

**ESG Data and Ratings Working Group  
International Regulatory Strategy Group (IRSG) &  
International Capital Market Association (ICMA)**

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**5 October 2023**

Dear all,

**RE: Consultation on Draft Code of Conduct for Environmental, Social and Governance (“ESG”) Ratings and Data Product Providers**

We are pleased to respond to the International Regulatory Strategy Group (IRSG) and International Capital Market Association (ICMA) consultation on the UK’s Draft Code of Conduct for Environmental, Social and Governance (ESG) Ratings and Data Product Providers.<sup>1</sup>

Since the formation of the ESG Data and Ratings Code of Conduct Working Group (DRWG) in November last year, the UK Sustainable Investment and Finance Association (UKSIF) alongside many of our members, from both our investor and service provider networks, have been strongly supportive of the group’s core objectives in developing an industry-wide code to enhance transparency and trust of the ESG data and ratings market in the UK.

It is encouraging to see the swift progress achieved already by the working group in recent months, and we look forward to seeing this momentum maintained and the final Code published before the end of this year. We remain optimistic that the Code of Conduct can help build greater trust in ESG data and ratings products in the UK, protect market integrity, promote more effective competition among providers, and importantly achieve this at pace while HM Treasury considers further its approach to a formal regulatory regime for ESG ratings.

As Treasury continues to determine its regulatory approach, we anticipate that the Code of Conduct will, in the shorter-term, swiftly enhance standards, transparency, innovation, and competition across the market. We see the Code playing a prominent role in these respects in the coming years, both in the UK and internationally, particularly given the growing prominence of ESG ratings in financial markets and the wider economy, and use of ratings

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<sup>1</sup>UKSIF’s response is informed by our membership, though this does not necessarily reflect the views and perspectives of our entire membership, either individually or collectively.

as a tool to inform financial market participants' strategies, capital allocation, and stewardship activities.

In our response, we highlight our strong support for the draft Code's objectives, main principles, and provisions, while drawing attention to a number of specific considerations for further exploration by the IRSG, ICMA, and FCA ahead of the finalised Code later this year.

These considerations include the following: the importance of appropriate sequencing of the UK's Code of Conduct with HM Treasury's approach to regulation, interoperability of the UK's Code with global voluntary codes and regulatory regimes, including in the European Union, promoting a level playing field between larger and smaller providers, and oversight of the Code which we believe should be supervised by the FCA in future.

### **About UKSIF**

The UK Sustainable Investment and Finance Association (UKSIF) is the UK's leading membership organisation for sustainable finance, committed to promoting a financial system that works for the benefit of the environment, society, and us all.

UKSIF represents a diverse range of financial services institutions and investors committed to these aims, and our more than 320 members-representing over £19trn of global assets under management (AUM)- include investment managers, pension funds, banks, financial advisers, law firms, ESG data and research providers, NGOs, among others.

UKSIF and our membership have played a prominent role to embed sustainability in the UK's public policy and regulatory frameworks, and across the financial system, over recent years and find ways to overcome barriers to the growth of sustainability in the UK. We are a representative on a number of advisory taskforces to policymakers and industry providing guidance on delivery of a number of sustainable finance initiatives, including the UK's 'green taxonomy,' the Sustainability Disclosure Requirements (SDRs), voting disclosures, and the integration of social issues in the UK's pensions industry.<sup>2</sup>

### **UKSIF's support for the draft Code of Conduct for ESG ratings and data**

As highlighted in our introduction to this response, we remain optimistic with the direction of travel pursued by the ESG Data and Ratings Code of Conduct Working Group (DRWG), and we believe the draft Code represents a very strong starting point ahead of the finalising of proposals later this year.

We welcome the FCA's approach taken in commissioning an industry-led solution to deliver a Code of Conduct for ESG ratings and data products, and in particular it is positive to see the Code's close alignment, in many respects, with recommendations outlined by the International Organization of Security Commissions (IOSCO) and existing, leading voluntary codes from across different jurisdictions, such as Japan and Singapore. More specifically,

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<sup>2</sup>For more information, please visit [www.uksif.org](http://www.uksif.org).

we endorse the Code's principles-based and 'future-proofed' nature, its clarity and relative simplicity for firms to report against, and the approach taken to allow the Code's signatories to satisfy its expectations in a way that is most relevant to their business model and structure.

Similarly to the IOSCO's recommendations, the draft Code's principles have remained relatively high-level, which we think is appropriate for the purposes of a voluntary Code and, we hope, will help broaden the number of industry signatories in the coming months. This high-level, principles-based approach recognises that the Code will seek to have wide applicability across the ESG ratings and data market, applying to a large portion of ESG-related ratings, data products, and services, and we would recommend this broad approach to scope is maintained in the finalised Code.

