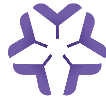

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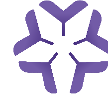

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September 27, 2024

Competition Bureau
ATTN: Commissioner Matthew Boswell
Deceptive Marketing Practices Directorate
50 Victoria Street, Room C-114
Gatineau, Quebec K1A 0C9

Re: Public Consultation on the *Competition Act's* New Greenwashing Provisions

Dear Commissioner Boswell,

The Smart Prosperity Institute (SPI) appreciates the opportunity to provide a submission to Canada's Competition Bureau in response to the public consultation on the new provisions in Canada's *Competition Act* outlined in Bill C-59. We recognize the importance of balancing strict regulatory measures to prevent greenwashing with the risk of discouraging engagement in sustainability initiatives, which could inadvertently limit investment in sustainable activities and products.

Basis for SPI's comments

The Smart Prosperity Institute is Canada's largest policy think tank and global research network focused on the environment and the economy. We believe that a thriving planet and its people are the pillars of true economic prosperity. Based at the University of Ottawa, we conduct leading-edge research and innovate policies and market solutions in pursuit of a greener, more competitive Canadian economy that works for people and the environment. Our governance and innovation policy research team has deep expertise in regulatory innovation and governance, particularly in the field of sustainable finance.

GREENWASHING IN THE SUSTAINABLE FINANCE MARKET

The Paris Agreement and the 2030 Agenda for Sustainable Development have sought to mobilize global action on climate change and broader sustainability objectives to spur economic and societal transitions towards sustainable development. The significant levels of investment required to realize this combined agenda has raised awareness of the critical role of the financial system in supporting a sustainable transition. This, in turn, has greatly accelerated the growth of sustainable finance, a subset of the broader financial market that intends to channel capital towards investments aligned with (i.e., contribute to) sustainability outcomes. In 2023, the overall market value of sustainable investment products alone (bonds and funds) reached an estimated USD 7 trillion.[1]

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[1] United Nations Conference on Trade and Development (2024). Chapter III: Sustainable Finance Trends, in 'World Investment Report 2024: Investment Facilitation and Digital Government.'

However, persistent greenwashing concerns have accompanied this market growth due to uncertainty over what credibly constitutes a 'green' or 'sustainable' entity, activity, or financial product. In this context, there is no universally agreed understanding of greenwashing; however, a useful definition to aid understanding is the high-level definition of greenwashing commonly agreed by the European Supervisory Authorities:

> *A practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.*[2]

This understanding of greenwashing captures the multiple levels at which environmental claims are made in financial markets (e.g., entity and financial product/service level), as well as the variety of channels through which environmental claims are communicated to consumers and investors (e.g., financial statements, marketing materials, voluntary sustainability-related reporting).

While the financial system has a critical role to play in meeting global sustainability goals, the actual and perceived risk of greenwashing acts as a significant barrier that, if unaddressed, will likely inhibit the growth of a credible sustainable finance market both globally and in Canada. More specifically, greenwashing can lead to capital misallocation towards investments that do not actually contribute to sustainability, unfairly advantage companies that engage in greenwashing over companies undertaking credible action to 'green' their businesses, and reduce overall investor confidence in the sustainable finance market.[3]

The recent amendments to Canada's *Competition Act,* which include provisions that specifically target greenwashing, represent important progress for addressing related concerns within the sustainable finance market. With this letter, SPI offers comments with respect to environmental claims in financial markets, drawing upon our experience providing independent research support for the Government of Canada's Sustainable Finance Action Council, as well as ongoing original research at the environment-economy nexus.

