

Canada's Financial Consumer Protection Framework: Consultation Paper



Comments of the Public Interest Advocacy Centre

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John Lawford
General Counsel
(613) 562-4002 x.25
lawford@piac.ca

Public Interest Advocacy Centre
One Nicholas Street, Suite 1204
Ottawa, Ontario K1N 7B7

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EXECUTIVE SUMMARY

- ES1. PIAC is pleased to make the enclosed comments on the Department of Finance's *Canada's Financial Consumer Protection Framework: Consultation Paper*, released December 3, 2013.
- ES2. A set of general principles and specific rules is required to fill in numerous consumer protection gaps in financial services regulation.
- ES3. PIAC believes that the best way to implement and administer these principles and rules is to create a comprehensive consumer financial code that has the force of law and to design intake and oversight bodies to administer it.
- ES4. PIAC believes that Canadian financial institutions should be required to follow rules specifically created to assist vulnerable consumers. In order to do this, the Department of Finance must have a good understanding of who vulnerable consumers are, as well as the qualities that distinguish these consumers from the average consumer. PIAC therefore identifies a number of key defining factors to meet the needs of these groups, as well as supplement meeting specific needs with general initiatives to improve financial literacy and awareness of consumer rights and avenues for redress.
- ES5. PIAC agrees with the objectives set out by the Department of Finance which outline the responsibility of financial institutions to consumers. In particular, we support the establishment of a financial consumer code which would be binding upon financial institutions subject to federal Government authority. In the absence of a clear, simple to understand standard, consumers – and notably vulnerable consumers – stand at a significant disadvantage when dealing with financial institutions and their employees or representatives.
- ES6. The standard of responsibility or level of care consumers should expect from their financial institution under a comprehensive financial consumer code is that their financial institution will act in the client's best interest, above all other considerations. This means putting the client's interest first -- and ahead of other competing demands including the ways in which the financial institution and its employees or representatives may be financially compensated for the services they provide.
- ES7. In considering the supervisory powers for accountability and enforcement, PIAC contends that while FCAC's mandate appears consistent with the adoption of a single broad standard of responsibility for financial institutions in their dealings with their clients. We also believe, however, that the establishment of an ombudsman to address consumer complaints arising under a financial consumer code should be

considered. The present Ombudsman for Banking Services and Investments (OBSI) could perform the day-to-day intake of complaints based on the Code, mediate and suggest resolutions to the financial institutions, leaving FCAC's role as supervisory, exercising an oversight, systemic enforcement and policy role.

- ES8. PIAC recognizes that innovation can result in legitimate consumer benefits. PIAC also recognizes that there is a balance to be struck between effective and efficient regulations, and businesses being able to bring new, beneficial products to market. Instead of focusing on product-specific fixes to the regulatory institutions and frameworks to address gaps, PIAC recommends design-level considerations for a consumer protection framework that will better protect consumers against the negative effects of innovation.
- ES9. PIAC contends that the implementation of the G20 High Level Principles on Financial Consumer Protection should serve as the point of demarcation for the minimum standard of disclosure provided to Canadian consumers under a proposed code. At the very least, a disclosure regime should begin with a statement of principles outlining the obligations of a financial institution to consumers. A statement of this nature can be found in numerous regulations, voluntary codes and laws operating throughout the globe. In an effort to enhance ongoing disclosure to consumers, PIAC also contends that consumer research be conducted regularly.
- ES10. It is important to ensure that financial services are accessible to all consumers. These include vulnerable consumers but also other consumers – including those who may not yet be permanent Canadian residents. Access to financial services can be restricted by any number of factors including: geographic or physical access to banks; onerous requirements or high eligibility criteria; insufficient number of products that meet consumer needs; or high banking or service fees. It is important that mandatory requirements to increase access to financial services be imposed on financial institutions, as past research has shown that voluntary measures are often inadequate in significantly improving banking services.
- ES11. The financial consumer code should have as broad a coverage of financial services as possible. Unfortunately, it cannot encompass investment services due to constitutional limitations. Likewise, insurance regulation may be too difficult to work into the scope of the code in its first iteration. However, PIAC is strongly of the view that Canadians consider payments systems to be a part of banking and therefore recommend development of code rules for payments. Should payments matters be dealt with elsewhere, this fact should be revealed publicly and a commitment made to make the payments regime complementary to the financial consumer code.
- ES12. While PIAC welcomes on-going consumer engagement, it also suggests that more than an intention is needed to address the issue of effective stakeholder

engagement – Canadians deserve action on that issue. Canadians would benefit from an institution that draws on principles illustrated in these various models: independence, involvement on an equal footing, and informed decision-making. PIAC therefore recommends that the Government adopt a Financial Consumer Advisory Board (FCAB), and giving PIAC and other public interest groups a mandated seat at the table and adequate funding to actively represent consumer interests on financial matters.

A. INTRODUCTION

1. The Public Interest Advocacy Centre (PIAC) is a non-profit organization that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services.
2. PIAC is pleased to make the enclosed comments on the Department of Finance's *Canada's Financial Consumer Protection Framework: Consultation Paper*, released December 3, 2013. PIAC requests that it be considered as a "stakeholder" in round two of this process and that it be invited to participate in upcoming stakeholder roundtables and any further comment process.
3. This consultation asks whether Canada should adopt a financial consumer code that banks and other federal financial institutions will have to follow in serving their customers. This is an important opportunity for Canadian consumers to improve consumer protection in financial services in Canada in a comprehensive and holistic manner.
4. PIAC appreciates this initiative by the Government of Canada¹ and hopes that its comments below assist the Department of Finance in advising the ministers responsible for a Canadian Financial Consumer Code.

B. THE CONTENT OF THE FINANCIAL CODE

(3) Establishing a Comprehensive Set of Principles for Consumer Protection

5. After a discussion of the "existing landscape" for consumer financial protection under "the Bank Act, regulations, voluntary codes, sector commitments, and Commissioner's

¹ See Canada, "Jobs, Growth and Prosperity, Economic Action Plan 2013", at p. 224, "Developing a Comprehensive Financial Consumer Code" ("Budget 2013").

guidance by the Financial Consumer Agency of Canada (FCAC),² the consultation asks its first substantive questions.

Should the government adopt a set of principles to govern financial consumer protection that would be applicable even where specific regulations have not been enacted?

If so, how should a set of principles be administered?

6. To the first question, PIAC is enthusiastically of the view that a set of general principles and specific rules is required to fill in numerous consumer protection gaps in financial services regulation that have been addressed, particularly recently, in other federally regulated consumer services sectors and that that protection is long overdue in Canadian banking.
7. The question of how these principles and rules should be administered is, we believe, best answered by the Government of Canada itself, in Budget 2013, where it stated:

The Government is proposing to develop a comprehensive financial consumer code to better protect consumers of financial products and ensure they have the necessary tools to make responsible financial decisions.³

8. PIAC therefore believes that the best way to implement and administer these principles and rules is to create a comprehensive consumer financial code that has the force of law and to design intake and oversight bodies to administer it. We detail the administrative bodies design further in s. 4.3 of our comments below.
9. However, somewhat bizarrely given the clear statements in Budget 2013, the Consultation Paper does not ask a specific question about whether the best manner for encasing and implementing the principles and rules should be a comprehensive consumer code. PIAC believes this is implicit in the Consultation Paper, however, we wish to make that assumption our explicit recommendation for two reasons.

² As the Consultation Paper rightly notes, most of these present *Bank Act* sections, *Bank Act* regulations and other federal act requirements are listed in s. 2 of the *Financial Consumer Agency of Canada Act* as "consumer provisions". PIAC is of the view that these provisions, and the voluntary codes of conduct and "public commitments" of federal financial institutions are scattershot and, with regard to the voluntary codes and commitments, largely unenforceable "good behavior" promises by banks.

³ Budget 2013, *supra*, at p. 224.

10. First, Canada lags many advanced economies in the G20 in financial consumer protection. Many of these countries and in particular those with similar Anglo-American banking law history have adopted comprehensive financial consumer codes in recent years. Both Ireland⁴ and Australia⁵ have comprehensive financial consumer codes and very similar banking systems to Canada. The Department of Finance could do worse than to simply select the best elements of the Irish and Australian codes and, with minor adaptations, have a draft Canadian financial consumer code in short order. In PIAC's view, on review of those two codes alone, huge strides in Canadian consumer financial protection could be taken.
11. For discussion, we raise a basic banking problem that these two codes both have addressed and that has been recognized in banking law and consumer protection as a problem at least since *Lloyd's Bank v. Bundy* in 1974⁶ – the personal guarantee.
12. This banking situation breeds problems because the guarantor is usually a family member of the primary debtor. The bank seeks additional security from the primary debtor either for continuing the loan or increasing it. The primary debtor is advised a guarantor can "co-sign" on the debt. The guarantor feels an obligation to their family member to co-sign. The bank is pleased to have another source of repayment. What is often lost is the obvious power imbalance between the guarantor and the other parties, especially the bank, as well as the very great risk that the guarantor is taking on without fully appreciating his or her ultimate responsibility for the entire (and perhaps to be larger) debt. The guarantee is often signed in the presence of all parties, discouraging probing questions by the guarantor or any sober reflection on his or her part and without independent legal advice for the guarantor.
13. The Australian and Irish codes have clear rules on guarantees that protect the guarantor based on review of cases like *Lloyd's Bank v. Bundy*, yet without requiring the guarantor to go to expensive civil court to try to vindicate his or her rights. Since the principles are clearly stated in a code of conduct, the guarantor is: protected from being put into unfair situations in the first place; is advised of his or her true liability, is provided an independent opportunity to consider the situation and is referred to independent legal advice.⁷ Banks which fail to offer these protections can face consumer complaints and be disciplined should they not follow the upstream regulator's recommendation of any compensation or other remedy.

⁴ See Central Bank of Ireland, Consumer Protection Code 2012, effective 1 January 2012 (the "Irish Code"). Online: <http://www.centralbank.ie/regulation/processes/consumer-protection-code/documents/consumer%20protection%20code%202012.pdf>

⁵ See Australian Bankers' Association Inc., "Code of Banking Practice 2013" (the "Australian Code"). Online version: <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice/Code-of-Banking-Practice-2013---Online-Version>

⁶ See *Lloyds Bank Ltd v Bundy* [1974] EWCA Civ 8, [1975] Q.B. 326.

⁷ See Australian Code at section 31; Irish Code at s. 4.26.

14. This is precisely the approach that will best protect Canadian banking customers. We therefore urge the Department of Finance to draw heavily upon these comprehensive banking code examples and to draft a similar code for consideration by the responsible Ministers.
15. The Consultation Paper at the end of this section also asks questions regarding the principles and rules underlying consumer financial protection:

What should be included in a set of principles that would form the basis for financial consumer protection?

What elements should be set out under each principle to ensure that the principles are meaningful, measurable and fair to consumers and financial institutions?

16. PIAC submits that the principles that should underlie the consumer protection framework as expressed in a comprehensive financial consumer code should be similar to those that undergird many other consumer protection regimes. What makes financial services different is that money is the subject of all interactions with the parties, so that risk, which is often at the inflection point of the application of a principle to rules, has financial consequences to consumers and to the financial institutions. Thus, as an overarching or guiding principle above others, PIAC submits that the financial consumer code seek to fairly balance that risk and to honestly reflect and consider the financial impact on individual Canadian financial consumers of any principle or rule. In short, this Code should make Canadians more confident with Canadian financial institutions and their financial affairs, which will aid individual Canadians and the Canadian financial services industry – and indeed Canada-wide economy.
17. The most obvious place to find overarching principles for such a Code is the *G20 High-Level Principles on Financial Consumer Protection*.⁸ These principles are:

- Legal, Regulatory and Supervisory Framework
 - i. Financial consumer protection should be an integral part of the legal, regulatory and supervisory framework, and should reflect the diversity of national circumstances and global market and regulatory developments within the financial sector.
- Role of Oversight Bodies

⁸ Organisation for Economic Co-operation and Development , "G20 High-Level Principles on Financial Consumer Protection" (October 2011). Online: <http://www.oecd.org/dataoecd/58/26/48892010.pdf>

- i. There should be oversight bodies (dedicated or not) explicitly responsible for financial consumer protection, with the necessary authority to fulfil their mandates.
- Equitable and Fair Treatment of Consumers
 - i. All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers.
- Disclosure and Transparency
 - i. Financial services providers and authorised agents should provide consumers with key information that informs the consumer of the fundamental benefits, risks and terms of the product. They should also provide information on conflicts of interest associated with the authorised agent through which the product is sold.
- Financial Education and Awareness
 - i. Financial education and awareness should be promoted by all relevant stakeholders and clear information on consumer protection, rights and responsibilities should be easily accessible by consumers.
- Responsible Business Conduct of Financial Services Providers and Authorised Agents
 - i. Financial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection. Financial services providers should also be responsible and accountable for the actions of their authorised agents.
- Protection of Consumer Assets against Fraud and Misuse
 - i. Relevant information, control and protection mechanisms should appropriately and with a high degree of certainty protect consumers' deposits, savings, and other similar financial assets, including against fraud, misappropriation or other misuses.
- Protection of Consumer Data and Privacy
 - i. Consumers' financial and personal information should be protected through appropriate control and protection mechanisms.
- Complaints Handling and Redress
 - i. Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient.
- Competition
 - i. Nationally and internationally competitive markets should be promoted in order to provide consumers with greater choice amongst financial services and create competitive pressure on providers to offer competitive products, enhance innovation and maintain high service quality. Consumers should be able to search, compare and, where appropriate,

switch between products and providers easily and at reasonable and disclosed costs.

18. In addition, based on our work in regulated essential services such as telecommunications, energy and transportation we would add: Accessibility (including universal service and obligation to serve). Much work has been done on making financial services accessible,⁹ but more needs to be done to ensure all Canadians benefit from high quality financial services, including vulnerable Canadians.¹⁰
19. In our comments to the Department of Finance in 2006, PIAC as part of the Canadian Consumer Initiative suggested the following principles for framework legislation to govern the Canadian payments system:
 - universality
 - neutrality
 - security
 - accountability
 - transparency
 - liberty
 - enforceability
20. PIAC submits that to the extent a financial consumer code deals with payments issues,¹¹ that these principles and the commentary from 2006 thereon, remain relevant and appropriate.
21. Each of these principles mean little at this high a level. However, upon detailing them, PIAC believes it becomes clear that these principles could and should apply to consumer financial protection generally.
22. Each of these principles then would support prescriptive rules when necessary for the Code to be functional. For our guarantees example above, this would notionally be under "fair and equitable treatment".
23. At this stage we also bring to the Department's attention mid-level statements of good practice that may serve as a bridge between high level principles and prescriptive code rules or specific directions. In particular, we note those outlined in the World Bank's

⁹ Indeed, this is the focus of the *Access to Basic Banking Services Regulations* made under the *Bank Act*.

¹⁰ See s. 4.1 of our comments, below.

¹¹ Please note that in s. 4.7 of our comments, below, PIAC strongly suggests that the financial consumer code include a section on payments issues.

“Good Practices for Financial Consumer Protection”,¹² the product of six years’ work in development by the World Bank Group. The Good Practices have been subject to substantial international review and comment.

24. At the top-Code level, for example, we note good practices suggested in this document that relate specifically to designing a comprehensive financial consumer code. These two bear repetition:

- The law provides clear consumer protection rules regarding financial products and services. The necessary institutional arrangements are in place to ensure thorough, objective, timely, and fair implementation (and enforcement) of the rules.
- Codes of conduct for sector-specific financial institutions are developed by the sector-specific association (in consultation with the financial supervisory agency and consumer associations, if possible). Monitored by statutory agencies or effective self-regulatory agencies, these codes are formally adhered to by all sector-specific institutions. The codes may be augmented by voluntary codes of conduct devised by individual financial institutions for their own operations. The codes are widely publicized.¹³

25. Other good practices for the banking sector outlined in the document include guidance on: disclosure and sales practices; customer account handling and maintenance; privacy and data protection; dispute resolution mechanisms; guarantee schemes and insolvency; consumer empowerment and financial literacy; and competition and consumer protection.

