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Monetary Authority of Singapore

<https://go.gov.sg/MAS-ESG-Code>

The below responses will be submitted to the Monetary Authority of Singapore online system on 22 August 2023.

ASIFMA Response to MAS Consultation on Proposed Code of Conduct (“CoC”) for Environmental, Social and Governance (“ESG”) Rating and Data Product Providers

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Q1. MAS seeks views on the proposed definitions of “ESG rating” and “ESG data product”, as well as the list of excluded products.

On behalf of Asia Securities Industry & Financial Markets Association (“ASIFMA”), we would like to submit our response to the Monetary Authority of Singapore (“MAS”) Consultation on Proposed Code of Conduct (“CoC”) for Environmental, Social and Governance (“ESG”) Rating and Data Product Providers (“Providers”).

We welcome the MAS’s action on this topic as we believe transparency and clarity in ESG ratings and data products will enable market participants to better understand the basis for the ratings and evaluate their quality and suitability.

We appreciate MAS’s efforts to closely align the CoC with the IOSCO recommendation which will ensure a level of global consistency and avoid market fragmentation. We also acknowledge MAS’s phased and proportionate regulatory approach which considers both the role of regulation in ensuring the quality of ESG ratings and data products, and its potential impact on innovation in and market development of these products.

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Lastly, we note the development of codes of conduct as part of regulatory frameworks in other jurisdictions, such as the United Kingdom, and urge the MAS to remain flexible in its approach to achieve regulatory convergence. In fact, in light of industry developments since the IOSCO Report was released in November 2021, we wonder if IOSCO should revisit their findings to ensure harmonisation, for example, in ESG scores and alternative ESG data as described below.

Evolving definitions

We would suggest that the MAS continues to take account of the evolution in ESG rating and data products, as and when a regulatory framework is introduced. In the meantime, we believe it is important to maximise global interoperability and ensure sufficient clarity of in-scope activities and exclusions to support innovation and enhance workability. As such, it would be preferable to ensure items are not in-scope where the risk of harm is low.

To avoid confusion, we would also suggest specific examples of in-scope and out-of-scope products are provided as part of any implementation guidance.

ESG data product

Our members note that the universe of non-financial data which is potentially in scope of the proposed definitions of ESG data product is broad and evolving. Over time, as data collection improves, we expect that an increasing amount of reported data will replace data that is currently estimated. As such, some of our members agree with the specific exclusion for raw data which *'does not entail added estimates, calculations or analysis'*.

Alternative ESG data

Our members increasingly rely on secondary sources of ESG-related data (or alternative ESG data) not obtained through traditional disclosure methods. These include ESG-related news and controversies, satellite images, electric vehicle sales, employee satisfaction insights, civil society research. These data provide a good supplementary source of ESG data particularly for some non-public companies and / or for certain markets (e.g., emerging markets). Technologies such as web-scraping, artificial intelligence / machine learning are typically used to obtain the data for further analysis.

Would the MAS clarify if its intention is to bring such ESG-related data and their providers into scope. Whilst there is a view that providers of alternative ESG data should also abide by the same CoC, other members would suggest that at this nascent stage of development, exclusion from scope is preferred to support innovation. That is, exclusion where alternative ESG data does not include analysis. For example, real time controversy news monitoring, where controversies are not categorised by risk categories.

ESG scores

In addition to the definition of 'ESG ratings' and 'ESG data products', some of our members would propose the inclusion of a definition of 'ESG scores'. These members consider ESG scores which involve quantitative analysis and are not opinions as they do not involve substantial analyst discretion in the ESG assessment, unlike ESG ratings, should not be a subcategory of ESG ratings. On the other hand, for other members, in practice, the distinction between ESG scores and ESG ratings is not so clear cut, especially without sufficient transparency around methodologies currently.

We would suggest that the MAS focus on ensuring that methodologies are transparent for users and make clear the nature / substance and naming of an ESG score or rating, which look towards the extent of analyst assessment, including adjustment of weightings and application of estimation models.

Exemption for internal use

Some of our members may be regulated entities, regulated benchmark providers, or other providers of ESG scores, ratings and / or ESG data products for group internal use only. It is likely that they would be subject to the proposed CoC if they were to make their product available in Singapore. We request MAS include an exclusion, in keeping with the approach taken in the EU proposals, for:

- **Internal or regulatory use:** ESG scores, ratings and data products that are used for internal purposes, for providing in-house financial services and products, or are issued and published for the purpose of complying with regulatory obligations.