Where Greenwashing Arises in Financial Markets

Communication Channels

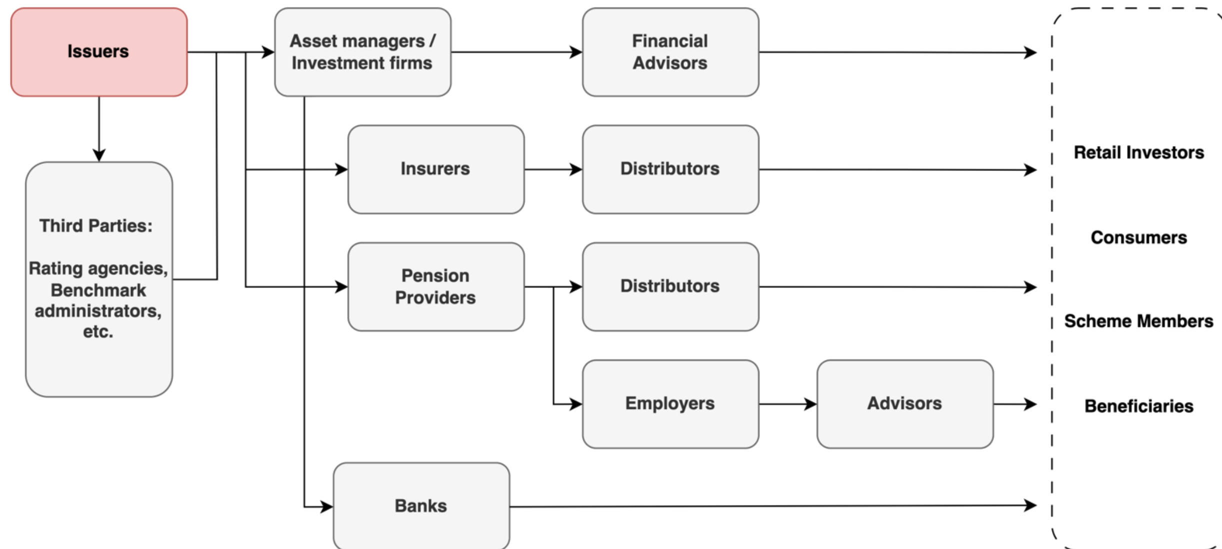
As mentioned above, sustainability-related claims in sustainable finance markets can be made at different levels and appear in a variety of statements and communications. Importantly, actors in sustainable finance markets rely on information provided to them by other actors to inform their investment activities. This creates several opportunities for greenwashing to arise along the sustainable finance investment value chain, as depicted in Figure 1. For instance, financial institutions utilize information provided to them that is publicly available to non-financial corporates in the real economy to construct sustainability-themed (or sustainability-labelled) financial products. These financial products are made available to consumers (acting as retail investors).

If the original information provided by companies in the real economy contains greenwashed claims, an additional round of greenwashing can occur if investments in a company are included in a sustainability-labelled financial product on the basis of the greenwashed claims. For this reason, it

[2] European Securities and Markets Authority (2024). 'Final Report on Greenwashing,' p. 78.
[3] Client Earth and the Asia Investor Group on Climate Change (2023). 'Greenwashing and How to Avoid it: An Introductory Guide for Asia's Finance Industry.'

is important to ensure that communications by companies adhere to the same standard of truth with respect to the sustainability claims they contain, even if a company intends to provide certain communications specifically to shareholders and investors.

Figure 1 – Sustainable finance investment value chain



Adapted from: European Insurance and Occupational Pensions Authority (2023). 'Advice to the European Commission on Greenwashing – Progress Report.'

Internationally Recognized Methodologies

Understanding the Differences Between Standards, Frameworks, and Methodologies

The availability of transparent, comparable, and decision-useful information is crucial to address greenwashing in sustainable finance markets. To this end, a global sustainability reporting architecture is emerging to facilitate entities' disclosure of material information from both a financial and impact perspective.[4] This work has coalesced around key frameworks developed by the taskforces on climate-related (TCFD) and nature-related (TNFD) financial disclosures, and the setting of global baseline reporting standards such as the GRI Standards and the International Sustainability Standards Board's (ISSB) sustainability disclosure standards.

Frameworks, such as the TCFD recommendations, help establish a baseline for approaching a specific topic. Reporting standards, such as the ISSB standards, can build upon frameworks and specify agreed, uniform requirements that reporting entities should meet to ensure a certain level of quality in their reporting on a topic.[5] While sustainability-related reporting standards are crucial for facilitating the disclosure of globally comparable sustainability information, they are not necessarily 'methodologies' for the purposes of substantiating information. For instance, the ISSB's *IFRS S2 Climate-Related Disclosures* standard identifies how to prepare and where to report information on an organization's climate-related metrics and targets.[6] In terms of targets, IFRS S2 requires an organization to disclose any targets it has set voluntarily or to comply with any laws or regulations

[4] For a brief explainer on materiality perspectives, see 'The Challenge of Double Materiality.'
[5] GRI (2022). 'The GRI Perspective: ESG Standards, Frameworks, and Everything in Between.'
[6] See 'Metrics and Targets' in: 'IFRS S2 Climate-Related Disclosures.'

and the target-setting methods used; however, it does not require that targets be set or that a specific target-setting method be followed.

