to structured products. To address this lack of agreement, the Listing Act introduced Recital 54 and Article 23(4a) of the PR, which repeats the message in Recital 36 PR.

2. Due to the absence of widely agreed guidance on this topic, NCAs make their own assessments, which can lead to inconsistent outcomes. In some cases, an NCA might require an issuer to draw up a new base prospectus because they argue the supplement is introducing a new security. In others, a supplement containing similar information might be considered as complementing what is already in the base prospectus and will be approved. Financial market participants do not have recourse to public information to help determining when either result will occur. This can have significant cost, time, and fairness

[1] Article 23(4a) states: "A supplement to a base prospectus shall not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus, unless doing so is necessary to comply with capital requirements under Union law or national law transposing Union law."

[2] Recital 54 states: "Diverging interpretations on whether an issuer should be allowed to supplement a base prospectus to introduce other securities, or securities with different features than the ones for which that base prospectus has been approved, have led to a lack of convergence between Member States. In order to ensure investor protection and foster regulatory convergence across the Union, it is therefore appropriate to lay down that a supplement to a base prospectus should not be used to introduce a new type of security for which the necessary information has not been included in that base prospectus unless doing so is necessary to comply with capital requirements under Union law or national law transposing Union law. Furthermore, to further foster convergence on the use of the base prospectus, ESMA should provide additional clarity by means of guidelines on 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."

[3] Recital 36 states that "[…]. Neither the final terms nor a supplement should be used to include a type of securities not already described in the base prospectus."

implications, as requiring an issuer to prepare a base prospectus instead of a supplement is a materially different outcome.

3. Such divergent, costly, and inconsistent outcomes are undesirable in the context of the Listing Act, which seeks convergence, burden reduction, and improved access to capital. Additionally, the complex nature and number of changes in product supplements can pose significant challenges for NCAs during their review process. This can lead to investor protection issues, as NCAs may have less time to thoroughly assess the content of supplements compared to base prospectuses. Therefore, clarifying when a supplement introduces a new type of security is beneficial for both market participants and enhancing investor protection. On 18 February 2025, ESMA published a Consultation Paper proposing two draft Guidelines to address this situation.

4. A total of **39 respondents** responded to ESMA's CP. This high volume of feedback suggests there was strong interest in the subject. Almost all stakeholders responded to the individual questions in the CP, with 37 or 38 replies per question typically received[4]. A **key point** is that 24 similar submissions were received from 19 individual firms and 5 associations[5] from one Member State. Otherwise, large associations elsewhere typically submitted "one" response on behalf of all their members. Therefore, readers of this Final Report must take care not to overlook the fact that certain "individual" responses represent the views of many members. The feedback statement tries to identify if respondents were associations or individual firms and tries to point out if geographic origin differs to assist readers in this respect.

5. The publication of this Final Report was delayed following the conclusion of the consultation due to adjustments made in response to market feedback. These revisions led to a new approach, dependent on the disclosure annexes outlined in Commission Delegated Regulation 2019/980, which were only recently amended.

3 Feedback statement

6. The following sub-sections include summaries of the feedback to the consultation and ESMA's response to the feedback received. Since similar points were made in response to Qs 1 to 6, ESMA has addressed all feedback collectively in sub-section 3.2 rather than replying to the feedback to each individual question.

Note: References to Annexes and items in this Final Report follow the numbering in the recently amended CDR on scrutiny and disclosure. Consultation Paper

[4] One stakeholder provided general remarks only, explaining why 38 was typically the highest count in response to individual questions and not 39.
[5] Of which several of the 19 individual firms are also understood to be members.

respondents typically used the numbering from the '[CP Annex (clean)]' in [ESMA's consultation paper on draft technical advice relating to the PR]. Thus, consultation responses that mention Annex 15 from the [CP Annex (clean)] are cited here as referring to Annex 17 in the amended CDR on scrutiny and disclosure and so on.

3.1 Summary of stakeholder feedback

General feedback provided by respondents about the draft Guidelines

27 general responses were provided of which 24 were from one Member State

7. Twenty-seven respondents comprised of issuer associations and individual firms provided general comments about the draft Guidelines. Twenty-four were from one Member State. The others included national issuer associations from two other Member States and a pan-European issuer association.

8. The general and mostly critical comments (featuring in twenty-six of the twenty-seven responses) reflected the following concerns:

- The current interpretation of the PR should allow for the introduction of new features within existing securities through supplements, rather than requiring a new base prospectus for every modification. The PR only prohibits the introduction of new types of securities, not new features. A clearer distinction needs to be made between new "type" of securities as opposed to "features".

- The Listing Act aims to reduce regulatory burden and facilitate access to capital. The proposed strict guidelines go against those goals. If more convergence is to be achieved, it should be based on the more flexible approaches of some NCAs.

- In relation to use-of-proceeds bonds, and securities with a "sustainable" component, prohibiting supplements for such bonds creates barriers to their issuance and contradicts sustainability goals outlined in the EU Green Deal.

9. While the general comments were mostly critical of the Guidelines, one of the twenty-seven general responses was more supportive. The national issuer association providing this feedback stated that the proposed Guidelines reflect the status quo in their market. While they emphasised the importance of being able to introduce new structures through a supplement under certain conditions, their opinion was that the proposed guidance was not particularly problematic.

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

38 responses were provided of which 24 were from one Member State.

Agreed with Guideline 1 (four of the thirty-eight respondents)

10. One pan-European investor association supported ESMA's approach to clarify the role of supplements, agreeing they should only be used to update existing material information and not to introduce new product types. They considered ESMA's approach as important for consistency across Member States, investor protection and issuer confidence. Moreover, while they agreed that product variations could sometimes be addressed using supplements, this should only occur if the underlying structure, risk-return profile, and asset class are already clearly covered in the base prospectus. Otherwise, where a new security introduces materially different risks, payoffs, or underlying exposures, a new prospectus should be required - particularly in the context of distribution to retail investors. The same respondent stated it is essential that NCAs have sufficient time to scrutinise product innovations through a full prospectus review, rather than through a more limited supplement process, to protect investors from being exposed to products that were not properly disclosed or understood at the point of sale.

11. A national investor association and an individual firm[6] fully supported ESMA's approach for similar reasons to those already described. The individual firm added that supplements are not supposed to be used to introduce entirely new securities to a base prospectus.

