

4 October 2023

UK ESG Data and Ratings Code of Conduct Working Group
Submitted electronically to: drwgsecretariat@icmagroup.org

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

Dear Sir/Madam:

ICI Global¹ appreciates the opportunity to provide feedback on the UK ESG Data and Ratings Code of Conduct Working Group (DRWG) consultation on a draft voluntary code of conduct for ESG ratings and data product providers (“Consultation Paper”).²

As the trade association representing regulated funds globally, ICI Global has a strong interest in regulatory developments that impact ESG ratings and data providers. Asset managers use ESG ratings, data, and related services as part of their assessments of companies and other investments when pursuing a range of investment strategies on behalf of millions of retail investors around the world investing for retirement, education, and to achieve other important financial goals.

ICI Global welcomes the DRWG’s efforts to set principles for UK-based ESG ratings and data providers on governance, management of conflicts of interests, and transparency, based on the recommendations of the International Organization of Securities Commissions (IOSCO).³ We believe that the proposed voluntary industry code of conduct would be an important step toward improving transparency about methodologies underpinning ESG ratings and data products, and at the same time, providing sufficient space and flexibility to allow for the continued growth and evolution of the ESG ratings and data market in the UK. We also appreciate the DRWG’s recognition of international interoperability in developing the voluntary code of conduct.

¹ ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated investment funds. With total assets of \$40.3 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, and Washington, DC.

² Consultation on Draft Code of Conduct for Environmental, Social and Governance (“ESG”) Ratings and Data Product Providers, 5 July 2023, available at <https://www.irsg.co.uk/publications/esg-ratings-and-data-products-providers-code-of-conduct-released-for-consultation>.

³ FR09/21 Environmental, Social and Governance (ESG) Ratings and Data Products Providers Final Report, November 2021, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf>.

We support the DRWG’s approach to setting out specific exclusions of certain types of organizations from the voluntary code of conduct. As the DRWG has recognized, these exclusions are important for helping market participants understand and identify the primary target of the voluntary code of conduct.

In order to better facilitate the industry’s understanding and the implementation of the code of conduct in the UK, we offer one specific recommendation for the DRWG’s consideration – **to clarify that the exclusion of ESG ratings and data produced for internal uses from the code of conduct covers internal ESG ratings and data provided to third parties as long as they are not provided or marketed on a commercial basis.** This clarification would be consistent with the DRWG’s intention for a proportionate application of the code of conduct, and better align the code of conduct with similar regulatory and voluntary initiatives in other jurisdictions.

Specifically, we recommend the DRWG adopt the following language with regard to the exclusion of entities producing ESG ratings and data for internal uses:

“entities who produce ESG ratings/scores or ESG data products that are used or consumed only within the same group of affiliated companies, and, if provided to third parties, it is not done on a commercial basis (e.g., for a fee).”

As the DRWG noted in the Consultation Paper, despite the intentionally broad definitions of ESG ratings and ESG data, the code of conduct is intended to be interpreted and applied in a proportionate manner. The DRWG has also recognized the limitation of applying the code of conduct to certain types of products and services, including investment research. Distinguishing between ESG ratings and data produced for internal use from products commercially distributed to external parties is especially important for the asset management industry. Asset managers collect ESG data, research, analytics, and ratings from various sources (*e.g.*, regulatory filings, sustainability reports, publicly available data sets, commercial service providers, etc.), and develop analyses as part of their internal processes for evaluating portfolio companies and other relevant investments. They may include internal ESG ratings and data, for example, in client reports or marketing materials of relevant financial products when describing their investment processes to third parties.

It is important to recognise that such provision of internal ESG ratings and data to third parties is for communicating asset managers’ internal processes for manufacturing the end products, *i.e.*, investment funds, and it is not intended for commercial subscription or distribution. Asset managers’ communication with external parties on their investment processes, including the use of data and estimations, are already subject to current regulatory and business conduct requirements in the UK. It would be unnecessary to have a separate code of conduct applying specifically to asset managers’ communication on their processes for assessing ESG aspects of their investments.

Additionally, the suggested clarification would enhance the interoperability of the UK code of conduct with similar policy initiatives in other jurisdictions. For example, while adopting IOSCO’s definitions for ESG ratings and data, the Japan Financial Services Agency clarifies that

its voluntary code of conduct for ESG ratings and data providers applies to a provider who “provides ESG evaluations and data services as part of its business.”⁴ This approach appropriately ensures the scope of the voluntary code of conduct is limited to products provided on a commercial basis.

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Thank you again for the opportunity to provide feedback on the Consultation Paper. We welcome continuing this dialogue with you. If you have any questions, please contact me at Victor.Vanhoorn@ici.org, or Elizabeth Lance, Assistant Chief Counsel, ICI Global, at Elizabeth.Lance@ici.org.

Sincerely,
/s/ Victor van Hoorn

Victor van Hoorn
Managing Director, Head of Brussels Office
ICI Global

⁴ The Code of Conduct for ESG Evaluation and Data Providers, Japan Financial Services Agency, December 2022, at Basic Concepts to the Scope of ESG Evaluation and Data Providers that are to be Called for Support of the Code of Conduct, p.12-15, available at <https://www.fsa.go.jp/news/r4/singi/20221215/02.pdf>.