[Below are the consultation questions to which we responded. Please note that our responses are highlighted in yellow. Any non-highlighted text has been copied verbatim from the consultation.]

SECTION 1. QUALITY AND SCOPE OF NON-FINANCIAL INFORMATION TO BE DISCLOSED

Question 1

The feedback received from the online public consultation on corporate reporting carried out in 2018 suggests that there are some significant problems regarding the non-financial information currently disclosed by companies pursuant to Directive 2014/95/EU ("the Non-Financial Reporting Directive" or NFRD) Likewise, ESMA's 2018 Activity Report gathers evidence that shows there is significant room for improvement in the disclosure practices under the NFRD.

To what extent do you agree or disagree with the following statements about possible problems with regard to non-financial reporting? Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree.

- The lack of comparability of non-financial information reported by companies pursuant to the NFRD is a significant problem.

- The limited reliability of nonfinancial information reported by companies pursuant to the NFRD is a significant problem.

- Companies reporting pursuant to the NFRD do not disclose all relevant non-financial information needed by different user groups. [Response: 5 = totally agree]

Question 5

In addition to the provisions of the NFRD, several other EU legislative acts require disclosures of sustainability-related information for financial sector entities:

- The Regulation on prudential requirements for credit institutions requires certain banks to disclose ESG risks as of 28 June 2022.
- The Disclosure Regulation requires financial market participants to disclose their policies on the integration of sustainability risks in their investment decision-making process and the adverse impacts of investment decisions on sustainability factors, as of 10 March 2021.
- The Taxonomy Regulation creates new reporting obligations including for companies subject to the NFRD, starting in December 2021.

To what extent do you think that the current disclosure requirements of the NFRD ensure that investee companies report the information that financial sector companies will need to meet their new disclosure requirements?

- Not at all
- To some extent but not much
- To a reasonable extent

- To a very great extent
- Don't know / no opinion / not relevant

Question 6

How do you find the interaction between different pieces of legislation? You can provide as many answers as you want.

- It works well
- There is an overlap
- There are gaps
- There is a need to streamline
- It does not work at all
- Don't know / no opinion / not relevant

Question 7

In order to ensure better alignment of reporting obligations of investees and investors, should the legal provisions related to non-financial reporting define environmental matters on the basis of the six objectives set out in the taxonomy regulation: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy (5) pollution prevention and control; (6) protection and restoration of biodiversity and ecosystems?

- Yes
- No
- Don't know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 1 to 7:

The current NFRD does not require companies to disclose the information that asset managers will need to meet the new disclosure requirements under the Disclosure and Taxonomy Regulations.

The Disclosure and Taxonomy Regulations require asset managers to obtain non-financial information of investee companies and then aggregate and disclose information at the manager level and product level. The draft regulatory technical standards (RTS) for the Regulations would require financial market participants (including asset managers) to make extensive new disclosure about investee companies, without any corresponding legal obligation on those companies to provide the information needed to make those disclosures. The Commission should align the disclosure obligations in the NFRD with the Regulations so that asset managers can meet their legal disclosure obligations.

In particular, asset managers will need additional information from investee companies in the following areas so that they can comply with the disclosure requirements in the Disclosure and Taxonomy Regulations:

- **Information on a company's principal adverse impacts on environmental and social sustainability factors**: The Disclosure Regulation (Article 4) requires manager-level disclosure of adverse sustainability impact of investee companies, including extensive and specific indicators/metrics under development by ESMA, EBA, and EIOPA in the Disclosure Regulation

RTS. The indicators in the draft Disclosure RTS are not currently information that companies must disclose pursuant to the NFRD.

- **Information on to what extent an investment in a company can be considered "sustainable" according to the Disclosure Regulation's definition in Article 2(17), which incorporates the Taxonomy Regulation's concept of "do no significant harm"**: The draft RTS for the Disclosure Regulation's product-level disclosure requirements (Articles 8-11) require asset managers to determine the proportion of sustainable investments in a financial product that promotes environmental or social characteristics or has a sustainable investment objective. As part of that determination of "sustainable investments," the draft RTS also require asset managers to assess and disclose how those "sustainable investments" have complied with the "do not significantly harm" principle from Article 2(17) (see Taxonomy Regulation, Article 16c, amending Disclosure Regulation, Article 2(17)) in relation to the principal adverse impact indicators in Annex I of the draft RTS.