Wider applicability may help to minimise risks of an overly extensive process for determining the range of products falling within scope of the UK's Code. Drawing on the experience of the Financial Services Agency of Japan (JFSA) in devising a voluntary code of conduct, our understanding is that the long lead-in time to establish the scope here led to negative outcomes. Similar lengthy delays in the UK in defining the scope will need to be avoided as far as possible, especially given the rapid evolution we are seeing in this market.

We hope the industry-led approach can effectively complement the more prescriptive regulatory approach by Treasury, which we continue to support and closely engage with policymakers on.

### **Importance of appropriate sequencing of initiatives on ESG ratings and data**

A core challenge that we, and a number of our members, continue to identify relates to the sequencing between industry-led and regulatory initiatives on ESG ratings and data in the UK, including the respective timelines for adoption. There remains some uncertainty, we think, over the interplay and links between HM Treasury's upcoming regulatory approach and the UK's Code of Conduct.

In our recent response to HM Treasury's consultation, we reiterated our view that further clarification is required from Treasury to the market and wider stakeholders on how the UK's Code may interact in future with, and be aligned with, Treasury's ongoing work to consider bringing in ratings providers into the FCA's 'regulatory perimeter'.<sup>3</sup>

A clearer, over-arching policy vision is needed from UK policymakers on the inter-links between these two initiatives, the extent to which they will be integrated, their respective objectives, and what areas of the market and types of products each initiative will seek to encompass. Following the finalising of the Code later this year, we would strongly welcome HM Treasury and FCA outlining this clarity to stakeholders on the alignment across both initiatives.

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<sup>3</sup>UKSIF's recent response to HM Treasury's consultation on regulation of ESG ratings can be read here- <https://uksif.org/wp-content/uploads/2023/06/UKSIF-Response-HM-Treasury-consultation-Future-regulatory-regime-for-ESG-ratings-providers-30-June-2023.pdf>.

More specifically, we would welcome the publication of specific timelines, envisaged phases, and the overarching objectives for both initiatives from Treasury and FCA, and for this to be regularly updated for the market going forward. This clarity would assist our service provider members to better understand the costs and implications of the rules being proposed by both regimes, as well as our wider investor network impacted by this market.

In terms of Treasury's role, we would like to see policymakers closely examine the industry's uptake of the Code in informing its upcoming approach to regulation. As part of this, policymakers should seek to provide additional clarity for the industry on the extent to which the Code will remain relevant to providers in the medium and long-term as formal regulation comes into effect, which could help providers in allocating resources to comply with both the Code and a more formal regime.

Finally, our expectation is that envisaged sequencing challenges will be a particular issue for ESG data products for a number of reasons. These include the nascency of this market and the relatively greater difficulties in comparing and defining ESG data products and raw ESG data when compared with ESG ratings or scores, making the boundaries for regulation appear less clear.

### **Interoperability with global regulatory regimes and voluntary codes**

A second challenge we envisage with the UK's Code of Conduct is the extent to which it may be superseded in the coming years by other jurisdictions' voluntary codes and regulatory regimes, including from the European Union. The UK will need to continue to move ahead quickly with its Code of Conduct in order to maximise the benefits afforded by a 'first mover advantage' status.

We see opportunities for the UK's voluntary Code to serve as a leading global example for ratings and data providers operating across jurisdictions and for their respective regulatory authorities, particularly should the UK's Code be finalised later this year ahead of the EU's rules and Singapore's voluntary code.<sup>4</sup> As part of this, we would like to see UK policymakers and industry continue to actively promote the UK's approach to its Code with the objective of encouraging other jurisdictions considering voluntary codes to draw on our model.

The UK's Code should benefit in these respects from its relative clarity, flexibility, and alignment with the IOSCO's recommendations, as well as from the involvement of a wide cross-section of industry participants and international regulators, such as the JFSA and Monetary Authority of Singapore (MAS), with its Code. This should help lend further credibility to the UK's Code as a global standard.

There may be a number of challenges as part of this, one being our expectation that the EU's regulations will likely become the de-facto, predominant standard for ESG data and ratings providers in the next several years, and could supersede countries' approaches to

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<sup>4</sup>The UK's Code could enjoy a 'first mover advantage' globally, particularly given the prospect of some delays to the finalising of the EU's regulations, potentially beyond next year's European Parliament elections.

both voluntary codes and formal rules. As such, we could see practical implementation challenges emerge in the coming years for providers catering to both the UK and EU market for example, especially should both jurisdictions' rules not align.

This means that the FCA, ICMA, and IRSG will need to further explore in the coming months how the UK's finalised Code can be as interoperable as is possible and complement the EU's upcoming initiatives. In addition, policymakers in the UK and industry bodies should help to influence the IOSCO's work going forward in order to further drive global regulatory consistency.

