September 27, 2024

VIA E-MAIL - greenwashingconsultationecoblanchiment@cb-bc.gc.ca

Deceptive marketing practices Directorate
Competition Bureau
50 Victoria Street
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Re: Public consultation on *Competition Act*'s new greenwashing provisions

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments regarding the Competition Bureau's (**Bureau**) public consultation (**Consultation**) on the *Competition Act*'s new greenwashing provisions (**Provisions**).

PMAC represents over 330 investment management firms registered to do business in Canada as portfolio managers (**PMs**) with members of the Canadian Securities Administrators (**CSA**). In addition to this primary registration, most of our members are also registered as investment fund managers (**IFMs**) and/or exempt market dealers (**EMDs**). PMAC's members encompass both large and small firms managing total assets in excess of $3.5 trillion for institutional and private client portfolios.

Some of our member firms manage mutual funds or pooled products offered in Canada to retail and institutional investors, and others manage separately managed accounts on behalf of high-net-worth individuals and families, or institutional clients such as pension plans and foundations. PMAC's members include asset managers that operate globally under a plurality of other legal and regulatory requirements, and firms that operate solely within Canada. Many of our members are members and signatories to environmental, social and governance (**ESG**) related organizations, frameworks and commitments, and integrate ESG into their investment decision-making processes.

PMAC's mission statement is "advancing standards". We are consistently supportive of measures that increase investor protection and meaningfully contribute to investor understanding and transparency.

BACKGROUND ABOUT PMAC & PORTFOLIO MANAGERS

The following context about PMAC's members will help inform the Bureau about our perspective on the Consultation. Our member firms are subject to regulation by members the CSA. The CSA is the umbrella organization of Canada's provincial and territorial

securities regulators, whose objective is to improve, coordinate and harmonize regulation of the Canadian capital markets. The CSA aims to achieve consensus on policy decisions that affect our capital markets and their participants. It also aims to work collaboratively in the delivery of regulatory programs across Canada, such as the review of prospectus filings and continuous disclosure by publicly-traded companies and funds (**issuers**). CSA members are members of the International Organization of Securities Commissions (**IOSCO**), the international body that establishes standards for financial regulation around the world.

Under provincial securities legislation, registered firms and individuals owe a statutory obligation to exercise their duties honestly and in good faith and in the best interests of their clients, or, as applicable, the funds they manage.[1] In addition to this statutory standard of care, registrants are subject to other requirements under provincial securities legislation and regulations, including National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

NI 31-103 includes specific requirements for registered entities and individuals, with respect to, *inter alia*:

- registration with the provincial securities regulatory authorities;
- firm financial condition, minimum capital requirements and financial reporting to regulators;
- proficiency of investment and compliance staff;
- permitted activities; and
- compliance requirements including maintaining detailed policies and procedures and recordkeeping requirements.

Given the rapidly evolving area of responsible investing globally, we would strongly suggest that direct consultation with the CSA, the provincial securities regulatory authorities, and industry participants to discuss the practical implications of the Provisions, would be beneficial to achieving an approach that addresses the Bureau's policy objectives while considering the implementation risks faced by the investment industry. PMAC would be happy to facilitate such a discussion.

We are concerned that the Provisions may have unintended consequences, including limiting the quality of disclosures that corporate issuers provide to investors with respect to sustainability metrics and goals, for fear of legal and regulatory repercussions.

[1] *Securities Act* (Ontario), R.S.O. 1990, c. S.5, s. 116:

> **Standard of care, investment fund managers**
> 116 Every investment fund manager,
> > (a) shall exercise the powers and discharge the duties of their office honestly, in good faith and in the best interests of the investment fund; and
> > (b) shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

See also section 159.3 of the Québec Act; section 125 of the B.C. Act; subsection 75.2(3) of the Alberta Act; subsection 33.1(2) of the Saskatchewan Act; subsection 154.2(1) of the Manitoba Act; subsection 26.2(3) of the Newfoundland Act; subsection 90(1) of the P.E.I. Act; subsection 39A(3) of the N.S. Act; subsection 54(3) of the N.B. Act; subsection 90(2) of the Yukon Act, N.W.T. Act and Nunavut Act.