As an example, ESG scores provided by one entity in a member group may be used, by that same entity or by another entity within the same group for benchmark calculation purposes.

- **Internal use and/or with incidental external distribution:** ESG ratings and data products developed for own decisions and investments, which are intended for enhancing investor awareness on ESG and not intended for retail investors, and/or are not the subject of public disclosure or distribution by subscription or other means.

Asset managers in particular may develop proprietary ESG scores or ratings for internal use but may also develop specific ESG data products to meet client objectives or upon request.

We would ask MAS to clarify that it is not the intent of the CoC to bring asset managers in scope of the proposals and hence subject to the CoC. Our asset manager members believe that proprietary products support product development, and if they were in scope, this would impact on their investment innovation capacity, leading to more market concentration to a simplified use of ESG rating services provided by third party vendors.

On the other hand, we would be clear to differentiate internal use from situations where group entities are operating within an internal marketplace on an arm's length basis, for example, buy-and sell-side, and thus an exemption under the internal use basis should not apply.

Activities of regulated financial institutions

The currently drafted definition of 'ESG rating' and 'ESG data products' could capture a very wide range of items. Examples of ancillary ESG-related products of and activities conducted by regulated financial institutions include:

- instances of internal use described above
- where a research report presents a comparison of a particular investment strategy against a third party ESG rating
- where metrics are derived from ESG ratings

- investment products under the MAS Excluded Investment Product / Specified Investment Product regime where the investment process and due diligence can involve analysis or consideration of ESG ratings.

This is by no means an exhaustive list. We do not believe it is the intention of the MAS that the activities of regulated financial institutions be in scope of the definition of ESG ratings and data products. To avoid overlapping with existing regulations and to support innovation, some members would suggest a broader exclusion for the activities of regulated financial institutions. This would simplify the application of the CoC reducing regulatory uncertainty for financial institutions and reflect a proportionate approach appropriate for this initial phase of regulation.

Q2. MAS seeks views on whether external reviews such as Second Party Opinions should be scoped in as ESG data products under the CoC.

On one hand, external reviews such as Second Party Opinions (“SPOs”) are currently excluded from IOSCO’s recommendations and HM Treasury’s consultation on ESG rating providers, as well as the EU regulations. On the other hand, they are included in other similar code of conducts, such as Japan’s Code of Conduct for ESG Evaluation and Data Providers, and IRSG/ICMA’s Draft Voluntary Code of Conduct for ESG Ratings and Data Product Providers consultation paper.

Alignment with IOSCO or global standards is preferred to ensure global consistency and ease of comparison across jurisdictions and entities. Proper oversight and regulation of ESG rating and data products (non-external reviews) is currently more important than external reviews given they are relatively less standardised and hence represent higher risk. Additionally, SPOs are not common in Asia Pacific, with insufficient local market expertise in this product, hence it is premature to bring them in scope.

Q3. MAS seeks views on the proposed definitions of “ESG Rating Provider”, and “ESG Data Product Provider”.

If MAS are considering an extra-territorial application of the CoC, it will be important for MAS to introduce substitutive compliance or an equivalence provision based on international providers complying with IOSCO recommendations. If not, it may result in international providers ceasing their provision of products to Singapore.

Internal use

Please also refer to our response to Question 1. Exemption for internal use. We request the MAS exclude Providers who produce product for internal purposes as discussed.

Consulting services and intermediaries

We suggest that entities providing ESG consulting services generally should be excluded, not just those offering services to “companies on improvements from an ESG perspective”. Additionally, those who are third party intermediaries distributing or placing an ESG rating or ESG-rated product, produced by another party, should also be excluded.

Q4. MAS seeks views on the proposed best practices on ESG rating and data product providers' disclosure of how transition risks and opportunities are factored into ESG ratings and data products.

We would expect large variation in Providers' disclosure across the various ESG ratings and data products. Accordingly, it may be preferable to limit transition risks disclosures to climate data specifically rather than more general ESG data.

Q5. MAS seeks views on the principles and best practices set out in the draft CoC in Annex 1.

