

January 27, 2023

Asset Management Business Monitoring Office
Securities Firms Supervisory Division, Supervisory Bureau
Financial Services Agency
3-2-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8967
Submitted electronically to: sousei-kodoka@fsa.go.jp

RE: Call for Public Comment on Proposed Partial Amendments to the Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, etc. regarding ESG Investment Trusts

Dear Sir or Madam,

The Investment Company Institute (ICI) and ICI Global,¹ appreciate the opportunity to provide feedback on the Financial Services Agency (FSA) consultation on proposed partial amendments to the comprehensive supervisory guidelines for financial instruments business operators regarding environmental, social and governance (ESG) Investment Trusts (“Draft Amendments”).² ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI Global members invest on behalf of millions of retail investors around the world choosing funds to save for retirement, education, and other important financial goals.

ICI Global supports the FSA’s effort to promote investor understanding of ESG investing strategies in order to help retail investors make informed investment decisions. We welcome the thoughtful, principles-based approach taken by the FSA in the Draft Amendments, in particular, the recognition of the importance of interoperability with other global counterparts when developing the naming and disclosure requirements for ESG Investment Trusts.

We offer recommendations below to encourage continued open dialogue between the FSA and ICI Global and its members during the implementation phase of the revised supervisory guidelines, and enhance interoperability between the FSA framework and other comparable regulatory regimes. We also seek clarity from the FSA on the scope of coverage, disclosure of investment processes, impact-related information and stewardship policies, and due diligence on ESG ratings and data providers.

¹ ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated investment funds. With total assets of \$36.6 trillion, ICI’s membership includes mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia and other jurisdictions. ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI Global has offices in Brussels, London, Hong Kong, and Washington, DC.

² Draft of Revised Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc. [Provisional English translation] (“Draft Amendments”), available at <https://www.fsa.go.jp/news/r4/shouken/20221219/02.pdf>.

I. Definition of ESG Investment Trusts and Naming Policy

We support the FSA’s principles-based definition of ESG Investment Trusts and the naming policy.

Defining ESG Investment Trusts. ICI Global welcomes the FSA’s principles-based approach in defining ESG Investment Trusts. In particular, we agree with the decision to not prescribe a numeric threshold of ESG investment and instead permit an investment trust to determine whether to identify itself as an ESG Investment Trust in the “Objective and Characteristics of the Fund” section of the delivery prospectus. We believe this flexible and disclosure-based approach will allow for the greatest degree of innovation and growth in the still rapidly evolving ESG market.

Given the wide spectrum of potential ESG investment strategies, and continued evolution of the global market for ESG products, we would encourage continued open dialogue between the FSA and ICI Global and its members during the implementation phase of the revised supervisory guidelines, in order to avoid any potential misunderstanding of the FSA’s expectations regarding the characteristics of ESG Investment Trusts.

Names of Investment Trusts. We agree with the FSA’s approach to the names of investment trusts and related disclosures, whereby only self-identified ESG Investment Trusts would be permitted to use ESG-related terms³ in the names, complemented by additional disclosures of the product’s ESG-related features. Additionally, we appreciate that the FSA would allow investment trusts that do not self-identify as ESG Investment Trusts to use ESG-related terms in the delivery prospectuses and other materials when relevant and appropriate, provided that these terms are used in a proportionate way in describing how ESG information is integrated into the investment process. This approach will facilitate retail investors’ exposure to and understanding of various ESG-related practices and investment strategies.

II. Application to Foreign ESG Investment Trusts

To enhance international interoperability, the FSA should generally deem a foreign ESG Investment Trust as compliant if it meets comparable ESG disclosure requirements of its home jurisdiction.

Given the cross-border nature of ESG-related issues and corresponding investments, we encourage the FSA to take into consideration and generally deem compliance with the FSA disclosure requirements proposed in the Draft Amendments in cases where a foreign ESG Investment Trust (or similar regulated ESG fund) meets the relevant ESG disclosure requirements of its home jurisdiction that has a broadly comparable (or more extensive) ESG disclosure framework. To facilitate this interoperable approach, the FSA could provide a list of jurisdictions which it considers having sufficient ESG disclosure requirements to be deemed compliant with the FSA requirements. Not only would this approach reduce regulatory fragmentation across jurisdictions, but it would also foster continued growth in cross-border sustainable investment channels and choices for retail investors in Japan.

³ We note that, depending on the context in which they are used, certain terms – such as “sustainable” or “impact” – may not be solely used for ESG investment strategies and thus should not be considered ESG-related terms. For example, “Sustainable Growth” could reasonably be read as an investment focus of growth that is sustainable (or “maintainable”) over time and “impact” could be a non-ESG term (for example, there are cases in which an investment trust can make a measurable impact in ways that do not relate to environmental, social, or governance objectives).

