

13 June 2024

Hong Kong ESG Ratings and Data Products Providers
Voluntary Code of Conduct Working Group
Submitted electronically to: vcwgsecretariat@icmagroup.org

RE: Consultation on the Draft Hong Kong Code of Conduct for ESG Ratings and Data Products Providers

Dear Sir/Madam:

The Investment Company Institute (ICI)¹ appreciates the opportunity to provide feedback on the Hong Kong ESG Ratings and Data Products Providers Voluntary Code of Conduct Working Group (VCWG) consultation on a draft voluntary code of conduct for ESG ratings and data product providers (“Consultation Paper”).²

As the leading association representing the global asset management industry, ICI 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 welcomes the VCWG’s efforts to determine for ESG ratings and data providers a set of principles on governance, management of conflicts of interests, and transparency, based on the recommendations of the International Organization of Securities Commissions (IOSCO).³ We

¹The [Investment Company Institute](https://www.icmagroup.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI’s members include 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 outside of the United States. Its members manage \$34.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

² Consultation on Hong Kong Code of Conduct for ESG ratings and data products providers, 17 May 2024, available at <https://www.icmagroup.org/sustainable-finance/icma-and-other-sustainable-finance-initiatives/the-hong-kong-esg-ratings-and-data-code-of-conduct-working-group-2/>.

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>.

believe that the proposed voluntary 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 Hong Kong. We also appreciate the VCWG's recognition of the importance of international interoperability in developing the voluntary code of conduct.

We offer one specific recommendation in response to the Consultation Paper to enhance the clarity and facilitate industry understanding of the primary focus of the Hong Kong Code of Conduct.⁴ **We recommend the Hong Kong Code of Conduct state explicitly that the exclusion of ESG ratings and data produced for internal uses covers internal ESG ratings and data provided to third parties as long as they are not provided or marketed on a commercial basis (e.g., for a fee). Specifically, we recommend the VCWG adopt the following language with regard to the exclusion of entities producing ESG ratings and data for internal uses (new language underlined):**

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

This clarification would be in line with VCWG's approach to setting out specific exclusions of certain types of organizations, and not including activities subject to existing regulatory requirements in the Hong Kong Code of Conduct.

Distinguishing between ESG ratings and data produced for internal investment processes from products commercially distributed to external parties is especially important for the asset management industry. Asset managers collect ESG data 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 implementing investment strategies of the relevant funds they manage. 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 recognize 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 to the wider public (e.g., for a fee). Asset managers' own investment processes, as well as the relevant communication with external parties, including the use of data and estimations, are already subject to current regulatory and business conduct requirements in Hong Kong. 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.

⁴ See Consultation Question 2: “Is the Code sufficiently clear to ensure adherence? For the Hong Kong Code, we are providing an English and Chinese version. Do you find that helpful and is the Code sufficiently clear to you? If not, please specify.” See Consultation Paper, *supra* note 2, Annex 1 at p.15.

Additionally, the suggested clarification would enhance the interoperability of the Hong Kong 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 that "provides ESG evaluations and data services as part of its business."⁵ 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 matthew.mohlenkamp@ici.org.

Sincerely,
/s/ Matthew Mohlenkamp

Matthew Mohlenkamp
Managing Director, Asia and Global Analytics
Investment Company Institute

⁵ 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>.