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Response to the technical standards proposed by ESMA for the external reviewers of EuGBs

ICMA is a trade association headquartered in Switzerland with over 620 members who are active in all segments of international debt capital markets in 68 jurisdictions globally. These include private and public sector issuers, financial intermediaries, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others worldwide. In pursuit of its objectives, ICMA prioritises three core fixed income market areas – primary, secondary, repo and collateral, with two cross-cutting themes of sustainable finance and FinTech and digitalisation. See www.icmagroup.org.

ICMA hosts the Principles that underpin sustainable bond issuances globally. In 2023, 97% of the global sustainable bond issuance volume aligned with the Green, Social, Sustainability, and Sustainability-linked Bond Principles (the Principles). As globally accepted market standards, the Principles are the fruit of extensive work and input from over 380 organisations including issuers, investors, and various other stakeholders, such as the external reviewers.

ICMA-hosted standards benefitting the sustainable bond market also includes the Guidelines for External Reviews. Being developed as a common undertaking between the Executive Committee of the Principles and the Advisory Council in consultation with a group of leading external reviewers, these provide voluntary guidance relating to professional and ethical standards for external reviewers, as well as to the organisation, content and disclosure for their reports, and thus promote best practice in the provision of external review services for green, social, sustainability and sustainability-linked bonds.

As of May 2024, 42 external reviewers from various countries have notified ICMA of their voluntary alignment with these Guidelines. In 2021, the Executive Committee of the Principles also established the External Reviewers' Forum which convenes approximately three times a year to share information and experience on the interpretation of the Principles and related guidance, existing and future market practice, and the impact of national regulations.

Furthermore, ICMA extensively engaged with EU lawmakers during the legislative process of the Regulation for European green bonds, also known as the European Green Bond Standard (EU GBS). We published six papers/statements since the original proposal of July 2021[1] and engaged bilaterally with EU lawmakers to ensure the complementarity of the EU GBS.

[1] These are: (i) an update on the provisional agreement on the EU GBS in April 2023; (ii) a statement of support for the voluntary nature of the EU GBS and broader market disclosures in March 2023; (iii) a statement with the Executive Committee of the Principles in December 2022; (iv) a paper providing an updated analysis on the trialogue negotiating of the EP and the Council in June 2022; (v) a commentary on the EP Rapporteur's proposed amendments in January 2022; and (vi) a paper providing an analysis on the European Commission's original proposal in July 2021. These documents can be found here.

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This response to ESMA's consultation is provided on behalf of ICMA and its constituencies, especially the External Reviewers' Forum and the Executive Committee of the Principles. In summary, our feedback is as follows:

- **The draft RTS should take a proportionate approach to requirements for all external reviewers (ERs)**. We believe proportionality should be integrated into the design of ESMA's draft RTS. For example, the number of documents and information required by ESMA is quite significant and appears to go beyond other regulatory regimes in certain cases. In addition to providing all relevant policies, procedures and organisational information, ESMA appears to require some assessments on (1) the collective suitability of the board and senior management, (2) internal controls, (3) knowledge of analysts, (4) outsourcing arrangements, all of which might be difficult to formalise for all providers. Given the voluntary nature of the EU GBS, reducing the overall administrative burden would help ensure that both potential smaller and larger ERs are willing to provide EuGBs-related services and thus enter within the EU GBS regulatory regime in the first place. This would in turn foster competition in the EuGB external review market. This question of the administrative burden also extends to the registration process.
- **The interaction between the Regulation on the EuGBs and the ESG Ratings Regulation should be clear to avoid overlapping regulations**. Since many external reviewers would be providing different services including SPOs and ESG ratings at the same time, the entity-level requirements should be designed with a view to avoiding unnecessary bureaucracy and documentation. Where applicable, they should also be designed to leverage existing structural and governance arrangements and processes. Organisations seeking to provide ESG ratings and External reviews should be able to become authorised and comply with both the ESG Ratings Regulation and the EuGB Regulation at the same time for the same entity.
- **Intragroup arrangements should be exempt from the rules on outsourcing.** External reviewers may leverage various expertise through their parent companies, subsidiaries, and affiliates when issuing opinions, which should not trigger the outsourcing rules, as this is not the objective.
- **Knowledge and experience of analysts:** ESMA should consider requiring a degree of knowledge by the external reviewer on the EU Taxonomy and the EU GBS, to be demonstrated on a self-declaration basis. However, given that the EU Taxonomy is a relatively new regime, the knowledge requirements should not create a significant entry barrier but rather take a proportionate approach as firms become more familiar with the practical application and best practice guidance related to the Taxonomy and the EU GBS.

Yours faithfully,

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