

September 27, 2024

Deceptive marketing practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, QC
K1A 0C9

Via email: greenwashingconsultationecoblanchiment@cb-bc.gc.ca

Dear Sir/Madam,

Re: CCGG's Response to the Competition Bureau's Canada's public consultation on the Competition Act's new greenwashing provisions

The Canadian Coalition for Good Governance (CCGG) is the pre-eminent corporate governance organization in Canada. CCGG's Members are Canadian institutional investors that together manage approximately \$5.5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors.

CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A representative list of our Members is attached to this letter.

We welcome the opportunity to comment on the Competition Bureau's public consultation on the new provisions aimed at greenwashing. The purpose of the consultation is to provide the Bureau with input that may inform its future enforcement guidance about environmental claims made under the *Competition Act* following the passage of Bill C-59 into law earlier this summer.

Greenwashing does not facilitate investor decision-making

CCGG Members strongly support measures designed to discourage and prevent greenwashing.

It is essential that the Competition Bureau's guidance provides clarity to companies that enables and does not stifle meaningful climate-related disclosures by companies.

The amendments to the Act made through Bill C-59 have created questions and uncertainties which has led to a pullback in some disclosures. This is concerning to institutional investors both as users and preparers of climate-related disclosures.

What corporations say about their business or business activities in respect of “protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change”¹ are important inputs into institutional investors’ investment decision making, risk analysis, and the effective discharge of investors’ fiduciary duties to their beneficiaries and clients through voting, stewardship activities and engagement.

Truthful claims about the benefits of a business or business activity’s impact on the causes or effects of climate change are essential not only to consumer confidence and competitive integrity between companies but to the stewardship responsibilities and investment decisions of institutional investors

CCGG Members are institutional investors who recognize that material environmental and social matters², including those related to climate change and the transition to a low carbon economy, can pose both financial risk and provide significant opportunity.

Given its systemic nature, institutional investors have recognized for some time that climate risk is an investment risk that they are not able to mitigate through traditional approaches to diversification. This is especially true for universal owners whose portfolios hold a portion of the entire market through the replication of market indicis. As a result, institutional investors in Canada, and globally, are increasingly requesting that the companies in which they invest make material, comparable, consistent and decision-useful disclosures about their environmental, social and governance practices in order to inform investor decision-making and stewardship activities such as engagement with investee companies.

The Competition Bureau must provide clear guidance that both prevents greenwashing AND does not discourage meaningful climate disclosures

In response to the amendments, some companies are removing all sustainability and climate disclosure commentary from their websites; others are offering disclaimers.³

¹ [Competition Act as amended by Bill C-59, S.74.01\(1\)](#): A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,... (b.1) makes a representation to the public in the form of a statement, warranty or guarantee of a product’s benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test, the proof of which lies on the person making the representation.

² CCGG, [The Director’s E&S Guidebook: Practical insights and recommendations for effective board oversight and company disclosure of environmental and social \(E&S\) matters](#), 2018.

³ Jeffery Jones, [Ottawa’s move to fine companies over deceptive green claims triggers wave of website disclaimers in energy sector](#), Globe and Mail June 21, 2024

While there is some support for the position that this is, in effect, simply the legislation achieving its intended purpose⁴, the legal uncertainty surrounding several aspects of Bill C-59 has created a reasonable basis for concern and caution within Canadian companies and their investors.

The elements of Bill C-59 that have raised questions include:

- the meaning of “adequate and proper substantiation in accordance with internationally recognized methodologies”;
- the application of the provisions to representations made outside of marketing/advertising materials;
- the reverse onus on companies; and
- the potential for third party claims as of June 2025, and the potential exposures to administrative penalties which could extend to 3% of worldwide gross revenues.⁵
 - A penalty of 3% of gross worldwide revenues would have a significant impact on a company’s share price and the financial return to its investors.
 - The potential for third party claims could have unintended consequences for Canadian competitiveness globally.⁶

It is therefore imperative that the Competition Bureau’s guidance addresses these uncertainties in a timely manner and in such a way as to provide companies and investors with a clear path to assessing compliance such that companies are encouraged to make the truthful climate-related disclosures that investors have been requesting.

