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Delivered By Email: greenwashingconsultationecoblanchiment@cb-bc.gc.ca

Deceptive Marketing Practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Dear Sirs and Mesdames:

RE: Competition Bureau – Consultation – Environmental Claims and the Competition Act – Draft Guidance

The Investment Funds Institute of Canada (**IFIC**) is pleased to provide the Competition Bureau (**Bureau**) with our comments on the Competition Act's recent guidance for comment on greenwashing provisions. We also refer to our letter dated September 27, 2024, for additional support for our position including with regards to the topics of internationally recognized methodologies and forward-looking claims (our **2024 Submission).**

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

SUMMARY

IFIC appreciates the opportunity to provide feedback on the Bureau's guidance on environmental claims and greenwashing provisions. IFIC recognizes and supports the Bureau's objective of ensuring that environmental claims are accurate, substantiated, and not misleading. We also welcome the Bureau's acknowledgment of the distinct function that securities disclosures serve in comparison to general marketing claims. However, we continue to emphasize that the Canadian securities regulators already have a complete legal, regulatory, oversight and enforcement framework in place to address misleading claims of any nature made by an investment fund manager or a firm registered to deal in, or advise in, securities (a securities registrant).

We request that the Bureau's final guidance provide deference to the jurisdiction of the Canadian Securities Administrators (**CSA**) and the Canadian Investment Regulatory Organization (**CIRO**) (collectively, the **Canadian Securities Regulators**), regardless of the purpose or manner/type of document in which statements are made by securities registrants with respect to the anti-greenwashing provisions under the Competition Act. Provincial/territorial, CSA and CIRO securities laws, regulations, rules, and instruments (**Canadian Securities Laws**) prohibit misleading or untrue statements to be made by securities registrants. Applicable laws and regulations are provided in detail in **Appendix A**. Without this deference by the Bureau to the Canadian Securities Regulators, there will be a duplicative standard for securities registrants that

creates uncertainty and a lack of alignment without increasing consumer protection in any meaningful way. We further note the 2014 Memorandum of Understanding (**MOU**) between the Bureau and the Chair of the Ontario Securities Commission (**OSC**) wherein the Bureau and the OSC agreed to a cooperative framework for addressing overlapping regulatory matters. We believe the anti-greenwashing provisions under the Competition Act constitute such an overlapping issue.

IFIC remains committed to supporting efforts to protect consumers and investors from deceptive environmental claims. We appreciate the Bureau's efforts to enhance transparency and ensure that environmental representations are credible. However, as we previously highlighted in our 2024 Submission to the Bureau's consultation on greenwashing provisions, we believe the guidance should fully and clearly defer to the MOU and existing legal and regulatory frameworks enforced by Canadian Securities Regulators.

DETAILS

Deferral to Securities Regulators and Avoidance of Regulatory Overlap

While the Bureau acknowledges the role of securities regulators, the guidance does not go far enough in recognizing the extensive legal and regulatory infrastructure already in place under Canadian Securities Laws.

Through well-established Canadian Securities Laws, guidance, and enforcement mechanisms, the Canadian Securities Regulators have a comprehensive regime that prohibits registered firms and their registered individuals from making false or misleading claims. This prohibition extends to a prohibition on misleading or unsubstantiated claims related to ESG and environmental disclosures.

IFIC reiterates its request that the Bureau formally confirms in its guidance that it will defer to the Canadian Securities Regulators on matters of greenwashing enforcement within the asset management, investment fund and dealer industries. This position aligns with the MOU which establishes a cooperative framework for addressing overlapping regulatory matters. The Bureau's deference to securities regulators will prevent regulatory duplication and ensure that asset manager, investment fund and dealer disclosures remain subject to a single, comprehensive, clear set of compliance obligations.

