

Green bonds and legal risk

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Purpose and Agenda

Disclaimer:
This presentation represents the views of the speaker and does under no circumstances constitute legal advice or recommendations.

Purpose

- To discuss legal risk in relation to sustainable finance, in particular green bonds

Agenda

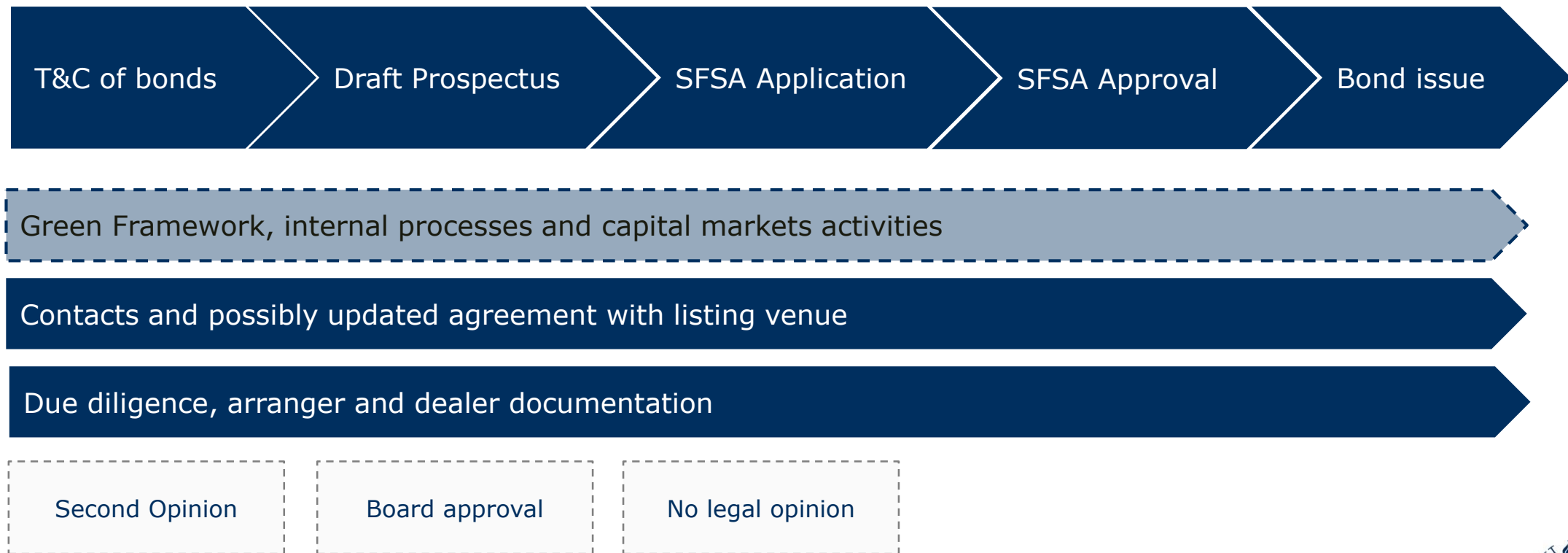
- What is legal risk and why is it important?
- The creation of legal risk in the process of issuing a green bond
- In particular, legal (un)certainty in relation to the issuer's green undertakings

What is legal risk?

- Legal risk in the context of bonds and loans
- What sets sustainable purpose instruments apart from others?
 - Rapid regulatory *and* market developments
 - Untested in court – compare to similar cases
 - Compare to credit rating and recharacterization risks
- Distinguish from other kinds of *climate related* risks

Main legal documentation process - example

Green Bonds included under Swedish law MTN Program

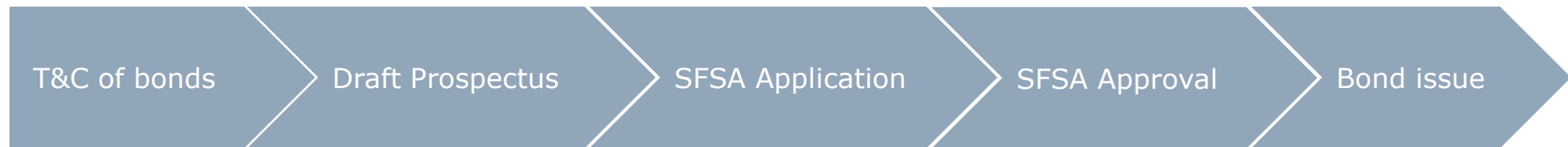


What makes the documentation accommodate green bonds?

1. FINAL TERMS ALLOW GREEN SELECTION

2. PROSPECTUS RISK SECTION HAS GREEN WARNINGS

3. SOMETIMES, T&C WILL HAVE CARVE-OUT FOR GREEN BREACHES IN "BREACH OF OTHER OBLIGATIONS".



Green Framework, internal processes and capital markets activities

Contacts and possibly updated agreement with listing venue

Due diligence, arranger and dealer documentation

Second Opinion

Board approval

No legal opinion

Main legal documentation, cont'd

Swedish EMTN	Danish EMTN	Finnish EMTN	Swedish SEK MTN
Overview of program contains description of Green Bonds and warning that no EoD or other compensation if failure to apply funds/ comply with green framework.	Nothing in overview of program	Nothing in overview of program	Overview of program contains description of Green Bonds and warning that no EoD or other compensation if failure to comply with green framework.
Risk disclosure in prospectus states that green failures will not be EoD and not entitle investors to other compensation .	Risk disclosure in prospectus states that breach against use of proceeds undertaking or other green failure will not be EoD.	Risk disclosure in prospectus states that breach against use of proceeds undertaking or other green failure will not be EoD.	Risk disclosure in prospectus states that green failures will not be EoD and not entitle investors to other compensation .
Use of proceeds section of prospectus stating that green bonds used for green purposes.	Use of proceeds section of prospectus stating that green bonds used for green purposes.	Use of proceeds section of prospectus stating that green bonds used for green purposes.	No separate use of proceeds section.
No carve-out in general T&C.	No carve-out in general T&C.	No carve-out in general T&C.	Carve-out in general T&C.
Selection of green bond purpose is made under " Other Provisions " of the final terms.	Selection of green bond purpose is made under " Contractual Provisions " of the final terms.	Selection of green bond purpose is made under " Other Provisions " of the final terms.	No Part A/Part B in form of final terms, use of proceeds included in part that is signed.

Two separate questions

1. Does the current green bond program documentation provide for enforceable green promises?
 - Market consensus is (generally) **no** – at least when it comes to events of default
 - Legal analysis however inconclusive, especially in light of
 - the lack of uniform drafting standards
 - the green use of proceeds as a core feature
 - asymmetric regulation of the green elements

2. How *should* green bonds be structured?
 - In order to best promote the mitigation of climate change by way of the financial markets
 - At the same time as keeping legal risks at a minimum
 - And considering the EU Taxonomy

Aspects when considering best practice

- Who is best equipped to bear the risk associated with green failure?
 - Or does the lack of responsibility in the bond documentation mean that there is no such risk?
- What are the regulatory constraints?
- Does it make sense to diversify between “blue chip” and other issuers?
- Are some sectors different than others?
- Does it make sense to seek a harmonized standard?



Thank you!

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