Asset managers are likely to be impacted by the Provisions in the following ways:

- they require and rely on disclosures including sustainability disclosures from corporate issuers (public companies) to make informed investment decisions; and,
- they may create products such as investment funds with sustainable goals, and may make public disclosure with respect to the objectives and strategies of those products, as mandated by provincial securities laws, regulations and guidance.

As is described below, considerable uncertainty surrounds the application of the Provisions. This uncertainty increases risks for corporate issuers and asset managers, including regulatory risks, given potentially conflicting requirements. If this increased risk has the effect of reducing the amount of information that is made available with respect to issuers' sustainability goals or targets (known as "green-hushing"[2]), this will have a negative impact on the efficiency of the capital markets, and would be a disincentive to sustainable investing. Investors, clients of asset managers and the public will be left with less information to make informed decisions and less choice of ESG-related investment options. Moreover, given that there are a multitude of international standards and methodologies that exist in the investment sector, the Provisions could also have the unintended consequence of increased greenwashing.

KEY RECOMMENDATIONS

The following are PMAC's key recommendations with respect to the Consultation:

1. **Defer to existing regulations by carving out disclosures that are mandated and governed by provincial securities regulators, the CSA and global entities that oversee the preparation of ESG-related voluntary reports**
2. **Clarify that reliance on company disclosures, reputable third-party information sources and cautionary statements will satisfy the requirement for adequate and proper testing**
3. **Interpret the term "internationally recognized methodology" in a broad, flexible and principles-based manner taking into account evolving science and standards, and specify the criteria to be taken into consideration when determining whether a particular methodology meets the standard**

GENERAL COMMENTS

Canadian financial institutions, asset managers and corporate issuers are already subject to significant regulation and oversight with respect to the representations they make in public disclosure documents, which include sustainability-related disclosures. These rules and regulations are contained in provincial securities and other legislation; they are developed and overseen by the provincial and territorial securities regulators, the CSA, the Office of the Superintendent of Financial Institutions (**OSFI**) and other bodies.

Canadian securities legislation and instruments require reporting issuers (generally, Canadian public companies) to disclose information in their continuous disclosure

[2] Green-hushing is the practice of companies deliberately downplaying or avoiding publicizing their environmental efforts and sustainability initiatives. Green-hushing may be considered a form of greenwashing.

documents and in other contexts.[3] There are also robust rules regarding public statements made to induce investors to purchase public investment funds (sales communications) under Part 15 of National Instrument 81-102, *Investment Funds* (**NI 81-102**).[4]

There are a multitude of proposed changes that will affect the disclosure regime in Canada, particularly as it pertains to ESG disclosure. Please see **Appendix A** for a non-exhaustive list of requirements currently in force or in development in Canada. For example, the CSA recently issued guidance with respect to the disclosure and sales communication practices of investment funds as they relate to ESG matters.[5] This guidance is intended "to enhance the ESG-related aspects of the funds' regulatory disclosure documents and ensure that the sales communications of such funds are not untrue or misleading and are consistent with the funds' regulatory offering documents."[6]

On September 19, 2024, the CSA published proposed amendments to streamline investment fund disclosures in order to provide investors with information that is useful and easy to understand. The proposals would require investment funds to include certain additional disclosures for investment funds that have sustainability-related objectives.[7] The proposed amendments include the following disclosures in the Investment Objectives and Investment Strategies section of the fund report:

> (2) Include a brief summary of the investment fund manager's assessment of the investment fund's success in respect of achieving its investment objectives and using its investment strategies to achieve those investment objectives during the 12-month period covered by the annual fund report. For greater certainty, include a discussion of any of the following that apply:
>
> …
>
> > (b) key quantitative metrics used by the investment fund manager to assess whether the investment fund has satisfied the stated ESG-related aspects of the investment objectives of the investment fund;

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[3] See, for example, National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**); Securities Act, R.S.B.C. 1996, c. 418, s. 85; Securities Act, R.S.A. 2000, c. S-4, s. 146; and Securities Act, R.S.O.1990, c. S.5, s. 75.