12. Finally, a national issuer association agreed with the guidelines because they reflect factors which market participants already consider in their jurisdiction.

Disagreed with Guideline 1

13. The remaining thirty-four responses were against the proposed guidance. While 70% were from the same Member State and provided almost identical feedback, there was pushback by issuer associations from three other Member States in addition to pushback from issuer associations with a pan-European / "global" focus and a pan-European individual firm. A noteworthy observation is that the negative responses could be described as "issuer focused" as opposed to (retail) investor focused[7], which reveals a difference in attitude

[6] The individual firm in this case should be considered as "other".

[7] The classification of respondents can be complex, as there are respondent firms who are likely both "issuers" and "investors". This observation is thus based on the title of certain respondents, e.g., "issuer [XYZ] association" as well as the emphasis on "burden for issuers" versus "risk to investors" in the feedback provided.

according to whether a stakeholder's focus was ease of issuance versus investor protection.

14. The main arguments against the proposed guidelines were:

- The guidance is too restrictive and unclear: The argument was that the guidance takes a narrow interpretation and is overly restrictive. It conflates "type" of security with "features" and in doing so will likely increase costs and complexity for issuers. It was stated that a more flexible approach that allows for minor adjustments through supplements is needed as well as guidance which adequately differentiates between security features and types of securities. The following bullets summarise how certain respondents understood "feature" as opposed to type:
    - Payment features: Several pan-European issuer associations and two national issuer associations from separate Member States argued that including a new fixed-to-variable interest payment clause, or a new step-up / step-down interest payment structure, should be allowed using a supplement. That is because the result is not a fundamentally new type of security but simply a modification of the conditions for calculating interest.
    - New guarantee: A national and a pan-European issuer association believed a supplement should be permitted to include a new guarantee. They argued that the addition of a guarantee is a feature which is solely advantageous from an investor point of view, especially if a security was previously unsecured. They added that the guarantor assumes an additional legal obligation, which strengthens the investor's position, and thus there is no reason why a supplement should not be used to add guarantees. Another national issuer association argued that a new guarantor should not be introduced via supplement but that amendments to an existing guarantee should be permitted. However, another pan-European issuer association stated that a new guarantee, which might involve a fundamental change to the entity or parent company, thus potential disclosure on creditworthiness, could be considered a situation in which a new type of security arises, concluding that credit is generally a differentiating factor and therefore a situation in which a new base prospectus is likely needed.
    - A new type of underlying: Two issuer associations argued that it should be possible to use a supplement to include a new type of underlying insofar as the base prospectus already contains information about a related underlying. For example, if share indices are described as an underlying in the base prospectus, adding another share index or comparable underlying by supplement should be permissible. In such cases, the mechanics,

volatility and historical performance of the new underlying would follow the same structure, as defined in Annex 17, to those already laid out in the base prospectus.

- The guidance makes incorrect use of the materiality concept: The argument was that linking the assessment of whether a supplement introduces a new type of security to the concept of materiality could severely restrict issuers' ability to take remedial action in the event of an error or inaccuracy. It was argued that, as currently drafted, the guidance implies that any security feature not described in the base prospectus is not considered material for the purposes of Article 23(1) PR and that the obligation to prepare and file a supplement rectifying a security feature-linked error or inaccuracy in the base prospectus should not be impaired. For example, if a security related feature is mistakenly entered erroneously or left blank, and such error or inaccuracy is material, the use of a supplement must be available.

  Moreover, the argument was extended to state it would be to the detriment of investors and issuers if any and all errors or inaccuracies related to a security feature in the documentation are automatically deemed non-material for the purposes of the supplement regime, regardless of whether the error is material or not in the context of the assessment of the securities and, while important, the materiality aspect should not be used as a tool for assessing other aspects, such as whether the supplement introduces a new type of security.

- The guidance makes incorrect distinctions between mandatory and voluntary supplements: The argument was that focusing on the Article 23(1) PR supplement trigger is inappropriate when dealing with a base prospectus and the list of securities which may be issued. That is because Article 23(1) PR was not drafted with programme base prospectuses in mind and, instead, relates to scenarios when existing "information" in the prospectus, rather than existing "instruments", changes and the mandatory nature of supplements in that specific context is without prejudice to voluntary supplements in others. It was further argued that there are circumstances in which supplements are mandatory, such as under Article 18 of the CDR on financial information, supplements, advertisements, and metadata, but this is without prejudice to the right to prepare a supplement in other circumstances under Article 23(1) PR.

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

38 responses were provided of which 24 were from one Member State.

Agreed with Guideline 2 (two of the thirty-eight respondents)

15. One national investor association agreed with the guidance in Guideline 2. In their view, it will require firms to plan ahead and to include all expected product types in their base prospectus, thus minimising uncertainty for all parties by encouraging full and comprehensive disclosure upfront. Moreover, they argued it will help supervisors and investors to clearly understand what kind of products are within the scope of the base prospectus. An individual firm[8] who agreed with the guidance generally subscribed to this reasoning.

Mixed views (three of thirty-eight respondents)

16. A pan-European investor association, a pan-European issuer association and a national issuer association had mixed views. They were not against the guidance and agreed with the overall objective but highlighted the difficulties it will create. For example:

- One believed the term "reasonably expected" is open to interpretation, particularly for smaller issuers or those less familiar with regulatory expectations, and that while ESMA's examples were helpful in identifying what might be considered a new type of security, they fall short of setting clear criteria to formalise what qualifies as a distinct security "type" or what level of variation remains within the permitted scope of the base prospectus for the purpose of a supplement. They feared this may lead to "defensive" preparation of base prospectuses and thus substantial front-loading making them less comprehensible. They nonetheless stressed that plans to issue materially different product types are rarely finalised within 12-months, therefore a new prospectus — rather than a supplement — should remain the norm and concluded that supplements should not become a workaround to avoid proper scrutiny under the full prospectus regime.

- One stated that the guidance was more aligned with the legislative provisions[9] and general policy direction of the Listing Act. However, citing paragraph 16 of the CP[10],

[8] The individual firm in this case should be considered as "other".
[9] The precise meaning of this statement was not specified but was understood to refer to Article 23 PR as amended.
[10] The full text of paragraph 16 of the CP was as follows: "If an issuer sought to add a new currency as an underlying in a base prospectus that generally provides for the issuance of currency-linked notes, the supplement in that case should not be treated as a "product supplement". That is because the base prospectus provides the general contractual provisions applicable to issuances of that type of security and the supplement makes changes relating

they highlighted the importance of not restricting the introduction of underlyings using supplements, provided that the base prospectus includes essential disclosures such as risk factors and overarching terms and conditions related to that type of underlying.

