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ESMA
European Securities and Markets Authority

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Consultation on the Technical Standards under the Regulation on the transparency and integrity of ESG rating activities

Position statement by Ethos Services SA

We thank you for the opportunity to comment on the consultation regarding the Technical Standards under the Regulation on the transparency and integrity of ESG rating activities.

Established in 1997 by and for Swiss pension funds, the Ethos Foundation aims to enable them to invest sustainably and responsibly. The Ethos Foundation currently represents over 250 Swiss pension funds, insuring more than 2.3 million people in Switzerland and managing assets totalling over CHF 400 billion. Our daily mission is to support our members on their journey to invest sustainably and responsibly by taking environmental, social and governance (ESG) criteria into account. To this end, the Ethos Foundation established Ethos Services in 2000 to provide institutional investors with a range of services and products dedicated exclusively to socially responsible investment. These include ESG research and ratings, proxy voting advice, engagement programmes and sustainable investment solutions.

As an ESG rating agency based outside the European Union (EU) that provides services to Swiss and to a smaller extent EU investors, Ethos is directly interested in the development of EU regulations impacting part of its service offering. We broadly support the EU's initiative to enhance oversight of ESG rating activities, particularly to ensure that the services provided to investors are not biased by additional services provided to issuers. Ethos believes this is essential to maintaining the credibility and impartiality of ESG ratings.

Nevertheless, Ethos has concerns about certain aspects of the proposed regulation, particularly its implications for smaller, independent agencies – both within and outside the EU. In recent years, the ESG rating industry has become increasingly concentrated, dominated by a handful of large, primarily US-based firms. While Ethos endorses the objectives of enhancing transparency, integrity, and reliability, it believes the draft framework could impose a disproportionate compliance cost on small and mid-sized agencies. In particular, the proposed separation of sustainability services provided exclusively to investors could prove costly and operationally complex for these entities.

This is particularly striking considering the European Commission's parallel efforts to reduce the regulatory burden on corporate issuers through the so-called 'Omnibus package', which notably excludes ESG rating providers from its scope. The result is a regulatory imbalance: ESG rating agencies, often small, research-driven entities, are subject to increasing compliance risks, while the corporate issuers assessed by these agencies to ensure more sustainability practices are facing a lighter regulatory touch. This asymmetry raises questions about the broader policy intent. From our perspective, it appears that the regulatory pressure is being shifted away from large market actors and onto the entities tasked with holding them accountable. This could weaken the independence and diversity of the ESG rating landscape and may ultimately undermine the EU's sustainable finance agenda.

We appeal to ESMA and the European Commission to consider proportionality as a guiding principle in finalising these standards, particularly for smaller providers who play a vital role in enriching ESG insights across the European market.

We again thank you for the opportunity to answer the questions included in Annex III below.

7.3 Annex III List of Questions

Q1. Do you agree with ESMA's proposals for the draft technical standard under Articles 6(3) and 12(9)?

(Applications for Authorisation and Recognition)

We agree with ESMA's proposal to merge the requirements for authorisation and recognition to simplify and clarify the process.

We however consider that the ESMA could provide additional information on the specific points detailed below.

Point 1

We would welcome ESMA's clarification on the scope of the authorisation and recognition application in particular for an ESG rating provider established outside the EU which provides different sustainability services to investors. In particular, the "consulting services to investors" is not well defined and it is currently unsure if an application for Authorisation and recognition should be sought for the following services:

- Proxy voting recommendations
- Engagement activities

Point 2

Part A) of Annex III of the draft RTS mentions additional information to be provided for the legal representative in the member state of reference.

We would welcome ESMA's clarification on the types of legal entity that could act as legal representative and any requirements that those entities should satisfy. It would also be useful to inform on the legal responsibilities endorsed by the legal representative.

Point 3

Parts B) and C) of Annex III of the draft RTS mention additional information to be provided on turnover and on ESG ratings intended to be distributed in the EU.

We do not see the rationale of asking additional information in the case of a recognition in particular regarding the full list of detailed ratings required under parts C (last rating notch or value). We consider that either this information is essential and required for both recognition and authorisation, or it is optional and shall not be requested for recognition.