26. Finally, we note and agree with the somewhat more detailed “General Principles” from the Irish Code, which require the “regulated entity” in “all its dealings with customers and within the context of its authorisation” follow these overarching principles:

- 2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;
- 2.2 acts with due skill, care and diligence in the best interests of its customers;
- 2.3 does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;
- 2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;

¹² World Bank, “Good Practices for Financial Consumer Protection” (June 2012). Online: http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Good_Practices_for_Financial_C_P.pdf

¹³ *Ibid.*, at p. 7.

- 2.5 seeks from its customers information relevant to the product or service requested;
- 2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;
- 2.7 seeks to avoid conflicts of interest;
- 2.8 corrects errors and handles complaints speedily, efficiently and fairly;
- 2.9 does not exert undue pressure or undue influence on a customer;
- 2.10 ensures that any outsourced activity complies with the requirements of this Code;
- 2.11 without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and
- 2.12 complies with the letter and spirit of this Code.

27. We do not think that at this point it is desirable to try to outline the exact elements of each principle that will make them “meaningful, measurable and fair to consumers and financial institutions.” We trust that these various sources provide enough of a base from which the Department can work in consultation with the stakeholders in defining the set of principles, and at what level they shall apply and how they shall be expressed in a Canadian financial consumer code.

(4) Possible Enhancements to the Existing Framework

(4.1) Addressing the Needs of Seniors and Vulnerable Canadians

28. Principle 3 of the *G20 High-level Principles on Financial Consumer Protection*¹⁴ requires “special attention” to be dedicated to the needs of vulnerable groups. Therefore, PIAC believes that Canadian financial institutions should be required to follow rules specifically created to assist vulnerable consumers.

29. Before discussing how the Financial Code should address the financial service challenges faced by vulnerable consumers, the Department of Finance must have a good understanding of who vulnerable consumers are, as well as the qualities that distinguish these consumers from the average consumer.

¹⁴ *G20 High-level Principles on Financial Consumer Protection* (2011), online: OECD <<http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>>.

30. It is easier to single out specific groups as vulnerable Canadians. A UK Office of Fair Trading report¹⁵ identified six non-mutually exclusive categories: the unemployed, those suffering from a long-term illness or disability, those with a low level of educational attainment, members of ethnic minorities, older people, and the young.
31. Social and Enterprise Development Innovations (**SEDI**) identifies vulnerable groups as including: newcomers and those for whom English is an additional language; children and youth in the child welfare system as well as youth more generally; persons with developmental disabilities; individuals with mental health issues; women, especially those who are leaving abusive relationships or who are reliant on partners for income security; and individuals involved with the criminal justice system.¹⁶
32. However, identifying the qualities that make these groups vulnerable is much more difficult. The Central Bank of Ireland's *Consumer Protection Code 2012*, for instance, defines a "vulnerable consumer" to be a natural person who:
 - a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or
 - b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).¹⁷
33. While this definition has the advantage of encapsulating a broad group of vulnerable consumers, it gives only a vague indication of the specific needs of these groups.
34. Consumer Futures (previously Consumer Focus) in the UK identified a range of conditions or circumstances that increase the risk of vulnerability, including – lack of self-confidence; low literacy, numeracy and/or financial capability; low/insecure income; being unemployed; being responsible for high levels of care for another person; having a

¹⁵ Office of Fair Trading, *Vulnerable Consumers and Financial Services: The report of the Director General's Inquiry* (1999), online: OFT

<http://www.oft.gov.uk/shared_oft/reports/financial_products/oft255.pdf> at para. 201.

¹⁶ SEDI, *Financial Literacy: Strategies to Meet the Needs of Low Income Albertans* (2009), online: SEDI

<<http://www.sedi.org/DataRegV2-unified/sedi-Reports/Strategies%20to%20meet%20the%20needs%20of%20low%20income%20Albertans.pdf>> at 65.

¹⁷ Central Bank of Ireland, *Consumer Protection Code 2012* (2012), online: Central Bank of Ireland

<<http://www.centralbank.ie/regulation/processes/consumer-protection-code/documents/consumer%20protection%20code%202012.pdf>>, c. 12.

physical impairment; having mental health problems; living in social rented housing; and living in a lone parent household.¹⁸

35. Other researchers, such as Peter Cartwright, define five elements of “vulnerability”¹⁹:

- Information vulnerability (information gaps),
- Pressure vulnerability (susceptibility to pressure from, for instance, a salesperson),
- Supply vulnerability (lack of choice or options, and restricted access to financial products),
- Redress vulnerability (difficulties faced in obtaining redress), and
- Impact vulnerability (the greater effect of loss, or harm, on certain consumers).

What are the unique challenges faced by vulnerable populations?

36. PIAC also consulted with two not-for-profit groups who work with low-income Canadians on a daily basis. Entraide budgétaire Ottawa (**Entraide**) is a community organization that offers budget counselling services to low- and middle-income earners with the goal of promoting financial autonomy and security.²⁰ ACORN Canada (**ACORN**) is a national advocacy organization whose membership consists of over 59,000 low and moderate income families across eight Canadian cities.²¹

37. Following these discussions, we have drawn a list of some of the common characteristics shared by vulnerable consumers. This will also hopefully bring to light the specific needs of these groups:

- **Low income:** Many vulnerable consumers tend to be low-income consumers, including those whose family income falls at or below the Low Income Cut-Off (**LICO**).²² Having a low income may make consumers vulnerable in two ways.

¹⁸ Jonathan Stearn, *Tackling consumer vulnerability: An action plan for empowerment* (2012), online: Consumer Focus <<http://www.consumerfocus.org.uk/files/2012/12/Tackling-consumer-vulnerability.pdf>> at 10.

¹⁹ Peter Cartwright, “The Vulnerable Consumer of Financial Services: Law, Policy and Regulation” (2011), Financial Services Research Forum, online: University of Nottingham, <<http://www.nottingham.ac.uk/business/businesscentres/crbfs/documents/researchreports/paper78.pdf>> at 2-3.

²⁰ More information on Entraide may be found online at: <http://www.ebottawa.org/en/>.

²¹ More information on ACORN may be found online at: <https://www.acorncanada.org/>.

²² In 2011, the after-tax LICO for a family of four living in a community with a population between 30,000 and 99,999 was \$30,487. However, we also strongly recommend looking to US descriptions of “low income,” commonly defined as between 100% and 200% of the poverty level.

First, many are eager to find opportunities to improve their financial circumstances, even where those opportunities also present significant dangers or risks. However, any financial loss or increased cost also creates particularly acute consequences for these consumers, who may be on a fixed social assistance program or who may already be living paycheque to paycheque.

- **Low education and financial literacy or numeracy:** Although banking products and services appear complex to the average Canadian consumer²³, they are particularly challenging for vulnerable consumers to understand. Vulnerable consumers find it generally more challenging to understand banking written materials – including brochures, handbooks, and contracts. Moreover, some consumers may only have a functional or working knowledge of the English language, and according to Entraide, French materials which are mere literal translations of English materials are even more challenging to understand. This makes these consumers more likely to rely on a banking representative for information on a service.
- **Credulity and insufficient awareness of consumer protection issues and rights:** Vulnerable consumers are generally less aware of consumer protection issues and rights and are eager to rely on a banking agent with whom they are speaking. As such, they may not be able to identify questions they should ask or seek the remedies that are available to them. As pointed out by Entraide, this also makes them more inclined to believe – without questions – the information given to them by a banking representative and to purchase a product or service based solely on that information. This trait tends to be more common in specific groups of consumers, many of which were listed above – seniors, youth, and consumers with disabilities.

38. With these specific needs in mind, we can begin to look at broad and more specific measures that would assist vulnerable consumers.

39. Some jurisdictions have implemented general measures targeted at assisting vulnerable consumers. Many have been implemented in response to the EU Unfair Commercial Practices Directive 2005/29²⁴. The UK Consumer Protection from Unfair Trading

²³ Nearly 48% of Canadians aged over 16 have a level of literacy rated 1 or 2, which is below the level of competence deemed desirable; 55% exhibit a level of numeracy rated at 1 or 2.

See: Statistics Canada, *Building on our Competencies: Canadian Results of the International Adult Literacy and Skills Survey* (2003), Catalogue no. 89-617 XIE, online: Statistics Canada <<http://www.statcan.gc.ca/pub/89-617-x/89-617-x2005001-eng.pdf>> at pp. 9, 16 and 27.

²⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council. [Unfair Commercial Practices Directive]

Regulations 2008,²⁵ for instance, adopts article 5(3) of the EU Unfair Commercial Practices Directive, stating:

5. (3) In determining the effect of a commercial practice on the average consumer—
 - (a) where a clearly identifiable group of consumers is particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, and
 - (b) where the practice is likely to materially distort the economic behaviour only of that group,
a reference to the average consumer shall be read as referring to the average member of that group.²⁶
40. The Irish Consumer Protection Code mandates that where a regulated entity has identified a consumer as vulnerable, it must ensure that the vulnerable consumer “is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity.”²⁷
41. Although the EU and Irish rules are appropriate starting principles for addressing vulnerable consumer needs, PIAC’s view is that the Financial Code should incorporate more specific requirements and duties in relation to vulnerable consumers. Moreover, the Financial Code should identify specific groups to which the vulnerable consumer rules would automatically apply – such as seniors (e.g. ≥60 years old), youth (≤30 years old), new immigrants or members for whom English may be an additional language, and individuals with a physical disability or mental illness.

How should the consumer code address these challenges?

42. With regards to the types of requirements that should apply, first, it is clear that vulnerable consumers are more likely to rely on the oral explanations of a financial services representative. The US Consumer Financial Protection Bureau (**CFPB**) writes that:

Given the volume and variety of financial products and services, most consumers can benefit from access to trusted, knowledgeable advisors at some point in their lives to help them navigate the marketplace. This is especially true for low-income consumers. Further, if they fall victim to fraud, identity theft, deceptive marketing, prohibited debt collection efforts, or other financial problems, low-income and economically vulnerable consumers may lack the resources or capability to remedy these problems by

²⁵ S.I. 2008/1277. [UK Consumer Protection from Unfair Trading Regulations]

²⁶ Section 2(5).

²⁷ Section 3.1.

themselves. Here, too, a trusted advisor or advocate may be essential to financial empowerment.²⁸

43. The US Financial Industry Regulatory Authority has also stated, with respect to senior investors in particular (though the same issues may apply to all senior or vulnerable banking consumers) that firms must make reasonable efforts to acquire information about a customer's age, life stage, and liquidity needs, and must give their customers a "fair and balanced picture of the risks, costs and benefits associated with the products or transactions they recommend," recommending "only those products that are suitable in light of the customer's financial goals and needs."²⁹
44. Neutral and effective banking representatives are critical to empowering vulnerable consumers to navigate complex financial products and services. Therefore, PIAC submits that financial institutions should be held to a high positive duty owed to all financial services consumers, with additional responsibilities towards vulnerable consumers. PIAC believes that, as expressed below in the ensuing sections, financial institutions should have a duty to serve the best interests of the client.
45. In addition, PIAC considers that other requirements must be imposed to further accommodate vulnerable consumers. These include general requirements such as mandatory disclosure and the prohibition of providing misleading information; prohibitions on "doorstep selling" and other aggressive commercial practices³⁰; the provision of flexible services, such as flexible repayment terms; accessible, independent forms of redress in which financial institution participation is mandatory; and the creation of a compensation scheme such as the Financial Services Compensation Scheme in the UK.
46. The Australian *Code of Banking Practice*'s³¹ rules related to customers in remote Indigenous communities also create obligations that could be appropriately applied to financial institutions serving vulnerable consumers. Specifically, section 8 states that banks must take reasonable steps to:
 - Make information about banking services available in an accessible manner;

²⁸ Consumer Financial Protection Bureau, *Empowering low income and economically vulnerable consumers* (2013), online: CFPB <http://files.consumerfinance.gov/f/201311_cfpb_report_empowering-economically-vulnerable-consumers.pdf> at 17. [CFPB Vulnerable Consumers Report]

²⁹ Financial Industry Regulatory Authority, *Senior Investors: FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers* (2007), Regulatory Notice 07-43, online: FINRA <<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p036816.pdf>> at 3.

³⁰ See, for instance: UK Consumer Protection from Unfair Trading Regulations, s. 7.

³¹ Australian Bankers' Association, *Code of Banking Practice and Code Compliance Monitoring Committee Mandate* (2013), online: <<http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice/Code-of-Banking-Practice-2013---Online-Version>>.

- At a customer's request, provide details of accounts – including those with no or low standard fees – which would be suitable to that customer's needs;
- Assist customers with meeting identification requirements;
- Train staff who regularly deal with customers in remote Indigenous communities to be culturally aware; and
- Consider relevant government programs, such as income management programs, in providing their banking services.

47. These types of obligations could equally be imposed on Canadian financial institutions serving vulnerable consumers.

48. Some more specific obligations we developed following our consultation with Entraide that we believe should be included in the Financial Code are that:

- All written materials must be provided in plain language.
- Where a customer signs a contract, the contract must also contain a one-page summary of the key terms of the contract.
- All contracts should include an adequate cooling off period in order to allow a customer to be able to fully understand the terms and consequences of the contract.
- Banking representatives should be required to give oral explanations of the key terms of a product, service or contract. Oral explanations are particularly important for vulnerable consumers, as reading materials can be difficult to navigate.
- Independent redress with minimal access barriers should be made available and actively promoted.

49. Moreover, the services listed above and access to any additional tools, services or advice should be provided free of charge in order to eliminate financial barriers to vulnerable consumers seeking information.

50. Finally, PIAC would briefly add that these requirements should be supplemented by general initiatives to improve financial literacy and awareness of consumer rights and avenues for redress. This falls in line with Principle 5 of G20 principles on financial consumer protection. According to SEDI, many countries have started to develop strategies to improve citizen financial literacy levels for several reasons, including: the proliferation and complexity of financial products, the erosion of trust in the financial

services industry, increasing consumer debt and bankruptcies, and the availability of credit products to an increasing proportion of the population.³² The US Federal Reserve also states that:

From a broader perspective, market operations and competitive forces are compromised when consumers do not have the skills to manage their finances effectively. Informed participants help create a more competitive, more efficient market. As knowledgeable consumers demand products that meet their short- and long-term financial needs, providers compete to create products having the characteristics that best respond to those demands.³³

51. SEDI writes that the private sector has a role to play in supporting financial literacy training through programs such as funding matched savings programs and expert volunteer programs.³⁴ However, it emphasizes that "it is critical that there is a clear differentiation between financial literacy training opportunities that provide independent support and commercial advertising or tied selling which links advice to products."³⁵ PIAC submits that financial institutions should play a role in offering independent, financial literacy training free of charge, branding and advertisements, particularly to vulnerable consumers.

³² SEDI, *Financial Literacy: Strategies to Meet the Needs of Low Income Albertans* (2009), online: SEDI <<http://www.sedi.org/DataRegV2-unified/sedi-Reports/Strategies%20to%20meet%20the%20needs%20of%20low%20income%20Albertans.pdf>> at 3.

³³ Sandra Braunstein and Carolyn Welch, "Financial Literacy: An Overview of Practice, Research, and Policy" (2002), *Federal Reserve Bulletin*, online: Federal Reserve Board <<http://www.federalreserve.gov/pubs/bulletin/2002/1102lead.pdf>> at 445.

³⁴ *Ibid.* at 64.

³⁵ *Ibid.*

(4.2) Responsibility of Financial Institutions to Consumers

52. When it announced the launch of public consultations regarding what it described as a *comprehensive financial consumer code to better protect consumers of financial products*³⁶, the Department of Finance stated that a strong financial system is one in which consumers are confident that their interests are protected by a high-quality regulatory framework. The Government also stated that in order to make the framework robust in a rapidly evolving and innovative financial marketplace, such a financial consumer code should be adapted to suit the needs of consumers of today and tomorrow.³⁷

53. More specifically, the Government of Canada's Department of Finance stated that:

To achieve a framework that is more adaptable to changes in the financial marketplace, products and technology, the government is considering the merits of adopting standards or principles to anchor the financial consumer code. Standards and principles would set out general expectations and offer a degree of flexibility in implementation. They can be supplemented by rules and guidelines that would give more detailed requirements to allow an objective assessment of whether the principles are being met.³⁸

54. We agree with these objectives. In particular, we support the establishment of a financial consumer code which would be binding upon financial institutions subject to federal Government authority. We agree with the view the Department of Finance expressed when it launched this public consultation that Canada's new financial code should be based on standards or principles which set out general expectations, in other words, a code which sets a standard for financial institutions which consumers can rely upon in all aspects at all stages of a client's relationship with a financial institution.

