PRI | Principles for Responsible Investment

CONSULTATION RESPONSE

CANADIAN COMPETITION BUREAU: PUBLIC CONSULTATION ON THE *COMPETITION ACT'S* NEW GREENWASHING PROVISIONS

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INTRODUCTION

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into their independent investment and ownership decisions in line with their fiduciary duties. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a range of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

The PRI develops policy analysis and recommendations based on independent evidence-based policy research, considering signatory input.

ABOUT THIS CONSULTATION

On June 20, 2024, new provisions were added to the *Competition Act* that explicitly target greenwashing. Businesses are now required to have testing or substantiation to support certain environmental claims.

On July 22, 2024, the Competition Bureau launched a public consultation on the new provisions aimed at greenwashing that will inform its future enforcement guidance about environmental claims. With any important amendments to the *Competition Act*, the Bureau is committed to offering enforcement guidance in consultation with Canadians to ensure transparency and predictability.

The PRI welcomes the opportunity to provide feedback to Canada's Competition Bureau on the new provisions in the *Competition Act* aimed at greenwashing.

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SUMMARY OF THE PRI POSITION

The PRI supports the Competition Bureau's intention to address the issue of greenwashing as global economic markets transition to a lower-carbon economy. There is evidence that the recent changes to the Competition Act have created a chilling effect in the intervening period before the Competition Bureau has had the opportunity to provide guidance. Citing the lack of clarity around what constitutes an "internationally recognized methodology", numerous companies have removed their environmental claims and commitments from public-facing platforms.

It is in the public interest for the Competition Bureau to improve the marketplace of information on sustainability-related commitments, and support both consumers and businesses. Substantive guidance is needed to ensure that companies can comply with the changes to the Competition Act and communicate decision-useful, standardised information about their products and services. The key elements to be defined include:

- The scope of application of the provisions;
- The standards, methodologies and measures which constitute appropriate methods of substantiation;
- Safe harbours for voluntary disclosure against domestic standards aligned with IFRS S1 and S2, including estimates and forward looking information;
- The role of provincial regulation;

FULL RESPONSE

The PRI supports efforts to address greenwashing in both marketing and official documents and welcomes the intention of policy makers to reduce deceptive or misleading claims from business practice. However, the PRI notes significant concerns—raised to us by numerous Canadian and global signatories—that the provisions recently added to the Competition Act could have far reaching unintended consequences on market practices and national sustainability efforts. Therefore, the PRI encourages the Competition Bureau (the Bureau) to provide robust and comprehensive guidance, including examples or best practices, to clarify key aspects of the provisions for entities seeking to communicate their sustainability ambitions and activities to the public.

As the potential impacts from climate change become increasingly evident, actors across markets, including in financial services, are attempting to adapt their activities. At the core of business activities to address sustainability issues is a growing expectation from consumers, investors and, in aggregate, society to align their activities with the sustainability goals set out by the leading scientific consensus. Publication of such activities are immediately relevant as consumers seek to shop at sustainable, eco-friendly businesses. As such, the market has become flush with statements, claims

and commitments from businesses that publicise their related actions. Indeed, these environmental claims can be a deciding factor among consumers when faced with two companies that sell a similar product.

Beyond reputational signals, companies also act to address sustainability issues because environmental and social risk factors can have a material impact on a business' bottom line. These companies are seeking to ensure that they can be profitable in an unknown future by managing these material risks. These actions are not only beneficial to the environmental and social systems upon which companies rely, but they are also a good business decisions seeking to address risk and capture opportunities.

Greenwashing obscures true sustainability-related risks that face business operations and ultimately their bottom line. Such claims can inflate stock valuations and expose investors to sudden drops in asset value once the company is found to be misleading. This provides reputational and financial risk to institutional investors, as they seek to satisfy the demand from clients and beneficiaries to invest responsibly on their behalf.

Cases abound of companies marketing false and misleading information on their environmental commitments, ultimately misleading consumers and gaining an unfair advantage from such claims. According to a survey conducted by Deloitte in 2023, 57% of Canadian consumers no longer trust brands' environmental claims.[1] This is not surprising as many environmental claims are purposefully left vague with very little supporting evidence and weak or non-existent verification.

The issue of vague or unsubstantiated claims makes the work of investors difficult as they seek to analyse, or compare over time, the activities of an investee company. This becomes an increasingly difficult task for investors considering the number of companies in which a large institutional investor has a stake, especially those with diverse portfolios across industries and global regions.

The Bureau should support companies seeking to make commitments to promote viable business models and support competition in the market. Requirements for such disclosure must not be overburdensome or create significant additional risk for those subject to the rules. Such regimes could disincentivise the very activity that is meant to be defended, and in aggregate improved. As the market has recently witnessed, a number of companies operating in Canada have determined themselves to be high risk targets of litigation and have since removed their public-facing environmental claims and commitments from websites and similar documents.

