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Director General
Financial Services Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin St
Ottawa ON K1A 0G5

Delivered by Email: complaintsconsultation-consultationplaintes@fin.gc.ca

Re: Consultation on Strengthening Canada's External Complaints Handling System in Banking

The Canadian Credit Union Association (CCUA) is pleased to participate in the consultative process on strengthening Canada's external complaint handling system (EHS). CCUA is the national trade association that provides services to Canada's credit unions, caisses populaires (outside of Quebec) and regional Central organizations, who serve over 5.8 million Canadians. Canada's credit unions exist to serve their members and have ranked first among all financial institutions in overall Customer Service Excellence for 14 years in a row; it is with this in mind that we respond in support of strengthening Canada's EHS for financial institutions.

Introduction

Credit unions are regulated, co-operative financial institutions that are 100 per cent owned and controlled by the people who bank with them – their members. CCUA is the national trade association for the 225 credit unions and caisses populaires outside Quebec (including two federal credit unions), which represent a 6.5 percent share of domestic assets held by all Canadian deposit-taking institutions.

All credit unions are full service financial institutions rooted in the communities we serve and are an integral part of Canadian communities. Canadians trust us for their day-to-day banking as well as for mortgages, investments, and personal and business loans. From coast to coast, credit unions work hard to help Canadians achieve financial well-being.

As you are aware, the rules for complaint handling systems in Canada are set out in the *Bank Act*, the *Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations*, and associated guidance from the Financial Consumer Agency of Canada (FCAC).



While the majority of credit unions are provincially regulated, and therefore not included in the federal complaint handling systems outlined in this consultation, almost 60 of Canada's credit unions, including Canada's two federal credit unions, currently use the Ombudsman for Banking Services and Investments (OBSI) as their external complaint handling body (ECB), with more anticipated to do so in the near future.

Summary

CCUA believes that an effective, efficient, impartial and transparent EHS plays a vital role in building and maintaining trust in Canada's financial sector; without customer trust and confidence in financial institutions, our financial system cannot operate effectively. An EHS that adheres to international standards and accepted best practices benefits customers, financial institutions and regulators by ensuring that customer complaints are dealt with in a manner that is impartial, fair and efficient, and by allowing regulators to focus on addressing sector-wide complaints data and identifying and responding to emerging trends, risks and issues. As such, and for the specific reasons outlined below, CCUA supports an EHS that:

- is accessible, accountable, impartial and independent, timely, efficient and transparent;
- includes a single, not-for-profit ECB structure;
- uses an assessment based on institution size and historical complaints data;
- provides resolution services for banking and non-banking services;
- offers robust complainant assistance;
- issues binding recommendations; and
- operates under a governance structure which includes balanced representation of stakeholder groups, including consumers and industry, and knowledgeable, but impartial, experts.

Our responses to the specific questions posed in the consultation are provided below and we consent to our submission being made public in its entirety.

Discussion Questions

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

The Canadian credit union system supports an EHS which aligns with internationally accepted best practices, including ISO 10003 *Guidelines for dispute resolution external to organizations*, G20 principles on financial consumer protection, and the World Bank's guide on fundamentals for a financial ombudsman. We agree that Canada's EHS should be accessible, accountable, impartial and independent, timely and efficient, and should render impactful decisions, as outlined in the consultation paper. We also suggest that the principle of transparency be included. The principles outlined in the consultation discussion paper, with the addition of transparency, would align the Canadian EHS with internationally accepted standards and, most importantly, strengthen Canadians' confidence in the financial services sector.

With regard to the principle of accessibility, we suggest that consideration should be given to ensuring this principle extends to vulnerable adults and marginalized communities, who may find the EHS difficult to navigate.



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?

The FCAC report highlighted concerns with Canada's current ECB system, including that the multiple ECB model introduces inefficiencies by increasing the complexity of the complaint handling system, which may negatively affect consumers' perceptions of the fairness and impartiality of ECBs. The Canadian credit union system agrees with this concern and supports a single, not-for-profit ECB structure, which we believe would address the deficiencies identified in the FCAC report and most effectively uphold the guiding principles previously outlined.

Although the FCAC has determined that Canada's not-for-profit ECBs find in favour of the banks roughly the same percentage of the time as for-profit ECBs, Canada's current model, which allows banks to choose among multiple ECBs and includes an ECB operating on a for-profit basis, reduces the perception of impartiality and undermines consumers' trust and confidence.

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?

As Credit unions are cooperative financial institutions that do not operate for profit, we are particularly aware of the role profits play in consumer perception, confidence, and trust in the financial sector. A for-profit model appears incompatible with the aim of securing public confidence and trust in the financial sector – one of the primary aims of an EHS.

A for-profit ECB, paid by the financial institutions it investigates, stands to profit from offering a service that benefits those same financial institutions. This certainly creates the perception that such an ECB might place its profit margins ahead of the public or consumer interests, and this perception is increased when the for-profit entity competes for business amongst other ECBs. Additionally, the comprehensiveness and detail of a for-profit ECB's investigations, reviews, processes and finding could suffer in an environment where an ECB's focus was on reducing costs.

For this reason, we strongly support an EHS that operates on a not-for-profit basis, such that the funding structure will not appear to influence how disputes are resolved.

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

An ECB's assessment formula has the potential to impact the real or perceived impartiality and independence – and efficiency – of the ECB when an hourly rate for investigations is included.