55. In our view, a code designed to protect consumers, to be comprehensive and to be robust in an evolving and innovative marketplace, should set a high standard regarding the responsibility of financial institutions and their employees and representatives to consumers. The standard of responsibility for financial institutions and their employees and representatives should be that financial institutions and their representatives and employees must act in the client's best interest.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ As part of Canada's Economic Action Plan – 2013, see <http://actionplan.gc.ca/en/initiative/comprehensive-financial-consumer-code>. Regarding this consultation, see Government of Canada, Department of Finance *Canada's Financial Consumer Protection Framework: Consultation Paper* 3 December 2013 <http://www.fin.gc.ca/activty/consult/fcpf-cpcpsf-eng.asp>

56. When it sought input regarding financial institutions' responsibility towards consumers, the department invited comments on the following issues:

- a) Would it be useful to have in legislation a broad standard of responsibility for financial institutions to consumers and, if so, what level of care should consumers expect from financial institutions?
- b) How should this standard be administered or enforced?
- c) How should financial institutions' business practices be evaluated to ensure that they are meeting their responsibilities to consumers?

57. As the Department noted in its discussion paper,³⁹ the existing consumer protection regime for financial institutions subject to federal government jurisdiction is detailed and prescriptive in nature and does not contain a general expectation regarding the degree of responsibility financial institutions and their employees and representatives should have to consumers. The Department also noted that this can lead to uncertainty regarding financial institutions' obligations to consumers when new products or services are developed, including an assessment of the risks these products or services may pose to consumers.⁴⁰

58. We would add that, in the absence of a clear, simple to understand standard, consumers – and notably vulnerable consumers – stand at a significant disadvantage when dealing with financial institutions and their employees or representatives.⁴¹ Canadian consumers more generally need a standard for financial institutions they can rely upon in all aspects at all stages of their relationship with their financial institution.

59. Some jurisdictions have developed principles that set out an expectation of how financial institutions should treat consumers, such as a requirement for institutions to act in the best interests of consumers or to treat consumers fairly. These are supplemented by

³⁹ Discussion Paper, section 4.2

⁴⁰ Ibid.

⁴¹ In the discussion paper, the Department noted that many Canadians face challenges in this respect: Seniors and other vulnerable populations can be susceptible to financial fraud, mis-selling and poor financial outcomes due to limited capacity, knowledge or education when making financial decisions. Statistics Canada projects that the number of seniors in Canada will double in the next 25 years to reach 10.4 million seniors, and that Canada will receive nearly 334,000 immigrants per year by 2036. Seniors are a diverse group of individuals, some of whom face unique challenges related to financial literacy and interactions with financial institutions. For example, some seniors may face financial decisions and challenges related to transitioning from work to retirement, understanding the complexities of the retirement income system, managing and liquidating accumulated assets and savings in retirement. As seniors age, due to physical or cognitive impairment, they may rely on the help of others to act on their behalf in financial matters, including through the use of powers of attorney. This will be particularly pronounced among seniors who have limited financial literacy.

Canada's Financial Consumer Protection Framework: Consultation Paper, section 4.1.

rules about what “fair treatment” entails or specific obligations that financial institutions must fulfill in order to act in consumers’ best interests.

60. Acting in the best interests of the consumer should include evaluating and assessing the needs of the consumer, including their financial situation, attitude to risk at all stages of the relationship with the financial institution, and using that information to ensure that appropriate products and services are presented and discussed.
61. In an effort to better protect consumers against mis-selling, some countries have established rules concerning specific business practices to ensure fairness for consumers and to define a financial institution’s responsibility to the consumer. Financial institutions in Ireland, for example, are required to know their customer and conduct an assessment of whether certain products or services are suitable for the consumer.⁴² Australia has regulations on responsible lending that require credit providers to make an assessment of whether the credit contract is suitable for the consumer⁴³. As a principle, the UK requires financial institutions to treat consumers fairly, with some rules and guidance to clarify expectations.
62. Some jurisdictions have specific rules that address business practices that are not considered to be in the best interest of consumers. In Australia, financial institutions are required to avoid possible conflicts of interest. In the UK, supervisors in financial institutions have the power to intervene and prohibit or set limits on the product design or marketing of certain risky or complex financial products that could harm consumers. Other jurisdictions have rules that require staff and agents of financial institutions to be properly trained and qualified.⁴⁴

⁴² Central Bank of Ireland, *Consumer Protection Code*, 2012, p 5-6. Last accessed February 19, 2014 at <http://www.centralbank.ie/regulation/processes/consumer-protection-code/documents/consumer%20protection%20code%202012.pdf>

⁴³ Financial Ombudsman Service, “Responsible Lending Conduct Obligations & Maladministration,” Financial Ombudsman Service Circular, Issue 5, March 2011. Last accessed February 19, 2014 at <http://www.fos.org.au/the-circular-5-home/responsible-lending-conduct-obligations-maladministration/>. The regulations cited here are in association with the Government of Australia’s *National Consumer Credit Protection Act 2009*.

⁴⁴ Organisation for Economic Co-operation and Development, *Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection*. September 2013, p 14-15. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>. See also Central Bank of Ireland, *Consumer Protection Code*, 2012, p 6. Last accessed February 19, 2014 at <http://www.centralbank.ie/regulation/processes/consumer-protection-code/documents/consumer%20protection%20code%202012.pdf>, and Consumers International, *In Search of Good Practices in Financial Consumer Protection*, February 2013, p. 3, 13. Last accessed February 14, 2014, at <http://www.consumersinternational.org/media/1135359/in%20search%20of%20good%20practices%20in%20financial%20consumer%20protection.pdf>

Would it be useful to have in legislation a broad standard of responsibility for financial institutions to consumers and, if so, what level of care should consumers expect from financial institutions?

63. The current regulatory framework in relation to financial institutions subject to Government of Canada jurisdiction focuses primarily on prohibiting specific individual practices of financial institutions such as, for example, certain forms of negative option billing and unsolicited credit card cheques. The current framework also requires banks to have dedicated procedures and personnel in place to handle consumer complaints. While this approach may address certain specific practices, we are concerned that such an approach does not provide adequate guidance to financial institutions nor does it adequately protect consumers in an evolving, dynamic and increasingly complex marketplace.
64. The adoption of a single broad standard of responsibility for financial institutions in their dealings with their clients could provide such guidance for financial institutions, their employees and representatives and their clients. Canada's framework does not currently set a broad standard.
65. Establishing a standard of responsibility which applies in all aspects at all stages of a client's relationship with a financial institution and which applies across a range of financial institutions is indeed essential if the financial code is to protect consumers in an evolving and innovative marketplace. Consumers should not have to wonder if a particular activity or aspect of their relationship with their financial institution is subject to a different, or lower, standard of responsibility.
66. Moreover, a single broad standard of responsibility for financial institutions would ensure that institutions which compete for the consumer's business and which are subject to federal government jurisdiction meet a similar standard of responsibility. As the marketplace evolves, a single standard of responsibility ensures that consumers can expect a consistent standard of responsibility across competing institutions.
67. The standard of responsibility or level of care consumers should expect from their financial institution is that their financial institution will act in the client's best interest, above all other considerations. This means putting the client's interest first -- and ahead of other competing demands including the ways in which the financial institution and its employees or representatives may be financially compensated for the services they provide.
68. The adoption of a single standard -- placing the client's interests first-- would also simplify the development of rules or policies regarding ethical and professional conduct for financial institution and their employees and representatives.

69. For financial institutions and their employees and representatives, placing the client's interest first means:

- a) Putting the client's best interest ahead of all other considerations;
- b) Acting with the client's funds or other assets as a fiduciary;
- c) Ascertaining the client's financial literacy and acting accordingly;
- d) Ensuring that the client is provided full and timely disclosure of all important facts, consistent with the client's financial literacy;
- e) Avoiding conflicts of interest and, where an unavoidable conflict may arise, fully disclosing the conflict to the client on a timely basis and obtaining informed consent, then managing the client's funds or other assets in the client's favour.

70. The notion that there is room for improvement on behalf of the financial industry to serve Canadians satisfactorily is also reflected in a survey commissioned by the Financial Consumer Agency of Canada (FCAC) in 2013. The report clearly notes that only 6 in 10 Canadians indicated they were very satisfied with the 6 largest Canadian banks.⁴⁵ The FCAC also found about 1 in 2 Canadian chequing account holders surveyed feel the monthly service charge they pay is high or very high. Service charges are the most popular reason cited for consumers to switch financial service institutions.

71. PIAC believes that most if not all of the concerns expressed by banking customers surveyed could be addressed through the adoption of a best-interests standard for financial institutions and their employees and representatives.

72. A Financial Consumer Code outlined in legislation, including a broad best-interests standard of responsibility for financial institutions, could contribute to a degree of consumer confidence restoration. It would also serve as a lens through which existing consumer protection measures concerning the banking industry located in various statutes and regulations can be reviewed.

73. This best-interests standard would clearly articulate what is expected by Canadian consumers when dealing with financial institutions and their employee representatives. Moreover, a legislated consumer code, partnered with a best interest standard, would serve as a lens through which remaining consumer protection measures concerning the banking industry located in various statutes and regulations can be reviewed.

How should this standard be administered or enforced?

74. We discuss in section 4.3, below, ways in which the standard could be administered and potential mechanisms for its enforcement.

⁴⁵ Financial Consumer Agency of Canada, *Survey Among CFM Panelists on Financial Behaviours*, September 4, 2013. Page 4, 15.

75. A key consideration, of course, regarding the enforcement of a standard is that it must be binding upon the financial institutions to which the financial code will apply. Consumers should be able to expect that their financial institution will abide by the financial code. To promote compliance, we have proposed a number of measures. These include periodic audits by financial institutions of their own practices and of their employees' and representatives' compliance, as well as audits from the relevant enforcement agency to ensure compliance. We have also proposed periodic public reporting by financial institutions of the outcomes of audits. Finally, we have proposed the establishment of an efficient dispute resolution mechanism to be funded by the financial institutions whose customers use its services industry in which membership by financial institutions would be compulsory and which would operate independently of the financial institutions in question.

How should financial institutions' business practices be evaluated to ensure that they are meeting their responsibilities to consumers?

76. Evaluating financial institutions' business practices begins, in our view, with the individual relationships Canadian consumers have with their financial institution. Financial institutions should do their part to ensure that the broad standard of responsibility to consumers is met by their employees and representatives.

77. To this end, we recommend that on a periodic basis, for example semi-annually (or more frequently, depending on the evolution of a customer's relationship), the customer's file should be reviewed by a supervisor(s) of the employee(s) or representative(s) of the financial institution offering service to the consumer. The purpose of this review would be to ensure that the products and services being provided are meeting the standard of care required, and to keep a record of that review.

78. Employees and representatives of financial institutions whose responsibilities include the sale of products or services to consumers should be subject to periodic audits of their client records. To the extent a financial institution has an obligation to act on its client's best interests, employees and representatives who are expected to provide service to clients in this manner should be subject to periodic audits to ensure that the employees or representatives are in fact meeting the standard. These audits would be conducted both internally by the financial institution, as well as by the relevant enforcement agency.

79. Where an audit or investigation shows that a material shortfall(s) regarding the financial institution's or any its employees' or representatives' compliance with their obligations under the financial code has occurred, the client should immediately be notified. The client should be provided options which should include moving their business to another

institution of the client's choice with the assistance of the financial institution which failed to meet its bests-interests obligation and at no cost to the client. This remedy and its operation could be set out in regulations, or enforceable implementation guidelines associated with the financial code.

80. Consumers should also be provided a forum in which to bring complaints regarding financial institutions' and their employees' and representatives' compliance with the financial code.
81. We once again draw the Department's attention in this respect to the Wireless Code (the Code) developed by the CRTC⁴⁶ and the mechanisms established by the CRTC to implement the Code.
82. When it adopted a code to protect the interests of consumers of mobile wireless telecommunications services, the Commission requested that the CCTS administer the Wireless Code. As discussed earlier, the CCTS tracks the complaints it receives. It identifies complaints by subject matter and it also identifies the number of complaints it processes in relation to each telecommunications service provider.
83. With specific reference to a financial consumer code, the entity which processes complaints arising under the code could similarly track complaints and publish information regarding its enforcement of the code. It could publish such information periodically and, as well, it could make such information available on its website.
84. In addition to the creation of a mechanism for the resolution of complaints arising under a financial consumer code, the Department could consider granting an agency such as FCAC powers analogous to those found in section 10 and 11 of the *Competition Act*. These are the powers to initiate an inquiry as well as compel the production of information, if required. If an alternative enforcement model is created, we suggest these powers be provided to this new office, in an effort to effectively protect consumers.

(4.3) Supervisory Powers for Accountability and Enforcement

What tools and authorities will the FCAC need in order to effectively supervise and enforce the implementation of a principles-based financial consumer protection framework?

85. Please note that PIAC makes a structural suggestion below to include a front line Code complaints agency in order to handle the day-to-day management of likely complaints under a Code and to reduce the FCAC's oversight to more of a supervisory and policy

⁴⁶ Telecom Regulatory Policy CRTC 2013-271 *The Wireless Code*.

role. However, in this part of our submission we discuss the changes to FCAC that would be necessary to enable it to manage Code compliance as the only responsible agency.

86. A review of the mandate of the Financial Consumer Agency of Canada suggests that the application and enforcement of a broad standard of responsibility for financial institutions to consumers would be consistent with its present jurisdiction. Our proposals regarding a financial code based on broad standard of service is consistent with a number of the objectives for the FCAC set out in the *Financial Consumer Agency of Canada Act*:

- to supervise federally regulated financial institutions to ensure that they comply with federal consumer protection measures that apply to them, with undertakings relating to the protection of customers as defined in legislation, and with directions from the Minister of Finance
- to promote the adoption by financial institutions of policies and procedures designed to implement consumer protection measures, voluntary codes of conduct and financial institutions' public commitments designed to protect the interests of customers
- to monitor federally regulated financial institutions to ensure that they comply with voluntary codes of conduct and respect the public commitments they have made to protect the interests of consumers and merchants
- to promote consumer awareness of the obligations of financial institutions to financial consumers and of all matters related to protecting consumers of financial products and services.⁴⁷

87. While these elements of the FCAC's mandate appear consistent with the adoption of a single broad standard of responsibility for financial institutions in their dealings with their clients, we also believe, however, that significant challenges would need to be addressed for the FCAC before it could be responsible for enforcing or administering any broad standard.

88. One challenge arises from the wording used to describe the FCAC's mandate – to “supervise,” “promote” and “monitor.” We question whether activities of this nature would provide the FCAC the ability to compel financial institutions to meet the requirements of any compulsory financial code or, indeed, to meet an overall broad standard of responsibility set out in a financial code.

89. As consumer advocates, we expect that any broad standard of responsibility for financial institutions to consumers will require some form of enforcement. Unfortunately, this is an

⁴⁷ Financial Consumer Agency of Canada, *About FCAC*. Webpage. Last accessed January 30, 2014 at <http://www.fcac-acfc.gc.ca/Eng/about/Pages/home-accueil.aspx>

area where the past and current undertakings by the FCAC leave something to be desired from the perspective of Canadian consumers.