[4] Section 15.2(1) provides:

15.2 (1) Despite any other provision of this Part, a sales communication must not

(a) be untrue or misleading; or

(b) include a statement that conflicts with information that is contained in the preliminary prospectus, the preliminary fund facts document, the prospectus or the fund facts document, as applicable,

(i) of an investment fund, or

(ii) in which an asset allocation service is described.

[5] CSA Staff Notice 81-334 (Revised) *ESG-Related Investment Fund Disclosure* (**SN 81-334**).

[6] Ibid, at p. 1739 (page 1 of the PDF)

[7] Proposed Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure, National Instrument 81-102 Investment Funds, National Instrument 81-106 Investment Fund Continuous Disclosure, National Instrument 81-107 Independent Review Committee for Investment Funds and Related Proposed Consequential Amendments and Changes; Modernization of the Continuous Disclosure Regime for Investment Funds

(c) key quantitative metrics used by the investment fund manager to assess whether the investment fund has satisfied the stated ESG-related criteria for the investment strategies of the investment fund;

(d) how the investment fund's use of proxy voting, shareholder engagement and issuer engagement, as applicable, as principal investment strategies satisfied the stated ESG-related aspects of the investment fund's investment objectives or the stated ESG-related criteria for the investment strategies;

(e) how significant changes made to the composition of the investment portfolio of the investment fund align with the stated ESG-related aspects of the investment fund's investment objectives or the stated ESG-related criteria for the investment strategies.

Where these disclosures include forward-looking statements, a disclaimer similar to the following must be included:

> This Annual Fund Report may contain forward-looking statements that reflect current forecasts of future events. Due to many factors, such as [*insert examples applicable in the case of the investment fund*], actual events may differ materially from those expressed in, or implied by, these forward-looking statements. Do not overly rely on forward-looking statements to make investment decisions.

Many of our members also have international business operations that are subject to regulatory regimes in other jurisdictions. These regimes usually require specific disclosures with respect to sustainability-related matters.

As is described below, we believe that the Provisions may overlap or conflict with existing requirements under the Canadian and/or international securities law regimes, and voluntary standards to which our members are subject. This will add regulatory burden and make compliance with the Provisions difficult, or in some cases, impossible.

In addition, the risk of being subject to the Bureau's review and tribunal processes may disincentivize ESG-related disclosure and lead to green-hushing. This would have a negative effect on our capital markets and diminish investment in sustainable businesses.

We have described our concerns in more detail in response to the Consultation questions below.

RESPONSE TO CONSULTATION QUESTIONS

Subsections 74.01 (1) and (b.1)

1. **What kinds of claims about environmental benefits are commonly made about products or services in the marketplace? Why are these claims more common than others?**

Public communications including sustainability or ESG-related information are an increasingly important aspect of the investment landscape. There is a growing demand for investments that have sustainable or ESG-related (including climate) goals. Some

institutional investors (such as pension funds) have specific mandates to direct a portion of their assets to such investments.

These communications may occur in various contexts, such as:

- statements made to induce investors to purchase public company shares or investment funds (**sales communications**);
- information required as part of an entity's commitment to a voluntary ESG-related initiative that is
    a. administered by an organization that is not affiliated with the entity or, in the case of an investment fund, its IFM, portfolio adviser or principal distributor; and
    b. widely recognized

  (**Required ESG-Related Initiative Communications**);[8]
- material information pertaining to a reporting issuer (generally, a Canadian public company) contained in its continuous disclosure documents or other public statements.[9]

Existing disclosure requirements

In some cases, such statements are required to be made by law or regulation, to describe the nature of the investment, the business operations of a company or the ESG-related objectives of a fund.

These statements and the entities that make them are subject to scrutiny by the provincial securities regulators through legislation, regulation and guidance. Where forward-looking statements are made, they must be reasonable and accompanied by prescribed disclosures regarding their accuracy and reliability, such as the example provided above.

Where environmental disclosures are mandated, discussed, negotiated or governed by another regulator or governing body in Canada or in another country, such disclosures should be exempt from competition law liability. The Bureau should defer the assessment of such disclosures to those regulators or governing bodies that oversee them.

