



## **THE DANISH FSA ON THE NEW PROCESS FOR SUBMISSION OF PROSPECTUSES, A NEW ESMA STATEMENT ON REQUIREMENTS FOR SUSTAINABILITY INFORMATION IN PROSPECTUSES, AND DISCLOSURE OF MANAGEMENT CHANGES AS INSIDE INFORMATION**

*27 October 2023*

### **Introduction**

On 19 September 2023, the Danish Financial Supervisory Authority (the “**DFSA**”) published a newsletter regarding DFSA’s new process for submission of 1<sup>st</sup> prospectus drafts, a new ESMA statement on requirements for sustainability information in prospectuses, and how an issuer should handle management changes as insider information.

## **Process for Submission of Prospectus**

On 28 March 2023, the DFSA published a newsletter on a new process for submission of 1<sup>st</sup> prospectus drafts. The DFSA has changed how an issuer or the issuer's advisors should submit the 1<sup>st</sup> prospectus draft for the DFSA's review going forward.

The first part of the approval process continues as before, with the issuer or its advisors contacting the capital markets office of the DFSA to coordinate the processing of the prospectus.

The issuer or its advisors must send an email with a proposed timetable to the DFSA's prospectus mailbox, [prospectuses@ftnet.dk](mailto:prospectuses@ftnet.dk). Subsequently, the timetable will be coordinated with the handlers of the prospectus.

As part of the new process, once the timetable has been coordinated, the issuer or its advisors will receive an email from the handler containing a link to an online form and a case number to be used when submitting the 1<sup>st</sup> prospectus draft.

When the prospectus is ready for the initial review, the issuer or its advisors must fill out the form with the required information and attach the prospectus draft, timetable, cross-reference list, and other relevant documents, which will be sent to the DFSA in accordance with the coordinated timetable.

The issuer or its advisors will then receive confirmation that the DFSA has received the materials.

The remaining part of the process will continue as before.

The new process is now officially in effect.

Link to the DFSA's newsletter can be found [here](#) (in Danish).

## **New ESMA Opinion on Requirements for Sustainability Information in Prospectuses**

On 11 July 2023, ESMA published an opinion [here](#) addressing how issuers should fulfil specific disclosure requirements related to sustainability information as outlined in the Prospectus Regulation<sup>1</sup>. Issuers and their advisors should take note of its content and consider it when preparing prospectuses.

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<sup>1</sup> 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 (the "**Prospectus Regulation**").

In October 2022, the DFSA released news regarding disclosure requirements for prospectuses of green bonds. ESMA’s new opinion aligns with the approach previously outlined by the DFSA regarding green bonds. However, ESMA’s opinion has broader coverage, encompassing disclosure requirements for both equity securities (such as shares) and non-equity securities (such as bonds). ESMA’s opinion is thus relevant for all prospectuses and not only prospectuses of green bonds.

### What is the purpose of the opinion?

ESMA aims to:

Ensure that national competent supervisory authorities adopt a coordinated and uniform approach to the examination of sustainability-related information in prospectuses under the prevailing regulations.

Provide issuers and their advisors with an understanding of the information that national competent supervisory authorities in the EU expect issuers to include in their prospectuses.

Support investors in making informed investment decisions regarding securities issued as sustainable.

### Which information about sustainability should be included in a prospectus?

Issuers are required to incorporate “necessary” sustainability-related information in the prospectus and the final terms of the securities pursuant to Article 6(1) of the Prospectus Regulation. The Prospectus Regulation and the delegated prospectus regulation<sup>2</sup> do not explicitly define sustainability-related information, but issuers and their advisors should nonetheless consider whether the information qualifies as “necessary” under Article 6(1) of the Prospectus Regulation. Whether information is “necessary” depends on an assessment of whether the information is essential and significant for an investor to make a well-informed assessment of:

1. The assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor.
2. The rights attached to the securities.

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<sup>2</sup> 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.

3. The reasons for the issuance and its impact on the issuer.

The circumstances of the issuer and the type of securities in question are crucial in determining which information is necessary.

In the prospectus, issuers should also provide the basis for all statements about the issuers or their securities' sustainability profile. This can be achieved by:

1. Indicating whether the issuer or its securities adhere to a specific sustainability standard and including necessary information about this standard in the prospectus.
2. Referring to underlying data and assumptions.
3. Referring to third-party research or analyses.

Issuers should present this information in an easily comprehensible form, and terms related to sustainability should be sufficiently defined. Moreover, the prospectus should not contain sustainability-related disclaimers over factors that the issuer can control.

Prospectuses for shares must include sustainability-related information that has been disclosed in the issuer's non-financial reporting in accordance with the Non-Financial Reporting Directive (NFRD)<sup>3</sup> and future sustainability reporting under the Corporate Sustainability Reporting Directive (CSRD)<sup>4</sup>, if such information can be characterised as necessary under Article 6(1) of the Prospectus Regulation.

For green bonds, issuers are expected to disclose the use of proceeds and provide information enabling investors to assess the sustainability initiatives underlying the issuance. The prospectus may include a summary of the necessary information related to the issuer's "Green Bond Framework" or refer to relevant legislation used to categorise the sustainability profile of the bonds.

For bonds issued to pursue ESG objectives, the prospectus should detail selected key performance indicators (KPIs), sustainability goals, and information that allows investors to gauge

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<sup>3</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

<sup>4</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Directive 2013/34/EU amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EU and Directive 2013/34/EU, as regards corporate sustainability reporting.

the alignment between the KPIs, their related sustainability targets along with relevant sector-specific targets, and the overall sustainability strategy of the issuer.

#### Information in marketing materials and the prospectus

Issuers should also be aware of including sustainability-related information in marketing materials. If sustainability-related information is used for marketing purposes, it clearly indicates that such information is necessary under Article 6(1) of the Prospectus Regulation and should, therefore, be a part of the prospectus. Additionally, information in marketing materials must align with the information in the prospectus.<sup>5</sup>

Consequently, based on the above, the DFSA will include these factors in its review and control of prospectuses going forward.

Link to the DFSA's newsletter can be found [here](#) (in Danish) and link to ESMA's opinion [here](#).

#### **Disclosure of Management Changes as Inside Information**

The DFSA has released a newsletter containing previously issued guidelines for the disclosure of management changes as insider information. We have previously discussed these guidelines in our newsletter on 11 May 2023.

Link to our previous newsletter regarding the DFSA Guidelines can be found [here](#).

Link to the DFSA's newsletter can be found [here](#) (in Danish).

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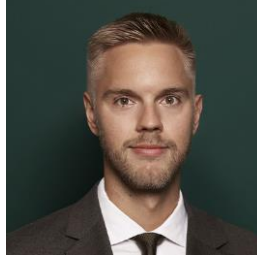
<sup>5</sup> The Prospectus Regulation, Art. 22(3) and (4).

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us.**



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