- One agreed with the guidance because it emphasised the importance of including general contractual provisions in base prospectuses but stated that it does not address the practical issue of identifying if a new type of security arises during the validity of a base prospectus.

Disagreed with Guideline 2

17. The remaining thirty-three responses were generally against the guidance. Again, 70% were from the same Member State and submitted similar feedback. Additionally, issuer associations from three other Member States, plus pan-European issuer associations and an issuer association with a "global" focus as well as a pan-European individual firm, pushed back.

18. Among the main arguments against were the following:

- The guidance is not practical: A common theme across the thirty-four responses was that the guidance is too restrictive and impractical. It was stated that issuers already try to predict their needs and to front load base prospectuses, but circumstances can change, making the ability to use a supplement important. Respondents argued that issuers will not want to incur the cost, or take the time required, to include mechanics that they do not anticipate being even remotely necessary at the point of programme update. Therefore, in their view, a practical approach is needed to maintain agility in issuances and the use of base prospectuses, which the current guidelines would purportedly undermine. Moreover, a comment interspersed throughout responses to the CP[11] was that Guidelines 1 and 2 together will cause difficulties and so their cumulative effect needs to be considered.

to a security which the issuer is already permitted to issue. Similarly, making limited adjustments to existing redemption formulae or formulae for calculating interest or limited changes to risk factors should also be permissible by supplement with respect to securities that are already described in the base prospectus. By contrast and by way of example, if an issuer tried to introduce sustainability-linked securities or crypto-assets as an underlying to a base prospectus not containing any associated general contractual provisions or disclosures, this should not be permitted using a supplement."

[11] This comment was not limited to Guideline 2 per se. It was part of the general narrative in negative feedback towards the Guidelines as a whole and was communicated with varying degrees of nuance.

- Oncoming problem in relation to benchmarks and structured products if the general approach in both guidelines is maintained: A pan-European issuer association and a national issuer association drew attention to a potential major issue that may arise due to ESMA's proposed guidance and an upcoming change to the EU Benchmarks Regulation applicable as of 1 January 2026. Namely, due to revisions to the EU Benchmarks Regulation, administrators of non-significant benchmarks (such as proprietary indices) will be removed from ESMA's Article 36 benchmarks register after 30 September 2026. As a result, benchmarks provided by such administrators will not benefit from the reduced disclosure permitted for administrators in ESMA's Article 36 benchmarks register under item 2.2.2 of Annex 17[12]. Consequently, this might require index disclosure for every potential index in a base prospectus at the outset and that is not possible from a practical perspective. In their view, an alternative approach is to permit the use of supplements for such index disclosure. And this could possibly be subject to a separate index review process, whereby NCAs review an index description on a standalone basis and approve it for the purposes of a particular programme, also allowing for such information to be otherwise incorporated by reference.

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.

37 responses were provided of which 24 were from one Member State

19. Two main views were expressed in response to question three:

- The guidance will lead to longer base prospectuses: This was the view of two pan-European issuer associations, four national issuer associations from three different Member States, and five individual firms from different Member States including one with a pan-European focus.

  The argument was that if issuers are required to include every potential type of product in their base prospectus, the document will become bloated. It will likely lead to prospectuses describing numerous structural features and securities categories, the majority of which may not even be issued, making it more difficult for investors to filter out the core of securities on offer, thus resulting in less comprehensible prospectuses.

[12] Or Annex 15 in the CP Annex (clean) (securities giving rise to payment or delivery obligations linked to an underlying asset).

- The guidance **will not** necessarily lead to longer base prospectuses: This was the view of one national investor association, one pan-European issuer association, one issuer association with a “global” focus and two national issuer associations.

  The argument was that the guidance merely reflects an existing practice to front load base prospectuses. Thus, it is unlikely to have a material effect on prospectus length.

20. Separately, a pan-European investor association and a national investor association, argued that detailed disclosure helps investors make better-informed decisions and includes important safeguards for complex or structured products. However, the former was concerned about base prospectuses being too long and less comprehensible, especially for retail investors. They supported a modular approach, which includes a clear, general base prospectus paired with short, tailored supplements that highlight product-specific features in plain language. They suggested that this approach should be encouraged and applied proportionately, with more extensive disclosure required for structured products and more focused summaries for simpler products.

21. Otherwise, responses focused less on length than the potential general impact of the guidelines. Twenty-two respondents from one Member State stated that issuers using base prospectuses usually include all the products they plan to issue during their annual update. While this makes prospectuses long, they did not think it makes them less comprehensible, referring to the benefit of all information for a single product in one place. In their view, the ability to use supplements to quickly react to market conditions is more important. This view was shared by a pan-European issuer association and an issuer association with a "global" focus who were more concerned about the general policy direction and its impact on the use of supplements.

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[13].

[13] The reference to Annex [21] relates to the proposed annex in ESMA’s consultation paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on financial information, supplements, advertisements and metadata. Section 5 of the consultation paper discusses the proposed annex. Annex [21] is also in ESMA's final report with technical advice concerning the Prospectus Regulation and the RTS updating the

37 responses were provided of which 24 were from one Member State.

22. The main views expressed in response to question four are set out under the headings below.

Green bonds and sustainability-linked notes <u>are new</u> securities

23. A pan-European investor association, a national investor association, and an individual firm[14], argued that green bonds and sustainability-linked securities are distinct securities.

24. One of the investor associations asked ESMA to explicitly state that green bonds and sustainability-linked notes should be treated as distinct securities in the guidance unless their specific ESG features are already clearly described in the base prospectus. They argued that although these instruments may share structural similarities with conventional bonds, they introduce material risks and commitments, including sustainability performance targets, reputational exposure, and ESG-related coupon adjustments. And this requires full and transparent disclosure about risks which are not comparable to those relating to financial underlyings, such as currencies or indices. Moreover, they stated that ESG-linked products rely on issuer-level performance, often involving external verification and subjective criteria, thus, to treat them as regular bonds may lead to a shortfall in disclosure and opens the door to greenwashing through ex-post reclassification.