Where disclosure is a Required ESG-Related Initiative Communication, such as those contained in global ESG voluntary reports as required by the Task Force on Climate-Related Financial Disclosures (**TCFD**), the Bureau should also defer the assessment to those organizations.

The CSA took this position by carving out "Required ESG-Related Initiative Communications" from the definition of sales communications that would otherwise be subject to SN 81-334. As noted above, Required ESG-Related Initiative Communications are defined as information that is explicitly required to be made public as part of such commitment.

[8] The definition of "Required ESG-Related Initiative Communications" is in SN 81-334

[9] Reporting issuer continuous disclosure is regulated by NI 51-102

The Bureau should adopt the same approach and create a similar carve-out for disclosures that are mandated and governed by the CSA, such as NI 51-102, prospectus and Fund Facts disclosures, those under the relevant fund disclosure rules and SN 81-334, all of which require full, true and plain disclosure. Subjecting this disclosure to the Bureau's oversight could result in conflicting regulatory outcomes, which would put financial institutions in an untenable position.

It is unclear how the Bureau views representations relating to these legal disclosure requirements. For example, existing requirements for reporting on sustainability labeled issuances (such as green bonds, social bonds, sustainable bonds, and sustainability linked loans, among others). Investors rely on regular reporting against the use of proceeds in the case of the bonds as well as the progress against targets in the case of the linked loans, to effectively oversee that the company is fulfilling the mandate it has set out for itself.

The uncertainty created by the Provisions gives rise to additional liability risks for financial institutions that are subject to mandatory disclosure requirements, relative to other issuers that are not currently required to make such disclosures. It is therefore vital that the Provisions account for existing legal disclosure requirements that pertain to forward looking environmental claims.

2. **Are there certain types of claims about environmental benefits of products or services that are less likely to be based on adequate and proper testing? Is there something about those types of claims that makes them harder to test?**

As noted above, some investment disclosures are forward-looking, and therefore inherently uncertain. No standard "test" can be applied to these claims in the investment context. The Bureau's interpretations with respect to "adequate and proper testing" to date have focused on the evaluation of claims related to physical products.[10] These interpretations may not be relevant in the context of non-physical products or service offerings, which are less amenable to scientific testing.

However, as noted above, there exists a comprehensive disclosure regime for Canadian public issuers and asset managers, which prohibits misrepresentations in continuous disclosure. This regime is overseen by the provincial securities regulatory authorities.

Sustainability reporting requirements, which are in the process of being developed and implemented by Canadian regulators, will likely address the policy goals the Bureau is trying to achieve through the Provisions. For example, the Canadian Sustainability Standards Board (**CSSB**) has recently released draft Standards for Canadian disclosures. These track the International Sustainability Standards Board (**ISSB**) standards and modify them to the

[10] *Canada (Competition Bureau)* v. *Chatr Wireless Inc.*, 2013 ONSC 5315 at para. 295

> The phrase "adequate and proper test" is not defined in the *Competition Act*. Whether a particular test is "adequate and proper" will depend on the nature of the representation made and the meaning or impression conveyed by that representation. Subjectivity in the testing should be eliminated as much as possible. The test must establish the effect claimed. The testing need not be as exacting as would be required to publish the test in a scholarly journal. The test should demonstrate that the result claimed is not a chance result.

Canadian context.[11] The CSA is actively considering mandating climate-related disclosures and enhancing disclosures related to governance and diversity.[12]

3. **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"?**

Further guidance on what constitutes adequate and proper testing is needed, especially for the asset management sector. For example, clarity is needed as to whether third-party data can be used for adequate and proper testing or substantiation. Cautionary statements, such as disclaimers that highlight forward-looking statements or a reliance on third-party data, should provide a "safe harbour" from liability for climate-related information.

Responsible investing is a valuable development and may lead to additional capital being directed to laudable sustainability-related goals. Strict requirements around testing could result in a lack of innovation, a lack of investment options for consumers, and, critically, a lack of investment in companies that themselves may be protecting or restoring the environment.