By contrast, a methodology in this context would constitute, for instance, a recognized procedure followed for arriving at net-zero pledges, interim and long-term emissions targets, and 1.5°C aligned pathways. The UN's High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities identifies several "robust methodologies" for this purpose, including those developed by the Science Based Targets Initiative, the Transition Pathway Initiative, the International Organization for Standardization, and others.[7]

Clarifying the Meaning of 'Internationally Recognized Methodology'

While we recognize that the global landscape of methods for substantiating sustainability claims is still evolving, there are a variety of internationally recognized methodologies available for businesses to use to substantiate claims about their business and business activities. These include, for example, the *GHG Protocol Corporate Accounting and Reporting Standard* for preparing GHG emissions inventories and a variety of best practices and specific methods for net-zero commitments identified by the UN High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities. For nature-related issues, the Taskforce on Nature-Related Financial Disclosure's recommendations include a clear approach (LEAP) for assessing and reporting nature-related dependencies, impacts, risks and opportunities, and has made a catalogue of tools available to help entities comply with the approach.

While numerous other examples could be provided, we note more generally that the new provision stipulating adequate and proper substantiation in accordance with an internationally recognized methodology is vague; however, not more so than existing provisions on product performance claims (i.e., adequate and proper testing). To provide additional clarity, the Bureau could consider:

- Explaining if and how established considerations for determining whether a test is "adequate and proper" can apply to identifying appropriate methodologies to substantiate claims about businesses and business activities.
- Identifying or developing examples of good practice for substantiating common types of business or business-activity level environmental claims and including these examples in the forthcoming guidance.

Greenwashing Regulation Interactions with Sustainable Finance Taxonomies

A sustainable finance taxonomy is a classification system that identifies and defines 'sustainable' economic activities and/or assets. A publicly available and science-based taxonomy that specifies activity- or asset-level environmental performance criteria provides standardized definitions for what constitutes sustainable activities and is, therefore, a key tool to substantiate claims.

If a company makes a claim about the overall sustainability of its business or a specific business activity, a taxonomy could be used to substantiate them. For instance:

- A company wishes to communicate about the 'sustainability' of the aluminum they produce. To substantiate such a claim, the environmental performance of the company's manufacturing process could undergo an independent assessment against the performance

[7] High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities (2022). 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions.'

criteria specified in a taxonomy for aluminum manufacturing. If met, a company could communicate this claim while clarifying the specific taxonomy against which it has been assessed.

- A company wishes to communicate about the sustainability of its overall business. While the typical unit of analysis in a taxonomy is economic activities or assets, a business can assess the alignment of all their business activities against a taxonomy (assuming all the activities are covered). Once determinations about activity alignment are made, the business can determine the proportion of their revenues and expenditures associated with aligned activities compared to their total revenues and expenditures. With this information, a business can more accurately and credibly identify the overall sustainability of its current business model and communicate this in terms of the overall alignment of its revenues and expenditures to a credible taxonomy.[8]

The use of taxonomies to assess and disclose the alignment of an overall business and individual activities is common in Europe, where a large number of companies are required to do so against the European Union Taxonomy for Sustainable Activities.

Taxonomies can also be used to assist in substantiating sustainability claims about financial products. For instance:

- A company wishes to issue a sustainability-labelled bond, where the use of proceeds will be dedicated to financing or re-financing projects with clear environmental benefits. While this type of bond issuance involves several steps, one key step is the selection of eligible projects. For this purpose, a taxonomy can be used to identify projects that can credibly be considered to deliver environmental benefits. A notable example of the use of taxonomies for this purpose is the Climate Bonds Standard and Certification Scheme. For a use-of-proceeds bond to be certified against this scheme, an issuer must determine and verify the eligibility of the projects it intends to finance against the criteria of the Climate Bonds Taxonomy.[9]
- A financial institution wishes to develop a sustainability-labelled investment product offering. For this purpose, a publicly available taxonomy can be used to inform the underlying methodology for selecting eligible investments. In communications about the product, the financial institution can identify the product as featuring a certain proportion of investments that are aligned with the criteria of a specific taxonomy.

However, it is important to note that **not all taxonomies are created equal**. In the last few years, over 40 national and regional taxonomies have been developed globally. These taxonomies are not uniform, and not all take a science-based approach or include specific performance criteria at the activity level. Therefore, whether a specific taxonomy can be used as a reliable method of substantiation should involve consideration for the taxonomy's specific approach to defining activities' contributions to sustainability objectives, for instance:

- Is the approach science-based?