25. Similarly, the other investor association stated that 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. Investors thus need to clearly understand how these differ from regular bonds.

Mixed position

26. One national issuer association argued that it is important to distinguish between (i) changes that solely affect the use of proceeds and the associated risk factors and (ii) changes that affect the structure of the terms and conditions of the instruments. In their view, the introduction of a green component in a bond typically pertains to the use of proceeds and may necessitate updates to the risk factors, whereas the inclusion of a sustainability-linked feature represents a structural modification of the terms and conditions. As such, they saw a stronger case to use a supplement for "use of proceeds" disclosure in the context of "regular" green bonds than for more structured instruments.

CDR on financial information, supplements, advertisements and metadata. The corresponding annex number in the CDR on scrutiny on disclosure, as amended, is Annex 23.

[14] The individual firm in this case should be considered as "other".

Green bonds and sustainability-linked notes <u>are not</u> new securities

27. The remaining thirty-three responses generally argued that green bonds and sustainability-linked notes are not new securities. While 70% of those responses were from the same Member State and were similar, national issuer associations from three other Member States, a pan-European issuer association, an issuer association with a "global" focus, and a pan-European individual firm made this argument. It is worth noting that those making the argument could be described as "issuer" rather than (retail) "investor" focused[15], which reveals a difference in attitude according to whether a stakeholder's focus was ease of issuance versus investor protection.

28. The main arguments were as follows and resembled the commentary under question one about security "type" versus "features":

- <u>They are fundamentally the same</u>: Essentially all thirty-three argued that green bonds and sustainability-linked notes should not be treated as distinct securities relative to "regular" bonds and structured products. In their view, the specificities related to green aspects do not change their intrinsic nature, or type, which is a bond or a structured product.

  A pan-European individual firm stated that a comparison of the non-ESG characteristics of a green and regular bond would not reveal any major differences, i.e., interest rates, calculation methodologies, payment mechanisms, the parties involved etc., would all typically be addressed in the base prospectus for both. Three issuer associations, including one with a pan-European focus, another with a "global" focus and a third representing a member state stated that use of proceeds bonds generally, i.e., not only referring to green bonds, and sustainability-linked bonds have the same capital and income risk as their traditional counterparts and therefore should not be deemed new "types" of instruments.

  - <u>Payment features</u>: Extending these arguments, one national issuer association argued that a sustainability-linked note with a redemption premium should be compared to other non-equity securities with premium payments on redemption, such as a make-whole call option or a change of control put option with a premium put price. Adding that if the base prospectus already includes non-equity securities with such redemption premium features, a sustainability-linked note with a redemption premium should not be deemed a new security. Likewise, if a base prospectus

[15] The classification of respondents can be complex, as there are respondent firms who are likely both “issuers” and “investors”. This observation is thus based on the title of certain respondents, e.g., “issuer [XYZ] association” as well as the emphasis on “burden for issuers” versus “risk to investors” in the feedback provided.

already includes a non-equity security step-up feature, such as a credit rating related interest rate step-up, then a sustainability-linked note with an interest rate step-up should not be deemed a new security.

Annex 21 (now Annex 23)[16]

29. Five issuer associations stated that the oncoming Annex 21 (now Annex 23) cannot be a basis for determining that a new type of security is included in a base prospectus. In their view, certain annexes are only applicable in connection with certain features of securities and do not affect their legal nature. They stated that the inclusion of a sustainable feature does not change the nature or risk profile of the security, which will still be a bond or structured product.

30. Two of those associations added that, as long as the ESG characteristics do not change the underlying repayment structure, they should not be considered new types of securities. Only if the ESG components determine the structure and significantly influence the repayment modalities is it then possible to categorise the instrument as a new type of security.

Advantage to EuGBs

31. Three issuer associations stated that disadvantaging "other" green bonds relative to those that fulfil the EuGBs must be avoided. This was in reference to ESMA's consultation paper[17] which spoke about treating information in an EuGB factsheet as Category C information, to facilitate the issuance of EuGBs using incorporation by reference. They noted that "other" green bonds will likely be impacted by the fact that several items in Annex 21 (now Annex 23) are Category A[18], thus creating more onerous conditions for them. Moreover, they said this situation presupposes that the planning and documentation of the sustainability aspects of the "other" bonds are at a very advanced stage. However, this may not be the case and the likely consequence of the categories in Annex 21 (now Annex 23), and the guidance overall, is that "other" green bonds would have to occur through standalone issues with their own prospectuses.

[16] Following the revision of Annex 21 (now Annex 23) since the release of the CP, some comments may be affected. Nevertheless, the feedback statement's narrative reflects the comments as originally submitted.
[17] ESMA's consultation paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on financial information, supplements, advertisements and metadata.
[18] For instance, items 2.1, 2.2, 2.3, 2.4 and 3.1 for green bonds and 4.1.1, 4.1.3 from Annex 21 (now Annex 23) for sustainability-linked bonds. Following the revision of Annex 21 (now Annex 23) since the release of the CP, some comments may be affected. Nevertheless, the feedback statement's narrative reflects the comments as originally submitted.

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.

37 responses were provided of which 24 were from one Member State.

32. Varied proposals were provided in response to this question. Some were high-level and general, others were more worked out referring to firm rules to apply to product supplements.

General comments - clearer criteria are needed

33. A pan-European investor association and a national investor association suggested that ESMA could go further by developing a unified framework with clearer definitions and product categories. This would help prevent divergent interpretations by NCAs and promote a more harmonised approach across member states. In their view, a structured classification-based on risk profile, payoff structure, or underlying exposure-could clarify when a supplement is appropriate and when a new prospectus is required.

34. Two national issuer associations stated that an approach could be to define what the distinguishing criteria for a new type of security are, but it was acknowledged how difficult that is and that, even if such boundaries were accompanied by a non-exhaustive list of examples, it is likely that NCAs would still need to undertake case-by-case assessments.

35. By extension, another individual firm stated that it would be useful to specify the principles under which a supplement would be sufficient, and under which a new base prospectus would be required. They argued that, in principle, the refinement or the update of terms that are by essence in the base prospectus, and which could not have been specified at the time of the publication of the prospectus, should be allowed via supplement because it does not change the nature of the security.