KEY POINTS OF CLARIFICATION

While the goal of the recent greenwashing provisions is not to discourage companies from making credible sustainability-related claims and commitments, the market has already seen how the lack of guidance has engendered significant unintended consequences as companies anticipate extensive

[1] Deloitte, *Creating value from sustainable products: How business purpose and brand trust can make the difference* (June 2023), available at: https://www2.deloitte.com/ca/en/industries/consumer/consumer-sustainability-report.html

legal risks associated with public disclosures about the sustainability of their products and services. Extensive compliance guidance will be necessary to support companies as they communicate how they are participating in the global transition to a lower-carbon economy. The failure to provide adequate guidance will diminish the availability of material sustainability information as companies prioritise avoiding potential litigation risk over transparency.

SCOPE OF APPLICATION:

The guidance must first clarify the scope of application of the provisions. It remains uncertain how the provisions relate to fund and entity-level disclosures, impact goals, or language explaining broader responsible investment approaches. Furthermore, many businesses today have vision statements that set an overarching direction for the company that may include language on broad goals or their intended company position in the future. These are usually well-intentioned statements that may be backed by transition plans with targets but will not always have concrete evidence for interim progress.

The Bureau should seek to clarify what types of statements fall within the intention of the provisions. Too broad a scope could risk sweeping up general statements of principle, such as to "consider environmental impact", that are credible signals of company focus.

The Bureau may see fit to provide specific safe harbour for voluntary disclosures aligned with those issued by the International Sustainability Standards Board (ISSB), including forward-looking assessments and estimates made in good faith. Companies may estimate future growth, progress, or potential impact based on current data and information which is useful to investors. In order to encourage companies to continue to do this, the Bureau could require the disclosure of assumptions made and the rationale used to form these estimates and forward-looking assessments. There should be no penalty if companies are unable to reach these goals in the future as long as they are made in good faith, based on legitimate data, and that demonstrable action and effort were taken in pursuit of the goals.

As the Canadian market does not have a national securities regulator, guidance from the Competition Bureau should explain how it will interface with provincial securities regulators to ensure a uniform approach and coherent disclosure of relevant sustainability information across the country.

TESTING AND SUBSTANTIATION:

Market actors require clarification on the use of "adequate and proper substantiation in accordance with internationally recognized methodology" to support the advertised benefits of a business or business activity. While the use of "adequate and proper testing" of the advertised benefits of a product is informed by case law and existing guidance from the Competition Bureau, there lacks information on how to support business and business activity claims.[2] Further, the global methodologies, standards and metrics used to guide company behaviour continue to evolve. There

[2] Competition Bureau Canada, *The Deceptive Marketing Practices Digest – Volume 2* (March 2016), available at https://competition-bureau.canada.ca/deceptive-marketing-practices-digest-volume-2#section2_5

exist various frameworks used for specific reasons or activities and market actors require additional guidance on when various frameworks are appropriate.

The Bureau's guidance could provide a non-exhaustive list and concrete examples of best practices demonstrating the use of specific methodologies, standards or frameworks, as well as describe parameters used to determine whether a chosen means of substantiation is credible and appropriate. This would include whether a methodology, standard or framework is overseen by an independent body, whether it is science-based, and whether it has been mandated in other jurisdictions, such as the Corporate Sustainability Reporting Directive (CSRD) in the European Union.

The PRI welcomes the opportunity to work with the Bureau on these issues.

RESPONSES TO DETAILED QUESTIONS

1. **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?**

Since governments have pledged to tackle sustainability crises through international initiatives like the Paris Agreement, the Sustainable Development Goals and the Kunming-Montreal Global Biodiversity Framework, they are increasingly looking to help investors put capital to work addressing issues like climate change. Faced with calls for action from customers, clients, investors and beneficiaries, many businesses have made voluntary commitments to align their activities and products with global goals, most commonly with net zero by 2050.

The Intergovernmental Panel on Climate Change (IPCC) and International Energy Agency (IEA) have established scientific consensus on the pathways required to remain within 1.5 C. The financial materiality of GHG emissions on value creation is well understood although not necessarily easy to forecast. There is clarity on how economic activities contribute to relevant sustainability thresholds and goals. Data provision and market regulation are effectively integrating these considerations, making credible pledges and action on climate increasingly accessible to businesses.

However, as stated, these international methodologies, standards, and metrics evolve regularly. There should be no penalty for companies who act on a commitment that is later revised or, for example, if a pathway under the IEA has yet to be finalised. The company should be able to demonstrate credible intention through actions taken. Additionally, companies should differentiate claims made on current performance and forward-looking ambition. It would be helpful for the Competition Bureau to provide further guidance on this differentiation.

