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VIA EMAIL

Director General
Financial Services Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin St
Ottawa ON K1A 0G5
Email: complaintsconsultation-consultationplaintes@fin.gc.ca

Re: Consultation Document: Strengthening Canada's External Complaint Handling System (the "Consultation Document")

The Canadian Advocacy Council of CFA Societies Canada¹ (the "CAC") appreciates the opportunity to provide the following comments on the Consultation Document. We are very interested in the structure and efficacy of the dispute resolution and complaints processes that exist throughout the financial services industry, and are supportive of the direction of the Department of Finance Canada's review of the current external compliant handling system for banks, particularly as we believe these systems are inextricably linked across financial services regulatory silos.

Our comments address the consultation questions regarding the potential objectives, structure and attributes of an effective external complaint bodies ("ECB") system in Canada. We believe the guiding principles behind the ECB system and the appropriate structure for an ECB should be premised first and foremost on a public interest mandate, such that Canadian financial services consumers can rightfully foster trust and confidence in banks and other providers of financial services.²

Our main concern with contemplating the appropriate structure for ECBs is that Canadian financial services complaint handling systems are segmented by complex regulatory verticals, despite the consumer experience being overwhelmingly focused on

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 178,000 CFA Charterholders worldwide in over 160 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

² "CFA Institute & Edelman Investor Trust Study", online: (2013) CFA Institute <https://www.cfainstitute.org/-/media/documents/survey/cfa-institute-edelman-investor-trust-study-2013.ashx>

unified brand and service experiences within cross-jurisdictional financial services conglomerates. As the ultimate stakeholder of ECBs, financial services consumers should not be expected to distinguish whether their complaint relates to a particular product or service that is banking, securities, mortgage or insurance – all of which have different and complex complaint and dispute recourse mechanisms, that further vary amongst the consumer’s jurisdiction of residence and/or the product/service provider’s regulatory jurisdiction. As identified by this consultation, this overly complex financial consumer journey is exacerbated by how the Bank Act allows multiple ECBs to address banking cases.

We believe the framework for Canada’s external complaint handling system could be re-envisioned to be universal in coverage, set the the global standard for efficacy, and be intuitive to navigate for all Canadians, regardless of the financial product or service being offered and without the need for financial or regulatory sophistication.

Specific Questions

1. *Are these principles appropriate to guide future policy directions on the structure and key elements of the ECB system in Canada?*

Broadly we agree with the principles outlined, as they seem consistent with sources of applicable global best practices.³ With respect to the “accessible” principle⁴, we note that the definition is somewhat exclusive, as it does not explicitly recognize that many Canadians are not fluent in either official language and/or have less sophisticated knowledge of financial products, the regulatory environment, and their own individual rights. We believe the principle should adopt either a less exclusive definition, and/or also contemplate accessibility for individuals in remote locations, and be explicitly inclusive of considerations relating to Indigenous peoples and communities, minorities and new Canadians.

2. *What ECB system structure would best address the deficiencies identified in the FCAC report and most effectively uphold the guiding principles outlined in the previous section?*

As we reviewed global experiences with a variety of ECB configurations and structures, it is interesting to note that a number of jurisdictions with similar economies and structures to Canada that had originally permitted more than one ECB, such as

³ “Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman”, online: (2012) The World Bank <https://documents1.worldbank.org/curated/en/169791468233091885/pdf/699160v10ESW0P0en0Vol10Fundamentals.pdf>

⁴ Described in the Consultation Document as “complaint handling services should be available at no cost to the consumer, be easy to access and understand, and be available in both official languages”

Australia,⁵ later reverted policy and regulatory structure back to allowing only one ECB from previously multi-ECB/‘open’ systems.

An ECB system that permits a single ECB geared toward the public interest, operating on a non-profit basis is in our view more likely to address the deficiencies identified in the FCAC report and uphold the stated guiding principles. We believe that systems that permit banks and other financial services providers to choose from multiple ECBs are susceptible to causing financial consumer confusion and behaviours where an ECB will not raise or report on systemic issues based on a concern that members may move to a different and perceivedly more permissive ECB.

