British Columbia Investment Management Corporation
750 Pandora Ave / Victoria BC / V8W 0E4 CANADA
T +1 778 410 7100 communication@bci.ca BCI.ca

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Deceptive marketing practices Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Via email: **environmentalclaims-declarationsenvironnementales@cb-bc.gc.ca**.

Dear Sirs/Mesdames,

Re: Environmental Claims under the Competition Act: Public Consultation on Draft Enforcement Guidelines

British Columbia Investment Management Corporation ("BCI") is an investment manager with over CAD $250 billion in assets under management, and one of the largest institutional investors in Canada. Our investment activities help finance the pensions of approximately 725,000 people in our province, including university and college instructors, teachers, health care workers, firefighters, police officers, municipal and other public sector workers. On behalf of these pension beneficiaries, we provide long term capital to companies around the world that we believe will deliver strong and stable financial returns.

BCI provided the Competition Bureau (the "Bureau") with **feedback** on the new greenwashing provisions in the Competition Act during the September 2024 consultation. In this previous submission, BCI emphasized the importance of clear, consistent, and enforceable guidelines to prevent greenwashing while promoting transparency and reliability in ESG disclosures. We highlighted the need for guidance that balances consumer protection with the needs of investors and suggested the inclusion of recognized international standards to establish a common framework for environmental claims.

BCI continues to support the overall intent of the Bill C-59 (the "Bill") amendments to the Competition Act to protect Canadian consumers and businesses from unsubstantiated environmental claims about products or services, particularly in cases where they deceive customers by misrepresenting or exaggerating a product's benefit to the environment or obfuscate negative impacts on the environment. However, we are very concerned about the number of large Canadian firms that have removed important ESG data, including historical data, from their websites and digital platforms in reaction to the new provisions, an unintended negative consequence for investors such as BCI.

Investor-Focused Disclosures

The Bureau's draft enforcement guidance (the "Guidance") explains that the Bureau's focus is on marketing and promotional representations made to the public, rather than representations made for the purposes of informing investors and shareholders in the context of securities filings. However, if the information in those materials is then used by the business in promotional materials, the Bureau will consider the representations to be marketing representations. While it is helpful that the guidance

makes this distinction, we believe that the guidance is not sufficiently clear and very unlikely to provide Canadian companies with adequate assurance that their historical data will not be interpreted as an environmental claim.

The disclosure of Scope 1 and Scope 2 emissions data has long been considered a minimum disclosure expectation for companies operating in most sectors. This is backward looking data, calculated using established methodologies such as the GHG protocol, and increasingly subject to reasonable or limited assurance from external auditors. To assess and evaluate climate-related risks or environmental performance of the companies in our portfolios, investors often request data on energy consumption, carbon intensity, water usage, and waste management in addition to a company's emissions. The CDP has been requesting and collecting this information from global companies since 2003 providing an invaluable resource to investors; and under the International Financial Reporting Standards Sustainability Disclosure Standard 2: *Climate-related Disclosures* ("IFRS S2") standard, the global baseline for climate disclosures developed by the International Sustainability Standards Board ("ISSB"), emissions data is mandatory for all companies. At this moment, the Canadian Securities Administrators ("CSA") is contemplating the implementation of the Canadian Sustainability Standards Board's ("CSSB") own climate-related disclosure standard ("CSDS S2"), which is largely aligned with IFRS S2.

Since the question of mandatory ESG disclosures is currently a live discussion in Canada, and with BCI and other institutional investors actively engaging on these issues with the CSA, BCI recommends that the Bureau expands their guidance to recognize that voluntary, backward looking, environmental data disclosures made to investors would be provided safe harbour and not be subject of enforcement. This distinction would encourage transparency and support informed investment decisions without subjecting essential ESG data to potential misinterpretation within the guidelines. A clear indication that reporting in line with these standards (such as IFRS S2 or CSDS S2) would also be welcomed.

In the absence of these further clarifications, we believe that there will not be a reversal in approach from companies that have chosen to withdraw their historical data. Further, we think the trend will proliferate and we will lose even more information, in essence developing a culture of greenhushing here in Canada. This loss of historical data negatively impacts all stakeholders, and particularly investors like BCI, who rely on such information to make informed decisions.

Proxy Voting

Additionally, we want to highlight that BCI's **proxy voting guidelines** state that we will vote against certain directors at companies that do not provide material climate-related information. During the 2024 voting season, BCI voted against more than 110 directors at over 90 companies around the world for insufficient climate-related disclosures. This stance reflects our commitment to promoting transparency and accountability. We firmly believe that companies should be encouraged to disclose comprehensive and accurate climate-related information to support informed decision-making by investors. This means BCI will vote against the chair or members of a company's sustainability committee, or an equivalent committee, in cases where this disclosure doesn't exist. If a company has no sustainability committee, or if it is not clear which committee is mandated to look at climate risk, BCI may vote against the chair of the board. BCI also generally supports shareholder proposals seeking the disclosure of material climate-related risks and opportunities including the adoption of IFRS S2 Climate-related Disclosures or equivalents. To BCI, the differentiation between data-driven information, positive or negative, and claims of environmental benefits is distinct, and, therefore, our expectation for

companies remain the same. We do not plan to make allowances in cases where companies feel restricted by the Bill.

Diversity of Approaches to Net-Zero Emissions and Internationally- Recognized Methodologies

The guidance explains that there is a wealth of information available to businesses regarding internationally recognized methodologies related to common claims such as those related to net-zero. However, this is not the case for all sectors, such as the oil and gas sector. For example, the Science Based Targets Initiative ("SBTI") is only now developing a potential approach for the oil and gas sector, which is expected to be finalized in 2026 after public consultation.

BCI recommends that the Bureau rely less on methodologies that are recognized by multiple countries, and instead affirmatively identify methodologies that it considers to be "internationally recognised". For example, the Partnership for Carbon Accounting Financials ("PCAF") is a global partnership of financial institutions that have developed a harmonized approach to assess and disclose GHG emissions associated with loans and investments, known as financed emissions. PCAF has developed methodologies used by banks, asset managers, insurance companies and even pension funds to disclose their portfolio's carbon footprints to their stakeholders.

We reiterate our recommendation that the Bureau study approaches in other jurisdictions such as the EU Green Claims Directive ("GCD") in the aim of providing guidance that is clear and addresses various types of environmental claims to ensure transparency and accuracy in marketing and advertising.

Uncertainty Creates Risks

The guidelines do not yet address how the Bureau will handle private complaints or the threshold for enforcement. Clearer enforcement criteria and timelines would help businesses achieve compliance without excessive risk exposure. The extension of rights of action to private parties may result in a significant increase in the number of complaints, we believe it is crucial to provide this guidance in an expedited manner. The lack of clarity in this respect further prevents companies from adequately disclosing even historical data.

Our last point is to again urge the Bureau to try to strike the appropriate balance between protecting Canadian consumers and business from blatant greenwashing and creating a culture of greenhushing. Canadians require a regulatory regime where uncertainty is recognized, and continuous improvement is encouraged. Companies that are using sound methods, careful calculations, and are providing thoughtful quantitative and qualitative disclosures should feel confident enough to share their decarbonization efforts. We urge the Bureau to facilitate this via clear guidance and appropriate penalties for failure to adopt a transparent approach.

Thank you again for the opportunity to opine on this important endeavour. For any clarifications related to this submission please contact Susan Golyak, Director, ESG at **susan.golyak@bci.ca**

Sincerely,

Daniel Garant
EVP & Global Head, Public Markets
cc Susan Golyak, Director, ESG