2. **Are there certain types of claims about the environmental benefits of businesses or business activities that are less likely to be based on "adequate and proper**

substantiation in accordance with internationally recognized methodology"? Is there something about those types of claims that makes them harder to substantiate?

Broader sustainability claims about activities and products that make positive contributions to society and the environment, or contribute to SDG alignment, may be more difficult to substantiate. As such, they may be subject to inflated statements, selective disclosures, data omissions and intentionally vague commitments, to name a few. However, improved recognition of sustainability issues and the understanding of investors' capacity to perform due diligence on potential investments to address issues in ways that contribute to investment value, means that investor concern and action on other issues, such as biodiversity, human rights and anti-microbial resistance, is growing.

Market actors, especially in the private sector, are often early adopters of voluntary frameworks that may not yet be internationally recognised or picked up by regulators. Provided a company states its rationale clearly, and demonstrates the credibility of the new framework, they should be able to do so without penalty.

3. **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?**

Guidance could consider the recommendations of the report, "Integrity Matters: Net Zero commitments by Businesses, Financial Institutions, Cities and Regions" prepared by the UN High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities. It provides concrete actions for substantiating claims and identifies the importance of regulatory convergence "across borders and across regulatory domains, alongside leading voluntary and standard-setting initiatives and independent experts, to drive reconfiguration of the ground rules of the global economy to align to the goals of the Paris Agreement."

The PRI recognises and supports the efforts of the ISSB to establish a global baseline for sustainability reporting and calls on the relevant authorities across jurisdictions to adopt the ISSB standards – IFRS S1 and IFRS S2 – on an economy-wide basis by 2025.[3]

The ISSB was formed in 2021 under the IFRS Foundation. The ISSB aims to provide financial markets with information on companies' sustainability risks and opportunities, building on established sustainability reporting initiatives. Its IFRS S1 standard requires the reporting entity to assess whether information could "reasonably" be expected to influence decisions by primary users, even if this information is not deemed material on a financial basis, which is interpreted to include systemic risks like climate change. The standard goes as far as recognising the interaction between impacts and dependencies and risks and opportunities, recognising that the former may give rise to risks and opportunities. However, the extent of the implications on entities' disclosure is difficult to assess

[3] Joint call for adoption of ISSB standards | Policy engagement | PRI (unpri.org)

without forthcoming guidance on how to use the ISSB Standards alongside the impact-focused GRI Standards and European Sustainability Reporting Standards (ESRS). The ISSB will collaborate with GRI to provide a global and comprehensive sustainability reporting system for companies looking to meet the information needs of both investors and a broader range of stakeholders.

The inaugural IFRS S2 currently focuses exclusively on climate-related disclosures, although the ISSB will seek to eventually enhance the standard to include natural ecosystems and the human capital aspects of the climate resilience transition (just transition), considering the work of the Taskforce for Nature-related Financial Disclosure (TNFD) and other existing nature-related standards and disclosures where they relate to the information needs of investors.[4] S2 requires reporting on GHG emissions using the GHG Protocol Corporate Standards. The ISSB and GHG Protocol will work together to ensure the standards evolve to meet the needs of capital markets. The ISSB will also assume responsibility for the Transition Plan Taskforce's disclosure-related materials.

The Canadian Sustainability Standards Board (CSSB) has the mandate to domesticate the ISSB standards to be adopted and implemented in the Canadian market by provincial securities regulators and federal legislation. Federally regulated financial institutions are already expected to report on S2 as outlined in the Office of the Superintendent of Financial Institutions' B-15 Climate Risk Management guideline.

An internationally interoperable national sustainable finance taxonomy with science-based metrics, including considerations for how activities may impact workers and Indigenous communities would equip Canadian investors to assess the sustainability of economic activities.

Because methodologies, frameworks and standards continue to evolve, the PRI suggests the Bureau provide guidance on appropriate parameters, examples of best practice and a non-exhaustive list of internationally recognised means of substantiation, including IFRS S1 and S2, Partnership for Carbon Accounting Financials (PCAF), the Science Based Targets Initiative (SBTI), Transition Pathway Initiative (TPI), Net Zero Asset Owner Alliance and Net Zero Asset Management. Credibility parameters should include whether a methodology, standard or framework is overseen by an independent body, whether it is science-based, and whether it has been mandated in other jurisdictions. Guidance should also consider:

- Due diligence in data analysis and conclusions;
- Forecasts and trends backed by third-party quality assured financial data;
- Accountability mechanisms, such as executive renumeration, to drive progress;
- Alignment of capital allocation, corporate lobbying and advocacy activities with their public sustainability commitments and claims.