- **Information on a company's degree of Taxonomy-alignment, including respective proportions of "enabling" and "transition" activities, and the environmental objectives to which the company's economic activities are contributing**: The Taxonomy Regulation - Art. 4β, 16c (amending Disclosure Regulation, Articles 8, 9, and 11) requires asset managers to disclose this information for financial products that promote environmental or social characteristics or have a sustainable investment objective.

Appropriate timing and sequencing of these disclosure requirements are essential. Investee companies are the primary source of data for asset managers' disclosures about investments in those companies. We have concerns that some of the asset manager and financial product disclosure requirements will apply before this data is available from investee companies. Below are three examples:

- First, the Disclosure Regulation will require asset managers to disclose detailed adverse impact data on investee companies although investee companies are not currently under any obligation to disclose this information.

- Second, the Disclosure Regulation will require financial product disclosure related to the Taxonomy Regulation's concept of "do no significant harm," but the Taxonomy's technical screening criteria (that include criteria for determining "do no significant harm") are still under development. The "do no significant harm" analysis also links to the adverse impact indicators that are being currently developed in the Disclosure Regulation RTS. As an added complication, the Disclosure and Taxonomy Regulations' definitions of "sustainable investment" are inconsistent.

- Third, the Taxonomy Regulation will require asset managers to begin disclosing information about investee companies' degree of Taxonomy-alignment at the same time as it requires companies to make that same disclosure about their Taxonomy-alignment. The company disclosure should be sequenced first so that asset managers have the opportunity to obtain that data from investee company disclosures and aggregate them into their own disclosure.

Without disclosures from investee companies and without an implementation timeline that is sequenced effectively with other related legislation, asset managers are likely to need to rely more heavily on third party service providers to obtain the required data.

SECTION 2. STANDARDISATION

Please provide any comments or explanations to justify your answers to questions 8 to 20:

As the Commission has identified, there are a number of existing corporate disclosure frameworks with different areas of focus. In considering whether and how to develop a disclosure framework, we urge the Commission to consider an approach that is based upon existing frameworks that are widely used on a global basis. Existing frameworks have been developed using years of feedback from a broad base of stakeholders. Many of these frameworks are already widely used, and companies and investors alike have deep familiarity with the requirements. This type of approach would reflect the reality of global investing, including the fact that many investee companies will not be subject to EU-specific standards or frameworks. If the Commission decides to develop an EU framework, we strongly encourage using existing frameworks as building blocks, rather than developing a brand new framework in a compressed timeframe without the benefit of a more iterative, consultative process.

SECTION 3. APPLICATION OF THE PRINCIPLE OF MATERIALITY

The NFRD requires companies to disclose information "to the extent necessary for an understanding of the development, performance, position and impact of [the company's] activities." This materiality principle implies that companies reporting pursuant to the NFRD must disclose (i) how sustainability issues may affect the development, performance and position of the company; and (ii) how the company impacts society and the environment. This is the double-materiality perspective (see also the Commission's non-binding guidelines on reporting climate-related). The two "directions" of materiality are distinct although there can information be feedbacks from one to the other. For example, a company with severe impacts on the environment or society may incur reputational or legal risks that undermine its financial performance.

'Material' information is defined in Article 2(16) of the Accounting Directive as "the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking. The materiality of individual items shall be assessed in the context of other similar items." This definition is geared towards financial reporting, which is principally intended to serve the needs of investors and other creditors. By contrast, non-financial information serves the needs of a broader set of stakeholders, as it relates not only to the increasing impact of non-financial matters on the financial performance of the company, but also to its impacts on society and the environment. This may imply the need to provide an alternative definition of materiality for application in the context of non-financial reporting, or at least additional guidance on this issue.

Question 21

Do you think that the definition of materiality set-out in Article 2(16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company's development, performance and position?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 22

Do you think that the definition of materiality set-out in Article 2(16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company's impacts on society and the environment?

- Not at all
- To some extent but not much
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 23

Is there is a need to clarify the concept of 'material' nonfinancial information?

- Yes
- No
- Don't know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 21 to 24:

We agree with the Commission that the sustainability impact of a company and the company's financial performance are distinct, although a sustainability impact can certainly also have implications for financial materiality. Given the distinctions between these two concepts, we urge the Commission to develop a separate framework for analysis of sustainability impact rather than trying to incorporate it into the existing legal definition of materiality in Article 2(16) of the Accounting Directive.

