September 27, 2024

DELIVERED BY EMAIL

Deceptive Marketing Practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9
Email: greenwashingconsultationecoblanchiment@cb-bc.gc.ca

RE: Submission of the Responsible Investment Association regarding the Competition Act's New Greenwashing Provisions

The Responsible Investment Association (RIA) welcomes the opportunity to provide feedback to the Competition Bureau (the "**Bureau**") in the ongoing public consultation regarding the *Competition Act's* new greenwashing provisions.

The RIA is a Canadian investment industry association comprising more than 165 institutional members and over 400 individual members who practice and support responsible investing (RI)—defined as investments that incorporate environmental, social and governance (ESG) factors. Individual members include financial advisors, consultants and others, while our institutional members are mainly asset management firms and asset owners, including pension funds. The RIA's institutional members collectively represent more than C$40 trillion in global assets under management (AUM). A list of our members is available online at www.riacanada.ca.

RI in Canada totals over $3 trillion in AUM, which represents close to 50% of all professionally managed assets in Canada. The growth in RI reflects the business case for considering a portfolio's exposure to material ESG risks and opportunities, and illustrates that ESG factors, including concerns regarding environmental impact, can have serious financial implications for companies and portfolios.

Summary of RIA Member Perspectives

The RIA engaged in broad member consultations, including a digital survey and an online consultation to inform its submission. Survey respondents and online consultation participants included asset managers, representatives of financial institutions, asset owners, data providers and consultants. Note that these submissions do not reflect the views of all RIA members; rather, they represent the views articulated by a majority of members who responded to the survey and online consultation (together herein referred to as "**consultations**"). Reference to the RIA's view should therefore be interpreted accordingly.

Overall, consultations indicated that a majority of members were supportive of and agreed with the intentions of the Competition Act's greenwashing provisions. They noted that, if guidelines were clear and provisions properly enforced, they would facilitate informed decision-making and advance standardization and comparability of data and reporting. However, members emphasized the importance of ensuring that the Bureau's guidelines are drafted in a manner that does not inadvertently lead to unintended consequences, such as reduced disclosure about environmental strategies and targets. Investors are demanding more disclosure, not less. Reduced disclosure, otherwise known as greenhushing, could harm efforts to combat climate change and improve environmental outcomes. It is also worth considering the unique nature of the investment industry, whereby investment products and services rely on disclosure provided by corporations. This disclosure includes those related to claims about the environmental benefits of businesses or business activities.

Below are more detailed responses to the relevant provisions for consultation.

What kinds of claims about environmental benefits are commonly made in the marketplace about businesses or business activities? Why are these claims more common than others?

Over the last several years many governments and companies around the world have proposed climate strategies that include emissions reduction targets and environmental actions. These actions were driven by several factors including the adoption of international treaties such the Paris Agreement and the increasing use of the United Nations Sustainable Development Goals (UN SDGs) as an ESG framework, both of which include taking action to combat climate change and its impacts. These actions were also driven by recognition of the material impacts of climate and sustainability factors on investment performance, and the necessity to assess material risks in investment portfolios.

The proliferation of environmental disclosure and claims stems, in part, from heightened attention to climate change by the scientific community and groups such as the UN who have raised concerns about irreversible climate impacts. As a result, investors have incorporated such frameworks into their investment decisions, in turn putting pressure on companies to set emissions reduction targets and provide environmental disclosure.

What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities are based on "adequate and proper substantiation in accordance with internationally recognized methodology"? What should the Bureau consider when it evaluates whether testing to support claims about the environmental benefits of products or services is "adequate and proper"?

RIA members were supportive of the new provisions and noted that a requirement for environmental claims to be adequately and properly substantiated and for testing to be adequate and proper would facilitate more informed decision-making. However, while the existing case law and initial Bureau guidelines provide some guideposts on how the Bureau intends to enforce the standard of whether testing is "adequate and proper," there is considerable uncertainty regarding how "adequate and proper substantiation" will be interpreted, not only by the Bureau, but also the Competition Tribunal (the "Tribunal"). While this uncertainty persists, it may have the unintended consequence of companies ceasing to communicate their efforts to address the environmental impacts of their businesses and activities.

The results of RIA consultations included the following perspectives:

1) The Bureau could consider outlining the guiding principles for determining if a methodology is "internationally recognized methodology," so that the full variety of standards can be evaluated and assessed against those criteria. In this regard, the Bureau could look to the ISEAL Alliance which establishes global criteria for credible standards. Alternatively, the Bureau could outline directives similar to the EU Green Claims Directive that sets out clear guidelines for various types of green claims to ensure transparency and accuracy in environmental marketing.

2) The Bureau should consider the circumstances under which methodologies that are regional, industry specific, activity specific and/or issue specific may be acceptable. For example, because environmental claims made about investment products, such as investment funds, typically rely on an evaluation of the claims made by the underlying portfolio companies, the investor community has developed a wealth of methodologies and frameworks to assess these claims that the Bureau could look to in assessing claims made about such funds.