To ensure impartiality and independence, the governance structure of the ECB and its composition must be free of undue industry influence. It is important the board of an ECB be appointed by regulators and/or government, and mandated to represent and champion the broader public interest while maintaining industry and financial consumer expertise. Such a board should consist of at least a majority of independent board members, with the autonomy to act independently from management or applicable regulators if they deem it to be in the public interest. It may be possible and enabling in this regard to consider bifurcating the policy/advocacy function of an ECB from its adjudication functions. Effective director orientation and continuing education is an important component of good board governance as well.

3. To what extent does the profit structure of an ECB have a real or perceived impact on the impartiality and independence of an ECB?

To effectively establish and maintain a public interest mandate, it is important that any perceived impact on impartiality and independence of an ECB be addressed and mitigated. We understand there may be a perceived notion that it is difficult for an ECB to consistently decide against members in any form of industry-funded fee model. However, using the court system as a functional analogue, we’re not aware of any positive examples or models of a for-profit system on which to model a for-profit ECB system. Canada’s current acceptance of a competitive for-profit ECB system may also be creating a longer-term cross-sectoral race to the bottom, where effective ECB incumbents are disadvantaged, and new ECB entrants with lower costs and a more industry-friendly approach attract members amongst financial services firms, abandoning (and effectively defunding) those that better serve the public interest. This situation effectively leads to regulatory capture and should be disrupted through policy improvements.

4. To what extent could an ECB's assessment formula impact the real or perceived impartiality and independence of the ECB?

⁵ Dispute Resolution – Regulatory resources, online: Australian Securities & Investments Commission (ASIC) <https://asic.gov.au/regulatory-resources/financial-services/dispute-resolution/>

The perceived issue for a system where fees are partially assessed based on the number of complaints is that the greater the number of complaints that an ECB reviews, the higher the fees, and thus the ECB could be incentivized (or be perceived to be) to (i) increase/maintain its industry members through a friendly decision-making lens, and/or (ii) not expend as much time as needed on a full investigation, both of which negatively impact public trust in the system and don't serve the public interest. In our view, a fee model driven solely by volume of complaints from member banks when dealing with necessary fixed costs for provision of ECB functions presents a material and irresolvable conflict with the public interest.

We agree with the concerns raised by other commentators with respect to the perceived conflicts that can also arise through assessments based solely on an hourly rate for complaint investigations. On the other hand, an assessment formula that is based on historical complaints information will inevitably have a time lag and may be inflexible. We believe a hybrid model for fee attribution/assessment best addresses the concerns stated above.

We recognize there are implicit fixed costs in establishing and maintaining any viable ECB model that serves the public interest. A hybrid of the two existing assessment formulas could be possible, where there is a base level of funding and a variable component based on complaints data. A variable component that attributes some amount of total costs to those with more complaints is important, absent which the ECB may be required to periodically increase its fixed funding demands, and pass along increased fees to all members, including those with few complaints against them. This creates ineffective systemic incentives. The variable component could be reviewed each year, potentially from a quasi-independent policy/advocacy branch of an ECB. Alternatively, the relevant senior decision makers or adjudicative function of an ECB could have broader discretion to hear submissions from such a policy/advocacy branch of the ECB and rule on appropriate cost allocations within a guiding framework.

To preserve impartiality and independence, in our view an ECB's assessment formula should thus include a base level of fixed funding and a variable component, to be determined either quantitatively on the basis of complaints data or via a framework that has quantitative basis but that allows for some discretion.

5. What are the benefits to consumers from a banking ECB that provides non-bank dispute resolution services? Are there drawbacks?