General comments - the approach does not align with the Listing Act

36. Twenty-three respondents from the same Member State set out factors they believed need to be considered under the Listing Act when finalising the guidance for product supplements. In this respect, they believed:

- EU harmonisation for product supplements should be based on the more flexible approaches currently adopted by some NCAs. This is to be in line with the Listing Act goals of burden reduction and access to capital.

- The letter of Article 23(4a) of the PR should not be expanded to prohibit the use of supplements in situations where, in their view, the PR clearly allows supplements to be used, and which have not raised any concerns from the market.

37. They then argued that where additional information can be provided through a supplement without changing the type of securities, no base prospectus or draw down prospectus should be required. In their view, the criteria to determine "new type of security" should be based on fundamental distinctions, such as warrants versus bonds, equity securities versus non equity securities. To them, irrelevant factors in determining if a product supplement materialises are when the supplement includes:

    - use of proceeds disclosure, e.g., for green bonds, social bonds, EuGBs.
    - provisions in relation to which general principles are already included, e.g., step-up, step-down, premium and early redemption.
    - new risk factors.
    - new payoffs.
    - use of another Annex to the PR (such as the upcoming Annex 21 (now Annex 23)).

Annex-based approach

38. A pan-European issuer association, an issuer association with a "global" focus and a national issuer association, suggested that a more concrete and clear way to deal with the subject matter is to use to disclosure annexes themselves to identify product supplements. They provided worked out examples stating that the test of whether an instrument is of a new "type" should be whether a supplement involves the following additional securities note annexes or building blocks that were not previously relevant to the base prospectus, i.e. if a base prospectus was prepared using Annex 14 - non-equity securities - a product supplements arises if it would introduce disclosure from the following annexes not already used when preparing the original base prospectus:

    - Annex 11 - regarding units issued by collective investment undertakings of the closed-end type.
    - Annex 13 - depository receipts issued over shares.
    - Annex 17 - payment or delivery obligations linked to an underlying asset.
    - Annex 18 - underlying share.
    - Annex 19 - asset-backed securities.
    - Annex 21 - guarantees.

39. Moreover, acknowledging the role of structured products in debates about products supplements, they argued the same logic should apply within Annex 17 itself, i.e., that Annex 17 be sub-divided according to underlying type in that annex:

- Security
- Reference Entity or Reference Obligation (or pool of underlying Reference Entities/Reference Obligations)
- Index
- Interest rate
- Basket of underlyings; and
- "Other" underlying (that does not fall within the points above).

Two track supplement regime

40. Most other proposals were variations of those already described. However, one notable exception is that three respondents, including a pan-European issuer association, a pan-European individual firm, and a national issuer association, suggested that different processes could apply to product supplements. For example:

- Creating a separate approval process for supplements that introduce new but related product types. This separate process would be subject to its own review times.
- Creating a separate approval process for voluntary and/or product supplements.
- Creating a separate approval process for wholesale product supplements as opposed to retail.

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

29 responses were provided of which 23 were from one Member State.

41. There were two contrasting positions in response to question six.

The Guidelines will not increase costs

42. A pan-European investor association, a national investor association and a national issuer association argued that the Guidelines will not significantly increase costs. The pan-European investor association stated that plans to issue fundamentally new products are rarely finalised within the 12-month validity of a base prospectus and that, in such cases, a new prospectus is the appropriate means to disclose information about the new product and not a supplement.

43. Moreover, the pan-European investor association and national investor association added that the main benefit of the Guidelines lies in increased legal certainty, supervisory convergence, and investor protection, because by clarifying when a supplement is appropriate, they reduce the risk that firms introduce riskier or more complex products without sufficient prior disclosure. This will help to avoid divergent treatment across Member States and to reinforce a level playing field in EU capital markets and is particularly important for retail investor trust.

The Guidelines will increase costs

44. The remaining twenty-six respondents (twenty-three from one Member State, two pan-European issuer associations and one national issuer association from another Member State) were very concerned about the implications of the Guidelines in their present form. Each believed the Guidelines will create significant burden for the market and will greatly reduce flexibility in the use of supplements. They argued that the likely consequence of the Guidelines would be the proliferation of new base prospectuses. Twenty-five of these respondents highlighted that the cost of producing a new base prospectus relative to a supplement can range between five to ten times as much and is resource intensive because it takes much longer to produce a base prospectus.

3.2 ESMA's response to stakeholder feedback

Introductory remarks

45. ESMA welcomes the comprehensive feedback in response to the CP. It is important to determine the way forward for product supplements, which have generated diverse opinions and convergence issues, as emphasised in Recital 54 of the Listing Act. Several arguments presented in the feedback were previously considered by NCAs, including contrasting views, such as those suggesting that the proposed approach merely mirrors the status quo for product supplements versus those stating that it is overly restrictive and unclear. However, a key takeaway from both positive and negative feedback is that the final Guidelines need to be more clear-cut to ensure regulatory consistency.

46. Section 3.2 collectively addresses similarities in the responses to questions 1 to 6 of the CP, by presenting ESMA's rationale for the final Guidelines. The Guidelines incorporate several key themes from the feedback, including (i) the need for a clearer distinction between new "types" of securities and new "features" (ii) the importance of burden reduction and access to capital under the Listing Act and the current emphasis on simplification in the EU (iii) the political significance of ESG-related securities, and (iv) the need to protect investors. Regarding the latter, it is important to ensure that the introduction of new "types" of securities into base prospectuses does not compromise investor protection. Clear boundaries around the use of supplements are therefore necessary.

47. The final Guidelines provide those boundaries through criteria that can be easily applied. These criteria should mitigate the complex and nuanced discussions which until now have occurred in relation to product supplements and which are inherent to the question, "*what is a new security?*". They consider different types of non-equity securities, such as "plain vanilla" types, structured products with various underlyings, ESG-related securities and ABS securities with concentrated exposure to new credit. A significant benefit of the final Guidelines is that their ease of application is likely to reduce the risk of divergence and inconsistent outcomes across jurisdictions, such as an issuer in one jurisdiction being required to prepare a new base prospectus versus a supplement in another. Overall, ESMA considers these Guidelines will bring significant burden reduction, therefore aligning with the political goals of the Listing Act.