Point 4

We would welcome ESMA's clarification on the possibility to apply for recognition for ESG rating providers established outside of the EU with an annual net turnover of all its activities that is above the amount set in Article 3(2), second subparagraph of Directive 2013/34/EU.

Q2. Do you agree with ESMA's proposals for the draft technical standard under Article 16(5)?

(Separation of Activities)

We are in the opinion that activities and services provided to issuers (issuer-paid model/solicited ESG rating) should be separated from those provided to investors (user-paid model/unsolicited ESG rating). When an ESG rating provider is paid by both issuers and investors, potential conflicts of interest may arise and trust in the system could be damaged.

Therefore, we agree that all services and activities provided to issuers and undertakings, such as those defined under letters (a), (b), (e) and (f) of Article 16(1) of the Regulation, shall be provided by a legal entity that is separate from those that provide services and activities to investors, such as those defined under letters (a), (c), and (d) of point 1 of Article 16 of the Regulation.

We however do not see the rationale for implementing additional separation requirements between services and activities that are provided exclusively to investors. The current technical standard does not adequately define what is intended by consulting services to investors. We consider that the services, including but not limited to proxy advisor services, engagement services, sustainability or carbon assessments of portfolios should not be considered in the scope of the separation requested. Indeed, strong synergies can be reached between these activities enhancing the data quality and the value added to investors. Typically, relying on quality ESG data reinforce the quality of proxy voting advice and engagement activities. Furthermore, it allows smaller agencies to diversify their revenues and be able to compete against very large consolidated ESG agencies. The investment required to collect quality data are considerable. It is in the EU best interest to guarantee a good diversification of ESG data and rating providers and promote independent European based agencies. By

reducing the ability of smaller player to diversify their revenues and potential increasing compliance cost, the EU may further accelerate the current consolidation of the ESG rating agencies landscape.

We also do not believe that such services give rise to conflicts of interest, provided they are only offered to investors. We are seeking ESMA's explicit confirmation in order to eliminate any uncertainty regarding our classification and associated obligations.

In line with the above, we would welcome a clear definition of the following terms:

- "consulting activities to investors";
- "investment services and activities", particularly regarding the meaning of "investment advice" as set out in point (5), section A of Annex I of Directive 2014/65/EU.

Q3. Do you agree with ESMA's proposals for the draft technical standard under Articles 23(4) and 24(3)?

(Disclosure to the public, users of ESG ratings, rated items and issuers of rated items)

In general, we agree with ESMA's proposals for the draft technical standards under Articles 23(4) and 24(3).

We would however welcome ESMA's clarification on the level of granularity that needs to be made available for rated items and issuers of rated items as well as on the format in which such information should be provided. We would also appreciate if ESMA could indicate the proper timeframe for making this information available.

We are concerned that issuers could initiate lawsuits and legal action to censor, intimidate and silence ESG rating providers based on the information made available by the Regulation. Indeed, in recent years, we have seen large issuers and undertakings, especially in common law jurisdictions, tend to take such action more regularly in response to any type of criticism. We are referring to actions such as the so-called 'SLAPP lawsuit' (Strategic Lawsuit Against Public Participation).

We would welcome more details on ESMA's plan to guarantee ESG rating providers independence and protection against such actions.

Q4. Do you consider that the draft technical standards under Articles 23(4) or 24(3) should instead provide an expanded table in Annex proposing a sequence and structure for all disclosures to be made under parts 1 and 2 of Annex III? If yes, please explain the benefits of such an approach.

(Disclosure to the public, users of ESG ratings, rated items and issuers of rated items)

We have yet no comment on this part.

Q5. Do you agree with ESMA's proposed cost benefit analysis? If not, please explain.

We believe that ESMA's cost-benefit analysis significantly underestimates the impact of fixed costs on small ESG rating providers. The cost of implementing organisational and physical measures to comply with the Regulation will certainly not be low. These fixed costs will be disproportionately high for small entities, rising the barrier to entry to a potentially unreachable level, whereas large multinationals will find them acceptable, in relative terms. Therefore, compliance with the Regulation could be detrimental to smaller entities, threatening their survival.

We are also seeking ESMA's explicit confirmation that no cost will be incurred for authorisation or recognition applications submitted to ESMA.