Scope of Securities-Regulated Communications Carve-Out

IFIC commends the carve-out proposed by the Bureau but strongly recommends that the carve-out for securities-regulated communications include all documents and communications required by Canadian Securities Laws and any other disclosures made by investment fund managers, asset managers, advisers and dealers, including but not limited to, any sales communications. The carve-out should also be captured the by Bureau's related guidance such as Frequently Asked Questions (FAQ). For example, expanding FAQ No. 8 beyond securities filings to include sales communications regulated by Canadian Securities Laws. These materials are already subject to legal standards (detailed in **Appendix A**) and to oversight and enforcement by the Canadian Securities Regulators, making additional scrutiny by the Bureau unnecessary and duplicative. Without a fulsome and formal carve-out, securities registrants may limit their ESG disclosures due to regulatory uncertainty, which could reduce transparency for investors and inhibit the growth of sustainable investment products. We do not believe that such a curtailing of ESG-related disclosure would benefit investors, given the already robust protections from misleading or unsubstantiated claims set out by Canadian Securities Laws. It is worth noting that the existing regulatory framework provides Canadian investors with several avenues for recourse for misrepresentations by an applicable registered firm. This includes filing a complaint directly with the registered firm, which is required to have a formal dispute resolution process. If unsatisfied, investors can escalate their complaint to the Ombudsman for Banking Services and Investments (OBSI), which can recommend compensation. Investors may also report misrepresentations to the Canadian Investment Regulatory Organization (CIRO) or their provincial or territorial securities regulator, both of which have enforcement authority over applicable registered firms.

Consistency with the MOU Between the Bureau and the OSC

The MOU provides a framework for cooperation on matters of overlapping jurisdiction. Given the established regulatory infrastructure within the securities sector, IFIC urges the Bureau to formally incorporate its deference to the Canadian Securities Regulators into the final guidance, regardless of the purpose for which the communication has been made. This approach would enhance regulatory coordination, reduce administrative burden, and prevent conflicting enforcement approaches in a manner consistent with the Bureau's policy purpose in enacting the anti-greenwashing provisions.

Avoiding Regulatory Uncertainty and Burden on ESG Innovation

IFIC emphasizes that an uncertain or duplicative regulatory environment could have unintended consequences for ESG-focused investment products. Without a clear carve-out for all securities-regulated disclosures, fund managers and dealers may scale back voluntary ESG disclosures, or even the offering of sustainability-focused investment products to mitigate regulatory risk. This reduction in transparency would be detrimental to investors who rely on accurate and comprehensive ESG-related information to make informed decisions.

CONCLUSION AND REQUESTED REVISIONS

To ensure clarity and consistency, IFIC respectfully requests that the final guidance:

1. Confirm that the Bureau will defer to CSA/CIRO oversight for all communications made by investment funds, other securities issuers and dealers regarding greenwashing enforcement.
2. Provide a carve-out for all documents and communications required by securities regulation and any other disclosure used by investment fund managers or dealers, as these are already subject to oversight and enforced by the Canadian Securities Regulators.
3. Ensure alignment with the Bureau's MOU with the OSC to avoid regulatory overlap and inefficiency.

These revisions, we believe, will align with the Bureau's objective of ensuring accuracy in environmental claims while respecting the existing investor-protection framework under Canadian Securities Laws. We appreciate the opportunity to provide input and look forward to continued engagement on this important issue.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Andy Mitchell
President & CEO

APPENDIX A

One of the major purposes of Canadian Securities Law and its enforcement is to protect investors from unfair, improper and or fraudulent practices.[1] In general, the Canadian Securities Regulators have numerous rules that prohibit misleading claims. For example, all registrants must deal fairly, honestly and in good faith with their clients and ensure that statements provided to investors are fair and not misleading.[2] Firms registered with the Canadian Securities Regulators must not hold themselves out in a manner that could reasonably be expected to deceive or mislead any person regarding the products or services they provide.[3]

There are securities rules for sales communications by public investment funds that have detailed requirements and restrictions. Part 15 of **National Instrument 81-102 – *Investment Funds*** (**NI 81-102**) provides that an investment fund is prohibited from, among other things, issuing a sales communication that is untrue or misleading.[4] More specifically, NI 81-102 also provides that a fund must not include misleading statements in its sales communications and the CSA ESG Guidance (defined, and discussed in more detail, below) elaborates that this includes a prohibition against misleading statements about the environmental, social, and governance (**ESG**) performance or ESG-related outcomes of the fund e.g. inaccurate claims about (a) the fund's ESG performance or results, or (b) the existence of a direct causal link between the fund's investment strategies and ESG performance or results.