Initial proposal and way forward

48. The CP proposal aimed to clarify the role of a supplement under Article 23 of the Prospectus Regulation[19] and the type of information that may or not be included in a supplement. To assist this, examples of acceptable and unacceptable disclosures were provided. Further examples were included to the extent that issuers appropriately frontload their base prospectuses. While some respondents, including a national issuer association, believed the proposal mirrored current practices and generally supported it, most feedback suggested the approach was unclear. There were concerns it might lead to restrictive application of the Guidelines and would undermine the burden reduction envisioned under the Listing Act. More direct and clear-cut guidance was deemed necessary to prevent further difficult discussions between issuers and NCAs about the distinction between security "types" and "features", thereby pre-empting impediments to smooth access to capital and continued divergence across NCAs.

49. The final Guidelines therefore provide clear criteria to identify product supplements, rather than brief examples and principles relating to product supplements. The revised approach is based on feedback from large issuer associations, who advocated using the disclosure annexes in the CDR on scrutiny and disclosure as the basis to identify a product supplement. ESMA notes this alternative approach was considered in discussions with NCAs prior to the CP and therefore welcomes this suggestion returning in the feedback. Moreover, this approach would not appear to be an issue for those who were more supportive of the CP proposal. Notably, since they emphasised the need for convergence

[19] Article 23 on supplements to the prospectus states: "(1) Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus which may affect the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay. […]."

and investor protection, both of which may be better achieved through this approach, which provides a clearer basis to identify product supplements.

Overview of Annex-based approach to be applied going forward

50. The final Guidelines methodically outline how to determine if disclosure in a supplement introduces a new type of security, based on the annexes in the CDR on scrutiny and disclosure. A first and general Guideline focuses on new disclosure from an annex that was not previously applicable to the base prospectus. Three subsequent Guidelines focus on disclosure for structured instruments, requiring an analysis of targeted information items within the annexes, such as for structured products, ABS securities, and sustainability-linked securities. More information about this "refined" approach is provided below.

Guideline 1

Guideline 1: If a supplement involves disclosure from the following securities note annexes or building blocks that did not apply to the securities included in the base prospectus, the supplement should be treated as introducing a new “type” of security, and a new base prospectus should be required:

- **Annex 17 – Securities giving rise to payment or delivery obligations linked to an underlying asset**
- **Annex 18 – Underlying share**
- **Annex 19 – Asset-backed securities**
- **Annex 21 – Guarantees**

51. While the final Guidelines and annex-based approach introduce more regulation and boundaries in relation to product supplements, care was taken to consider excessive burden. The application of the final Guidelines and annex-based approach should, therefore, take inspiration from a principle in the CP: if a base prospectus generally provides for a type of security, it is acceptable to introduce related disclosure using a supplement. That principle featured in the CP, but ESMA acknowledges it may not have been clear. The annex-based approach is a better way to communicate it and is generally a cleaner and more predictable way to regulate product supplements, since it relies on concrete components of the CDR on scrutiny and disclosure.

Refined assessment for structured products and ABS securities

52. The proposed feedback to utilise Item 2.2.2 of Annex 17 to identify "new securities" based on different underlying assets was adopted. However, the list was expanded to reflect other

relevant variables and ESMA guidance. A reference to crypto assets as an underlying asset was therefore added to the proposed list as well as material from ESMA Q&A 12.2[20] or 1015[21]. Additionally, for thoroughness, a reference to Item 3.1.7 (a) of Annex 14, which interacts with Annex 17, was included. For the sake of clarity and in consideration of reducing burden, the guidance also explicitly states that, for base prospectuses including indices as an underlying, supplements can be used to introduce disclosure about proprietary indices, and this should not be treated as a new type of underlying. This acknowledges the practical concern of frontloading base prospectuses with such disclosure, noting that an issuer may not ultimately issue such linked instruments.

Guideline 2

Guideline 2: In relation to Annex 14 – Securities note for non-equity securities – and Annex 17 – Securities giving rise to payment or delivery obligations linked to an underlying asset – the assessment should be refined based on the type of underlying as per Item 3.1.7 (a)[22] of Annex 14 and Item 2.2.2 of Annex 17. This means that a supplement may include disclosure about the following types of underlying if the same type of underlying was included in the base prospectus:

- **The underlying is an equity security**
- **The underlying is a non-equity security**
- **The underlying is a reference entity or reference obligation (for credit-linked securities)**
- **The underlying is an index**
- **The underlying is an interest rate**
- **The underlying is a commodity**
- **The underlying is a crypto-asset**
- **The underlying is a basket of underlying**
- **The underlying does not fall within the categories specified above.**

53. Additionally, guidance is provided for Asset-backed securities (ABS). In such cases, reference is made to Items 2.2.11(a), 2.2.16, and 3.6 of Annex 19, considering the need for caution in those instances relating to equity, synthetic, or ABSs with a derivative component.

[20] ESMA31-62-1258 Q&As on the Prospectus Regulation.
[21] ESMA_QA_1015.
[22] "Where the rate is not fixed:"

Guideline 3

Guideline 3: In relation to Annex 19 – Asset-backed securities – the assessment should be refined based on whether a supplement involves Items 2.2.11 (a), 2.2.16 or 3.6 that were not previously included in the base prospectus. This means that a supplement should not be used to introduce disclosure in relation to a new obligor or entity guaranteeing the obligations as referred to in item 2.2.11 (a), new equity disclosure as referred to in item 2.2.16, or new disclosure for the reference asset or underlying as required by items 3.6 (a) or (c).

Refined assessment for ESG-securities

54. The question of whether ESG-securities should be treated as a new "type" relative to non-ESG counterparts was an important aspect of the CP. ESG-securities range from "plain vanilla" types to highly structured ones, carrying degrees of inherent risks and investor expectations, which make it difficult to determine where to draw a line. The question is compounded by the upcoming Annex 23, which, following the general logic of the annex-based approach, suggests that ESG-securities could be treated as a new type simply due to the inclusion of disclosure from Annex 23 in a base prospectus for the first time. ESMA, however, recognises this might not always be proportionate.

55. Accordingly, considering the various factors and arguments for and against treating ESG-securities as a new type, the final Guidelines limit the assessment to Sustainability-linked non-equity securities[23]. Therefore, a supplement should not be used to add disclosure about Sustainability-linked non-equity securities[24] if they were not mentioned in the base prospectus. In contrast, disclosure related to use of proceeds bonds or European Green Bonds[25] may be added to a base prospectus providing for "regular" bonds.