In the longer-term, given the proliferation of codes in recent years our expectation is that the IOSCO should take a prominent role to facilitate mutual recognition across countries' voluntary codes of conduct and where possible promote the standardisation of international approaches to these codes.

This coalescing role could draw on the work of standard-setting institutions such as the Task Force on Climate-Related Financial Disclosures (TCFD) and International Sustainability Standards Board (ISSB) on harmonisation of corporate disclosures, and would recognise that mutual recognition and memorandums of understanding (MOUs) between countries can be best facilitated by a global body such as IOSCO, rather than lying necessarily with individual jurisdictions.

We believe more consideration may need to be given in the UK's Code to approaches being considered by or adopted by other countries that have already delivered progress in terms of new rules and codes, such as Japan, Hong Kong, India, and Singapore. To date, we are pleased to see some positive learnings from Japan's Code of Conduct and other international codes within the UK's draft version.

More broadly, we would reiterate that the FCA will need to continue to closely collaborate with international standard-setters, such as IOSCO and ESMA, and regulatory authorities, with greater international alignment of rules having potential to achieve the following benefits for financial market participants and investors: enhancing innovation in the market, reducing barriers for UK-based investors in accessing ESG products and ratings, promoting investor protection, and supporting new and smaller players in the UK's market.

There will be considerable benefits in more harmonised regulatory approaches due to the highly global nature of ESG ratings, as well as the set-up and structures of many global providers with the construction of an ESG rating normally involving employees based in a number of different countries. A high degree of interoperability, we expect, would help to reduce compliance costs and complexity for providers while helping to keep costs for end-users of these services at a more reasonable level. It would bring benefits for regulatory authorities across jurisdictions, potentially easing supervisory processes and responsibilities.

We do recognise challenges in promoting alignment and that national Codes may need to naturally differ slightly to reflect respective countries' markets.<sup>5</sup>

A long-term challenge for the UK's Code, and all policymakers, will be navigating the increasingly complex global regulatory landscape for ESG data and ratings, and we would be pleased to convene a select group of our service provider and investor members to discuss this in further detail.<sup>6</sup>

An example of the benefits of mutual recognition will be to facilitate greater access to providers' ratings for investors across different countries should providers be deemed as complying with a single Code, or limited series of Codes, that are setting the highest bar in terms of good practice. As previously mentioned in our response, there is real potential we think for the UK's Code to set a leading standard for other countries to follow.

### **Scope of the UK's Code of Conduct and impact on smaller providers**

We largely support the broad scope highlighted in the UK's draft Code of Conduct, and the proposed implementation timeframes envisaged for ESG data products and ESG ratings to comply.

The relatively more gradual approach for ESG data products compared with ESG ratings has been recognised in the draft version, which is appropriate and mirrors the effective implementation approach in the JFSA's voluntary code. We would recommend this sequenced approach is maintained in the UK's finalised version, one reason being that there will be certain provisions in the UK's Code better suited for ESG ratings that may not translate across as seamlessly for ESG data products.

Policymakers will need to be attuned to a number of complexities in determining which precise groups of ESG ratings and ESG products may fall within scope of a formal regulatory regime versus a voluntary code in the UK. In our recent response to Treasury's consultation, we highlighted a number of examples, including some products that could be categorised and fall in between an ESG score and raw ESG data, such as Climate Value-at-Risk (Climate VaR).

Drawing on the previous experience of the JFSA in devising a voluntary code of conduct, delays in the UK in defining the scope for products in the UK's Code will need to be avoided as far as possible, especially given the evolution we are seeing in this market globally.

Separately, given the wide applicability of the Code, which we support, there may be a case for additional groups, beyond ratings and data providers, to be encouraged to report against the Code's principles. One way of encouraging a wider take-up by the market would

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<sup>5</sup>Some limited regional divergence may be inevitable given the large number of jurisdictions considering voluntary codes and the IOSCO's recommendations, including the EU, Japan, Hong Kong, Singapore, India, among other countries.

<sup>6</sup>In the long run, we highlighted in our response to HM Treasury's consultation on regulation of ESG ratings that Treasury and FCA should actively consider mutual recognition arrangements (or similar) with the EU and other third-party jurisdictions for overseas providers to ensure that ESG ratings are not unduly restricted to users in the UK, and to retain a competitive market.

be for the FCA to confirm shortly a 'comply or explain' approach to the Code. We provide further details in the following section of our response on the role we envisage for the FCA in formally overseeing the Code and its implementation going forward.

The additional groups of Code signatories could include fund managers that are distributing and selling their ESG ratings and assessments for commercial purposes in the market publicly to investors (e.g. in the context of selling an investment fund rather than for reporting purposes to their clients), consultancies, think-tanks, and NGOs that may be offering ratings.

In our recent response to Treasury's consultation, we highlighted that the risk of harm to investors will remain regardless of which entity is providing the rating. There may be natural limits to the UK's upcoming rules should wider groups not be examined by policymakers and regulatory authorities, either through the Code or formal regulation.