90. The FCAC has limited legal capacity to enforce specific provisions of a series of acts.⁴⁸

According to its mandate, in cases of contravention or non-compliance with legislation, the agency has authority to notify the federally regulated financial entity of a violation. Depending on the severity and frequency of the problem, the FCAC can take the following action:

- seek a commitment from the financial entity to remedy the issue within a short time
- impose a monetary penalty
- impose criminal sanctions
- take other actions as necessary

91. FCAC's Annual report revealed that in 2012-2013, of the over 400 federally regulated entities under the FCAC's oversight, there were 5 violations where a total of \$275,000 in fines was levied.⁴⁹ In 2011-2012, there were 3 violations with fines \$50,000, and there were total fines of \$212,000.⁵⁰ Given that in 2012-2013, there were over 12,000 inquiries and complaints to the FCAC Consumer Service Centre, and 1,526 cases investigated for compliance violations, we are concerned that the fines imposed by FCAC may be inadequate.⁵¹

92. We also express concern regarding the means used to inform the public when violations are found to have occurred. Generally, an announcement involving the violation of an act under the authority of the FCAC is posted on the FCAC website. FCAC rarely holds a press conference or communicates directly to the public explaining what occurred that was in violation of an existing statute or regulation. Even on the FCAC website, the following statement is made, "The Commissioner *can* make public the nature of the violation and decide whether a monetary penalty of up to \$500,000 will be applied."⁵²

93. The FCAC's current approach to communications in relation to enforcement and compliance issues is not sufficiently focused upon informing the public and is therefore inadequate. This would be even more so if the FCAC were given responsibility to enforce

⁴⁸ As a regulatory agency, FCAC can exercise its enforcement powers to ensure that federally regulated financial entities comply with the consumer provisions of the various federal acts relating to financial services, including the *Bank Act*, *Insurance Companies Act*, *Trust and Loan Companies Act*, *Co-operative Credit Associations Act*, *Green Shield Canada Act*, *Payment Card Networks Act*, and the *Financial Consumer Agency of Canada Act*.

⁴⁹ Financial Consumer Agency of Canada, *Annual Report*, 2012-2013, p. 27

⁵⁰ Financial Consumer Agency of Canada, *Annual Report*, 2011-2012, p. 24

⁵¹ Financial Consumer Agency of Canada, *Annual Report*, 2011-2012, p. 18

⁵² Financial Consumer Agency of Canada, *About the Commissioner*. Last accessed January 30, 2014 at <http://www.fcac-acfc.gc.ca/Eng/about/commissioner/Pages/home-accueil.aspx>

financial consumer code for financial institutions and their employees and representatives.

94. We believe that consideration of a financial consumer code of conduct is in direct response to consumer frustration with those very entities the FCAC is mandated to monitor. As a result, if the FCAC is provided the opportunity to enforce a financial consumer code a fundamental shift in its communications practices may be required.
95. Better communications and therefore greater transparency would add to consumer confidence in the financial consumer code by demonstrating to the public how a broad standard of responsibility is working. Increased transparency would promote consumer awareness of the financial code and the FCAC's role.
96. Another area of concern regarding potential amendments of the FCAC's mandate to include the enforcement of a broad standard of responsibility of financial institutions to consumers relates to the resources provided to the agency to achieve its goals. In 2011-2012, the Compliance and Enforcement branch of the FCAC spent \$3.04 million in and was composed of 21.6 full-time equivalent employees.⁵³ Placed in comparison with the resources available to the financial institutions, these figures appear insignificant. As a result, PIAC questions whether the Compliance and Enforcement branch of the FCAC could undertake the effective enforcement of a broad standard of responsibility for financial institutions to consumers unless its resources are expanded substantially.
97. A third concern regarding the administration of such a broad standard of responsibility for financial institutions to consumers by the FCAC is the treatment of complaints. The current complaints mechanisms in place that culminate in either an OSBI or alternate hearing are not the most effective avenue. A recent decision, however, to allow alternatives to the OSBI to be introduced by financial institutions raises the prospect of a significant conflict of interest.⁵⁴
98. A further suggestion would be to consider amending the *Financial Consumer Agency of Canada Act* to include an inquiry initiation mechanism similar to what exist under Section 9 of the *Competition Act*. Adding a section where any six persons residing in Canada who are over eighteen years of age and the opinion that a violation of the proposed principles has taken place could be greatly beneficial to consumers.
99. If an alternative approach to the FCAC is envisioned by the government, PIAC puts forward some suggestions. Our main suggestion is to create a day-to-day complaints ombudsman to handle consumer-facing complaints made under the Code so that FCAC can provide a supervisory and policy role for the Code and not be overwhelmed. This is

⁵³ Financial Consumer Agency of Canada, *Annual Report*, 2011-2012, p. 39

⁵⁴ PIAC opposes the approval of "external complaints bodies" that are not independent, non-profit entities.

detailed below as it relates to the Department's next question regarding greater recourse beyond the FCAC for financial consumers.

100. Another more radical suggestion to that detailed below or to "tuning up" FCAC would be to consider an approach similar to what was recently implemented in the United States – the creation of the Consumer Financial Protection Bureau (CFPB). The CFPB is an independent federal agency that holds primary responsibility for regulating consumer protection with regard to financial products and services in the United States.

101. The CFPB extends its jurisdiction over banks, credit unions, securities firms, payday lenders, mortgage-servicing operations, foreclosure relief services, debt collectors and a range of other financial services providers.⁵⁵ Its mandate consolidated responsibilities from a number of other federal regulatory bodies, including the Federal Reserve, the Federal Trade Commission, and the Federal Deposit Insurance Corporation.⁵⁶ The President urged Congress to give the consumer agency the same accountability and independence that the other U.S. banking agencies have and sufficient funding so it could ensure that powerful financial companies would comply with consumer laws.⁵⁷ As a result, the CFPB is an independent unit located inside and funded by the United States Federal Reserve. It writes and enforces rules for financial institutions, examines both bank and non-bank financial institutions, monitors and reports on markets, as well as collects and tracks consumer complaints.⁵⁸

Should consumers have greater access to recourse, beyond the FCAC, in the federal consumer protection framework?

102. A further suggestion would be to consider initiatives taken by the Canadian Government such as that, in particular, in which the Government directed the creation in 2007 of an independent process for the redress of consumer complaints in the telecommunications sector, combined, more recently and, more recently, with the adoption by the CRTC of the Wireless Code.

Giving consumers recourse and tracking service providers' performance

103. *In the Order requiring the CRTC to report to the Governor in Council on consumer complaints*⁵⁹ (the 2007 Order-in-Council), the Governor-in-Council in April 2007 directed

⁵⁵ Warren, E., "FACTBOX-New US consumer financial bureau has wide powers," *Reuters*, September 14, 2010. Last accessed January 30, 2014 at <http://blogs.reuters.com/financial-regulatory-forum/2010/09/14/factbox-new-us-consumer-financial-bureau-has-wide-powers/>

⁵⁶ *Wikipedia*, United States Consumer Financial Protection Bureau. Last accessed January 30, 2014 at <http://en.wikipedia.org/wiki/CFPB>

⁵⁷ United States Consumer Financial Protection Bureau, "Creating the Consumer Bureau," *Webpage*. Last accessed January 30, 2014 at <http://www.consumerfinance.gov/the-bureau/creatingthebureau/>

⁵⁸ *Wikipedia*, United States Consumer Financial Protection Bureau. Last accessed January 30, 2014 at <http://en.wikipedia.org/wiki/CFPB>

⁵⁹ Order in Council P.C. 2007-533, 4 April 2007

Canadian telecommunications service providers (TSPs) subject to the Telecommunications Act to "participate in and contribute to the financing of an independent telecommunications consumer agency that would, among other things, resolve complaints from individual and small business retail customers."⁶⁰ The Governor-in-Council also directed that the agency should report periodically "on the nature, number and resolution of complaints received for each telecommunications service provider; and, as appropriate, identifying issues or trends that may warrant further attention by the [CRTC] or the government."⁶¹ The Order in Council provided that the consumer agency's structure and mandate would be approved by the CRTC. As a result, in 2007, Canadian telecommunications service providers developed an agency known as the Commissioner of Complaints for Telecommunications Services (CCTS).⁶²

104. CCTS's mandate primarily focuses upon the resolution of complaints from consumers regarding telecommunications services. It describes itself as:

... an independent organization dedicated to working with consumer and small business customers and participating Canadian telecommunications service providers to resolve complaints relating to most deregulated retail telecommunications services. We strive to assist customers and service providers in an independent, fair, effective and efficient manner, after direct communications between a customer and a service provider has proven ineffective.⁶³

105. Membership in CCTS is compulsory for all Canadian telecommunications service providers.⁶⁴

106. The procedures of the CCTS have been developed to provide consumers a means to bring complaints regarding their telecommunications service provider with a minimum of complexity or "red tape". CCTS's process has been designed to ensure that the consumer and his/her service provider are first provided adequate opportunity to resolve the complaint.

107. The CCTS applies industry codes of conduct in the telecommunications sector such as the recently adopted Wireless Code.

⁶⁰ As described in Telecom Public Notice CRTC 2007-16 *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services*, para. 1.

⁶¹ P.C. 2007-533

⁶² See Telecom Decision CRTC 2007-130 *Establishment of an independent telecommunications consumer agency* and, also Telecom Decision CRTC 2008-46 *Applications to review and vary certain determinations in Telecom Decision 2007-130 regarding the establishment of an independent telecommunications consumer agency*.

⁶³ CCTS Annual Report [:] 2012-2013, page 4.

⁶⁴ Consistent with Order in Council 2007-533.

108. In 2013, following a public proceeding⁶⁵ the CRTC approved a mandatory code of conduct for providers of retail mobile wireless voice and data services.⁶⁶ The CRTC first conducted a proceeding in which it sought input from interested parties – including the industry and the public, regarding the merits of adopting a code to protect the interests of consumers.

109. Based on input it received, the Commission then conducted a second proceeding to develop a code. It, once again, sought input from the industry and from the public. Based on this input, it developed and put forward for comments a draft code. Based on the comments and proposals it received regarding its draft proposals, the Commission ultimately approved a Wireless Code in 2013. A copy of the Wireless Code is attached as Appendix A.

110. The Wireless Code applies to all telecommunications service providers in Canada in relation to mobile wireless services.

111. The CCTS resolves complaints arising under the Wireless Code.

112. The CCTS also tracks the consumer complaints it receives (whether subject to the Wireless Code or otherwise). It issues an annual report in which it provides extensive details of consumer complaints it handles. In its annual report the CCTS also discusses trends and developments in relation to the complaints it handles.

113. An important feature of the CCTS is that in the 2007 Order-in-Council, the Governor-in-Council specified that the CCTS was to be financed by the industry and that it was to be independent of that industry. As a result, the CCTS constating documents contain a wide range of safeguards designed to ensure that it remains independent of the telecommunications industry. In our view, any entity which enforces a financial consumer code must be independent of the financial services institutions governed by the financial consumer code.

114. Another important feature of the CCTS is that once it was in operation, the CRTC required telecommunications service providers it regulates to ensure that their customers were made aware of the availability of the CCTS's services. Service providers were thus required to inform consumers who have a dispute of the availability of the CCTS. Telecommunications service providers were also directed to ensure that the availability of

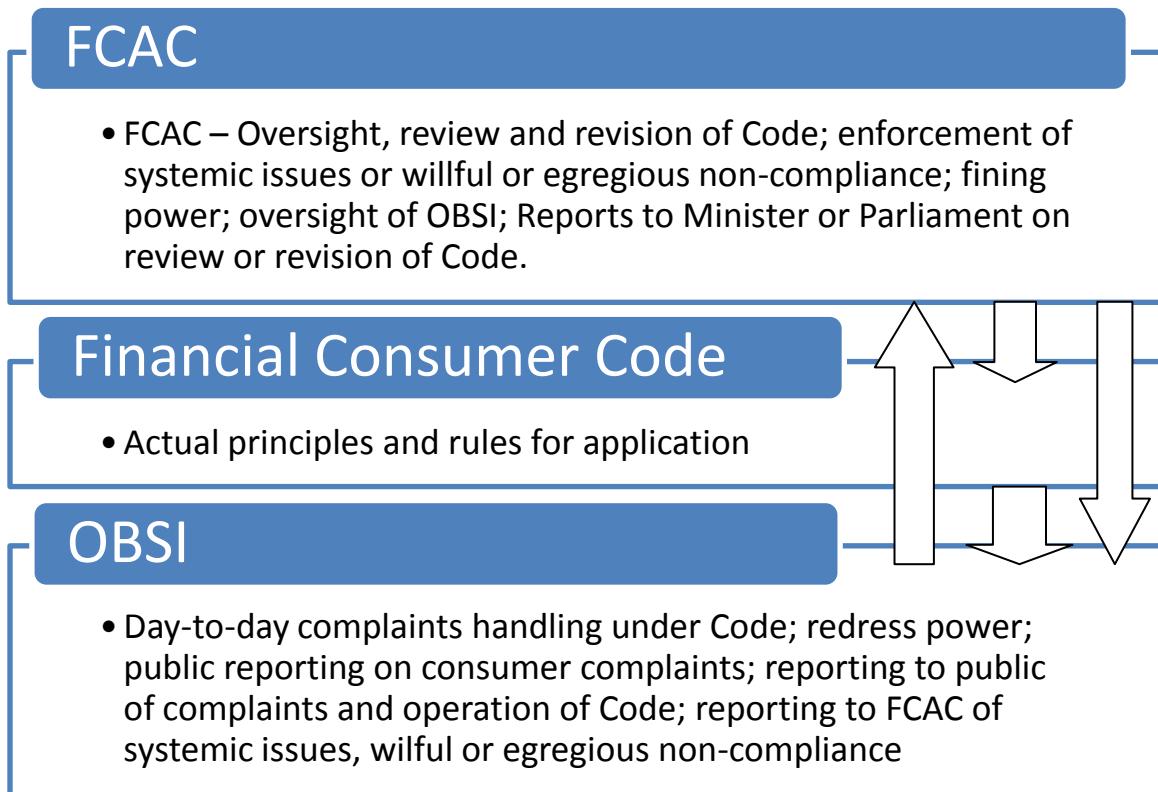
⁶⁵ Telecom Notice of Consultation CRTC 2012-557 *Proceeding to establish a mandatory code for mobile wireless services*. The CRTC initiated this proceeding based on its finding in Telecom Decision 2012-556 *Decision on whether the conditions in the mobile wireless market have changed sufficiently to warrant Commission intervention with respect to mobile wireless services*, that it would be appropriate to develop a code for retail mobile wireless data and voice services “to ensure the clarity of mobile wireless service contracts and related issues for consumers.”

⁶⁶ Telecom Regulatory Policy CRTC 2013-271 *The Wireless Code*.

recourses to the CCTS was prominently posted on their websites and that billing statements periodically informed consumers of the CCTS's services.

115. In our view, the establishment of a mechanism such as the CCTS to address consumer complaints arising under a financial consumer code should be considered. Subject to safeguards such as those outlined above, such a mechanism could be operated as a compliment to the FCAC which would exercise an oversight, systemic enforcement and policy role.
116. PIAC believes that the present Ombudsman for Banking Services and Investments (OBSI) could perform this day-to-day intake of complaints based on the Code, mediate and make binding recommendations to the financial institutions, leaving FCAC's role as supervisory of systemic issues and review and revision of the Code. Changes to OBSI would have to be made to ensure its mandate and capacity to deal with the influx of Code complaints. The OBSI budget would have to be increased and OBSI would be required to publicly report on its Code-related complaints.
117. However, this system of a subordinate ombudsman, funded by industry but independent of it to apply the Code, with a more formal supervisory regulatory body operating above to manage the Code itself and deal with systemic issues works fabulously for consumers in telecommunications. We believe the same system would work for financial services complaints under a new financial consumer code. See Figure 1 below.
118. As noted above, this bifurcated approach would insulate the FCAC from the very demanding intake and day-to-day Code complaints resolution as well as avoiding making structurally significant changes to FCAC to perform this role. The Department of Finance should understand that the CCTS now accepts in excess of 13,000 complaints a year (and many more thousand inquiries) for resolution. We would anticipate an eventual complaint volume very similar for a financial consumer code.
119. In addition, the OBSI has staff, policies and procedures that can be readily adapted to taking these additional consumer complaints. It is, quite frankly, only a matter of scale for OBSI, whereas FCAC would have to re-invent the complaint intake and procedure wheel.
120. Success of the Code will rely upon enforcement and its simple and effective implementation. FCAC under this model can issue guidance, as it does now, to financial firms on compliance, while remaining "above the fray" of individual consumer problems.

Figure 1: Schematic of Supervision and Enforcement under the Financial Code



121. If this scenario is not accepted and the FCAC is asked to enforce compliance with the Code,⁶⁷ a series of changes will need to occur in order for the FCAC to provide an effective mechanism for consumers. Additional powers, very significant additional resources and a shift in enforcement and public relations practices would be key to FCAC's successful application of the Code. Adding the burden of enforcing a broad standard of responsibility for financial institutions to consumers without a significant infusion of resources to enforce this new standard could become a recipe for disaster.