4. **What challenges may businesses and advertisers face when complying with this provision?**

Conflicting requirements

Various domestic and international bodies have developed myriad standards to measure environmental qualities. In many cases, these standards take different approaches, make different assumptions, and require different inputs and outputs. The Provisions may conflict with other ESG and climate reporting requirements and standards that are being introduced in various jurisdictions, including OFSI B15, CSA requirements and guidance, CSSB and ISSB standards, and the CFA Institute Global ESG Disclosure Standards for Investment Products, among others. Please see **Appendix A** for a non-exhaustive list of requirements currently in force or in development in Canada. This list does not include the multitude of international disclosure requirements and voluntary standards that exist around the globe. These various reporting requirements and standards will require issuers to report on their sustainability opportunities, strategy, resilience, and associated targets, over the short, medium, and long term.

The Bureau's initial guidance for businesses discourages making aspirational claims absent a "clear understanding of what needs to be done to achieve what is being claimed". Asset managers depend on robust sustainability reporting from corporate issuers to assess all sources of risk and return within their portfolios. Where reporting requirements expect issuers to make projections over medium- and long-term time horizons, it is understood that the information is not intended to be relied on as a statement of fact. This limitation is expressly recognized in securities statutes which, as one example, include an exemption

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[11] See CSSB, Exposure Draft, "CSDS 1, General Requirements for Disclosure of Sustainability-related Financial Information", and Exposure Draft, "CSDS 2, Climate-related Disclosures".

[12] See for example CSA Climate-related Disclosure Update and CSA Notice and Request for Comment, Proposed National Instrument 51-107 *Disclosure of Climate-related Matters*; and, CSA Notice and Request for Comment, Proposed Amendments to Form 58-101F1 *Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices* and proposed changes to National Policy 58-201 *Corporate Governance Guidelines*

from liability for misrepresentations in a forward-looking statement, provided the information is appropriately identified and qualified, and the statement had a reasonable basis.[13]

Furthermore, many asset managers use common methodologies for evaluating the credibility of a transition plan from well recognized sources, such as the Paris Aligned Investing Initiative's Net Zero Investment Framework, the Climate Engagement Canada Net Zero Benchmark, and the Transition Pathway Initiative Online Tool; others have built their own frameworks for assessing credibility.

The Bureau can help mitigate the risk of green-hushing by providing reasonable guidance on how issuers can communicate intended future actions, such as committing to meet net zero greenhouse gas (**GHG**) emissions by 2050. These commitments are an important signal to investors that over the long term, an issuer intends to follow a pathway towards net zero emissions by mid-century; it is understood that it is impossible to know the exact trajectory of the GHG reductions at this time. Having a well-defined plan for making progress over the next three to five years is sufficient for investors, as long as the plan is updated at regular intervals. Businesses would benefit from additional guidance with respect to aspirational claims (such as claims to reach net-zero GHG emissions by a certain date). Otherwise, given their long-term time horizon and the evolving nature of science, innovation and regulation in this area, this will be a difficult standard for businesses to meet.

Adequate and proper testing

For securities registrants that are subject to regulation by members of the CSA, complying with existing requirements should satisfy the adequate and proper testing requirement.

It may be difficult or even impossible for asset managers to demonstrate adequate and proper testing of the underlying investment methodology's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change, as required by the Provisions.

It is unclear how adequate and proper testing can be conducted on investment funds and insurance offerings, especially feeder/sub-advised funds that are not directly managed by the fund’s distributor. Investors, including asset managers, are not in a position to engage directly with every corporate issuer to investigate their representations and underlying methodologies.

As noted above, investors rely on comprehensive disclosures from companies on sustainability risks and opportunities. Institutional investors and asset managers may be well equipped to evaluate company disclosures for credibility and are in a position to help reduce greenwashing through engagements with company management.

Moreover, rather than having to create their own data or conduct independent testing, asset managers rely on reputable third-party information sources when evaluating ESG-related representations. Specifically, investors using a quantitative investment approach or those

[13] See, for example, *Securities Act*, R.S.O. 1990, c. S.5, s. 132.1(1).

with a large number of companies held in their portfolios often rely on third-party data. It would be practically impossible to perform adequate tests on underlying portfolio company claims gathered through third-party data. These investors are often not in a position to conduct engagements or perform other due diligence to verify or substantiate underlying portfolio company claims other than with the use of third-party data. There should be a "safe harbour" provided where cautionary statements regarding the methodology, scope, and limitations regarding third-party data are given.