⁴ Janis Sarra, [Oil companies’ fuss over greenwashing rules is much ado over nothing](#), Globe and Mail July 21, 2024; Hugh Helferty, [Is the oil industry fighting for the right to greenwash?](#), Globe and Mail, July 15, 2024.

⁵ Omar Wakil, Tyson Dyck, Claire Seaborn and Ian Li, [“Prove it: Competition Law Amendments require companies to back up environmental claims”](#), Torys LLP, June 21, 2024; Chris Margison, Robin Spillette & Tony Di Domenico, [“Deceptive Marketing Practices \(Greenwashing, Ordinary Sales Pricing, Drip Pricing\) – Where Are We Now”](#), Fasken Martineau DuMoulin LLP, July 8, 2024.

⁶ For example, one CCGG Member, has noted that Canadian companies could potentially lose access to business from jurisdictions like Europe, where the reporting obligations are higher. For example, a Canadian company may not be able to get an order from a European company if environmental-related information is not disclosed by the Canadian company due to concerns about third party claims.

The Bureau's guidance should take a principled approach to identifying and resolving the following uncertainties

What constitutes an “internationally recognized methodology”?

Over the past several years, significant time, effort and resources have been expended by the global investor community to develop, consolidate and standardize a robust set of international sustainability disclosure requirements, with a climate first prioritization.⁷

This initiative led to the establishment of the International Financial Reporting Standards (IFRS) International Sustainability Standards Board (ISSB) and the publication in June 2023 of the first two international sustainability standards, ISSB S1 (General requirements) and S2 (Climate-related).

The ISSB integrated and consolidated a number of previously independent voluntary reporting frameworks and standards that had emerged to address increasing interest in climate and other sustainability-related risks. For example, the ISSB:

- Based its standards on the widely accepted and respected framework of the Taskforce on Climate-related Financial Disclosure (TCFD) which organized disclosures around the pillars of governance, risk management, strategy and metrics and targets;
- Integrated and internationalized the materiality indicators established by the Sustainability Accounting Standards Board (SASB) which identified material, industry specific sustainability factors, including for climate risk;
- Integrated the Integrated Reporting Framework which supports connection between financial and sustainability-related disclosures; and
- Integrated the CDSB.

The goal of the ISSB's standards is to establish a 'global baseline' of consistent and comparable disclosures that meets the needs of institutional investors as the primary users of such disclosures. Approximately twenty four jurisdictions around the world, including Canada, have either adopted or are in the process of adopting these standards on either a voluntary or mandatory basis.⁸

In response to the issuance of the international standards by the ISSB, a new domestic standards setting body, the Canadian Sustainability Standards Board (CSSB), was established as the mechanism for adopting the ISSB's standards into Canada and that work is underway and moving rapidly.⁹

⁷ IFRS News Release, [ISSB decides to prioritise climate-related disclosures to support initial application](#), 4 April 2023.

⁸ See: [News Release, Progress towards of adoption of ISSB Standards as jurisdictions consult](#), IFRS ISSB April 3, 2024; and also, see the interactive jurisdictional chart by [Helen Tooze, IFRS S2 Adoption by Jurisdiction, Canadian Climate Law Initiative \(CCLI\) June 4, 2024](#).

⁹ [CSSB, About, Financial Reporting & Assurance Canada](#); also see [Canadian Sustainability Disclosure Standards, Overview](#), Financial Reporting & Assurance Standards Canada.

A public consultation process recently closed in June of this year and the CSSB is actively reviewing feedback to its recommendations as to the content and implementation of Canadian Sustainability Disclosure Standard (CSDS) 1 (General sustainability disclosures) and CSDS 2 (Climate-related disclosures) which, as proposed, would be substantively aligned with the ISSB's standards. Final standards are expected to be published in the last quarter of 2024.

As such, the ISSB's international climate-related disclosure standard, S2, is substantively reflected in the proposed CSDS 2 which includes disclosures of a company's governance, risk management, strategy and metrics and targets in respect of material climate-related risks and opportunities, including green house gas (GHG) emissions, and related emission reductions targets and transition plans. It uses the GHG Protocol as the methodology for calculating greenhouse gas emissions and incorporates the industry specific materiality indicators originally established under SASB (now part of the ISSB).