It should be noted, however, that while data for such evaluations is readily available for listed equities, there is a significant lack of reliable data for small- to medium-sized enterprises (SMEs) and other asset classes. The proposed CSDS S1 and S2 (Canadian Sustainability Disclosure Standards) disclosures would help support investors in this exercise. Further, a sustainable finance taxonomy would help identify activities that can be safely referred to as sustainable. Specifically, the Sustainable Finance Action Council (SFAC) Taxonomy Roadmap Report outlined a Canadian Green and Transition Financial Taxonomy Framework which is key to attracting the global capital needed to fund Canada's net zero transition. It would also provide the necessary clarity for capital markets which are hungry for sustainable investment opportunities. The taxonomy, which includes science-based screening criteria, will encourage companies to disclose the environmental impacts and benefits of their activities and help prevent greenwashing concerns. It will also allow investors to assess the sustainability impacts of companies' business activities.

3) Any framework used should allow companies to easily determine if they are in compliance, and that in this regard, focus should be on the "spirit of the law."

4) It must be recognized that information prepared for investors (e.g. financial and sustainability reports) serves a very different purpose than product claims trying to position a particular product.

What internationally recognized methodologies should the Bureau consider when evaluating whether claims about the environmental benefits of the business or business activities have been "adequately and properly substantiated"? Are there limitations to these methodologies that the Bureau should be aware of?

Overall, there were a wide variety of options proposed by RIA members, including established international standards, ESG benchmarks and industry-specific certifications that the Bureau could consider when evaluating whether claims can be properly substantiated.

The consultations produced a unanimous view that the standards adopted by the Canadian Sustainability Standards Board (CSSB) and the International Sustainability Standards Board (ISSB) are appropriate for the Bureau to consider when evaluating whether the claims about environmental benefits of the business or business activities have been adequately or properly substantiated.

Other methodologies were recommended. They include but are not limited to the following, as methodologies continue to be developed and evolve, and are in no particular order:

1) The GHG Protocol (which had broad support) and other emission accounting methodologies, which are widely accepted for verifying claims related to greenhouse gas reductions.
2) Established ESG frameworks and benchmarks that are grounded in scientific principles and offer structured approaches for assessing environmental claims, such as Science Based Targets initiative (SBTi), Climate Action 100+ (CA100+) and Climate Engagement Canada (CEC) benchmarks, Partnership for Carbon Accounting Financials (PCAF), the Net Zero Investment Framework (NZIF), Finance for Biodiversity Pledge, Nature 100 Benchmark and Net Zero Asset Managers Initiative (NZAM).
3) The Bureau could also consider a range of standards for different types of disclosures, including general sustainability standards, such as ISSB S1 and the Global Reporting Initiative (GRI), thematic disclosure standards for nature and climate, such as ISSB S2, Task Force on Climate-Related Financial Disclosures (TCFD), Taskforce on

Nature-related Financial Disclosures (TNFD) and ISO standards, including ISO 14064 for GHG accounting and ISO 14040 to Lifecycle Assessment.

4) Third-party, industry-specific certification standards that the Bureau could consider include those specific to financial institutions, such as Definitions for Responsible Investment Approaches (a collaboration between the CFA Institute, Global Sustainable Investment Alliance (GSIA) and UN PRI), the Partnership for Carbon Accounting Financials, UN PRI assessment score methodology or the regulatory guidelines developed by the Canadian Securities Administrators (CSA) related to ESG. Other standards include those developed by the Canadian Standards Association, Standards Council of Canada, ISEAL Alliance (global) and GRESB for real estate, infrastructure and related funds. Other standards noted include FSC for forest products, LEED, Envision, MSC for seafood, RSPO for palm oil, MSA and IRMA for mining and mining products, fair trade and organic labels.

Limitations to Methodologies

It should be noted that most methodologies and standards that aim to measure or address ESG or environmental features will have limitations, assumptions and gaps. This is due to the complexity and inherent difficulty of quantifying and measuring progress and compliance in regard to environmental impact. The availability and quality of data to support claims is also a potential limitation to note, reinforcing the need for quality corporate disclosures. However, many internationally recognized methodologies make allowances for data limitations, provided they are accompanied with adequate rationale and disclosure.

Further, it would be challenging to develop a list of standards for the range of topics that could potentially result in greenwashing. Harmonizing these standards and methodologies is further complicated by the multitude of varying standards developed by industry associations and third parties.

It is worth considering that it can take years, or even decades, to create internationally recognized methodologies, such that existing standards may not fully capture innovative practices or emerging technologies. Further, as methodologies evolve with the science, compliance may become more challenging as businesses will have to keep up with moving targets. Additionally, methodologies recognized today may lose their status in the future, further complicating compliance.