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

Risk of green-hushing

Asset managers and other investors rely on public disclosure by corporate issuers to make investment decisions. The existing securities law regime prohibits material misrepresentations by issuers in public statements. We agree that baseless statements on the environmental benefits of products, services, or actions taken by a corporate issuer should be avoided. Any baseless claims or misrepresentations would already be subject to regulatory action and/or civil liability claims under the existing securities law regime.

To allow investment decision-making to be informed and efficient, corporate issuers must be able to openly discuss the actions they are taking on issues related to sustainability. Relevant corporate actions could include smaller actions, such as pilot projects with sustainability-related goals, but where the outcome is uncertain. Management must be able to openly discuss the potential impact of such projects without the risk of potential regulatory action. This is especially the case for large organizations that release their decarbonization plans in a piecemeal fashion as standards evolve and opportunities for reducing emissions emerge.

The uncertainty created by the Provisions has already resulted in some Canadian issuers removing sustainability reporting from public disclosures (an act known as "green-hushing"), due to the risk of regulatory consequences. This risk is exacerbated by the expanded access to the Bureau's review and tribunal processes for private parties and the "reverse onus" for statements about environmental benefits. Whereas in the past only the Commissioner or a private party "directly and substantially affected" by the impugned conduct could apply or receive leave to apply to the Competition Tribunal, the Provisions allow any private party to obtain leave where the Commissioner believes the application is in the public interest. Previously, the applicant bore the responsibility to prove that impugned statements were materially false or misleading.[14] The Provisions allow any private party to make a claim against an entity and place the onus on the entity to prove its statement was based on adequate and proper testing or in accordance with an internationally recognized methodology. These changes significantly increase the regulatory and reputational risk for issuers and may lead to green-hushing.

The disclosure standards are not only a problem for corporate issuers, but also affect asset managers that provide investment services directly to private clients or institutional clients, such as pension funds. These managers may limit statements regarding their ESG

[14] With the exception of statements "guaranteeing the performance, efficacy or length of life of a product", where the party making the statement bore the onus to prove the statement was based on adequate and proper testing.

investment considerations, due to the same regulatory risks described above. As a result, investors that want their investments to achieve specific environmental goals, such as net zero GHG emissions, may struggle to identify asset managers that have the ability to do so. This will disproportionately affect smaller asset managers that are still in the process of building their reputation and credibility with individual and institutional investors.

A lack of sustainability disclosure has a negative impact on asset managers' and owners' ability to evaluate the risk and opportunity of investments generally, and their ability to pursue investment strategies with sustainability-related goals. This may result in momentum being lost in influencing corporate decision-making and priority-setting when it comes to mitigating the risks of climate change and other ESG-related goals.

Access to the Bureau

As noted above, we are concerned with how the greenwashing Provisions will interact with the Provision that expands private access to the Bureau, as this could result in a significant increase in private access applications. Even if such applications are ultimately found to be unsubstantiated, the reputational risk of being subject to a review is significant.

The asset management industry would benefit from specific guidance regarding the "public interest" test for obtaining leave from the Tribunal and what factors the Tribunal will consider in determining that a claim is in the public interest.

Subsections 74.01 (1) and (b.2)

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?**

Issuers, financial institutions and asset managers often make claims relating to net zero GHG targets, carbon neutrality and having targets that are "science-based". These claims are becoming more common because they respond to demands for information from different stakeholders (investors, consumers, suppliers, industry associations etc.) and they align with the growing consumer demand for environmentally responsible investment options and business practices.

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?**

Forward-looking environmental claims, including those relating to net zero GHG targets, climate-related opportunities and scenario analysis, are significantly more difficult to substantiate due to their long-term time horizon and limitations in available methodologies. Over the course of these claims, science, innovation and regulation in this area are expected to evolve considerably. This means that the assumptions underlying these claims are likely to shift over time.

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?**

Although the Provisions refer to "internationally recognized methodologies", no specific standards are currently universally accepted in the Canadian investment sector. The Bureau should defer to the various industry specific regulators (such as the CSA and OSFI) to determine whether a given methodology is acceptable.