III. Scope of Coverage

The FSA should clarify the scope of coverage for the revised supervisory guidelines as it relates to the type of product and fund.

It appears from the proposed Draft Amendments that the focus of the revised supervisory guidelines is specifically targeted at protections for retail investors in the context of publicly offered investment trusts offered by Japan-based managers. However, it would be helpful to ensure full understanding within the industry for the FSA to clarify that is the case, and that there are no implications for other types of products and funds.

IV. Investment Strategy, Reference Index, and Periodic Disclosure

The FSA should clarify that an ESG Investment Trust does not need to disclose overly granular details or detailed information about methodologies.

Overly granular disclosures can distract, rather than enhance, investor understanding. Moreover, an investment trust should not be expected to disclose proprietary information about its investment process. In addition, requiring an investment trust to disclose the index methodology for any index it tracks, including any criteria or methodologies for selecting or excluding components of the index that are based on ESG factors, would inappropriately put the burden on an investment trust to include in its own regulatory disclosures information about a third party's methodologies. For these reasons, we recommend that the FSA clarify that an ESG Investment Trust does not need to provide overly granular details about its investment process, including any proprietary information, and does not need to disclose the index methodology for any index it tracks.

The FSA should clarify that an ESG Investment Trust that aims to create environmental or/and social impact can measure and report impact-related information based on individual investments, rather than at an aggregated portfolio level.

Many funds have a strategy to invest in companies that aim to create positive impacts but do not themselves, as a fund, seek specific sustainable outcomes. This reflects the essential nature of funds as a vehicle to invest in other companies. Moreover, an impact fund does not necessarily seek to generate an impact relating to one theme that could be rolled up and measured on an aggregated level. Rather, many impact funds focus on multiple themes, such as some or all of the 17 United Nations Sustainable Development Goals. For these reasons, the FSA should clarify that an ESG Investment Trust's disclosures may reflect its measurement of investment-level impacts and not an aggregated portfolio-level impact. In addition, the FSA should clarify that an ESG Investment Trust that aims to create environmental or/and social impacts is not obligated to describe progress in quantitative terms, which is not necessarily feasible with respect to certain investment themes, and can, instead, describe progress in qualitative terms.

The FSA should clarify that an ESG Investment Trust may link to a stewardship policy covering multiple portfolios in its disclosures.

Asset managers take varied approaches to stewardship activities, utilizing individuals, teams, or committees specifically dedicated to developing and carrying out engagement strategies and proxy voting. Many have a centralized team to coordinate and/or conduct voting and engagement for multiple portfolios. The FSA should clarify that, in those circumstances when an investment trust management company uses a stewardship policy covering multiple portfolios, the ESG Investment Trust may fulfill any disclosure obligation it may have

relating to stewardship policies⁴ by providing a link to any broadly applicable stewardship policy.

V. Due Diligence on ESG Ratings and Data Providers

The FSA should clarify that an investment trust management company will not be required to verify endorsement or compliance of ESG ratings and data providers with the Code of Conduct as a part of the due diligence requirement.

ICI Global appreciates the efforts of the FSA to improve market practices of ESG ratings and data providers by establishing a Code of Conduct.⁵ Transparency by providers to users of ESG evaluations and data is important. Asset managers must be able to understand key features of these services and products in order to evaluate whether an ESG rating or data product would meet the manager's specific needs.

Although the endorsement of the Code of Conduct could be a consideration of asset managers when selecting ESG ratings and data providers, asset managers should be given the flexibility to follow due diligence practices that are fit for their business characteristics and needs. In this regard, we recommend the FSA clarify that an investment trust management company will not be obliged to check whether a given ESG ratings and data provider has endorsed the Code of Conduct or verify the provider's compliance with the Code of Conduct's principles.

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Thank you again for the opportunity to provide feedback on the Draft Amendments. We welcome continuing this dialogue with you. If you have any questions, please contact me at michael.pedroni@ici.org or Matthew Mohlenkamp at matthew.mohlenkamp@ici.org.

Sincerely,
/s/ Michael Pedroni

Michael N. Pedroni
Chief Global Affairs Officer and Head of ICI Global
Investment Company Institute

⁴ See Draft Amendments, *supra* note 2, at VI-2-3-5 (3)(ii)(e).

⁵ The Code of Conduct for ESG Evaluation and Data Providers ("Code of Conduct") was finalized on December 15, 2022. See Code of Conduct, available at <https://www.fsa.go.jp/news/r4/singi/20221215/02.pdf>. We note the first list of ESG ratings providers who endorse the Code will be published by the FSA in June 2023.