Use of an hourly rate could create the impression that an ECB might either rush an investigation – e.g., to keep costs low for its customer banks in a competitive environment – or extend an investigation unnecessarily – e.g., to increase profits. Furthermore, the practice of associating fees with the process or outcome of investigations is not in accordance with international best practices such as ISO 10003.



In addition to the fact that a funding model linked to the volume of complaints would give financial institutions an incentive to invest in effective internal complaint handling systems and resolve more complaints internally, an ECB fee structure linked to the size of the institution and historical complaints data helps ensure that Canada's external complaint system remains accessible to smaller financial institutions – including provincially regulated credit unions – and therefore all Canadians.

Unlike ADRBO, which only works with Canada's largest banks, OBSI provides external complaint handling services to institutions of various sizes and types, including small banks and provincially regulated credit unions. Many of Canada's credit unions currently access OBSI's services and in 2022, all credit unions in British Columbia will be required to engage an ECB. Were such institutions required to pay fees based solely on the average number of complaints plus an hourly fee, they would essentially be paying fees comparable to those paid by Canada's D-SIFIs, despite having significantly fewer consumers. This could create a competitive disadvantage in the marketplace and discourage smaller institutions from voluntarily obtaining the services of an external complaint body.

As such, the Canadian credit union system strongly supports an assessment based on institution size and historical complaints data, rather than an hourly rate.

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

Credit unions believe there are many advantages to having a single ECB for banking and non-banking services, including consistent application of principles and more effective and efficient processes.

Over 60 credit unions currently use OBSI as their external complaint body and appreciate that OBSI's mandate provides service to customers of banks, credit unions and other financial institutions. This enables OBSI to understand and be able to address the full spectrum of complaints that a financial institution might receive and need to escalate to an ECB.

The financial services marketplace is constantly evolving and the line between retail banking and investment services is increasingly blurring. As a result, consumers do not always distinguish between banking and investment services or firms. Providing a single ECB for both banking and investment firms would reduce confusion, simplify processes and help promote efficiency through the implementation of consistent external complaint handling standards and practices across the financial sector.

A single ECB would also allow greater line of sight on the full spectrum of financial products and services, allowing both financial institutions and regulators to identify emerging risks and problems with products and services that cross both the banking and investment sectors.

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

The Canadian credit union system recognizes that not all Canadians have a sophisticated understanding of the financial sector or the resources to pursue drawn out complaints, and many Canadians face additional barriers due to cognitive or health impairments, language or literacy issues, low-income, and reduced digital or physical access to financial services.



Credit unions are strong proponents of financial literacy, education and information to support Canadians' full participation in the financial sector and we support a legislative requirement for ECBs to provide assistance and support to complainants.

We agree that consumer assistance is useful in promoting accessibility in the complaint handling system and that it can help promote efficiency by ensuring that consumers receive the assistance they need to move their complaint forward in a timely manner. Given the significant discrepancy between a bank's resources and those of the average consumer, ensuring that the dispute resolution services of an ECB can be accessed without additional costs is vitally important.

We recommend a full range of supports including, but not limited to, explanations of the complaint handling process, services and customer rights; assistance with the formulation of a complaint; working with customers to collect documentation; and providing vulnerable complainants with an advocate to ensure they can participate effectively in the complaints process. It is our view that any type of assistance offered to customers would work to create a more level and equitable process and would not impair perceptions of independence and impartiality of the ECB.

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.

The Canadian credit union system supports an EHS model which provides binding recommendations and a mechanism to enforce such recommendations. Without the power to issue binding decisions, an ECB is essentially only able to offer suggestions to a financial institution, which the institution may then ignore. This can create a sense of unfairness and impartiality among customers whose complaints remain unresolved, despite an ECB's recommendation. As such, we support the designation of a dispute resolution services organization that would have the power to issue binding decisions.

From an enforcement perspective, we further recommend that ECB binding recommendations be referred to the Financial Consumer Agency of Canada (FCAC) and/or the Office of the Superintendent of Financial Institutions (OSFI), who should have the power to impose penalties on non-compliant institutions.

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 cooperative financial institutions, credit unions are governed differently from other financial institutions and recognize that an entity's governance structure has a significant impact on operations. While we support allowing an approved ECB to continue to establish a governance structure appropriate for its operations, including the composition of its board of directors, we also support the imposition of certain standards and requirements with respect to representation on the board of an ECB.

Specifically, we support a governance structure that requires balanced representation of stakeholder groups, including consumers and industry, and knowledgeable, but impartial, experts. We also recommend an independent chairperson, term limits and a transparent board selection process.

In addition to making its governance process public, we suggest that an ECB should publish annual data with respect to the complaints received and recommendations issued.



This should include: (i) the number and type of complaints received and handled per financial institution; (ii) the number of complaints resolved in favour of the complainant or the financial institution; (iii) the number of complaints that were discontinued; (iv) the time frame for resolving disputes; and (v) emerging trends and issues.

Conclusion

Credit unions are committed to promoting the financial well-being of Canadians. We support a single, not-for-profit, external complaint handling body and believe that OBSI already provides an excellent model which is reflective of international best practices. We encourage decision makers to ensure that Canada's EHS remains accessible for smaller financial institutions and continues to support Canadians' confidence and trust in their financial sector.

We thank you again for the opportunity to participate in this consultation and look forward to continuing to work closely with government to identify ways to support and promote a strengthened EHS in Canada. Should you have any questions or wish to discuss these issues further, please do not hesitate to contact us.

Regards,

Victoria Mainprize
Senior Counsel, Legislative Policy
Canadian Credit Union Association
vmainprize@ccua.com | (343) 571-5228

