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Ref: Proposed International Ethics Standards for Sustainability Assurance (including International Independence Standards) (IESSA) and Other Revisions to the Code Relating to Sustainability Assurance and Reporting

Dear Ms Figueiredo Dias,

The European Securities and Markets Authority (ESMA) thanks you for the opportunity to provide comments on IESBA's Exposure Draft on the *International Ethics Standards for Sustainability Assurance (including International Independence Standards) (IESSA) and Other Revisions to the Code Relating to Sustainability Assurance and Reporting* (the ED).

ESMA's mandate on corporate sustainability reporting includes promoting consistent and correct application of the applicable requirements and the convergence of supervisory practices and outcomes. These objectives are best pursued not only when high-quality reporting standards are in place, but also when the assurance process can rely on sound and standardised requirements that are internationally recognised. Therefore, in line with our comments¹ on the Proposed International Standard on Sustainability Assurance (ISSA) 5000, we are pleased to provide the following feedback on selected areas of this ED, addressing the necessary ethical safeguards for the professionals involved in sustainability assurance engagements as well as other services.

The new EU Corporate Sustainability Reporting Directive (CSRD) establishes disclosure obligations on sustainability matters for a wide range of companies and groups, including those with securities listed on European regulated markets. These requirements are accompanied by a limited assurance regime for the sustainability statements for the first years, with the objective to move towards reasonable assurance at a later stage.

An external assurance opinion on the compliance with the main pillars of the corporate sustainability reporting, i.e. the European Sustainability Reporting Standards (ESRS), the disclosures pursuant to Article 8 of the Taxonomy Regulation and the related digital mark-up

¹ [ESMA32-389550249-174](#) – Response to IAASB's Exposure Draft *Proposed International Standard on Sustainability Assurance (ISSA) 5000, General Requirements for Sustainability Assurance Engagements* - 28 November 2023

requirements, will therefore be required from one or more statutory auditors, audit firms or other independent assurance providers. The assurance of sustainability reporting will need to comply with several requirements including in relation to professional ethics and independence. These requirements are aligned to those envisaged for the statutory audit of financial statements, but duly adapted to reflect the specificities of sustainability reporting.

ESMA notes that sustainability indicators and narrative disclosures, due to their longer-term perspective, stronger forward-looking orientation and relative novelty compared to financial reporting, may be exposed to higher risk of misstatements and omissions, especially in the first years. This fact, coupled with increasing scrutiny by market participants of the sustainability profile of issuers may pose particular pressure and challenges when providing assurance on sustainability reports. External assurance, together with internal controls of issuers and public supervision, plays therefore a key role in preventing greenwashing cases.

Broad support for the general approach proposed by IESBA to the new Section 5 of the Code

Against this background, ESMA welcomes IESBA's proposal to develop ethics requirements for sustainability assurance, including International Independence Standards, that are grounded on existing principles applicable to the audit of financial statements, but duly adjusted, internationally recognised, profession-agnostic and framework-neutral. This approach is also in line with IOSCO's 2022 statement of support² to the work of IESBA and IAASB in the field of sustainability assurance standards.

ESMA stresses the importance of IESBA's role to help bridge the gap between the two main groups of professionals that will be involved in the assurance of sustainability reporting: audit firms and conformity assessment bodies as well as other practitioners. Convergence towards the highest and most effective ethical and independence standards for those involved in sustainability assurance engagement is not only essential to enable financial supervisors to rely on the assurance work in their supervisory task, but it is of utmost importance for the credibility and reliability of the reporting vis-à-vis investors and other stakeholders. ESMA therefore supports both IESBA and the IAASB in taking a leading role at international level in fostering the dialogue and convergence across the diverse community of sustainability assurance practitioners.

Importance of keeping close coordination between IAASB's and IESBA's respective standards

ESMA understands that, prior to issuing its proposals, IESBA has coordinated with the IAASB on a number of subjects. We also concur with the fact that developing framework-neutral ethics requirements implies maintaining neutrality not only from jurisdictional initiatives, but also to some extent from the IAASB's international sustainability assurance standard. Nevertheless, ESMA would recommend maintaining consistency between the IAASB's approach to define sustainability information and sustainability matters in the proposed ISSA 5000 and the

² [Public statement](#) - IOSCO encourages standard-setters' work on assurance of sustainability related corporate reporting – 15 September 2022

proposed IESBA approach to define sustainability information. In our view, eliminating unnecessary divergence between IESBA's and the IAASB's standards would not undermine their neutrality, but rather improve their interoperability.

Similarly, we note that IESBA has proposed requirements for situations where sustainability assurance takes place at group level. On the contrary, the proposals on ISSA 5000 have remained at a more high-level in this area. With the objective of fostering consistency between their respective standards, ESMA encourages IESBA to continue working with the IAASB to consider converging on the way the respective standards address group sustainability assurance engagements.