The Companion Policy to NI 81-102 – which is guidance issued by the CSA - lists some of the circumstances in which a sales communication would be misleading. One such circumstance is where the sales communication contains a statement about the characteristics or attributes of an investment fund that makes exaggerated or unsubstantiated claims about the characteristics of the investment fund. Another is that a statement would be misleading if it lacks explanations, qualifications, limitations or other statements necessary or appropriate to make the statement not misleading. In addition, CSA staff are of the view that sales communications should not contain statements that are vague or exaggerated, or that cannot otherwise be verified.[5] This guidance applies to both current and future oriented information or claims. The CSA and the firms it regulates have a long history with these requirements such that they understand the appropriate standards of conduct and regulatory expectations.

Specific CSA ESG Guidance

Recently, securities regulatory expectations were developed to reduce the potential for greenwashing in the fund industry. In January 2022, the CSA issued CSA ESG Guidance (CSA ESG Guidance) in the form of **Staff Notice 81-334, ESG-Related Investment Fund Disclosure**, which guidance was revised in March 2024.[6] The specific purpose of the CSA ESG Guidance was to provide regulatory guidance to investment fund managers on their disclosure and sales communication practices, "to reduce the potential for greenwashing, whereby a fund's disclosure or marketing intentionally or inadvertently misleads investors about the ESG-related aspects of the fund".

The CSA ESG Guidance is based on interpreting existing securities regulatory requirements and addresses areas of investment funds' disclosure, including investment objectives, names, investment strategies, risk disclosure, continuous disclosure and sales communications. This guidance specifically addresses disclosure in prospectus documents, Fund Facts, ETF Facts, Management Reports of Fund Performance, websites, and all sales communication materials.

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[1] For example, see section 1.1 of the **Securities Act (Ontario)**.

[2] This requirement is found in section 2.1 of **Ontario Securities Commission Rule 31-505 Conditions of Registration**, section 14 of the **Securities Rules (British Columbia)**, section 75.2 of the **Securities Act (Alberta)**, subsection 33.1(1) of the **Securities Act (Saskatchewan)**, subsection 154.2(2) of the **Securities Act (Manitoba)**, section 160 of the **Securities Act (Quebec)**, subsection 54(1) of the **Securities Act (New Brunswick)** and section 39A of the **Securities Act (Nova Scotia)**.

[3] See section13.18 of **National Instrument 31-103**.

[4] CIRO has a similar rule that provides that a dealer member must not issue, participate in or knowingly allow the use of its name in any advertisement, sales literature or correspondence that contains an untrue statement or omission of a material fact or is otherwise false or misleading.

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

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

The CSA ESG Guidance aims to bring greater clarity and consistency to ESG-related fund disclosure and marketing, helping investors make more informed decisions.[7] The CSA ESG Guidance specifically addresses investment funds that market themselves as focusing on ESG factors or incorporating them into their investment processes. Non-ESG Funds[8] should not refer to ESG in their sales communications, with the exception of limited factual information. The factual information about the ESG characteristics of a portfolio should not be framed in a way that suggests that the Non-ESG Fund is aiming to achieve any ESG-related goals or is trying to create a portfolio that meets certain ESG-related criteria. The CSA ESG Guidance is established in the marketplace and overseen by a sophisticated set of regulators that have jurisdiction over these issues.

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

[8] Funds that do not consider ESG factors in their investment process