Obligations of product users

We refer to Annex 1 PREAMBLE, "market participants who use the ESG ratings and/or ESG data products are encouraged to engage providers who adopt the Code". Our members agree that products users be encouraged to engage Providers who adopt the CoC, but also have the flexibility to engage Providers who do not adopt the CoC to ensure adequate choice and allow for market innovation.

Principle 1. Ensuring the quality of ESG rating and data products

Some of our members are concerned about the lack of clarity in the word 'ensure' when products are based on disclosure (or lack thereof) by covered entities. To avoid misconceptions with 'assured' or 'verified', it is suggested to replace the work 'ensure' with '*establish measures to safeguard*'.

- Best Practice 1d: We suggest that the regular review be subject to review by a function independent of the preparation of the ESG ratings, scores or data products.
- Best Practice 1e. Provide transparency around the sources of data and Principle 2. Ensure its decisions are independent: Providers should be transparent about whether raw data is purely aggregated in a formulaic manner or where there may be the involvement of expert opinion. Where expert opinions are involved, Providers should be encouraged to disclose the expertise and composition of such expert panels, to ensure their independence.
- Best Practice 1h: We would suggest that 'relevant personnel' are '*professional, competent, suitably qualified and persons of integrity*'.
- Additional suggestions: In order to ensure data quality, we would suggest that Providers conduct regular dialogue with users and covered companies who both provide input on potential biases. We would also suggest the establishment of proper complaints management processes to address any service issues.

Principle 4: Adequate levels of public disclosure and transparency ... including their methodologies and processes

- ESG indices: Given the pervasiveness of negative screening, it is important to have transparency about how issuers are grouped. Asset manager members may need to determine exposure to or threshold-based revenue exclusions to typical categories such as

fossil fuels, tobacco, controversial weapons, and compliance with taxonomies and principles such as UNGC or where credible taxonomies have been applied.

- Best Practice 4a: We would suggest there is transparency around ESG ratings / ranking methodologies, models and key assumptions, including whether analysis is backward-looking or forward-looking.
- Best Practice 4b: Apart from 'objective', Providers should disclose the 'scope' of the product, i.e. whether it is an aggregated product (aggregating E and S and G factors), or a rating of individual factors or specific issues, for example, transition risks.
- Best Practice 4c: Reference should be made to quality control around source data, and where applicable, reference the method of data collection. We note that beyond automation for data collection, generative 'artificial intelligence' can be used to derive or generate data, including ratings and scores, whilst the technology behind it is still at a nascent state where data and information accuracy cannot be guaranteed.
- Best Practice 4d: Our members who are product users would suggest that Providers should alert users each time there are methodology changes and past data is changed, and in this alert identify what has changed and why, and provide an impact analysis (as referenced in Best Practice 1d). On the other hand, our members who are Providers do not support ad-hoc updates and would prefer to address these points through a robust and transparent methodology and procedures.
- Additional suggestions: Providers should inform on how materiality and risk of bias are considered.

Principle 7: Responding to and addressing issues raised by covered entity

Some of our asset management members are anecdotally aware of incorrect data in the data sets of Providers, where a covered entity is unable to get its data corrected. This is because either there are limited avenues for communicating problems to the Provider and/or corrections are only made during a Provider's review cycles (which typically occur every six or twelve months). We agree with Best Practice 7a. to provide "a clear and consistent contact point" and would suggest that incorrect data is corrected expeditiously to "ensure the issuance of high quality ESG rating and data products" in accordance with Principle 1. For our members who are Providers, they do not support ad-hoc corrections and would prefer to address these points through a robust and transparent methodology and procedures.

Additional principle: Commercial terms

Given that ESG ratings and data products will be increasingly used for manufacturing financial products and managing ESG risk, our product user members expect to be increasingly reliant upon Providers and think it is important to be able to negotiate with Providers on commercial terms, including pricing and licensing frameworks, product and services bundling, and limitations on the reuse and redistribution of ESG data and data products. Whilst our Provider members do not support this suggestion, our product user members would like to see an additional principle added that Providers take steps to ensure that commercial terms be established on a fair, reasonable, consistent and transparent basis.

Q6. MAS seeks views for the CoC to be adhered to on a “Comply or Explain” basis.

In light of further developments in the regulatory framework including bring ESG rating providers into the CMS licensing regime under the SFA, a phased approach which starts with a “Comply or Explain” basis is appropriate.