Investors have been encouraging public companies to begin disclosing against these standards voluntarily pending any mandating of disclosures by Canadian securities regulators. Likewise, investors have been encouraging securities regulators to mandate ISSB aligned climate-related disclosures.¹⁰

The ISSB's sustainability and climate-related standards are designed to be proportional. They take into account a public company's available resources and expertise, rely on information that is reasonable, supportable and available to the company without undue cost or effort and permit companies to move disclosures from qualitative to quantitative over time as disclosure methodologies refine, data improves and best practices mature.¹¹

We highlight this trajectory of the ISSB's standards for two reasons.

The first reason is to draw the Bureau's attention to the importance to Canadian and global institutional investors of the current momentum around climate and sustainability-related disclosures with a view to highlighting the need for the Competition Bureau's pending guidance not to create a chill in the voluntary adoption of disclosures.

Investors recognize that to enhance the reliability, integrity and comparability of climate-related claims and statements over the long term, company's need to begin disclosing; the expectation is progress over perfection.

The second reason is to illustrate that the universe of "internationally recognized methodologies" for climate and environmental sustainability disclosures is not static, and is in a period of significant evolution. The Bureau's guidance should take this momentum and evolution into account when

¹⁰ [CCGG letter to the CSA Re: CSA's Climate change-related disclosure update, December 15, 2022](#)

¹¹ CSDS 1 para 37 (a) and (b); para 38-40.

considering the acceptability of substantiation of a claim in accordance with an “internationally recognized methodology”.

In addition, while the ISSB and CSSB focus on disclosures useful to investors, there are other methodologies and standards that also exist for different purposes such as measurement and certification.

In our view, mandating a closed list of specific “internationally recognized methodologies” to substantiate that a claim is not greenwashing is potentially problematic given that this is a rapidly evolving and maturing area. There continues to be an alphabet soup of different international methodologies and standards appropriate for substantiating different claims and statements for different purposes (e.g. ISSB, but also ISO (the International Standards Organization), IPCC (Intergovernmental Panel on Climate Change), IEA (International Energy Agency), SbTI (Science-based Targets Initiative), GHG Protocol (Green House Gas Protocol), PCAF (Partnership for Carbon Accounting Financials)). There are also different industry and corporate certifications and labels (such as Europe’s Ecolabel regime¹²). All of which are legitimate.

Given that the onus is on the company to demonstrate, on a balance of probabilities, that the representation made is properly and adequately substantiated in accordance with an “internationally recognized methodology”, the Bureau should provide guidance as to the criteria or principles against which it will assess whether the methodology is “internationally recognized”, including:

- Does the methodology have an independent oversight body (e.g. ISSB, ISO)?
- Is the methodology science based, where appropriate (IPCC, SbTI)?
- Is the methodology widely used globally (GHG Protocol)?
- Is the methodology industry specific (e.g. industry certifications)?
 - If so, are there certain criteria or characteristics of an industry certification that the Bureau would look to as indicators of the appropriateness or inappropriateness as to its credibility (e.g. governance, funding sources, participants/stakeholders, verification process, etc?)
- Will the Bureau recognize or consider other jurisdictions’ methodologies (e.g. Europe’s Corporate Sustainability Reporting Directive applies to some Canadian companies¹³)?

¹² EU Ecolabel https://environment.ec.europa.eu/topics/circular-economy/eu-ecolabel_en

¹³ [Institute for Sustainable Finance, EU sustainability reporting requirements a wake up call for Canadian firms, policy makers: ISF Briefing Note, March 26, 2024](#). In addition, one Member noted that absent strong guidance from the Bureau, non-Canadian companies may be deterred from operating in Canada, when they have to comply with other reporting requirements such as the CSRD in Europe, if such reporting may open up the potential for third party claims to be made in Canada.

- Will the Bureau distinguish between frameworks, standards, and methodologies?
- How will the Bureau consider claims made pursuant to mandated domestic provincial and federal methodologies and standards?
- How will the Bureau consider credible claims made where there is no “internationally recognized methodology”? For example:
 - In the Canadian context, claims made by Indigenous led businesses or organizations may rely on traditional Indigenous knowledge and environmental stewardship practices. Further consultation with Indigenous leaders and organizations, and clarity as to the Bureau’s approach to such claims is essential.¹⁴
 - In the investor context, methodologies may be internally developed where no independent external sources yet exist.¹⁵

How will the Bureau resolve conflicts between “internationally recognized methodologies”?

