The Chartered Governance Institute UK & Ireland

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Dear Sir / Madam,

Consultation on the Draft Voluntary Code of Conduct for Environmental, Social and Governance (ESG) Ratings and Data Product Providers

We welcome the opportunity to comment on the Draft Voluntary Code of Conduct from the ESG Data and Ratings Working Group (DRWG).

The Chartered Governance Institute UK & Ireland is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead 'effective governance and efficient administration of commerce, industry and public affairs', working with regulators and policy makers to champion high standards of governance and providing qualifications, training and guidance. As a lifelong learning partner, the Institute helps governance professionals to achieve their professional goals, providing recognition, community and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and in many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements. They are therefore well placed to understand the issues relating to ESG data and ratings products and they are highly familiar with the role of Codes of Conduct and other similar policies. In preparing our response we have consulted, amongst others, with our members. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent.

Our comments on the Draft Code of Conduct, as well as our responses to the consultation questions in Appendix 1, are set out below.

Comments on the Code of Conduct

As the Chartered Governance Institute, we are very familiar with the creation of Codes of Governance and Codes of Conduct such as this. Our members are also heavily involved in the application of such Codes. Overall, we are very pleased with the Draft Code, and support its use by the sector whilst HM Treasury continues with the longer process of making potential changes to the regulatory regime. In certain areas, we would suggest that the Code could go further in order to achieve its ultimate aim of 'foster[ing] a trusted, efficient and transparent market'.

The Institute agrees with each of the points set out under 'Application and Approach', in particular that a Code of Conduct ought not to prescribe a single approach but should be flexible for successful implementation. We feel that the draft Code achieves this. We support a six-to-twelve-month implementation period, as well as the notion that companies applying the Code should produce an 'Annual Statement of Application'. We would query whether guidance is needed on where this statement should be produced (e.g. annual report, company website). More fundamentally, will the DRWG or FCA be monitoring or evaluating companies which produce such a statement to assess whether they are adhering to the Code?

The provisions under 'Target Scope and Application' and 'Negative Scope' are clear and reasonable. The 'Terminology' section is also important for further clarity. We feel the DRWG has struck the right balance in creating a Code with broad enough applicability without diluting its purpose.

As you would expect, we take a particular interest in the governance of ESG ratings and data providers themselves. Consequently, we are pleased that the Code's first principle is Good Governance. As is suggested under 1.2 (Context) and 1.5 (Action B), this principle functions as the foundation which enables organisations to achieve the other principles.

The Institute agrees with the provisions set out under Principle 2 on Securing Quality, and feels that they are appropriately detailed and at the correct level of granularity.

The third principle on Conflicts of Interest sets out several highly beneficial recommendations, particularly around policies and processes. However, it does not go far enough with regards to managing conflicts of interest (under 3.7 to 3.11) and could be made more stringent. Under 3.7, the Code states 'these steps could include (but are not limited to) the following measures in respect of appropriate staff'. This could be replaced with 'should take the following measures'. This would strengthen the Code – and as it is voluntary in the first place, it would not be at risk of imposing overly onerous requirements. International Codes and regulators have already taken a tougher approach here, in recognition of the fact that there are several cases where ESG ratings and data providers may provide both ratings about, and consulting services to, the same firm. For example, the Japanese Financial Services Agency's Code suggests the implementation of firewalls between data-providing and consultancy staff. Proposed regulation from the European Commission could require ESG ratings and data providers to divest from conflicting activities such as consulting, or risk being fined up to 10% of annual turnover. We do not suggest that this Code needs to set out such stringent measures, but it currently needs more teeth with regards to the management of conflicts of interest.

We are pleased to see the inclusion of principle 4 on Transparency and agree with the publication of the types of information set out under principle 4. In particular, indicating where industry averages have been used in ratings (rather than company-specific information) is especially important. The Code is (rightly) careful to consider the need for confidentiality and the protection of proprietary information. It could also include a recommendation that providers publish information on the assumptions behind and potential limitations of their methodologies. This would help investors to select the most appropriate ratings and data products and would help companies to compare and understand any discrepancies between ratings they are given by different providers.

We agree with the recommendations set out under principle 5 on Confidentiality.

The final principle on Engagement is particularly welcome. Our members in listed companies have consistently expressed to us their frustration with the level of engagement. They would appreciate efforts to open up further channels of communication with the providers of data and ratings. The suggestions made in the Code are appropriate and would go some way in achieving this – particularly the suggestion under 6.8 for a consistent point of contact, which many of our members have requested. The recommendation to include pre-inputted information in requests for data under 6.6 is also commendable. It would be helpful to give a benchmark timeframe for how long 'sufficiently in advance' may be (under 6.5), as this is currently rather vague. We would also like to see ESG ratings and data providers consulting more extensively with companies about what specific ESG metrics are material to their industry and to their specific business model.

Consultation questions

Interoperability

1. We have no comment.

2. The Code's basis in the IOSCO recommendations is to be commended, particularly as this lends itself to increased interoperability. The Institute also commends the DRWG on its efforts to engage other jurisdictions in the development process. A globally consistent regulatory framework for ESG ratings and data providers may still be some time away and will require significant further international cooperation, but this Code certainly sets out a reasonable starting point for such a framework.

Differentiation of ESG ratings and data products

3. Yes. The sections on scope, negative scope and terminology clearly set out the differences. As the market is rapidly evolving, it is important that these definitions have a degree of flexibility built in, which we feel the DRWG has achieved. It is made very clear when particular actions apply only to certain business practices (e.g. under principle 6 on engagement, actions are split out into those who seek information bilaterally and those

who source it publicly). Overall, we feel the DRWG has struck the right balance in creating a Code with broad enough applicability without diluting its purpose.

Forward looking information

4. Yes, the Code should include a recommended action for explicit statements on forward looking information. As the UK moves towards a net zero economy, and particularly with the forthcoming recommendations of the Transition Plan Taskforce, forward looking non-financial information will become increasingly widespread. Whilst greenwashing is a risk for many areas of ESG data, forward looking information such as transition plans is particularly susceptible. It is therefore important to highlight where such information is included or excluded. Information included in ESG ratings and data ought not to be misleading. After all, ESG ratings and data influence the allocation of capital in the markets.

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

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