As noted above, we believe that the appropriate structure for an ECB system should be premised first and foremost on a wide and overriding public interest mandate, such that the ECB system helps to foster financial consumer trust and confidence in banks and other providers of financial services. The current regulatory and ECB siloing is in our view fundamentally incompatible with the unified service and brand experience that is ingrained in consumers by banks and (often-related) financial services conglomerates. As a policy matter, a banking ECB that provides non-bank dispute resolution services

can better leverage its expertise (and potentially complainant assistance) across banking and the wider financial services industry, and is far better positioned to opine on systemic issues in the public interest, some of which may cross the boundaries of regulatory and ECB jurisdiction. It also has the inherent advantage of scaling fixed cost allocations across a greater number and types of participating firms, making it potentially more economically effective for a wider array of financial services firms and banks.

6. Should an ECB be required to provide complainant assistance, and what type of complainant assistance should be provided?

Financial services consumers implicitly have a much lower level of knowledge and bargaining power than our banking institutions in a complaints and dispute resolution setting. As a policy matter, we believe an ECB should be required to provide complainant assistance. At a minimum, some level of assistance should be expected to be provided under access to justice principles. The assistance should encompass walking a complainant through the system, but also helping a complainant to identify relevant or related issues/bases for complaint (e.g., an issue regarding fees could also relate to an issue concerning product suitability). As a policy recommendation, an ECB should provide as much factual assistance to a complainant as possible to encourage procedural fairness, while maintaining impartiality from the adjudicative function. This could be assisted from a controls and conflicts perspective through functional separation of the assistance function from the adjudicative/decision-making branch. As an added benefit, assisting complainants in navigating the process should lead to cost and other systemic efficiencies within the ECB and for banks and other covered financial services providers.

7. Do you have views on whether the decisions of an ECB should be binding or non-binding on banks? Please refer to the guiding principles to support your position.

Yes, we believe as a policy matter the decisions of an ECB should be binding on banks (and all other covered firms), supplemented with appropriate and effective enforcement mechanisms through the courts. One of the stated guiding principles is impactful decisions, where consumer complaints are resolved through a remedy or a clear explanation of why a remedy is not appropriate, where banks must adhere to those decisions. We recognize that under current legislation, additional procedures may add cost and delay to the resolution process. However, we are optimistic about (and would encourage) legislative changes that could alleviate these concerns, including by introducing an independent adjudicative function. We believe an efficient ECB staffed with appropriate experts in their fields will be able to minimize the number of decisions that are ultimately appealed, again leading to greater systemic efficiency for the ECB system, financial consumers, and members.



8. *Should the government establish requirements for representation on the board of directors of an ECB? To what extent should an ECB be required to make public its governance process?*

As noted above, we believe government (through the necessary legislative and regulatory means) should indeed establish requirements for representation on the board of directors of an ECB. Such a requirement is demanded by the stated guiding principle of being impartial and independent, such that there is no undue influence or conflicts of interest. This should follow widely understood good governance principles including (but not limited to) that the board be staggered and composed of a diverse group of individuals with various backgrounds and experiences, representative of specific financial consumer constituencies. The board should also meet constitutional expectations of representation, including Indigenous and regional representation and official language considerations. The board should also be insulated from the undue influence of political appointments and related timelines. We defer to recognized Canadian and international sources of governance principles for further recommendations, such as the [International Corporate Governance Network \(ICGN\)'s Global Governance Principles](#) and [similar policy statements from the Canadian Coalition for Good Governance \(CCGG\)](#).

Concluding Remarks

We support efforts to examine Canada's external compliant handling system for banks, particularly as it relates to ensuring our ECB system best serves the public interest. As noted above, it is important that the broader framework of our financial ecosystem be considered in the review, with a focus on ensuring that the resulting ECB system is consumer friendly across financial products and services, and that the government remain open to considering both regulatory action and legislative amendments to achieve such ends. We believe the ECB system demands a non-profit model, a hybrid cost assessment formula that drives positive externalities, and that its decisions must be binding to reinforce financial consumer trust in the system and serve the public interest.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. We consent to the disclosure of this submission in whole. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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