Lastly, it is important to achieve a consistent understanding between the proposed Section 5 of the IESBA Code and ISSA 5000 on the notion of value chain and its relationship with the boundaries of groups, as further explained in our comments.

Non-Assurance Services (NAS)

ESMA generally supports the approach proposed with regards to Section 5600 on the provision of non-assurance services to a sustainability assurance client and the consistency with Part 4A of the Code. ESMA notes, however, that the proposed requirements leave substantive room for judgement with regards to the possibility for the sustainability assurance practitioners to engage in NAS. ESMA notes that the Code – both in the new Part 5 and in Section 600 – would benefit from more stringent requirements and specific prohibitions.

Furthermore, one of the factors to be considered in evaluating threats that might be created by providing NAS to a sustainability assurance client is the consideration of whether the outcome of the service will have a material effect on the sustainability information. In this regard, ESMA supports the proposal to link the concept of materiality to the relevant underlying sustainability reporting framework.

Definition of value chain

ESMA supports the proposed definition of value chain in the revised glossary as this definition reflects – just like the notion of materiality of sustainability information used in the proposed Part 5 – the concepts set out in the underlying sustainability reporting framework. While we acknowledge that by referring to the underlying legal framework defining the value chain under a specific set of requirements or reporting standards, there will be diversity in the performance of assurance engagements depending on the applicable requirements, this is a necessary consequence of the different scope of the underlying legal frameworks to which international standards will apply.

However, ESMA notes that the definition of value chain proposed by IESBA indicates that the value chain does not include components. This specification may create divergence with the value chain notion that can be derived from the draft IAASB requirements where it is envisaged to acknowledge that part of the value chain of an undertaking may be within an entity's group structure.

Non-Compliance with Laws And RegulationsTM (NOCLAR®) in relation to value chain actors

ESMA notes that the ED does not address provisions for cases of Non-Compliance with Laws And Regulations relating to actors in the value chain of a sustainability assurance client.

We understand that this provision is mostly envisaged to keep alignment with the existing requirements in Section 360 of the International Code of Ethics which focuses on non-compliance within the perimeter of a client's activities and those working for or under the direction of the client.

However, we question whether this approach fully reflects the specificities of sustainability reporting where the value chain elements would be potentially quite relevant. Reporting on sustainability information would, in fact, require, both under EU and international standards, consideration of risk, opportunities and impacts stemming from the relationship with value chain actors.

To the extent the client has identified material risk, opportunities and impacts stemming from its value chain, the conclusion expressed by the assurance provider should enhance the degree of confidence of the intended users about the sustainability information also with regards to these value chain aspects. Therefore, ESMA would recommend reconsidering the extension of NOCLAR provisions to value chain actors when this is relevant for the purpose of ultimately assessing the compliance of the value chain-related disclosure of the client with applicable sustainability reporting requirements.

ESMA also recommends strengthening the requirements relating to the communication on any non-compliance or suspected non-compliance of the client between the sustainability assurance practitioner and the client's external auditor (par. R5360.18a and par. R360.18a). In particular, these requirements should envisage that this communication *shall* take place unless otherwise provided for by applicable laws and regulations.

Confirmations of independence of other practitioners

Both Sections 5406 and 5407 require that the firms ascertain the independence respectively of another practitioner or of a sustainability assurance practitioner who performs assurance work at a value chain entity. ESMA recommends that this confirmation is requested in writing. Furthermore, ESMA recommends clarifying the definition of "Another practitioner" in Part 5 based on concrete cases which the Code aims at capturing.

IESBA approach to preparers of sustainability reporting

Finally, ESMA supports IESBA's decision to take a step-by-step approach to setting ethics standards to professionals other than professional accountants involved in the preparation of sustainability reporting. ESMA concurs with IESBA's acknowledgement in its strategic work plan that there is a public expectation that all preparers of financial and sustainability information are subject to the same high ethics standards. The integrity of the teams responsible for the preparation of sustainability information should be supported by adequate professional ethics and ESMA believes that IESBA can considerably contribute with its expertise in this field by developing adequate guidance. ESMA therefore recommends that

IESBA engages in extensive outreach with the relevant parties in the sustainability reporting field to be able to address this area in a timely fashion.

Should you have questions or comments, please contact Isabelle Grauer-Gaynor, Head of the Corporate Finance and Reporting Unit (isabelle.grauer-gaynor@esma.europa.eu) or Evert van Walsum, Head of the Investor Protection and Sustainable Finance Department (evert.vanwalsum@esma.europa.eu).

Yours sincerely,

Verena Ross