122. PIAC prefers and recommends the OBSI-Code-FCAC model outlined above, provided it is adequately funded and has sufficient enforcement powers (OBSI would have to have the authority to make binding awards of compensation for Code breaches that cost a consumer money). It is, in our view, the structure most likely to benefit consumers, be responsive to the financial services industry and to leave the FCAC best placed to do what it does best, namely oversight, systemic enforcement and policy.

⁶⁷ In this regard we note the FCAC's recently released Business Plan 2014-17, at p. 15, which appears to assume the scenario that FCAC will be fully ramped up to try to manage the implementation of the Code. This is listed there as a major risk. Without proper tailoring of FCAC's role under the Code or a very large operating budget increase, PIAC is concerned that the addition of Code responsibilities would simply overwhelm FCAC and undermine consumer and financial institution confidence in the Code.

Types of Consumer Banking Complaints Made Now and Complaints Likely to be Made Under a Financial Consumer Code

123. Although the Consultation Paper did not request comment on the types of complaints that would likely be handled by an ombudsman, the FCAC or other consumer-facing agency, PIAC contends that this information is crucial to the Department's understanding of the appropriate structure for consumer redress under a Code.
124. PIAC therefore has compiled a meta-analysis of the types, frequencies and, where possible, dispositions of consumer banking complaints as reported by the OBSI, ADR Chambers Banking Ombuds Office (ADRBO), and the FCAC. This analysis in the form of charts, is found at Appendix B. Note, as well, that the OBSI released its 2013 Annual Report only three days ago,⁶⁸ and therefore we have not integrated those complaint types and other numbers in our chart.
125. Firstly, this presentation of the types of banking complaints in existence aids all parties designing the Code to quite frankly know what are the real problems consumers have with banking.
126. Secondly, an analysis of any of the complaint issues provides insight into possible Code provisions.
127. Notable in the OBSI 2013 report is, for example at p. 27, this exposition of the risk of fraud and joint accounts with seniors and family members:

Finally, with the Canadian population aging, some new challenges arise. Recent surveys show that more and more seniors are victims of financial abuse. It is in everyone's interests to protect them against abuses, but it is not always easy to find the right balance between a senior's request, their best interest, and the privacy obligation a firm owes to its elderly customer. Where do banks draw the line when a senior who appears to have full mental capacity comes into a branch accompanied by a family member, and asks to make all the accounts he or she owns joint with this family member, with a right of survivorship as well? What if the senior refuses to answer questions from this firm or to meet individually with a representative? Is it for privacy reasons or because the senior is being abused by this family member? How do we know the true intent of the elderly client at the time? These are the sorts of issues that banks, and then OBSI, grapple with frequently.

128. PIAC believes that a Code provision could help with the problem with which OBSI is grappling. It seems to PIAC that some of the rules in, for example, the Australian Code

⁶⁸ See: https://www.obsi.ca/images/Documents/Annual_Report/EN/obsi_ar2013_en.pdf

could assist: Customers with Special Needs;⁶⁹ Privacy and Confidentiality;⁷⁰ Joint Accounts and Subsidiary Cards;⁷¹ and Guarantees.⁷² These provisions appear to be modifiable to help with this situation, notably the requirement to inform the primary account holder (the senior) of how funds may be withdrawn and by whom and how to withdraw that permission. While such a section could be framed more restrictively, for example, requiring independent legal advice or a cooling off period as required for Guarantees, the architects of the Financial Consumer Code could in the meanwhile refer to publications on seniors and financial services such as the excellent recent publication by the Law Commission of Ontario, "A Framework for the Law as it Affects Older Adults: Advancing Substantive Equality for Older Persons through Law, Policy and Practice" (April 2012) for guidance in drawing up this section of the Code.⁷³

129. The point of this expostulation is simply to note that a Code section dealing with the situation faced by the public-facing banking ombudsman can be designed. Once designed, it will assist all parties: consumers will have clear rules and expectations in the situation and the banks will have a standard to meet that is objective and fair, and if followed, will very likely remove a great number of risky situations from developing.

(4.4) Innovation

How should the consumer protection framework accommodate emerging technologies and financial products?

130. In highlighting the challenges posed by innovation, the Consultation Paper puts forth several views. First, that banking products and services have evolved significantly over the last few decades as financial systems have grown and the number and variety of financial products in the marketplace has expanded, and that digital innovation has led to an increase in consumer choice in financial products and services. Second, that regulation has tended to have been reactionary to product-specific innovations. Third, that the emergence of new and innovative service delivery channels in the age of mobile devices highlights the need for the financial consumer protection framework to be technology-neutral. Fourth, that if the consumer protection regime is overly cumbersome, it could slow the development of innovative products and services, but if consumers are confident in the framework, they will have more confidence in supporting innovative products and services, and ultimately innovation.

131. The Consultation Paper then asks: "*How should the consumer protection framework accommodate emerging technologies and financial products?*

⁶⁹ Australian Code, s. 7.

⁷⁰ Australian Code, s. 24.

⁷¹ Australian Code, s. 30. See also Irish Code, s. 3.13.

⁷² Australians Code, s. 31.

⁷³ Online: <http://www.lco-cdo.org/older-adults-final-report.pdf>

132. PIAC recognizes that innovation can result in legitimate consumer benefits.⁷⁴ PIAC also sees a role for technology to play in aiding the un-served and underserved people – people who may not qualify for a credit card or loan, or not meet the minimum requirements to get a bank account. Yet the fast pace of innovation can also pose risks to consumers, and challenges to regulators to effectively eliminate or mitigate those risks. We therefore suggest that an equally relevant reformulation of the consultation question would be: "How can the consumer protection framework best protect consumers from technological innovations that outpace the regulatory process?"

133. PIAC also recognizes that there is a balance to be struck between effective and efficient regulations, and businesses being able to bring new, beneficial products to market. Consumer protection should always be paramount, however, given the slow pace of regulatory change and given different consumers' vulnerabilities to abuse (be it based on age, technological or financial literacy, financial situation, health or other factors).

134. Examples of positive financial services innovation include innovations which make financial services more accessible, more understandable, more affordable, less expensive, and more secure. Examples of negative financial services innovation include innovations which, by design or by effect, elude the reach of regulators through gaps in jurisdiction or in laws and regulations, and therefore put consumers at risk of being taken by outright fraud, or poorly served by inappropriate or unsuitable products/services.

135. In many cases, an innovation can have both legitimate consumer benefits, yet pose risks at the same time. For example, many consumers are unable to obtain credit cards. A pre-paid debit card may be positive in its ability to provide the functionality of a credit card needed to conduct certain transactions (e.g., online purchases), but negative in the way service providers charge maintenance fees, usage fees, customer service fees.

Example – Pre-paid Cards

While PIAC was encouraged to see the Government taking steps to deal with unreasonable prepaid card fees and practices that eat away at Canadians' hard-earned money, the *Prepaid Payment Products Regulations* (SOR/2013-209) did not go far enough to protect consumers from fees and expiry policies which may quickly erode the initial value of the card, and allow card issuers to impose unreasonable fees so long as they have been disclosed and the customer has consented (highlighting the weakness of disclosure as a consumer safeguard – see Section 4.5 – *Disclosure About Financial Products and Services*).

For promotional cards, these may still be subject to expiry and maintenance fees. Re-loadable cards may also be subject to maintenance fees, so long as the cardholder has consent. All other cards can be subject to maintenance fees after a period of 12 months after activation.

⁷⁴

See e.g., *Innovation and Knowledge Flows in the Financial Services and ICT Sectors of the Toronto Region*. A report prepared by David A. Wolfe, Charles H. Davis, Nicola Hepburn, Nicholas Mills & Gale Moore for the Ontario Ministry of Research and Innovation, the Toronto Region Research Alliance, and the City of Toronto. Toronto: November 2011.

In PIAC's view, the regulations did not go far enough to protect consumers. First, there should be no expiry of funds, whatsoever. Second, fees unrelated to the costs of actually providing the credit should not have been allowed. Third, disclosure and consent are insufficient to protect consumers from the imposition of maintenance fees to preserve their own money. Fourth, card issuers can still charge "use" fees, which our research indicates are unreasonable. For example, one card issuer charges \$20.00 as an "issuance" fee; \$2.50 to reload in –branch or online; \$1.50 to contact customer service; \$3.00 for a monthly statement; \$2.00 for a withdrawal; and \$10.00 for cancellation.

136. Innovation can result in consumer harm where consumers lack sufficient understanding of the innovative product or service in question, or from outright fraud, or from a product or service which eludes consumer protection rules outright.

137. As the World Economic Forum (**WEF**) has stated, "innovation, almost by definition, introduces uncertainty which gives rise to unintentional negative outcomes."⁷⁵ According to the WEF, there are four main types of negative outcomes associated with financial innovations: (i) consumer disservice; (ii) insolvency of institutions; (iii) systemic risk; and (iv) loss of market integrity.⁷⁶ In the view of the WEF, "consumer disservice" can be either outright fraud, a question of suitability of the product/service in question for the customer, or misinformed or misguided sales staff who either do not understand product/service features/risks and customer needs, or are motivated by incentives to sell products/services that are not suitable to the customers being sold to.⁷⁷

138. Given the pace of technological change, PIAC is reticent to identify in this section specific issues that ought to be addressed, though we note some examples to illustrate how innovations in financial products/services can pose risks to consumers.

Peer-to-peer lending: Peer-to-peer (**PRP**) lending involves using the Internet to connect "potential borrowers seeking consumer or small business loans to a myriad of largely unsophisticated lenders looking for investment opportunities."⁷⁸ As one law firm notes, although "there are a number of legal issues involved in setting up a P2P lending business" and "regulatory constraints will likely serve as high barriers to entry", the PRP marketplace is growing quickly in the US, and, outside of the regulated marketplace, because "the Internet is seemingly infested with scams and scammers" there are challenges in ensuring the legitimacy of parties, and enforcing agreements.⁷⁹ Unfortunately, much of the literature on PRP lending appears to be business-focused, not consumer focused. Excessive rates, predatory terms, and recourse are just some of the consumer issues raised by the innovation of PRP lending.

⁷⁵ World Economic Forum, *Rethinking Financial Innovation* (2012), online: <http://www.weforum.org/reports/rethinking-financial-innovation>.

⁷⁶ World Economic Forum, *Rethinking Financial Innovation* (2012) at 39.

⁷⁷ *Ibid.* at 40.

⁷⁸ James J. Shanks, Gowling Lafleur Henderson, "Canada: P2P Lending: A New Source Of Consumer And Small Business Credit?" (October 2013), online: <http://www.gowlings.com/KnowledgeCentre/article.asp?pubID=3051>.

⁷⁹ *Ibid.*

Bitcoin: Bitcoin is a type of virtual currency, not backed by any central bank. Its value is derived not from a state, or the demand that may be created by state-backing and state-sanctioning, but by complex mathematics and demand. There is much hype, uncertainty, and extreme price volatility surrounding Bitcoin, and apparently zero formal education or recourse for consumers. As one journalist wrote, “The \$64,000 (500 bitcoin) question you’re probably asking right now is ‘why?’ Bitcoin, after all, has no intrinsic value. It isn’t linked to any real-world asset. It is entirely arbitrary. It has value only because the people producing it says it does.”⁸⁰ And as one observed noted, while “[t]he technology is ready for primetime, the user experience and user knowledge is not”.⁸¹ “Bitcoin’s distance from the established financial system and lack of regulation so far is partly what has made it attractive. [...] Bitcoin is occasionally called a Ponzi scheme, a type of scam where money from new investments is used to pay off a few early investors with the rest skimmed until the scheme goes bust. While Bitcoin is clearly not a Ponzi scheme, the frenzied get-in-now enthusiasm of late belies the fact that it is a very new and immature software experiment.”⁸² The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) has told Bitcoin brokerages they do not require approval from it,⁸³ which suggests Bitcoin could be allowed to flourish in a legal vacuum in Canada with zero recourse for consumers who may put their trust in the vehicle. It is encouraging that the Government of Canada has recently announced its intention to “introduce anti-money laundering and anti-terrorist financing regulations for virtual currencies, such as Bitcoin”, and PIAC recommends that the legislation go beyond anti-laundering and anti-terrorism issues to include rules to protect consumers from fraud and from the risks of a potentially worthless currency.⁸⁴

Mobile money: Mobile money is another example of how innovation can be a double-edged sword for financial consumers. The GSMA defines “mobile money” as a “a broad term that describes using the mobile phone to access financial services” and “mobile technology to trigger a financial event.”⁸⁵ One mobile money conference producers describes mobile money as “the retail and payment experience of the future.”⁸⁶ As the GSMA notes, “Mobile money services are currently being deployed in many markets across the world. There is strong evidence that these services can improve access to formal financial services in developing countries.” Recently in the US, Verizon launched a mobile money offering in the US, and although the publicity surrounding the launch is aimed at suggesting mobile money comes at no cost, the

⁸⁰ Danny Bradbury, “Bitcoin Bet”, *Backbone Magazine* (November/December 2013) at 27.

⁸¹ Danny Bradbury, “Bitcoin Bet”, *Backbone Magazine* (November/December 2013) at 27.

⁸² PCWorld, “Bitcoin: The virtual currency built on math, hope and hype” (18 December 2013), online: <http://www.pcworld.com/article/2081560/bitcoin-the-virtual-currency-built-on-math-hope-and-hype.html>

⁸³ Global News, “As Bitcoin surges, Canadian banks make converting to cash difficult” (November 30, 2013), online: <http://globalnews.ca/news/996853/as-bitcoin-surges-canadian-banks-make-converting-to-cash-difficult/>

⁸⁴ Government of Canada, *Economic Action Plan 2014* at 134.

⁸⁵ GSMA Discussion Paper, *Mobile Money: Methodology for Assessing Money Laundering and Terrorist Financing Risks* (January 2010) at 20.

⁸⁶ Mobile Money Canada 2013, online: <http://www.mobilemoneycanada.com/>

actual experience of consumers may be different.⁸⁷ In Canada, PIAC notes that two of Canada's three dominant incumbent wireless service providers (Rogers and TELUS)⁸⁸ have recently taken steps into the financial services industry with the launch of a "mobile wallet" payments service with the Canadian Imperial Bank of Commerce,⁸⁹ and that Canada's largest wireless service provider, Rogers, also has become a Schedule I Canadian chartered bank governed by the Bank Act.⁹⁰

139. Although PIAC has noted these examples of how the regulatory regime can fail to keep up with innovation, instead of focusing on product-specific fixes to the regulatory institutions and frameworks to address those gaps, PIAC recommends design-level considerations for a consumer protection framework that will better protect consumers against the negative effects of innovation.

140. The G20 *High-level Principles on Financial Consumer Protection* (October 2011), which PIAC endorses, state that:

Regulation should reflect and be proportionate to the characteristics, type, and variety of the financial products and consumers, their rights and responsibilities and be responsive to new products, designs, technologies and delivery mechanisms. Strong and effective legal and judicial or supervisory mechanisms should exist to protect consumers from and sanction against financial frauds, abuses and errors.⁹¹

141. In order to best protect consumers without curbing incentives to innovate, PIAC recommends a technology-neutral approach to financial consumer protection.

142. We are pleased that the Consultation Paper takes the view that the consumer protection framework should be technology-neutral, although technological-neutrality should be expansive in scope and not just apply to what the Consultation Paper referred to as "service delivery channels in the age of mobile devices". In keeping with our previous submissions in this paper, we emphasize the need for a comprehensive code with

⁸⁷ See Mark Miller, brandchannel, "T-Mobile's Next Frontier? Your Bank Account" (January 29, 2014), online: <http://www.brandchannel.com/home/post/2014/01/29/140129-T-Mobile-Banking.aspx>.

[...] Mobile Money isn't free. The company takes 1 percent from any government or payroll checks a consumer deposits and 4 percent of any other check deposited—information that is buried in the fine print on the brand's website. "They have very poor disclosures," Jennifer Tescher, chief executive of the Center for Financial Services Innovation, told *Bloomberg Businessweek*.