It is possible that there may be differences between reputable and recognized methodologies. For example, methodologies can be different depending on the intended users of the disclosure (e.g. the ISSB’s primary users are investors whereas the Global Reporting Initiative (GRI), which is widely used in sustainability reporting, targets broader stakeholders as its audience, which leads to differences in the content and assumptions underpinning disclosures).¹⁶ Many Canadian institutional investors are required to comply with various global regulatory regimes. A lack of guidance by the Bureau as to how it intends to consider any conflicts or differences has the potential to introduce complexities with respect to compliance for investors .

- How will the Bureau view differences between methodologies?
 - Will it consider such conflicts to mean there is no “internationally recognized methodology” or will a reasonable basis for selecting the methodology combined with proper and adequate substantiation of disclosures consistent with such methodology be sufficient for a company to discharge its reverse onus?

How will the Bureau consider Canadian regulatory or legislatively required disclosures?

The “Deceptive Marketing Practices Digest – Volume 7” published at the same time as the Bureau’s consultation states that “[f]rom the Bureau’s perspective, an environmental claim is any

¹⁴ See, Climate Atlas of Canada, [Indigenous Knowledges: Indigenous ways of knowing and being are critical for understanding, observing, and addressing climate change](#), Prairie Climate Centre

¹⁵ See the Abatement Capacity Assessment (APA) as described in CPP Investments Insights Institute, [The Future of Climate Change Transition Reporting](#), CPPIB, Oct 2021.

¹⁶ Although efforts are being made to support aligned reporting see: [IFRS - GRI and IFRS Foundation collaboration to deliver full interoperability that enables seamless sustainability reporting](#).

representation related to the environment that has been made for the purposes of promoting a product or business interest”.¹⁷ The language of the legislation in 74.01(b.2) would include any “representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effect of climate change”. The latter includes disclosures that go beyond marketing or advertising materials and could extend to climate related claims including regulated and/or legislated disclosures.

For example, under the existing continuous disclosure regime, public companies are currently required to disclose all material risks, which include climate risks.¹⁸ In 2021, the Canadian Securities Administrators (the CSA) published draft regulations which would mandate climate-related disclosures. The CSA has indicated it intends to issue a further consultation with respect to climate-related disclosure requirements taking into consideration the anticipated finalization of CSDS 2 by the CSSB later this year.¹⁹ It is not yet clear whether the CSA will integrate some or all of the final CSDS 2 which is related to climate-related disclosures.

Similarly, the Office of the Superintendent of Financial Institutions (OSFI) which regulates federal financial institutions such as banks and insurance companies, has mandated climate risk management disclosures, aligned with the climate-related disclosure standard (S2) published by the ISSB which include disclosures related to transition plans and GHG emissions.²⁰

The Canadian Association of Pension Supervisory Authorities (CAPSA) has also integrated environmental, social and governance matters into its guideline for risk management for plan administrators, specifically highlighting the risk to the financial system posed by climate change.²¹ The CAPSA guideline recommends that “as a best practice, plan administrators should describe, in a level of detail proportionate to its circumstances, whether and how material ESG information is considered and refer to that information in its investment policy or in other sources of plan information such as websites, fund facts or statements”.²²

The CSA also recently updated its guidance in respect of the disclosure practices of investment funds in respect of how environmental, social and governance matters are described.²³

¹⁷ Competition Bureau, [The Deceptive Marketing Practices Digest – Volume 7](#), Bulletin, July 22, 2024 (Canada), at para 2. (“The Deceptive Marketing Practices Digest – Volume 7”)

¹⁸ CSA Staff Notice 51-358 “Reporting of Climate Change-related Risks” see [CSA press release August 1, 2019 “Canadian Securities Regulators Issue Guidance on Climate Change-related Disclosure”](#).

¹⁹ See [CSA press release March 13, 2024 “Canadian securities regulators issue statements on proposed sustainability disclosure standards and ongoing climate consultation”](#).

