

Intelligence MEMOS



From: Colin Busby
To: Investment Watchers
Date: October 17, 2024
Re: **BILL C-59: IS CANADA SETTING BACK SUSTAINABLE INVESTMENT OPPORTUNITIES FOR GREEN INVESTORS AND PENSION FUNDS?**

Canadian policymakers aim to attract more investment, especially from large international and domestic pension funds. These investors pursue opportunities globally, and competition is fierce. They seek the best returns that consider various risks, including climate, geo-political, legislative and regulatory risks. However, without clear implementation guidance and complementary disclosure standards, the federal government's Bill C-59—which includes new greenwashing rules—may reduce Canada's competitiveness in attracting sustainable financing. One big issue that needs to be addressed is to provide accompanying regulatory guidance on what sustainability information should be disclosed.

Bill C-59, embedded in the *Competition Act*, is causing concern among Canadian companies. One worrisome aspect is the “reverse onus” on company representations of environmental benefits of their actions. Although the *Competition Act* already contains provisions to deter false and misleading claims made by companies, the new subsection requires “substantiation in accordance with internationally recognized methodology” when presenting environmental benefits of “a business or business activity.” However, “internationally recognized methodology” is undefined. Further, is it not possible that local, domestic methodologies might, on occasion, be more applicable?

As Grant Bishop [notes](#), as of June 20, 2025, Bill C-59 will introduce a new private right of action, under which private parties will be able to seek leave to enforce certain provisions of the Act. “Companies understandably fear this 'open season' since they face sanctions for speech that lacks blessing from whatever counts as an 'internationally recognized methodology,’” he said.

The bill's implementation will affect institutional investors, including pension funds, in several ways. It hampers their ability to make environmental disclosures. Consequently, investors in climate solutions cannot accurately report or assess whether they are meeting sustainable investment targets without sufficient information from invested companies. Concerns over the new rules have already led some companies to reduce public disclosures about their environmental activities. As a result, we are likely to see less, not more, information on companies' sustainability efforts reaching large investors.

Further, reduced disclosures due to Bill C-59 make it difficult for investors to evaluate a company's environmental footprint and commitment to climate goals, exacerbating challenges in making new investments and reaching net-zero and other environmental targets.

The Competition Bureau must address these uncertainties through promised guidance and, where appropriate, additional regulations to ensure competitiveness and minimize risk exposure for capital providers.

Canadian companies already lag their peers in terms of public commitments to climate goals. In 2023, according to CDP – a not-for-profit charity that runs a global environmental disclosure system – the [largest Canadian companies on the S&P/TSX ranked last among G7 countries in using science-based targets](#). These are targets that a company sets to reduce its greenhouse gas emissions in line with targets detailed in The Paris Agreement. Nearly three-quarters of the largest Canadian companies on our stock exchange lacked such a target or commitment. The U.S. is mid-pack and well ahead of Canada. These results are even more concerning given the chilling effects of Bill C-59.

Overall, the new risks and uncertainties make it more difficult for institutional investors to pursue sustainable investment objectives—from uncertainty in substantiating environmental statements to increased litigation risks and the burden of reverse onus.

Policymakers need to address these uncertainties to enable transparency, enhanced disclosures, and informed investment decisions. In jurisdictions like the European Union, comprehensive climate and sustainability disclosures are mandatory. Investors may turn away from Canadian investments if company disclosures are perceived as limited compared to other countries, rendering them less competitive for capital investment.

Establishing sustainable finance foundations needs standardized disclosures and a taxonomy to instill confidence in the information provided by companies and used by investors. The government should accelerate its recently [announced](#) taxonomy plans. A well-defined taxonomy will offer standardized, science-based definitions for sustainable activities, ensuring consistent and comparable information.

A serious plan to attract large pension investors requires swift action. The Competition Bureau's enforcement guidance must clearly address how the greenwashing provisions apply in the investment space and be flexible enough to allow for evolutions standards over time, enabling companies to feel safe to make the disclosures that large institutional investors, like pension funds, need. At the same time, the implementation of a taxonomy and standardized climate disclosure requirements will enhance transparency and help mitigate the greenwashing risks that Bill C-59 intends to address.

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