[23] The CDR on scrutiny and disclosure, as amended, refers to "sustainability-linked non-equity securities" in Annex 23, whereas the CP Annex (Clean) referred to "sustainability-linked bonds" in Annex 21. The latter is also the case in the Final Annex (Clean) as part of ESMA's technical advice.
[24] Idem.
[25] Section 5 referring to European Green Bonds in the CP Annex (Clean) and Final Annex (Clean) as part of ESMA's technical advice no longer features in Annex 23 of the CDR on scrutiny and disclosure, as amended. This reference reflects market feedback on the earlier version of Annex 21.

Guideline 4

Guideline 4: In relation to Annex 23 – Non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives – the assessment should focus on whether the security amounts to a Sustainability-linked non-equity security as per Section 3 of that Annex. This means that a supplement should not be used to add disclosure in relation to Sustainability-linked non-equity securities if they were not previously included in the base prospectus.

56. The decision to limit the assessment to Sustainability-linked non-equity securities is based on technical considerations. Unlike use-of-proceeds bonds and European Green Bonds, whose underlying mechanics are generally similar to "plain vanilla" bonds, Sustainability-linked non-equity securities are considered to possess features which distinguish them more significantly. For instance, they are typically tied to specific targets inherent to this type of instrument, which also make them quite different in appearance to "regular" non-ESG structured products. In this case, ESMA's choice considers significant points in the feedback about investor protection, burden reduction, and broader ESG-related goals. It seeks to strike a balance based on all arguments presented and to generally align with the logic underpinning the Annex-based approach.

Other points in the feedback

57. As outlined at the beginning of section 3.2, ESMA's response and rationale for the final Guidelines addresses the main concerns raised in response to questions 1 to 6. They were largely centred around issues of clarity, practicality, and the need for greater certainty, all of which the annex-based approach should resolve. However, ESMA recognises that there are other specific matters warranting direct commentary, which are discussed in the following paragraphs.

58. **Length of prospectuses**: Question 3 in the CP specifically asked whether the proposed approach in draft Guideline 2 would result in longer and more complex prospectuses. Responses were divided, but overall length appeared less an issue than the impractical cumulative effect of draft Guidelines 1 and 2. While the Annex-based approach may not necessarily solve for length, it should allay concerns about the cumulative impact since the approach has changed.

59. **General proposals and two-track supplements**: In addition to the Annex-based approach, various proposals were put forward to address product supplements in response to question 5. Some were general suggestions about how to identify and regulate product

supplements. However, their broad and principled nature would make them challenging to apply in contrast to the Annex-based approach which was adopted.

60. Concerning the suggested two-track approaches to supplements, it is challenging to determine how they would address the definition of a new security to fulfil the mandate in Article 23(8) PR. More importantly, Article 23 PR does not currently envisage a two-track approach to supplements. Adopting such an approach would likely require an amendment to the PR.

61. **Cost/benefits of these proposed Guidelines**: In response to question 6, some respondents indicated that the proposal in the CP would not significantly increase costs. They even suggested that it would enhance legal certainty, convergence, and investor protection. However, a considerable number of respondents expressed serious concerns, highlighting that producing a base prospectus is significantly more expensive and resource-intensive (up to ten times more) than producing a supplement. The level of concern about these costs appeared to vary depending on the Member State. Respondents from certain Member States viewed the proposals as less problematic compared to others.

62. ESMA's adoption of the annex-based approach should help address these concerns. This approach aims to mitigate the claim, raised in the feedback, that a proliferation in base prospectuses relative to supplements will materialise, while also ensuring better legal certainty, convergence, and investor protection. While it is acknowledged that the guidance introduces more regulation in this area, it is sufficiently high-level to facilitate burden reduction. In particular, it carries forward the principle in the CP that a supplement can be used when a base prospectus generally provides for a certain type of product. The measure of "generally provided for" is set at the level of a class of product and not granular features. For example, what is relevant is whether commodity-linked securities are generally provided for in the base prospectus as a class, and not whether the base prospectuses omit or includes references to oil, gas or gold. Similarly, if currency-linked securities are generally provided for in the base prospectus, the addition of previously omitted currencies such as the dollar or yen should not present an issue. Setting the threshold of "generally provided for" at the level of product class should help reduce burden and prevent difficult discussions about granular features.

63. **Benchmarks**: The concerns about front-loading base prospectuses for proprietary indices should now be addressed, as the Guidelines explicitly state that a supplement can be used for index-linked securities if the base prospectus generally provides for that type of instrument. Beyond the subject of these Guidelines, ESMA acknowledges that the decision to limit the number of administrators in the benchmark register may impact disclosure in relation to structured products, but there are no further comments on that in this Final Report.

64. **New Guarantee**: ESMA acknowledges the argument that adding a new guarantee might enhance investor protection by securing previously unsecured instruments. However, the practical effect of this could be the introduction of a registration document concerning the new guarantor via a supplement, which is not a desired outcome. Furthermore, the introduction of a new guarantee may also bring additional credit risk, making it uncertain that it necessarily improves the investor's position. Taking these factors into account, the revised guidance permits amendments to an existing guarantee through a supplement. However, if the amendment introduces a new guarantor, it can only be done via a supplement if the guarantor has an approved and valid registration document.

4 Annexes

4.1 Annex I - Summary of consultation questions

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

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

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.

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[26].

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.

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

[26] The reference to Annex [21] relates to the proposed annex in ESMA's consultation paper on draft technical advice concerning the Prospectus Regulation and on updating the CDR on financial information, supplements, advertisements and metadata. Section 5 of the consultation paper discusses the proposed annex. Annex [21] is also in ESMA's final report with technical advice concerning the Prospectus Regulation and the RTS updating the CDR on financial information, supplements and metadata. The corresponding annex number in the CDR on scrutiny on disclosure, as amended, is Annex 23.

4.2 Annex II - Mandate

Article 23(8) of the Prospectus Regulation states ESMA shall by 5 June 2026 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. Moreover, ESMA may generally issue guidelines under Article 16 of the ESMA Regulation.

4.3 Annex III – Guidelines specifying 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

1 Scope

Who?

1. These Guidelines apply to competent authorities, as defined in the Prospectus Regulation, and financial market participants, including the persons responsible for a prospectus under Article 11(1) of the Prospectus Regulation.