²⁰ [OSFI news release March 20, 2024 “OSFI continues building climate resilience”](#). Also see [Autorité des marchés financiers, Climate Risk Management Guideline, July 2024](#), which includes detailed disclosure requirements and is applicable to financial institutions regulated by the Province of Quebec.

²¹ [CAPSA Guideline No. 10, Guideline for Risk Management for Plan Administrators, Sept 9, 2024](#), at pg. 26

²² *Ibid.*, see Principle 3, at page 28.

²³ [CSA Staff Notice 81-334 \(Revised\) – ESG-Related Investment Fund Disclosure, March 7, 2024](#).

It is important that the Competition Bureau clarifies the principles and factors upon which it will assess claims in respect of disclosures made in compliance with the requirements of other Canadian regulators or legislation. It is also important that the Bureau clarifies how it will consider enforcement under Bill C-59 in the context of the broader and evolving landscape of other environmental and climate-related regulated disclosures in Canada.

- Will it defer to the enforcement mechanisms of the mandating domestic regulator?
- Will it apply its own assessment of the disclosures even if they are otherwise compliant with regulated domestic requirements and not subject to enforcement or requests for restatement under the applicable disclosure regime?
- Will it consider the primary purpose for which the disclosures have been made (e.g. compliance or stewardship rather than promotional/advertising)?

Differentiating between reliance on a ‘disclaimer’ and appropriately transparent ‘forward looking information’ consistent with the methodology being used

The “Deceptive Marketing Practices Digest – Volume 7” states that companies should not “rely on a disclaimer or fine print to cure an otherwise misleading environmental claim”.²⁴

CCGG supports this premise but cautions that some inputs to climate-related claims, notably with respect to the assumptions, estimates and data used to substantiate calculations of GHG emissions, particularly Scope 3, are evolving and becoming more sophisticated as data improves over time. In such cases, investors and regulators require clear statements of the assumptions and estimates underlying forward-looking statements (such as achievements of transition plan targets and emissions reductions) and clear and transparent disclosures if such assumptions and estimates change year to year.²⁵

Related to the comments above about regulatory disclosures, we encourage the Bureau to provide clarity with respect to its view of forward looking statements that are made either in compliance with an applicable securities regulation or with an “internationally recognized methodology” voluntarily adopted by a company. In our view, these kinds of statements should not be considered as equivalent to an advertising “disclaimer”.

²⁴ The Deceptive Marketing Practices Digest – Volume 7, supra, note 17 at para 6(b).

²⁵ See CCGG, Jan. 31, 2022, [Submission to CSA in response to consultation on NI 51-107 Climate-related Disclosures](#). One member noted that from a practical perspective many institutional investors, especially those using a quantitative approach or those with large portfolios covering tens of thousands of companies, often rely on third-party data to incorporate ESG factors into investment processes. These investors may not be in a position to conduct engagements or perform due diligence to verify or substantiate underlying portfolio company claims other than through the use of third-party data. In such circumstances, transparent and cautionary statements about the methodology, scope, and limitations of the third-party data should not be considered a ‘disclaimer’ or ‘fine print’.

Conclusion

We encourage the Competition Bureau to meaningfully address the uncertainties noted in this submission and provide clear, principled and comprehensive guidance in respect of Bill C-59.

Please feel free to contact either CCGG's CEO, Catherine McCall, at cmccall@ccgg.ca, or our Director of Policy Development, Sarah Neville, at sneville@ccgg.ca, if you require further information or if we can be of any assistance.

Yours truly,

'Amit Prakash'

Amit Prakash
Chair, Canadian Coalition for Good Governance

CCGG MEMBERS 2024

- Alberta Investment Management Corporation (AIMCo)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec (CDPQ)
- CPP Investments
- Capital Group Canada
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Fondation Lucie et André Chagnon
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
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- Jarislowsky Fraser Limited
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- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Provident10
- Public Sector Pension Investment Board (PSP Investments)
- Qube Investment Management Inc.
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- Summerhill Capital Management
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- TD Asset Management
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- York University Pension

*As a coalition, CCGG strives to build and reflect a consensus but, while supportive of CCGG's mission and mandate, CCGG's Members are not individually bound by CCGG's positions.