It would also be helpful for the Bureau to set some parameters or provide a list of characteristics that it would expect to see from an "internationally recognized methodology", keeping in mind that the methodology should encompass a full range of standards, taxonomies, principles, guidelines, goals and approaches that are commonly used in Canada and internationally.

Corporate disclosures, decarbonization target setting, and decarbonization strategy development rely on a plethora of standards, including institutions such as the ISSB, TCFD, Science Based Targets Initiative (**SBTi**), Intergovernmental Panel on Climate Change, UN Environmental Program for Financial Institutions, among others. We recommend that the guidance provide flexibility on which methodologies would be acceptable, recognizing that the existing frameworks continue to evolve, and, while some have been recognized by various Canadian regulators, none have been mandated in Canada to date.

The term "internationally recognized methodology" should be interpreted broadly, flexibly and in a principles-based manner, to consider the evolving science and standards that support environmental claims.

There also exist industry and regionally specific standards that may not be considered "international," but may be valid. Failing to accept these standards would limit innovation in the development of new methods for measurement, as this assumes that a standard comes before measurement and disclosures. In reality, standards are typically developed after many years of innovation and testing.[15]

There is often not "one truth" when determining environmental benefits and measurement. Standards may take different approaches, all of which may be credible. For example, there is a debate as to whether carbon offsets or credits should be used to meet a net-zero target. The SBTi standards says no (for corporate issuers) and the Paris Agreement says yes (for sovereign issuers).

There are also cases where an internationally recognized methodology simply does not exist. There are many situations where frameworks are nascent or non-existent. This includes instances involving aspirational claims and forward-looking statements.

Myriad methodologies are available to financial institutions through international standards and best practices. However, these methodologies are constantly developing and should remain acceptable to the Bureau as they evolve.

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[15] For example, SBTi launched its first corporate net-zero standard in 2021, six years after the Paris agreement; TCFD was launched in 2017, 17 years after companies began making climate-related disclosures

4. **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"?**

Many internationally recognized methodologies have local variants that are adapted to a jurisdiction's context. These must also be recognized by the Bureau as they are often required by local regulators. For example, the CSSB can modify standards issued by the ISSB to suit the Canadian context.

In addition, local authorities may issue their own methodologies, rather than choose to rely on other national methodologies that are internationally recognized. For example, a Canadian sustainable finance taxonomy, should it established, should supersede its European equivalent for Canadian investments.

Inputs into international methodologies, such as climate transition pathways, are often issued by national authorities and must be permitted by the Bureau to ensure that companies are reflecting local contexts in the assumptions underlying internationally recognized methodologies.

Finally, in addition to internationally recognized methodologies designed for the financial sector, some groups may establish local sector-specific methodologies (for the mining or oil and gas sectors, for example). These methodologies may be utilized by financial institutions if they have investments in that sector and should be permitted by the Bureau.

For these reasons the Bureau should maintain a flexible and principles-based approach when determining what constitutes an acceptable methodology.

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

As a result of the challenges noted above, we are concerned that significant resources may be required to comply with the Provisions and address potential claims brought before the Bureau. This challenge could disproportionately fall onto smaller firms.

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

Investors depend on robust sustainability reporting to incorporate all sources of risk and return within their portfolios, including issuers' public commitments to decarbonization. These commitments can have a significant impact on investors that wish to incorporate environment-related risk in their investment process. While the Provisions can increase the credibility of these statements, they may also discourage companies from making public ESG-related commitments, including to decarbonization, to reduce their exposure to regulatory risk. This dynamic would significantly impact small and medium size enterprises seeking financing. Therefore, we urge the Bureau to be judicious in its guidance concerning claims about the future so as not to discourage well-meaning companies from publicly stating their ambitions to decarbonize.