What?

2. These guidelines are to assist competent authorities and financial market participants, in identifying when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation. These Guidelines have been drafted pursuant to Article 23(8) of the Prospectus Regulation and Article 16(1) of the ESMA Regulation.

When?

3. These Guidelines apply from two months after the date of their publication on ESMA's website in all official languages of the EU.

2 Legislative references, abbreviations and definitions

2.1 Legislative references

CDR on financial information, supplements, advertisements, and metadata	Commission Delegated Regulation 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301[27]
CDR on scrutiny and disclosure	Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Commission Regulation (EC) No 809/2004[28]
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[29]
Listing Act	Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises[30]
Prospectus Regulation or PR	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC[31]

[27] OJ L 166 21.6.2019, p. 1.
[28] OJ L 166 21.6.2019, p. 26.
[29] OJ L 331, 15.12.2010, p. 84.
[30] OJ L 2024/2809, 14.11.2024
[31] OJ L 168, 30.6.2017, p. 12.

2.2 Acronyms and Abbreviations

CP	Consultation Paper
EC	European Commission
EEA	European Economic Area
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
EU	European Union

2.3 Definitions

Competent authority	an authority designated under Article 31 of the Prospectus Regulation
Product supplement	an abridged term to refer to a "supplement that is to be considered to introduce a new type of security that is not already described in a base prospectus."

3 Purpose

4. These Guidelines are based on Article 23(8) of the Prospectus Regulation and Article 16(1) of the ESMA Regulation. The objective of these Guidelines is to clarify when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation and to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of the provisions in Article 23(8) of the Prospectus Regulation.

4 Compliance and reporting obligations

4.1 Status of the guidelines

5. This document contains guidelines issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

6. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practice, including where particular guidelines within the document are directed primarily at financial market participants.

4.2 Reporting requirements

7. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA to cfr@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

8. Financial market participants are not required to report whether they comply with these guidelines.

5 Guidelines specifying 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

5.1 Overview

9. Considering Articles 23(4a) and 23(8) of the Prospectus Regulation, these Guidelines aim to clarify when a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus drafted pursuant to Article 8 of the Prospectus Regulation.

5.2 The Guidelines

10. To ensure investor protection and foster regulatory convergence across the EU, guidance is necessary to clarify the circumstances in which an assessment as to whether a supplement is to be considered to introduce a new type of security that is not already described in a base prospectus because a supplement should not add information about new types of securities into a base prospectus. These Guidelines clarify those circumstances and are designed to help financial market participants and national competent authorities make such assessment.

11. **Guideline 1: If a supplement involves disclosure from the following securities note annexes or building blocks that did not apply to the securities included in the base prospectus, the supplement should be treated as introducing a new "type" of security, and a new base prospectus should be required:**

    - **Annex 17 – Securities giving rise to payment or delivery obligations linked to an underlying asset**
    - **Annex 18 – Underlying share**
    - **Annex 19 – Asset-backed securities**
    - **Annex 21 – Guarantees**

12. This means that if the base prospectus was prepared under Annex 14 – Securities note for non-equity securities – a supplement should not be used to add disclosure from Annexes 17, 18, 19 or 21.

13. Additionally, concerning Annex 21 - Guarantees - if a guarantee is included in the base prospectus, the details of that guarantee can be amended through a supplement. However, any amendment aimed at introducing a new guarantor can only be introduced by the incorporation by reference of an approved and valid registration document. Such amendment should not lead to the approval of a new

registration document via the supplement.

14. **Guideline 2: In relation to Annex 14 – Securities note for non-equity securities – and Annex 17 – Securities giving rise to payment or delivery obligations linked to an underlying asset – the assessment should be refined based on the type of underlying as per Item 3.1.7 (a)[32] of Annex 14 and Item 2.2.2 of Annex 17. This means that a supplement may include disclosure about the following types of underlying if the same type of underlying was included in the base prospectus:**

- **The underlying is an equity security**
- **The underlying is a non-equity security**
- **The underlying is a reference entity or reference obligation (for credit-linked securities)**
- **The underlying is an index**
- **The underlying is an interest rate**
- **The underlying is a commodity**
- **The underlying is a crypto-asset**
- **The underlying is a basket of underlying**
- **The underlying does not fall within the categories specified above.**

15. For instance, if a base prospectus includes "index" as a possible type of underlying, disclosure on new proprietary indices may be added via a supplement as this is not a new type of underlying based on this approach. However, a supplement should not include a commodity if the base prospectus does not include commodities as a type of underlying.

16. Additionally, in line with paragraph 13 of these Guidelines (with reference to Annex 21 – Guarantees), a supplement should not be used to introduce disclosure in relation to a new entity or issuer as referred to in Item 2.2.2 (a)(i) of Annex 17, unless the relevant disclosure is incorporated by reference using an approved and valid registration document.

17. **Guideline 3: In relation to Annex 19 – Asset-backed securities – the assessment should be refined based on whether a supplement involves Items 2.2.11 (a), 2.2.16 or 3.6 that were not previously included in the base prospectus. This means that a supplement should not be used to introduce disclosure in relation to a new obligor or entity guaranteeing the obligations as referred to in item 2.2.11 (a), new equity disclosure as referred to in item 2.2.16, or new disclosure for the reference asset or underlying as required by items 3.6 (a) or (c).**

[32] "Where the rate is not fixed:"

18. Additionally, in line with paragraph 13 of these Guidelines (with reference to Annex 21 – Guarantees), if such information is contained in a previously approved registration document or securities note then it could be included using a supplement. Otherwise, it should not.

19. **Guideline 4: In relation to Annex 23 – Non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives – the assessment should focus on whether the security amounts to a Sustainability-linked non-equity security as per Section 3 of that Annex. This means that a supplement should not be used to add disclosure in relation to Sustainability-linked non-equity securities if they were not previously included in the base prospectus.**

20. However, in the context of Annex 23, disclosure in relation to (i) non-equity securities with ESG-related use of proceeds or (ii) structured non-equity securities advertised as having an ESG component or pursuing an ESG objective, may be added to the base prospectus using a supplement.

21. For the avoidance of doubt, the approaches laid down in preceding paragraphs also apply to EU-Follow on and EU Growth issuances base prospectuses.