4. **What other factors should the Bureau take into consideration when it evaluates whether claims about the environmental benefits of businesses or business activities**

[4] IFRS - ISSB delivers further harmonisation of the sustainability disclosure landscape as it embarks on new work plan

are based on "adequate and proper substantiation in accordance with internationally recognized methodology"?

Many standard setters, regulators and legislators across the world are working to build their individual and collective capacity to establish consensus and ensure the coherence and interoperability of sustainable finance measures. Established sustainability measurements, criteria and thresholds evolve with our scientific understanding of the issues, consequences and potential solutions.

The recent provisions on greenwashing risks discourage companies from disclosing aspirational and voluntary commitments, even when supported by detailed plans and timelines. Guidance must permit companies to issue decarbonisation plans on a piecemeal basis as opportunities for reducing emissions vary across value chains. The Bureau should not discourage companies from disclosing their aspirational goals, including those relating to net zero, as long as they substantiate their targets with key intermediary targets, such as when their decarbonisation plan will be released.

Investors who have made their own net zero commitments are concerned with the extent to which their individual investments (e.g., companies) are aligned with net zero goals. To undertake such an assessment, they may need information on current emissions, current exposures to opportunities (e.g., climate solutions) and to risks (e.g., fossil fuels), the actions being taken to deliver real-world emission reductions required to meet net zero goals, and the quality of an investment's climate change governance, among other things. They will want to understand to what extent individual investments will be aligned with net zero goals in the future. This may require information on future emission trajectories, short and medium-term emission targets and the alignment of the investment's strategy with the goal of delivering real-world emission reductions, among other things. Forward-looking estimates are incorporated into internationally recognised reporting standards such as the ISSB, so the Bureau's guidance should clarify that this is permissible, and that rationale for assumptions should be disclosed.

Investors may assess whether the current position of their portfolios and funds are aligned with their net zero goals (i.e., in aggregate, are their investments net zero-aligned). They also may want to understand what level of emissions reductions will be required over time for their portfolios and funds to be net zero-aligned. Investors generally use net zero emission pathways to conduct these assessments. Investors interested in outcomes will want to measure the effects of the operational performance on the business's financial performance and on people, planet and the economy. The latter may measure sustainability performance (e.g., emissions) or performance may be measured in the context of global sustainability goals and thresholds (i.e., sustainability outcomes).

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

Performance claims about the sustainability of products and services must be verifiable, so businesses should be able to demonstrate their own due diligence and good faith transparency. Investors should be able to corroborate the data supporting the claim, or identify the underlying data

used to derive it. Corroboration for an individual investor could be a combination of one or more of the following:

- transparency of the underlying processes, metrics and methodologies. This is the very least that investors would expect from data;
- third-party verification for a dataset (e.g., assurance of a report). Assurance of a dataset or report should, according to the International Organization of Securities Commissions (IOSCO),[5] also include: (i) clarity on which sustainability information has been assured; (ii) the scope of assurance conducted; and (iii) conclusions reached;[6] and
- verification by a third-party for a specific data point (e.g., emissions data), which will depend on the relevance of the data.[7]

Companies will require proper assurances that actions undertaken in good faith to realise and report on progress toward achieving their sustainability commitments will provide them protections from third party litigation.

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

Environmental claims are increasingly made by investment fund managers in their products and services. These organizations are already subject to securities regulations, including guidance from the Canadian Securities Administrators ("CSA") B.1.1 CSA Staff Notice 81-334 (Revised) ESG-Related Investment Fund Disclosure, which aim to address greenwashing. The Bureau should make every effort to avoid regulatory overlap, promote consistency, and enhance the effectiveness of greenwashing prevention in Canada's investment fund industry.

All entity-level disclosures deemed material are required by Canadian securities law, and the Canadian Securities Administrators are considering how to improve climate-related disclosures by Canadian issuers. However, investors require information on a wide range of sustainability topics that are material to investment decisions and ownership activities. We recommend that Canadian regulators and legislators acknowledge the need to bring other areas of sustainability reporting in scope over time and look to establish a consistent and proportionate disclosure regime from coast to coast to coast, to provide near complete coverage of the Canadian market for these and future issue-specific IFRS Sustainability Standards after these are issued.

Canada should consider how it can take a whole of government approach to addressing sustainability concerns in the administration of competition law, particularly system-level risks such as climate change. To tackle greenwashing more comprehensively, it should seek to link up wider sustainable finance policies and standards, such as corporate disclosures, taxonomies, and ESG ratings, to develop coherent tools for transparency in a coordinated manner.

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[5] *For more information, see the IOSCO statement: IOSCO encourages standard-setters' work on assurance of sustainability-related corporate reporting.*
[6] *This is regardless of whether information is obtained directly from the relevant company or through third-party providers.*
[7] The PRI's Investor Data Needs Framework | Policy report | PRI (unpri.org)