[8] For an example of EU Taxonomy reporting, see Volkswagen Group's *2023 Sustainability Report*, pg. 69-82.
[9] The Climate Bonds certification standard is the second most popular bond labelling scheme globally. The vast majority of sustainability labelled bonds align with the International Capital Market Association's (ICMA) Green, Social, Sustainability, or Sustainability-Linked Bond Principles. ICMA's Principles do not require the use of a taxonomy for project selection.

- Does the ambition level of performance criteria align with international or national policy targets (such as Canada's net-zero emissions by 2050 target for a climate mitigation objective)?
- Does the taxonomy ensure that activities make a *net-positive* contribution to sustainability – i.e., are activities only considered sustainable if their contribution does not come at the expense of other environmental or social objectives?

Finally, while Canada does not have a national taxonomy in place, the Government of Canada has stated its intention to build from the Sustainable Finance Action Council's recommendations outlined in the *Taxonomy Roadmap Report* to establish a Canadian Taxonomy. Aligning greenwashing enforcement with a Canadian taxonomy will ensure coherence and clarity for both regulators and entities.

Emerging Topics within Sustainable Finance for the Bureau's Consideration

New innovations within sustainable finance are emerging on a regular basis. We discuss two recent innovations of note – sustainability-linked financial instruments and transition finance – that the Bureau should be aware of in terms of developing greenwashing guidance. In particular, the emergence of sustainability-linked instruments and transition finance represents a departure from more established sustainability-themed financial products (e.g., green bonds). Businesses that enter the sustainability-linked and transition finance markets should ensure that their communications on these matters are transparent about the actual environmental impact and to not conflate these instruments with more traditional forms of sustainable finance.

Sustainability-linked financial instruments. While 'use of proceeds' (UoP) bonds and loans carrying sustainability labels (e.g., green, social, and sustainability) have been established within the marketplace for many years now, sustainability-linked bonds and loans are a more recent innovation. Unlike UoP bonds, where the proceeds raised are earmarked for specific environmentally and / or socially beneficial projects, sustainability-linked finance can be used for general corporate purposes.

The 'sustainability' feature of these instruments are targets and key performance indicators (KPIs) set by the issuer that pledge to achieve a certain level of performance by a specified date. The types of KPIs are wide-ranging and can relate to environmental (e.g., an emissions reduction target) or social (e.g., 50% of board members are women) objectives. To incentivize the achievement of pledged targets, a penalty is specified that will be triggered if the pledged target is not achieved by a specific date. This penalty is most commonly a 'coupon step-up' where the interest paid on the instrument is increased by a certain amount (in basis points) if a target is not reached.

Businesses should be urged to be transparent in their communications about their sustainability-linked finance. For instance, communications should include details about the pledged targets and KPIs, as well as how the proceeds may be used, so that individuals are aware that proceeds may not finance projects with sustainability benefits.[10]

'Transition' Finance. Traditionally, sustainable finance has focused on (1) the environmental dimension, and (2) identifying 'green' or 'environmentally sustainable' investments. However, a newer category of 'transition' financing is gaining traction due to increasing recognition of the need for a whole-of-economy approach to delivering on sustainability goals. Sectors of the economy that

[10] Examples of sustainability-linked bond and loan communications: Tamarack Valley Energy; Enbridge.

are historically high-emitting may not be able to access financing through more traditional routes within the sustainable finance markets (e.g., a green bond offering).

The intention of transition finance is to create an additional and distinct category of financing to facilitate ambitious action on reducing emissions across activities that would not qualify for financing through a typical green or sustainability-labelled bond. Notably, the Sustainable Finance Action Council's *Taxonomy Roadmap Report* outlines the framework for a future Canadian Taxonomy that is inclusive of a 'transition' category and could, therefore, provide a credible tool for substantiating the appropriateness of projects to finance through a transition bond. That said, it is important that claims made with respect to transition finance are communicated in a way that clearly differentiates it from sustainable financing to avoid misleading consumers and investors.

Conclusion

In conclusion, SPI supports the efforts to revise the *Competition Act* to combat greenwashing, not only to protect Canadian consumers but to ensure Canadian companies are competitive in jurisdictions with strong greenwashing regulations. We also acknowledge the need to balance the stringency of regulatory guidance around greenwashing with the risk of suppressing engagement in sustainability-related activities at the entity level, and potentially resulting in reduced investment in sustainability-related activities and products. We encourage the Bureau to take an iterative approach to implementation that emphasizes collaboration, agility and learning.

We welcome any follow-up engagement with the Bureau. For further information or to discuss our submission, please contact Dr. Colleen Kaiser at colleen@smartprosperity.ca.

Sincerely,

Smart Prosperity Institute
https://institute.smartprosperity.ca/