The concept of materiality already has a well-understood historical meaning with significant legal implications. Materiality relates to analysis of risks to a company's business, based on the financial statements of the company. This is a completely separate and distinct concept from an analysis of that company's impact on environmental and social sustainability. We believe artificially linking the concepts of "materiality" and "sustainability impact" through the term "double materiality" will create significant, unnecessary confusion without a corresponding benefit.

Instead of using the term "material" in the context of sustainability impact, we urge the Commission to use existing language from the Disclosure Regulation, which refers to "principal" impacts on sustainability factors, or the Taxonomy Regulation, which uses the term "significant" (in the context of "do no significant harm").

SECTION 5. DIGITISATION

The EU has introduced a structured data standard, the European Single Electronic Format (ESEF) under the Transparency Directive. With effect from 1 January 2020 listed companies in the EU shall report their annual financial reports in XHTML (audited financial statements, management report and issuer's responsibility statements). Additionally, if the consolidated financial statements are prepared in IFRS, the XHTML document should also be tagged using iXBRL elements specified in the ESEF taxonomy. This allows the information to be machine-readable. This is expected to produce a number of benefits,

including cost saving for users of annual financial reports, greater speed, reliability and accuracy of data handling, improved analysis, and better quality of information and decision-making.

Additionally, the Commission is exploring opportunities to establish a single access point for public corporate information. In this respect, the Commission expects the High-level Forum on CMU to examine this topic and formulate recommendations from the Capital Markets angle in the coming months.

Question 33

To what extent do you agree or disagree with the following statements regarding digitalisation of non-financial information? Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree.

- It would be useful to require the tagging of reports containing nonfinancial information to make them machine-readable. [Response: 5 = totally agree]

- The tagging of nonfinancial information would only be possible if reporting is done against standards.

- All reports containing nonfinancial Information should be available through a single access point.

Please provide any comments or explanations to justify your answers to questions 33-35:

Our members would find machine readable data useful in their efforts to gather and analyze ESG-related data. We encourage the Commission to approach any digitisation efforts with an eye toward flexibility and future-proofing and a robust consideration of costs and benefits.

SECTION 7. PERSONAL SCOPE (WHICH COMPANIES SHOULD DISCLOSE)

The NFRD currently applies to large Public-Interest Entities (PIEs) with more than 500 employees. In practice this means large companies with securities listed in EU regulated markets, large banks (whether listed or not) and large insurance companies (whether listed or not) – all provided that they have more than 500 employees.

The Accounting Directive defines large undertakings as those that exceed at least two of the three following criteria:

- balance sheet total: EUR 20 000 000;
- net turnover: EUR 40 000 000;
- average number of employees during the financial year: 250.

Some Member States have extended the personal scope of the NFRD by lowering the threshold to 250 employees, in effect capturing all large PIEs.

Companies that are a subsidiary of another company are exempt from the reporting requirements of the NFRD if their parent company publishes the necessary non-financial information at consolidated level in accordance with the NFRD.

There are a number of potential arguments to support the extension of the personal scope of the NFRD:

- Changes in the legislative framework: following the adoption of the Disclosure Regulation and the Taxonomy Regulation, investors may require non-financial information from a broader range of investees in order to comply with their own sustainability-related reporting requirements.
- Large unlisted companies can have significant impacts on society and the environment. There may therefore be no a priori reason to differentiate between listed and non-listed companies in this respect. In addition, the difference in treatment between listed and non-listed companies in this regard may serve as a disincentive for companies to become listed, and therefore undermine the attractiveness of capital markets.
- Exempting PIEs that are subsidiaries limits the information about impacts on society and the environment, thus undermining the ability of stakeholders of such exempted subsidiaries to hold them accountable for their impacts on society and the environment, especially at local and national level.

Please provide any comments or explanations to justify your answers to questions 40 to 43:

As discussed in our response to Section 1, asset managers will need to obtain data from investee companies to meet the legal requirements of the Disclosure and Taxonomy Regulations. UCITS management companies generally focus on companies looking to raise capital from the public markets, and it is these companies that should be the focus of increased disclosure requirements.