Obligations of product users

Given the ‘Comply or Explain’ basis, we would hope that financial institutions licensed in Singapore and using a third party Provider which sufficiently explains why it isn’t compliant with the CoC, will not be expected to additionally explain why the third party Provider has been used and/or why the Provider does not comply with the CoC. This would reduce the administrative and regulatory burden on product users.

Q7. MAS seeks views on the proposed Checklist (Annex 2), whether it would enable product users to easily identify compliant providers and facilitate interoperability for ESG rating and data product providers’ global operations.

Assessment of compliance

We are unsure if the provision of a Checklist would necessarily ease the identification of compliant providers. For example, if a provider were to give “No” responses to some (not all) questions in the proposed Checklist in Annex 2, would the MAS consider the provider ‘compliant’ with the CoC? On the other hand, for Providers which offer an array of products, we wonder if they are able to provide the same level of completeness in their responses across their universe of products.

List of Providers

Given that Providers are encouraged but not required to publish the Checklist on their websites, we would suggest that the MAS consider maintaining a publicly available database of ‘compliant’ Providers for ease of reference of market participants.

Mutual recognition

Many of the principles and practices suggested in the MAS CoC are very similar to those in the EU proposals, for example. To the extent that overseas headquartered Providers would be subject to codes of conduct equivalent to the IOSCO recommendations elsewhere, we would suggest jurisdictional equivalence when overseas codes of conduct do come into effect. Refer also to our response to Question 11.

To the extent that MAS has proposed Singapore-specific best practices on top of IOSCO recommendations, we question if interoperability can be effectively achieved, whilst ensuring a level playing field for different Providers.

Obligations of product users

As mentioned in our response to Question 6, we would suggest that MAS not impose additional regulatory obligations on financial institutions licensed in Singapore, for example, when they use such third party Providers that are located in or outside of Singapore to ensure that these third parties comply with the CoC / complete the Checklist.

Q8. MAS seeks views on third-party assurance or audit on ESG rating and data product providers' self-attestations to be adopted on a voluntary basis.

Depending on the level of assurance, that is, limited or reasonable, the level of confidence can differ significantly, and hence requirements around clear disclosure of which processes or data are in scope of assurance, and which standards are adopted would need to be stipulated. Some of our members believe it would be premature to suggest voluntary third-party assurance or audit of self-attestations. The preference is to ensure broadest adoption of the CoC.

Q9. MAS seeks views on any other suggestions to encourage ESG rating and data product providers' adoption of the CoC.

We believe that the involvement of Providers in developing the CoC and the expectation of a regulatory framework will provide sufficient encouragement to Providers to adopt the CoC in readiness for a licensing regime.

Q10. MAS seeks views on the proposal to bring ESG rating providers into the CMS licensing regime under the SFA when a regulatory framework is developed.

We are supportive of the proposal to bring ESG rating providers, particularly those which are based in Singapore, under the CMS licensing regime under the SFA when a regulatory framework is developed. This should ensure accountability, quality and credibility of ESG ratings provided by licensed providers.

Q11. MAS seeks views on whether overseas based ESG rating providers who offer ESG ratings to users in Singapore should be subject to the proposed regulatory regime for ESG rating providers, and the scope of activities of such providers to be subject to regulatory requirements.

We are seeing similar initiatives to put in place regulatory frameworks for Providers in line with IOSCO recommendations in other jurisdictions. To reduce the duplicative compliance requirements especially for global providers (which would increase the costs of products for users) and simplify the administrative burden on users operating in multiple jurisdictions, we believe it would be beneficial to adopt a mutual recognition framework, to promote regulatory convergence and best practice around IOSCO's recommendations and enhance investor protection.

To the extent that overseas headquartered Providers would be subject to codes of conduct equivalent to the IOSCO recommendations elsewhere, we would suggest jurisdictional equivalence when overseas codes of conduct come into effect.

Q12. MAS seeks views on the appropriate monitoring period (in months) and observable market milestones before consulting on a more formalised regulatory regime for ESG rating providers.

We would suggest a monitoring period of at least 12 months and ideally 18 months would allow for sufficient time for observing adoption of and improvements against the CoC. With

commensurate formalised regulatory regimes being considered in other jurisdictions, in particular the EU and UK towards the end of 2024, we would also suggest that the MAS consider aligning to this timeline to benefit from 'lessons learnt' from the implementation of these other regimes.