⁸⁸ "CIBC and TELUS launch mobile payments" (February 4, 2014), online: <http://www.newswire.ca/en/story/1299657/cibc-and-telus-launch-mobile-payments>

⁸⁹ Online: <http://www.rogers.com/web/content/suretap?setLanguage=en>

⁹⁰ See Rogers Bank, online:

http://www.rogersbank.com/legaldocs/en/rogers_bank_basel_iii_pillar_3_disclosures.pdf

⁹¹ G20 *High-level Principles on Financial Consumer Protection* (October 2011). Principle 1, "Legal, Regulatory and Supervisory Framework", (emphasis added).

consistent application, and therefore technological-neutrality should apply to all financial services consumer protection.

143. This can be accomplished by adopting the principles-based approach to financial consumer protection as espoused throughout this submission. The principles-based approach, which has as its pinnacle a duty of care owed by financial product/service providers to their customers, should also incorporate a principle of technological-neutrality. In other words, the duty of care should apply regardless of service or technology or delivery platform in question – it should be universal. We note in this regard that the GSMA Association⁹² has also proposed that all regulation “should be risk-based and technology-neutral, i.e., ‘same risk – same regulation’ for everybody”.⁹³
144. PIAC also believes that more monitoring and reporting of industry developments, and more effective engagement between regulators and consumers can address the regulatory challenges posed by innovation. We address the issue of monitoring and reporting below. We address the issue of engagement in Section 5 - Engagement.

The Need for Monitoring and Reporting on Innovations and Concerns

145. The financial consumer protection framework should be capable of quickly identifying problematic innovations and issuing appropriate warnings to consumers.
146. A model of such oversight and early warning is the European Banking Authority⁹⁴ (the **EBA**). The EBA is an independent European Union (**EU**) authority tasked with ensuring effective and consistent prudential regulation and supervision across the European

⁹² The GSMA represents the interests of the worldwide mobile communications industry.
⁹³ GSMA Discussion Paper, *Mobile Money: Methodology for Assessing Money Laundering and Terrorist Financing Risks* (January 2010) at 4.
⁹⁴ Online: www.eba.europa.eu

The European Banking Authority (EBA) is an independent EU Authority which works to ensure effective and consistent prudential regulation and supervision across the European banking sector. Its overall objectives are to maintain financial stability in the EU and to safeguard the integrity, efficiency and orderly functioning of the banking sector.

The main task of the EBA is to contribute to the creation of the European Single Rulebook in banking whose objective is to provide a single set of harmonised prudential rules for financial institutions throughout the EU. The Authority also plays an important role in promoting convergence of supervisory practices and is mandated to assess risks and vulnerabilities in the EU banking sector.

The EBA was established on 1 January 2011 as part of the European System of Financial Supervision (ESFS) and took over all existing responsibilities and tasks of the Committee of European Banking Supervisors.

banking sector, and with the creation of a single set of rules for financial institutions in Europe. The EBA has a robust consumer protection mandate:

The role and tasks of the EBA related to consumer protection and financial activities include: collecting, analysing and reporting on consumer trends in the EU; reviewing and coordinating financial literacy and education initiatives; developing training standards for the industry; contributing to the development of common disclosure rules; monitoring existing and new financial activities; issuing warnings if a financial activity poses a serious threat to the EBA's objectives as set out in the its funding Regulation; and temporarily prohibiting or restraining certain financial activities, provided certain conditions are met.⁹⁵

147. The EBA regularly publishes technical standards, guidelines and recommendations; it monitors developments in the industry, and issues opinions and warnings about new developments.
148. For example, in March 2013 the EBA published a *Report on Consumer Trends* highlighting "supervisory concerns regarding consumer protection issues."⁹⁶ The report identifies concerns raised and actions taken, and ongoing concerns.
149. The report also identifies concerns raised by the EBA's "Banking Stakeholder Group" (**BSG**).
150. The EBA BSG is "composed of 30 members appointed to represent in balanced proportions credit and investment institutions operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. The Group's role is to help facilitate consultation with stakeholders in areas relevant to the tasks of the EBA."⁹⁷
151. The EBA consults the BSG, through formal and informal processes (consultations, informal polls, white papers, meetings), and then reports on the issues raised in the consultative process.
152. The consultation question of innovation and the consultation question of engagement go hand-in-hand. With better engagement consumers' negative experiences with financial services innovations can be brought to the fore quicker.
153. In the Engagement section of this submission, PIAC addresses the need for a permanent institution to effectively give voice to consumers and other stakeholders. For

⁹⁵ EBA, "Consumer protection and financial innovation", online: <http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation>

⁹⁶ Online: <http://www.eba.europa.eu/documents/10180/15962/Report-on-Consumer-Trends-revised.pdf>

⁹⁷ Online: <http://www.eba.europa.eu/about-us/organisation/banking-stakeholder-group>

now, we note that the EBA model of monitoring, listening to stakeholders, and taking action, would be a welcome approach in Canada.

The Need for a Pre-Approval Process for Inherently Riskier Products

154. In addition to improved monitoring and reporting of financial innovations, in some cases pre-approval of financial products should be required.
155. For example, in the area of payments, at least one jurisdiction has require pre-approval by the regulator.
156. In the United Kingdom, the Financial Services Authority (**FSA**) regulated al payments institutions (**PIs**) under the *Payments Services Regulations*. apply to banks; building societies; e-money issuers; money remitters; non-bank credit card issuers; and non-bank merchant acquirers. All firms providing payment services must either be authorised or registered as PIs (unless they are credit institutions or e-money issuers or expressly excluded from the PSRs; for example, credit unions). Types of business included are non-bank credit card issuers and money remitters. Institutions which are already authorized to carry out payment services, such as credit institutions and e-money issuers, need not seek further authorization yet need to abide by certain “conduct of business requirements.”⁹⁸
157. This is not surprising. As the European Payments Council observes, “the pace of launching new and innovative payment products has definitely increased within recent years.”⁹⁹
158. As Canadians increasingly move away from cash, mobile payments are expected to be a major focus of banks and wireless service providers and retailers alike. This is one area where pre-approval of authorized institutions and products should be considered.

The Need for Periodic Review of the Code

159. To assess the effectiveness of the Financial Consumer Code, PIAC recommends a periodic review of the Code.
160. Similar provisions exist in the Australia *Code of Banking Practice*. In this regard PIAC would not object to the provision in the Australia *Code of Banking Practice* which calls for a periodic, comprehensive review of its code every three years.

⁹⁸ Financial Services Authority, *The FSA's role under the Payment Services Regulations 2009 - Our approach* (January 2012), online:

<http://www.fca.org.uk/static/fca/documents/fsa-psd-approach-latest.pdf>

⁹⁹ European Payments Council, *A Closer Look at Innovation in Retail Payments* (July 13, 2011), online: http://www.europeanpaymentscouncil.eu/article.cfm?articles_uuid=09F2CFB5-FA32-CD60-C69A028D7F82A29C

Australia's Code of Banking Practice – Periodic Review Provision

5 Review of this Code

- 5.1 We will require the ABA to commission an independent and transparent review of this Code every 3 years or sooner if appropriate, with the review to be conducted in consultation with:
 - (a) banks which adopt this Code;
 - (b) consumer organisations;
 - (c) other interested industry associations;
 - (d) relevant regulatory bodies; and
 - (e) other interested stakeholders.
- 5.2 We will participate in any such review and co-operate with the person conducting it.

161. Although PIAC would not object to a similar provision in a Canadian *Financial Consumer Code*, we would suggest that the review period be five years, which will allow sufficient experience under the Code, and would also be in line with the five-year statutory review period under the *Bank Act* and other legislation governing financial institutions.

(4.5) Disclosure About Financial Products and Services

162. The government has used disclosure requirements as a key tool to provide Canadians with information to make responsible financial decisions. The current framework contains multiple regulations that set out mandatory information disclosure requirements, e.g., interest rates and fees to consumers for credit products such as credit cards, fixed or variable loans, or lines of credit before entering into the credit agreement. Disclosure requirements under the Cost of Borrowing Regulations are to be done in a manner that is clear, simple and not misleading. In addition, there are certain requirements for disclosure in advertising (e.g., prominently disclosing interest rates), ongoing disclosures (e.g., itemized monthly statements of account), and advance notice of changes in terms and conditions (e.g., 30-day advance notice).

163. In an effort to be comprehensive and enable consumers to make responsible financial decisions, the government is seeking views on what key information elements are needed and what are the most effective forms of disclosure to help consumers to understand and compare products.

What key information do consumers need and how should it most effectively be presented to allow consumers to make informed financial decisions?

164. PIAC contends that the implementation of the G20 High Level Principles on Financial Consumer Protection should serve as the point of demarcation for the minimum standard

of disclosure provided to Canadian consumers under a proposed code. For instance, an October 2013 update report on the progress of the G20 High Level Principles on Financial Consumer Protections' implementation states "the principle of disclosure and transparency is important as it is clearly in consumers' best interest that they are given complete, clear and not misleading information about financial products and services."¹⁰⁰ Moreover, it implies that in order for consumers to make informed assessments of the financial products and services being offered, they require an appropriate level of standardized information in to asses them comparatively. Disclosure rules are essential for marketing and advertising materials and not just for specific product offerings.¹⁰¹ It also recommends disclosing information in the format, time, medium and volume that best facilitates informed decision-making by consumers.

165. This view appears to coincide with information uncovered by the Task Force on the Future of the Canadian Financial Services Sector in 1998. According to the Task Force, disclosure is under the control of the party offering the product or service, and can be performed in such a manner that will be costly to the consumer, while remaining legal. As a result, for the purposes of financial consumers, the timing of receiving information on a financial product or service, as well as the content and format of that information, is critical. In addition, transparency speaks to the timing, format and presentation of information on comparable products and services.¹⁰²
166. The Alliance for Financial Inclusion, a network with financial policymakers from over 90 developing economies, has also recently made statements regarding the importance of disclosure. In July 2013, the AFI's Consumer Empowerment and Market Conduct (CEMC) Working Group noted that to ensure that consumers receive adequate information about a financial product or service, regulators should prescribe a compulsory format for disclosing information. This disclosure format would require financial service providers to provide a minimum level of information that should be provided to consumers, such as information on pricing or premiums, potential yields from deposits and investments, risks to consumers, key terms and conditions, related fees and charges, etc.¹⁰³ As a result, we have an agreement between both members of the G20, through

¹⁰⁰ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 5. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

¹⁰¹ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 5. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

¹⁰² Task Force on the Future of the Canadian Financial Services Sector, *Empowering Consumers*. Background Paper #3, Ottawa, 1998, p.17-18.

¹⁰³ Alliance for Financial Inclusion, *Consumer Empowerment and Market Conduct: Transparency and Disclosure*. AFI's Consumer Empowerment and Market Conduct (CEMC) Working Group, Bangkok, July 2013, p.3. Last accessed February 7, 2014, at <http://www.afi->

the High Level Principles, as well as a consensus among the majority of the next 90 developing economies, via the AFI, that enhancements to disclosure regimes are necessary to assist and protect consumers.

167. At the very least, a disclosure regime should begin with a statement of principles outlining the obligations of a financial institution to consumers. A statement of this nature can be found in numerous regulations, voluntary codes and laws operating throughout the globe. One example of a broad statement of this nature is the recently updated Australian Code of Banking Practice. The revised Code of Banking Practice was published on January 2013 and the commencement date for the 2013 version of the Code is 1 February 2014. On pages 5-6 the Code states:

PART C: OUR KEY COMMITMENTS AND GENERAL OBLIGATIONS

3. Our key commitments to you

3.1. We will:

- (a) through the ABA (Australian Bankers Association), consult with small business and consumer organisations, to continuously work towards improving the standards of practice and service in the banking industry (see also clause 6.3);
- (b) promote better informed decisions about our banking services:
 - i. by providing effective disclosure of information;
 - ii. by explaining to you, when asked, the contents of brochures and other written information about banking services; and
 - iii. if you ask us for advice on banking services:
 - A. by providing that advice through our staff authorised to give such advice;
 - B. by referring you to appropriate external sources of advice; or
 - C. by recommending that you seek advice from someone such as your legal or financial adviser;
- (c) provide general information about the rights and obligations that arise out of the banker and customer relationship in relation to banking services;
- (d) provide information to you in plain language;

(e) communicate with you and/or your representatives in a timely and responsible manner whether by written or electronic communications (including by telephone); and monitor external developments relating to banking codes of practice, legislative changes and related issues

168. In February 2013, Consumers International (CI), a world federation of 240 consumer groups operating in 120 countries, produced a report as part of an ongoing campaign calling for fairer financial services worldwide. The paper highlights examples of good practices that ensure consumers are treated fairly. Many CI members would be critical of a stance which approached general consumer protection in financial services from the direction of information only.¹⁰⁴ CI's requirements for consumer information are that it be: clear, sufficient, reliable, comparable and timely, suitable in these respects for the consumer to compare and contrast and to make an informed decision. Figure 4.5.1 compares a few of the disclosure regimes that can be found in various jurisdictions.

Figure 4.5.1 Disclosure Regimes¹⁰⁵

Jurisdiction	Method	Features
Thailand	Bank of Thailand Regulations on Market Conduct	<p>If there are any changes to the contract, it is the responsibility of the financial institute to give customers at least 30 days notice in writing.</p> <p>For all urgent matters, financial institutes must inform customers by mail or by newspapers announcement at least 7 days prior to the change being made.</p> <p>Violations by consumers are those stated in the contracts only</p> <p>There must be a warning for guarantors on the first page of guarantee contracts</p>
India	Fair Practices Code – Guidelines set by the Reserve Bank of India	The guidelines covered general principles on adequate disclosures on the terms and conditions of a loan.
Mozambique	Notice issued by the Central Bank	Notice obliges all financial services providers to state clearly the terms of contracts and charges for financial services.

¹⁰⁴ Consumers International, *In Search of Good Practices in Financial Consumer Protection*, February 2013, p. 9. Last accessed February 14, 2014, at <http://www.consumersinternational.org/media/1135359/in%20search%20of%20good%20practices%20in%20financial%20consumer%20protection.pdf>

¹⁰⁵ Consumers International, *In Search of Good Practices in Financial Consumer Protection*, February 2013, p. 9-11. Last accessed February 14, 2014, at <http://www.consumersinternational.org/media/1135359/in%20search%20of%20good%20practices%20in%20financial%20consumer%20protection.pdf>, also see Eddie Yue, Deputy Chief Executive, Hong Kong Monetary Authority, "Evolution of Financial Consumer Protection and Education in Asia." Speech at HKMA-SFC-OECD Asian Seminar, December 2012. Last accessed February 14, 2014, at <http://www.hkma.gov.hk/eng/key-information/speech-speakers/ewmyue/20121213-1.shtml>

		<p>Banks have it posted on their walls so that consumers can easily access the information.</p> <p>It has been useful for consumers, and has reduced conflicts.</p>
Nigeria	Central Bank of Nigeria (CBN) Directive	<p>Requires commercial banks to publish their rates on their websites and National Dailies.</p> <p>A CBN Directive to Commercial Banks obliges them to submit to this rule and publish consolidated interest rates on a weekly basis.</p> <p>Consumer Code of Practice Regulations requires disclosure of relevant information pertaining to a transaction.</p>
Trinidad	Code of Conduct	Requires full disclosure of contract terms to clients and potential clients.
European Union	EU Legislation	<p>As a result of an EU initiative since 1 June 2011, all funds and credit contracts have to offer a so called KIID (Key Investor Information Document). Currently being expanded to cover mortgage loans.</p> <p>The KIID is to be a short document containing key investor information the aim of which is to facilitate retail investors' understanding of the product being offered.</p> <p>Allows direct comparisons to be made between investment funds.</p> <p>Creates a uniform document that will communicate all relevant and pertinent information about a fund to investors.</p>
Hong Kong	Hong Kong Monetary Authority Directives	<p>In April 2010, the Hong Kong Monetary Authority (HKMA) created a Banking Conduct Department.</p> <p>Rules oblige service providers to provide information on investment products in the form of key fact statements and fund factsheets.</p> <p>Require the audio-recording the customer risk profile assessment and sales process to provide audit trails for reviews by banks and the regulators.</p> <p>A pre-investment cooling-off period in the sale of products to less sophisticated customers (such as the elderly or first-time buyer)</p> <p>Requires banks to carry out continuous reviews of product risk and inform investors of any upward changes to the risk ratings of the products they have purchased.</p> <p>HKMA conducts on-site examinations and mystery shopping trips.</p>

These are just a few examples of the disclosure regimes currently in place to protect consumers when engaged in the financial services industry. During the research for this section of the consultation, PIAC took particular interest in the models provided by Ireland, Australia and Hong Kong. We feel that elements of the consumer protection regimes established in these jurisdictions should be considered in an effort to assist Canadian financial consumers.