We would like clarity on whether aspirational commitments can be accepted provided there are timelines for when detailed plans accompany them. The Deceptive Marketing Practices Digest currently states that businesses should not make aspirational statements without

having a concrete, realistic and verifiable plan in place. This is a challenge for large companies because decarbonization plans are not one size fits all, most companies release them piecemeal as opportunities for reducing emissions vary across value chains. The Bureau should permit companies to state "we want to get to net zero GHG emissions by 2050" as long as they substantiate their target with key intermediary targets, such as when their decarbonization plan will be released. The Digest also states that there must be "meaningful efforts underway" to achieve the plan. This discourages companies that have not committed to decarbonize to move forward, which is contrary to the Government of Canada's policy goals. Therefore, clarity on this expectation is needed.

The Provisions create additional liability risk for Canadian federally regulated financial institutions (**FRFI**s) relative to other Canadian and non-Canadian issuers that are not required to make climate-related disclosures under OSFI Guideline B-15, *Climate Risk Management*.[16] Robust clarifying guidance will be critical to levelling the liability risk between different types of issuers.

CONCLUSION

While we support the Bureau's goals of reducing greenwashing in the commercial sphere, we do not believe the Provisions are well-suited to the investment industry, and in fact they create significant challenges for this sector. We urge the Bureau to create a carve-out for disclosures that are overseen by the CSA and global entities that supervise voluntary disclosure frameworks. Reliance on company disclosures, reputable third-party information sources and cautionary statements should be sufficient to satisfy the adequate and proper testing requirement. The term "internationally recognized methodology" should be interpreted in a broad, flexible and principles-based manner to account for evolving science and standards, and the Bureau should specify the criteria to be taken into consideration when determining whether a particular methodology meets the standard.

If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Victoria Paris at (416) 802-4347.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

"*Katie Walmsley*"	"*Warren M. Rudick*"
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President	Chair, PMAC Industry, Regulation and Tax Committee
	VP & Chief Counsel, Wealth and Asset Management Canada, & Global Chief Counsel, Distribution Law
	Manulife Investment Management

[16] Office of the Superintendent of Financial Institutions Canada Guideline B-15, Climate Risk Management (published March 2023)

APPENDIX A

- CSSB Exposure Draft – Canadian Sustainability Disclosure Standard (CSDS) 1: General Requirements for Disclosure of Sustainability-related Financial Information
- CSSB Exposure Draft – Canadian Sustainability Disclosure Standard (CSDS) 2: Climate-related Disclosures
- IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information
- IFRS S2 Climate-related Disclosures
- Task Force on Climate-Related Financial Disclosures (All Publications)
- CSA Staff Notice 81-334 (Revised) ESG-Related Investment Fund Disclosure (First published January 19, 2022; revised March 7, 2024)
- CSA Notice and Request for Comment – Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines (published April 13, 2023)
- Office of the Superintendent of Financial Institutions Canada Guideline B-15, Climate Risk Management (published March 2023)
- CSA Staff Notice 51-364 Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021 (November 3, 2022)
- CFA Institute Global ESG Disclosure Standards for Investment Products (published November 2021)
- Consultation: Climate-Related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters (October 18, 2021)
- CSA Multilateral Staff Notice 51-361 Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2020 and March 31, 2019 (October 29, 2020)
- CSA Notice and Request for Comment Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1 (September 12, 2019)
- CSA Staff Notice 51-358 Reporting of Climate Change-related Risks (August 1, 2019)
- CSA Staff Notice 51-356 Problematic promotional activities by issuers (November 29, 2018)
- CSA Staff Notice 51-354 Report on Climate Change–Related Disclosure Project (April 5, 2018)
- CSA Staff Notice 51-348 Staff's Review of Social Media Used by Reporting Issuers (March 9, 2017)
- OSC Staff Notice 51-711 (Revised) Refilings and Corrections of Errors (March 8, 2018)

- OSC Staff Notice 51-721 Forward-Looking Information Disclosure (June 13, 2013)
- Multilateral CSA Staff Notice 51-338 – Continuous Disclosure and Prospectus Requirements Relating to Documents Prepared under the U.S. Securities and Exchange Act of 1934 (March 7, 2013)
- CSA Staff Notice 51-333 Environmental Reporting Guidance (October 27, 2010)
- OSC Staff Notice 51-716 Environmental Reporting (February 27, 2008)
- CSA Staff Notice 51-311 (Revised) Frequently Asked Questions Regarding National Instrument 51-102 Continuous Disclosure Obligations (May 4, 2007)