Ultimately, due to the limitations of the methodologies and standards, the Bureau should strive for a balanced approach that facilitates compliance while addressing the complexities of measurement.

What challenges may businesses and advertisers face when complying with this new provision of the law?

There are several challenges that businesses may face when complying with the new legislation. First, the new legislation will likely increase costs for businesses, as they will likely face increased legal, compliance and audit expenditures to review disclosures and document and measure progress on “green” claims.

Second, measuring environmental impacts may also pose a challenge, especially where there are new or no established methodologies, or where there are issues with the availability or quality of data. For example, no international standard currently exists to calculate avoided emissions, but many companies try to estimate them for investors. This metric is important for the allocation of capital toward climate solutions and is material to investors. It is important that the regulation does not impede standards around such metrics from being developed, and that companies and investors continue to work on the issue.

Third, absent of clear guidelines on how they will be applied and enforced by the Bureau and the Tribunal, an unintended consequence of the new legislation may be a reduction in corporate disclosures, or greenhushing. This would especially be the case where there is a lack of well-established standards or methodologies. Of particular concern is the high risk of private actions, which may lead businesses to cease disclosure and, worse yet, to avoid commitments to climate goals. Unless the applicable Bureau guidelines and the chosen methodologies and standards are clear and measurable in a cost-effective way, businesses may refrain from setting ambitious environmental goals rather than risk enforcement from the Bureau or private actions including those from climate activists (especially in the energy and banking sectors). The Bureau could consider the allowance for “vision statements” as distinct from “environmental targets.”

Consultation with RIA members clearly indicated that any uncertainty regarding enforcement of the new provisions could result in greenhushing and reduced corporate disclosure at a time when investors are demanding more. This in turn would negatively impact the ability of investors to make informed investment decisions and for investment professionals to provide investment advice to clients. It would also pose challenges for fund manufacturers to develop and manage investment products due to lack of access to relevant information from corporations.

It should also be noted that it will likely take some time before businesses develop the internal expertise and capacity to enable them to measure compliance and audit progress on their environmental claims. This includes developing expertise to comply with new or unfamiliar international methodologies and standards. Accordingly, appropriate transition time must be provided.

What other information should the Bureau be aware of when thinking about how and when to enforce this new provision of the law?

In developing the guidelines, the Bureau should, in addition to its enforcement goals and protecting consumers from misleading advertising, aim to provide businesses with tools to enable them to comply with the new provisions so that sustainability and climate related goals are advanced. The Bureau should also avoid overly prescriptive directives that may limit how businesses manage their affairs and reduce their ability to communicate genuine efforts to improve their environmental impacts.

The Bureau should work closely with the Canadian Securities Administrators (CSA), the Office of the Superintendent of Financial Institutions (OSFI) and other relevant regulatory bodies to ensure consistent enforcement of environmental claims related to financial products and institutions.

Further, as previously noted, the Bureau needs to be aware that the new provisions and subsequent guidelines may unintentionally hinder ESG progress if the risks of making claims and the costs of compliance end up outweighing the benefits for companies.

Importantly, it was noted that private actions will represent a significant risk for companies. These actions could require considerable time and resources to defend and could also pose potential reputational risks. In turn, the potential threat of private actions will likely lead to reduced corporate disclosure at a time when investors are demanding more.

The Bureau should recognize that there are several benefits to environmental claims, key among them that companies have been adopting ambitious ESG goals and plans, which have been matched with significant resource commitments and mobilization toward meeting global climate change goals. These positive benefits of environmental claims should ideally be enhanced in an environment where all players are kept honest, and regulators ensure that the claims businesses make are verifiable. However, as noted above, a potential unintended consequence of the new legislation is greenhushing. If the

Bureau ultimately adopts guidelines that reduce companies' willingness to share their environmental goals, or if the prospect of private actions leads to a similar effect, there is a risk that companies will lose focus on climate-related goals or set less ambitious ones.

Lastly, acknowledging that it is prudent to mitigate greenwashing claims, there must be an allowance for "aspirational" or future-based sustainability goals, as these can spur innovation and culture change. Consideration should be given to companies, as well as investors who manage investment funds and products, that publish their intent to adopt frameworks and targets that align with efforts to achieve net zero emissions in attempt to meet global climate change goals. Within the financial system, investors are uniquely positioned to influence corporations to accelerate progress toward net zero and often do so through their own commitments/aspirations to decarbonize their portfolios. As technologies are still being developed, ambitious plans and targets are required to spur investments needed achieve net zero goals.

The Responsible Investment Association would welcome the opportunity to continue dialogue and provide further guidance as the Bureau progresses through the consultation. If you have any questions regarding the above, please feel free to contact Patricia Fletcher, Chief Executive Officer (patricia@riacanada.ca) or Glen Pichanick, Head of Advocacy and Industry Insights (glen@riacanada.ca).

Yours truly,

Patricia Fletcher, ICD.D
Chief Executive Officer