Financial Literacy

169. While likely outside the scope of any proposed code, an item worthy of discussion is the introduction of mandatory education of Canadian students on general financial literacy. PIAC contends the position taken by the Canadian Foundation for Advancement of Investor Rights (FAIR Canada), that Canadian governments should work together to develop and implement a national financial literacy strategy, is an appropriate and necessary step in increasing the financial literacy of Canadians. FAIR recommends the following action plan:

- a) Financial literacy should be mandatory in all Canadian high schools so that the next generation of Canadians enters the work force and financial system with a basic level of financial literacy.
- b) Government (including securities regulators and educators) should test the effectiveness of existing adult financial literacy initiatives and not simply assume their effectiveness.
- c) Securities regulators need to shift responsibility from consumers back to financially sophisticated market participants who manufacture and sell financial products.¹⁰⁶

Consumers must bear a portion of the responsibility to be financially literate. However, it is obvious consumers and the economy could be better served through additional educational efforts that begin before adulthood. Ironically, this has been attempted in the province of Ontario. However, one of the challenges is finding instructors who are financially literate, according to Gail VazOxlade, author of numerous financial literacy books and host of *Till Debt do us Part*.¹⁰⁷ The creation, implementation and ongoing awareness efforts related to a proposed Financial Consumer Code would mark an excellent opportunity to compel educational administrators to challenge financial literacy issues head-on going forward.

¹⁰⁶Canadian Foundation for Advancement of Investor Rights, *Financial Literacy*. Last accessed February 5, 2014 at <http://faircanada.ca/retail-investors/financial-literacy/>

¹⁰⁷Alexander, Julia, "Canadians financial literacy questioned." *Toronto Sun*, August 3, 2013. Last accessed February 5, 2014 at <http://www.torontosun.com/2013/08/03/canadians-financial-literacy-questioned>

Are there particular products or circumstances in which disclosure is not sufficient to provide consumers with the information needed to make responsible financial decisions?

170. One of the underlying assumptions in the October 2013 progress report on the G20 High Level Principles on Financial Consumer Protection state "Since transparency is not always sufficient, effective consumer protection through disclosure is best complemented with measures that ensure responsible business conduct and improve financial education."¹⁰⁸ In a similar view, researcher Bruno Lévesque, in a paper submitted to the OECD's Committee on Financial Markets in 2010, noted, "The financial retail market can indeed truly be seen as one in which caveat emptor prevails" and that "a fairer line" (should) "be drawn between a 'buyer beware' and 'vendor beware' market place."¹⁰⁹ The paper found evidence of: "Imperfect consumer protection regulation which is in many instances based only on transparency and disclosure requirements, the efficiency of which has yet to be tested".¹¹⁰

171. In addition to disclosure, the OECD/G20 update report outlines a series of measures aimed at assisting consumer of financial products. For instance:

- Consumers are allowed a period of reflection to study, question and understand the information they are provided with, to enable them to make an informed decision about the product or service they are buying and the consequences of their purchase.
- After buying the product or service, consumers are granted a sufficiently long cooling-off period, allowing them to withdraw from the contract without suffering any inconvenience. The implementation of this cooling-off period is adapted according to the nature of the product, clientele and marketing and distribution practices, such as distant or door to door sales, and as far as it is compatible with the kind of financial transaction.
- Financial services providers and authorised agents make certain that if a particular potential conflict of interest is not prohibited and cannot be avoided, then consumers are adequately informed about how the conflict of interest affects the services provided to

¹⁰⁸ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 5. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

¹⁰⁹ Consumers International, *In Search of Good Practices in Financial consumer Protection*, February 2013, p. 8. Last accessed February 14, 2014, at <http://www.consumersinternational.org/media/1135359/in%20search%20of%20good%20practices%20in%20financial%20consumer%20protection.pdf>

¹¹⁰ Consumers International, *In Search of Good Practices in Financial consumer Protection*, February 2013, p. 8. Last accessed February 14, 2014, at <http://www.consumersinternational.org/media/1135359/in%20search%20of%20good%20practices%20in%20financial%20consumer%20protection.pdf>

the consumer and its possible consequences. Hence, prior to providing their services, authorised agents may be subject to the obligation of providing information on their identity and links with financial services providers as well as on any influence these links exert on the provision of advice. Where disclosing a particular conflict of interest is not sufficient to mitigate its potential impact on consumers, the provider or authorised agent establishes what else it can do in mitigation.¹¹¹

172. In a circumstance where there is a product being offered by a financial institution, a provision should be in place to explain to the consumer the absolute cost of using such a service or product. Moreover, if an example of a comparable product or service exists that is better suited to their needs at a lower cost, information on that product must be provided to the consumer for the purposes of comparison. The financial institution then has the opportunity to justify to the consumer's satisfaction why the higher cost option is being recommended to them. If these steps are undertaken, and a waiver is signed stating this potential conflict of interest was explained and understood by the consumer, the financial product provider may proceed. In addition, it is recommended a minimum 72-hour "cooling off" period be introduced in the instance the consumer reviews the information provided to them and changes their mind. In the absence of a more effective suitability standard found in the regulation of financial products, this process may be effective in assisting Canadian consumers.

173. In a circumstance where there is a financial product being considered for a consumer that contains a commission for financial product providers, the disclosure of that commission is not enough. Under such a scenario where a perceived conflict of interest exists, the financial product provider must be compelled to explain any commissions to themselves or their employers, provide an example of a product that is better suited to their needs at a lower cost, and then justify to the consumer's satisfaction why the higher cost option is being recommended to them. If these steps are undertaken, and a waiver is signed stating this potential conflict of interest was explained and understood by the consumer, the financial product provider may proceed. In the absence of a more effective "suitability" standard for financial advice providers, this process may be effective in saving Canadian consumers millions of dollars in fees and commissions going forward.

174. While a 'legal duty of care' standard is absent in Canadian legal protection as well as in the G20 High Level Principles, it is present in some jurisdictions to compel financial services providers to act in the interests of their clients. Consumers International (CI), in a review of the G20 High Level Principles, stated their preference for a more stringent obligation for financial services providers than the existing "the best interest of their

¹¹¹ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 5, 7. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

clients," and PIAC agrees.¹¹² In its review of the G20 High Level Principles CI also noted that regulators should set minimum standards for financial products and financial service providers should be required to benchmark their products against a model product with minimum standards.¹¹³

175. Another multinational organization, the Alliance for Financial Inclusion (AFI), also contends that disclosing information on the cost of a financial product or service is not enough to protect consumers. The AFI argues a separate mandatory disclosure form must include disclosure on:

- Clearly defined key terms and conditions prior to entering into a contract or transaction with the financial service provider.
- Provide complete picture of the total cost of a product or service and important features and risks of the financial product or service being purchased.
- Consumer rights, obligations and avenues for recourse should be disclosed and communicated clearly
- Comparative information on financial products and services offered by different financial service providers should also be provided.¹¹⁴

The AFI also recommended financial service providers should be required to report key information to the regulators and the regulators should publish and update comparative tables on a regular basis.¹¹⁵

¹¹² Consumers International, Consumers International's comments on the OECD Draft high level principles on financial consumer protection, Public Consultation Submission, August 2011, p. 7. Last accessed February 7, 2014, at <http://www.consumersinternational.org/media/787929/ci-comments-on-oecd-draft-on-financial-consumer-protection-full.pdf>

¹¹³ Consumers International, Consumers International's comments on the OECD Draft high level principles on financial consumer protection, Public Consultation Submission, August 2011, p. 4-5. Last accessed February 7, 2014, at <http://www.consumersinternational.org/media/787929/ci-comments-on-oecd-draft-on-financial-consumer-protection-full.pdf>. For additional information on benchmarking, see Consumers International, *In Search of Good Practices in Financial Consumer Protection*, February 2013, p. 7. Last accessed February 7, 2014, at <http://www.consumersinternational.org/media/1135359/in%20search%20of%20good%20practices%20in%20financial%20consumer%20protection.pdf>

¹¹⁴ Alliance for Financial Inclusion, *Consumer Empowerment and Market Conduct: Transparency and Disclosure*. AFI's Consumer Empowerment and Market Conduct (CEMC) Working Group, Bangkok, July 2013, p.2. Last accessed February 7, 2014, at http://www.afi-global.org/sites/default/files/publications/cemcwg_guideline_note_no_6_transparency_and_disclosure_final.pdf.pdf

¹¹⁵ Alliance for Financial Inclusion, *Consumer Empowerment and Market Conduct: Transparency and Disclosure*. AFI's Consumer Empowerment and Market Conduct (CEMC) Working Group, Bangkok, July 2013, p.2. Last accessed February 7, 2014, at http://www.afi-global.org/sites/default/files/publications/cemcwg_guideline_note_no_6_transparency_and_disclosure_final.pdf.pdf

Product Bundling

176. Issues regarding the bundling and unbundling of financial products were addressed by the Central Bank of Ireland's Consumer Protection Code 2012. This Code suggests that in the case of products that are bundled, simple disclosure is not an adequate measure to provide consumers with the tools necessary to make informed decisions. In the instance of bundled products, the Code states:

3.20 Prior to offering, recommending, arranging or providing a bundled product, a regulated entity must provide the consumer with the following information on paper or on another durable medium:

- a) the overall cost to the consumer of the bundle;
- b) the cost to the consumer of each product separately;
- c) how to switch products within the bundle;
- d) the cost to the consumer of switching products within the bundle;
- e) how to exit the bundle; and
- f) the cost to the consumer of exiting the bundle.

3.21 Where a consumer wishes to switch one or more products in a bundle or exit a bundle, the regulated entity must:

- a) provide the consumer with the information set out in Provision 3.20 c) and d) or 3.20 e) and f) as appropriate, on paper or on another durable medium, and
- b) allow the consumer to retain any product(s) in the bundle that the consumer wishes to keep, without penalty or additional charge, apart from the loss of any discount.

3.22 Where a regulated entity offers an optional extra to a consumer in conjunction with a product or service, the regulated entity:

- a) must inform the consumer on paper or on another durable medium:
 - i. that the consumer does not have to purchase the optional extra in order to buy the main product or service;
 - ii. of the cost of the basic product or service (excluding the optional extra); and
 - iii. of the cost of the optional extra; and

must not charge the consumer a fee for any optional extra offered in conjunction with a product or service unless the consumer has confirmed that he or she wishes to purchase the optional extra.¹¹⁶

The measures proposed here serve as examples that should be considered for a Canadian Financial Consumer Code to protect Canadians if they chose to disassociate

global.org/sites/default/files/publications/cemcwg_guideline_note_no_6_transparency_and_disclosure_final.pdf.pdf

¹¹⁶ Central Bank of Ireland, *Consumer Protection Code 2012*, p.11-12. Last accessed February 5, 2014, at <http://www.centralbank.ie/regulation/processes/consumer-protection-code/documents/consumer%20protection%20code%202012.pdf>

themselves with elements of a bundled product or service. The Irish Code example above goes far beyond mere disclosure in an effort to protect consumers.

What enhancements to disclosure would provide Canadians with information to make responsible financial decisions?

177. Both the G20 High Level Principles on Financial Consumer Protection and the AFI support the use of consumer tests to be performed by regulators/supervisors and/or financial services providers at regular intervals in the development of disclosure documentation.¹¹⁷ The October 2013 update report on the progress of the G20 High Level Principles implementation stated this will ensure the documentation is working as intended, particularly for new and less experienced users of financial services, and is available in adequate format to people with impairments.¹¹⁸ The AFI noted that in developing the disclosure format, consumers must be engaged for feedback on the user-friendly and comprehensiveness of the form.¹¹⁹ AFI also believes feedback from consumers (e.g., engagement with consumer organizations, analysis of complaints data, research on consumer behavior, attitudes and literacy levels) is also necessary to ensure the disclosure regime is effective.¹²⁰ The G20 report notes "regulators, supervisors and financial services providers and authorized agents, with the help of consumer representatives, develop in a coordinated regular way, up-to-date information leaflets,

¹¹⁷ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 7. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>, and Alliance for Financial Inclusion, *Consumer Empowerment and Market Conduct: Transparency and Disclosure*. AFI's Consumer Empowerment and Market Conduct (CEMC) Working Group, Bangkok, July 2013, p. 4. Last accessed February 7, 2014, at http://www.afi-global.org/sites/default/files/publications/cemcwg_guideline_note_no_6_transparency_and_disclosure_final_pdf.pdf

¹¹⁸ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 7. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

¹¹⁹ Alliance for Financial Inclusion, *Consumer Empowerment and Market Conduct: Transparency and Disclosure*. AFI's Consumer Empowerment and Market Conduct (CEMC) Working Group, Bangkok, July 2013, p. 2. Last accessed February 7, 2014, at http://www.afi-global.org/sites/default/files/publications/cemcwg_guideline_note_no_6_transparency_and_disclosure_final_pdf.pdf

¹²⁰ Alliance for Financial Inclusion, *Consumer Empowerment and Market Conduct: Transparency and Disclosure*. AFI's Consumer Empowerment and Market Conduct (CEMC) Working Group, Bangkok, July 2013, p. 5. Last accessed February 7, 2014, at http://www.afi-global.org/sites/default/files/publications/cemcwg_guideline_note_no_6_transparency_and_disclosure_final_pdf.pdf

glossaries and appropriate tools, such as simple examples, tables, graphics or calculators to help inform consumers about key financial concepts.”¹²¹

178. PIAC believes that for any comparative product offered by a financial institution should be made between the product being considered, and what product could be provided to the client that would be in their own best interest, from a fee disclosure perspective. Since the current legislative and regulatory model does not compel financial service providers to act in the best interest of their clients, PIAC feels a stronger disclosure regime is required. Moreover, detailed performance metrics should be provided for any product being recommended by a financial service provider.

179. In an effort to enhance ongoing disclosure to consumers, PIAC contends that consumer research be conducted regularly. This will assist financial services providers and regulators to gain a better understanding of consumers' attitudes, reluctance, vulnerabilities and decision-making. The importance of consumer research was also highlighted in the update report on the progress of the G20 High Level Principles implementation. The update report recommended tactics such consumer surveys and mystery shopping, to the extent this is possible.¹²² Furthermore, the report supported further research into new delivery channels, such as mobile payments, online banking, as well as on the behavior of financial service providers and advisors. The authors of the update report believe this behavior research will provide useful insights into possible biases that lead to potential consumer detriment.¹²³

(4.6) Access to Financial Services

How could the code ensure reasonable access to basic banking services for all Canadians?

180. Lack of or restricted access to financial services remains a challenge in Canada. The latest Federal Budget 2014¹²⁴ said that about 96% of Canadians had access to banking

¹²¹ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 5. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

¹²² Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 10. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

¹²³ Organisation for Economic Co-operation and Development, Update report on effective approaches to support the implementation of the G20 High-level Principles on Financial Consumer Protection. September 2013, p 10. Last accessed February 6, 2014 at <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

¹²⁴ Minister of Finance, *The Road to Balance: Creating Jobs and Opportunities* (11 February 2014), online: Government of Canada <<http://www.budget.gc.ca/2014/docs/plan/pdf/budget2014-eng.pdf>>.

services; in other words, 4% still do not.¹²⁵ Professor Jerry Buckland, who has undertaken extensive research on financial exclusion in inner cities, found in 2008 that 3% of Canadian adults and 8% of low-income adults do not have a bank account.¹²⁶ Moreover, he found that this number likely had not improved since 1996.¹²⁷ Past research by PIAC¹²⁸ and Option consommateurs¹²⁹ has also found that rural and remote area consumers tend to encounter more challenges accessing financial services. Option consommateurs, for instance, recently located financial institutions in only 14 of 76 communities in Nunavik, Nunavut and the Northwest Territories.¹³⁰

181. Research has consistently shown that where consumers have no or restricted access to banking services, they often turn to other more dangerous forms of financial or lending services. More than ten years ago, Iain Ramsay found that 85% of users of cheque cashing businesses had annual incomes under \$30,000, 75% were under the age of 35, and only 65% had bank accounts.¹³¹ The vast majority of users of tax rebate discounting had incomes of less than \$20,000 and 64% were under 34 years old.¹³²

182. A recent study undertaken by St. Michael's Hospital and the University of Toronto found that cheque cashing businesses appeared to strategically target low-income vulnerable consumers and were also more prevalent in areas of high crime.¹³³ The researchers also noted that growth in these types of businesses has markedly followed bank closures in many low-income neighbourhoods. The study concluded that the cheque cashing industry "uses various strategic means to corner a niche market of unbanked consumers."¹³⁴

183. Buckland has also found that "[t]he number and variety of fringe banks, which operate on the margins of the financial services market primarily providing services to low and

¹²⁵ *Ibid.* at 188.