In terms of the impacts on smaller providers, we would very much welcome some form of a proportionate approach in the UK's Code to smaller ratings providers in order to continue to promote effective competition and drive innovative approaches in the UK's market.

More competition among providers will bring tangible benefits to the ratings community and users, many of whom, to different degrees, will be reliant on data sets provided by more specialist providers, such as those focused on biodiversity and nature data. Many investors and users will welcome disparate ESG data sets, which can provide advantageous insights informing capital allocation, and the depth and diversity of sustainability data provided by this group of ratings providers will need to be maintained under the UK's upcoming Code and rules.

One important benefit of the Code should be that a minimum baseline of standards are in place for all data and ratings providers from the onset, regardless of their size though we would strongly welcome consideration of additional mechanisms that could better support smaller providers under the Code and ultimately encourage them to report against it.

### **Oversight of the UK's Code of Conduct**

We would like to see the FCA confirm in due course its approach to overseeing and formally supervising the UK's Code of Conduct in future. This includes, in time, potentially collating and assessing ESG data and ratings providers' annual disclosure statements against the Code once this has been embedded more fully across the UK's market.

In the immediate term, the regulator should shortly consider how providers' disclosures against the Code's principles can be outlined publicly in as clear and decision-useful a way as possible for users of ESG ratings and data.

One initial option is for all providers reporting against the Code to be required to publish a link to their annual disclosure statement publicly on their website, with more detailed disclosures privately available to clients on request.

Alongside this, the FCA should consider hosting a webpage on its website with a list of all providers reporting against the Code and their annual disclosure statements, which would draw on the JFSA's approach and would parallel the UK's regulatory approach to the proxy

advisory industry.<sup>7</sup> In the longer-term, the FCA could then provide more formal oversight of the UK's Code, drawing on the experience of the Financial Reporting Council's supervision of the UK Stewardship Code. This includes the Stewardship Code's approach in naming firms and accrediting their activities and performance, as well as follow-up assessment to ensure consistent, measurable progress over time.

While the Stewardship Code could be a model for the voluntary Code of Conduct to follow, regulatory oversight of the Code would need to take into account, and complement, a future role alongside Treasury in supervising a more formal regulatory regime in the coming years.

Although reporting against the Code by providers is on a voluntary basis, our expectation is that market pressures will drive providers to continue to disclose further information on their reporting against the UK's Code, and the regulator should keep under review a formal mechanism to compile disclosures (e.g. a centralised registry). These pressures from clients we expect may lead to the Code becoming a naturally evolving 'living document', adapting over time in response to changes in the market.

In due course, the FCA and industry bodies together may want to consider how standardisation of disclosures can be enhanced in time in order to promote comparability by users of ESG ratings and data. As part of this, the approach taken in the Monetary Authority of Singapore's (MAS's) Code of Conduct-involving a compliance statement for providers to publish noting the specific principles of the Code they have adhered to and explaining any deviation from its six main principles-could be drawn on in the UK.

Once the Code is in place, consideration will need to be given by industry bodies and FCA to ways that can actively encourage as many providers as possible, and wider groups, to sign up to the Code and to apply a broad selection of their products and ratings as well.

There may be a scenario of 'cherry-picking' whereby some providers do not want to acknowledge that they will only report against some of the Code's principles, and we expect further exploration of ways to boost uptake of industry reporting will be needed.

Given the prospect of the UK's voluntary Code becoming a de-facto mandatory regime in the coming years, due to market pressures and client demand, this will further necessitate the importance of minimising any overlaps between the UK's Code and Treasury's regulatory approach.

## **Conclusion**

We look forward to seeing the work of the ESG Data and Ratings Code of Conduct Working Group (DRWG) continue to progress at pace, and we stand ready to support the FCA, IRSG, ICMA, and wider industry stakeholders once the Code has been finalised later this year.

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<sup>7</sup>We note the FCA has a webpage on its website highlighting all authorised proxy advisers operating in the UK, alongside certain disclosure obligations (e.g. on conflicts of interest) under the Proxy Advisors Regulations 2019- <https://www.fca.org.uk/markets/primary-markets/proxy-advisors>.

We see considerable opportunities for the Code of Conduct in delivering greater transparency and high-quality standards in the UK's ESG data and ratings industry, and providing more confidence to investors and other users in these products, including their underlying methodologies.

Finally, we see a role for data and ratings providers, investors, and industry associations, such as UKSIF and other groups, to more effectively inform the users of ratings, and wider stakeholders, of the prominent role of ESG ratings and data products in financial markets and the wider economy, and how they can be best placed to support the transition a more sustainable future.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'James Alexander', with a stylized initial 'J' and a horizontal line extending to the right.

**James Alexander**  
**Chief Executive**