¹²⁶ Jerry Buckland, "Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians" (2008), *Canadian Centre for Policy Alternatives*, online: CCPA http://www.policyalternatives.ca/sites/default/files/uploads/publications/Manitoba_Pubs/2008/Strengthening_Banking_in_Inner_Cities.pdf at 3.

¹²⁷ *Ibid.* at 3.

¹²⁸ Public Interest Advocacy Centre, *Banking in Rural Canada: Ensuring that Rural Consumers Have Adequate Service* (2000) at 13-16.

¹²⁹ Option consommateurs, *L'accès aux services financiers pour les populations du Nunavik, du Nunavut et des Territoires du Nord-Ouest* (2007), online : Industrie Canada, online : http://www.option-consommateurs.org/documents/principal/fr/File/rapports/services_financiers/oc_serv_fi_grand_nord_200706.pdf .

¹³⁰ *Ibid.* at v.

¹³¹ Iain Ramsay, *Access to Credit in the Alternative Consumer Credit Market* (2000), online: Consumer Measures Committee, [http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/ramsay_e.pdf/\\$FILE/ramsay_e.pdf](http://cmcweb.ca/eic/site/cmc-cmc.nsf/vwapj/ramsay_e.pdf/$FILE/ramsay_e.pdf) at ii.

¹³² *Ibid.*

¹³³ Joel G. Ray et al., "Cheque Cashing Places: Preying on Areas with High Crime" (2013) 13:4 *Sociology Mind* 278 at 278.

¹³⁴ *Ibid.* at 282.

modest-middle income people, are growing,”¹³⁵ quoting a Canadian Payday Lenders Association estimate that 1.5 to 2 million Canadians use a payday loan every year.¹³⁶ He notes that fees for cashing one cheque at a cheque casher can rival the monthly cheque-cashing fee of a mainstream bank, while annual percentage rates of interests for payday loans can range from 250% to 1,000%.¹³⁷ Buckland writes that financial exclusion can therefore be self-reinforcing – “without savings or a positive credit rating it is difficult to obtain credit cards, lines of credit, or bank loans.”¹³⁸

184. In the US, a 2011 Federal Deposit Insurance Corporation survey¹³⁹ of “unbanked” and “underbanked” (those who hold a bank account but also rely on alternative financial services (**AFS**) providers) households found that 1 in 12 American households were unbanked and 1 in 5 households were underbanked.¹⁴⁰ Around 25% of American households, including all underbanked households and 64.9% of unbanked households, had used AFS in 2011.¹⁴¹ The report found that “[u]nbanked and underbanked households value[d] the convenience of transaction AFS (e.g. non-bank money orders and cheque cashing) and perceive[d] AFS credit (e.g. payday loans, pawn shops and refund anticipation loans) to be easier to obtain than bank credit.”¹⁴²

185. Access to microcredit is equally important. The CFPB writes that “access to credit – especially small-dollar loans – is vital, because they have little money in reserve to cover an unexpected expense. There is some indication that over the past three years, more low-income consumers have been using credit cards to pay for basic living expenses such as rent or mortgage, food and utilities.”¹⁴³ The CFPB also notes, however, that high credit card debt – particularly with high associated interest rates – creates “high levels of financial stress and decreased financial stability.”¹⁴⁴

186. As a result, it is important to ensure that financial services are accessible to all consumers. These include vulnerable consumers but also other consumers – including those who may not be Canadian residents, such as international students or foreign interns.

¹³⁵ Jerry Buckland, “Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians” (2008), *Canadian Centre for Policy Alternatives*, online: CCPA http://www.policyalternatives.ca/sites/default/files/uploads/publications/Manitoba_Pubs/2008/Strengthening_Banking_in_Inner_Cities.pdf at 1. [Buckland Low-income Canadians Report]

¹³⁶ *Ibid.*

¹³⁷ *Ibid.* at 4.

¹³⁸ *Ibid.* at 1.

¹³⁹ Federal Deposit Insurance Corporation, *2011 FDIC National Survey of Unbanked and Underbanked Households* (2012), online: FDIC, http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.

¹⁴⁰ *Ibid.* at 4.

¹⁴¹ *Ibid.* at 6.

¹⁴² *Ibid.* at 6.

¹⁴³ CFPB Vulnerable Consumers Report at 40.

¹⁴⁴ *Ibid.*

Are there examples where access to financial services is difficult or constrained? How could these situations be addressed in the consumer code?

187. Access to financial services can be restricted by several factors besides geographic or physical access to banks. Access can also be restricted by onerous requirements or high eligibility criteria – including minimum account balances – for obtaining a financial service. Access can be restricted by an insufficient number of products that meet consumer needs. Or, access can be restricted by financial barriers such as high banking or service fees.¹⁴⁵ As Entraide had pointed out to us, banking fees, fees for cheque orders, and paper bill fees are particularly difficult for low-income consumers. SEDI has also found that use of fringe financial services appear to be very high among homeless and insecurely housed persons because of, among other things, poor experiences with customer service at financial institutions and desires to process a transaction more quickly.¹⁴⁶

188. The CFPB states that enabling access to financial services includes ensuring that consumers:

- Have more affordable options to pay bills and make purchases;
- Are able to send and receive money safely at a reasonable cost;
- Can obtain and use fair, affordable credit; and
- Can build and store savings in a safe way.¹⁴⁷

189. It is important that mandatory requirements to increase access to financial services be imposed on financial institutions, as past research has shown that voluntary measures are often inadequate in significantly improving banking services.¹⁴⁸

190. PIAC is aware that banks now accept certain types of personal identification to cash cheques and open accounts, have agreed to cash federal government cheques of up to \$1,500 for no fee, and that many offer “low-fee” accounts.¹⁴⁹ However, we believe that financial institutions should be required to do more to ensure that financial consumer banking needs are met.

191. Access to financial services tends to begin with unrestricted physical or geographic access. Although ATMS, telephone and internet banking create new banking platforms,

¹⁴⁵ See, for instance: CFPB Vulnerable Consumers Report at 8.

¹⁴⁶ SEDI, *Financial Inclusion for Homeless Persons and Those at Risk: A Step Up on the Ladder of Self-Sufficiency* (2008), online: SEDI <http://www.sedi.org/DataRegV2-unified/sedi-Reports/Financial%20inclusion.pdf> at 2.

¹⁴⁷ CFPB Vulnerable Consumers Report at 23.

¹⁴⁸ See, for instance: Canadian Community Reinvestment Coalition, *Access Denied: The Failure of Voluntary measures to Improve Banking Services* (1999) at 14.

¹⁴⁹ Buckland Low-income Canadians Report at 8.

they are not necessarily helpful for low-income consumers, many of whom may not have adequate access to technology or transportation.¹⁵⁰ Although we would, at this time, stop short of requiring that financial institutions ensure that they provide physical access to financial consumers, PIAC urges the Department of Finance to work towards a policy goal of ensuring that all Canadians have access to financial services within a 2 to 3-kilometre radius of their homes. If this cannot be achieved through mainstream Canadian banks, the Department should explore whether this can be achieved through other operations such as grocery stores or postal services.

192. Many low-income consumers have access to few financial products and services outside of a basic deposit account. PIAC, ACORN and Entraide generally believe that a no-fee banking services exception should be created for low-income consumers. This exception should eliminate fees such as general banking and ABM fees, cheque-cashing fees and paper bill fees for qualifying individuals in order to meet consumer banking needs. It should also ensure that other fees, such as NSF fees, are reasonable and may be waived where appropriate. At the minimum, PIAC believes that this exception should apply to consumers:

- Who participate in a social assistance program (e.g. OW, ODSP and other similar programs);
- Whose family income falls at or below the after-tax LICO¹⁵¹. However, we also strongly recommend looking to US descriptions of “low income,” which is commonly defined there as between 100% and 200% of the poverty level¹⁵²; or
- Who would meet the qualifying financial requirements for Legal Aid Ontario¹⁵³.

193. Specific exceptions may also be made for vulnerable consumer groups. Ottawa's Banking Accessibility Project¹⁵⁴, for instance, established a no-fee banking program with

¹⁵⁰ See: Buckland Low-income Canadians Report at 10.

¹⁵¹ In 2011, the after-tax LICO for a family of four living in a community with a population between 30,000 and 99,999 was \$30,487.

See: Statistics Canada, “Low income cut-offs,” online: Statistics Canada

<http://www.statcan.gc.ca/pub/75f0002m/2012002/lico-sfr-eng.htm> (accessed 18 February 2014).

¹⁵² See, for instance: Working Poor Families Project, “Low-income Working Families: The Growing Economic Gap,” *The Working Poor Families Project Policy Brief*. Winter 2012-2013, online: WPFP http://www.workingpoorfamilies.org/wp-content/uploads/2013/01/Winter-2012_2013-WPFP-Data-Brief.pdf

, which found that the low-income threshold in 2011 for a family of four with two children was \$45,622. The Federal Communications Commission also sets its Lifeline Program low-income eligibility criteria at family income that is at or below 135% of the Federal Poverty Guidelines.

See: FCC, “Lifeline: Affordable Telephone Service for Income-Eligible Consumers,” online: FCC <http://www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers> (accessed 18 February 2014).

Entraide, in assessing eligibility for its services, uses an upper limit of 115% of the LICO.

¹⁵³ See: Legal Aid Ontario, “Am I eligible for legal aid?,” online: Legal Aid Ontario <http://www.legalaid.on.ca/en/getting/eligibility.asp> (accessed 11 February 2014).

TD Canada Trust for ODSP recipients. In this program, Canadian Mental Health Association employees provided the identity check and helped their clients fill out their bank forms. PIAC contends that financial institutions should adopt similar programs without the necessary involvement of external not-for-profit organizations in order to accommodate their clients.

194. With regards to accessible microcredit, contrary to preconceptions about low-income consumers, some pilot projects in the US have shown that the default risk of loans given by not-for-profit organizations to low-income mortgage borrowers is, in fact, significantly lower than subprime mortgage to higher-income borrowers. The Centre for Community Self-Help, for instance, has lent more than \$6 billion dollars to individuals and organizations and helps guarantee mortgages to low- and moderate-income mortgage borrowers. The Stanford Social Innovation Review, citing ongoing data collected by the University of North Carolina, reported that:

The findings are surprising. The research shows that, even in the midst of the worst housing recession since the Great Depression, the families have managed to hold on to their homes. In fact, Self-Help, with fixed interest rate loans, free of refinancing penalties, has outperformed others offering subprime mortgages to much more affluent families. The default risk of Self-Help loans was three times lower than subprime loans made to similar borrowers between 2004 and 2008. Although the housing crisis has highlighted that homeownership does not guarantee rapid wealth building, Self-Help homeowners did accumulate more wealth than renters.¹⁵⁵

195. The CFPB has identified several innovative products and programs that could facilitate access to credit, including “bundled products” such as a small loan or secured credit card coupled with a savings component, or a credit-building product combined with a service such as financial coaching or counselling.¹⁵⁶ Buckland also writes that credit programs could tie a loan to a peer support network or a local organization.¹⁵⁷ Some loan systems even include subsidies for clients who complete financial management training or meet repayment deadlines.¹⁵⁸ PIAC believes that Canadian financial institutions should be required to make reasonable efforts to offer microcredit products or services to low-income and vulnerable consumers.

196. Finally, the Department of Finance should ensure that financial institutions are required to actively promote and advertise the low- or no-cost services they offer in order to increase access to financial services. Buckland¹⁵⁹, Option consommateurs¹⁶⁰ and

¹⁵⁴ See: Pam Lahey, “A Bank of One’s Own: CMHA Ottawa’s No-Fee Banking Project” (Spring 2010) 26:1 Network 13, online: CMHA http://ontario.cmha.ca/files/2013/04/spring_2010.pdf .

¹⁵⁵ Corey Binns, “Banking on Low-Income Families” (2012) Stanford Social Innovation Review, online: SSIR http://www.ssireview.org/pdf/Fall_2012_Banking_on_Low-Income_Families.pdf at 60.

¹⁵⁶ CFPB Vulnerable Consumers Report at 47.

¹⁵⁷ Buckland Low-income Canadians Report at 12.

¹⁵⁸ *Ibid.*

¹⁵⁹ Buckland Low-income Canadians Report at 8.

SEDI¹⁶¹ have all pointed out that vulnerable consumers in particular need to be made aware of banking access products or services.

The CRTC Wireless Code

197. In Telecom Decision CRTC 2012-556, the Canadian Radio-television and Telecommunications Commission (**CRTC**) found that Canadian consumers needed additional tools – notably a mandatory mobile wireless services code – to understand their basic rights and the obligations of their wireless service providers. Following a broad consultation, the CRTC published *The Wireless Code* in Telecom Regulatory Policy 2013-271.

198. PIAC submits that the Department of Finance may look to the CRTC's Wireless Code as a model for a consumer code for financial services. Notably:

- **Application:** The Wireless Code applies in all Canadian provinces and territories, regardless of whether the services are purchased (i) independently from other services or as part of a bundle of services; or (ii) in person, over the phone, or over the Internet.¹⁶²
- **Implementation:** All aspects of the Wireless Code took effect at the same time—there was no delayed or phased-in implementation.¹⁶³
- **Enforcement and Administration:** The Commissioner for Complaints for Telecommunications Services (CCTS) was made responsible for administering the Wireless Code, including: (i) resolving any complaints related to the Wireless Code; (ii) monitoring trends in complaints; and (iii) reporting on both complaints and trends in its annual report. The CRTC was made responsible for enforcing the Wireless Code by addressing issues related to (i) delayed implementation; and (ii) systemic non-compliance. Moreover, the CRTC required wireless service providers to file reports detailing their compliance with the Wireless Code.¹⁶⁴

199. PIAC recommends a similar enforcement structure for the Financial Code, in which some independent ombudsman or agency would administer and resolve complaints related to the Code, and the FCAC would be responsible for a more wide-scale

¹⁶⁰ Option consommateurs, *L'accès aux services financiers pour les populations du Nunavik, du Nunavut et des Territoires du Nord-Ouest* (2007), online : Industrie Canada http://www.option-consommateurs.org/documents/principal/fr/File/rapports/services_financiers/oc_serv_fi_grand_nord_200706.pdf at vii.

¹⁶¹ SEDI, *Financial Inclusion for Homeless Persons and Those at Risk: A Step Up on the Ladder of Self-Sufficiency* (2008), online: SEDI <http://www.sedi.org/DataRegV2-unified/sedi-Reports/Financial%20inclusion.pdf> at 2.

¹⁶² CRTC, Telecom Regulatory Policy CRTC 2013-271, *The Wireless Code* at para. 30. [Wireless Code]

¹⁶³ *Ibid.* at paras. 368-369.

¹⁶⁴ *Ibid.* at paras. 376-377.

enforcement of the Code. Financial institutions should also be responsible for filing reports detailing their compliance with the Code.

- **Promotion:** Wireless service providers were ordered to actively promote the Wireless Code on their websites and billing statements, and customer service representatives were required to be knowledgeable of the Wireless Code.¹⁶⁵ We submit that financial institutions should also be required to do the same with respect to the Financial Code.
- **Measurement and Review:** The CRTC is scheduled to carry out a formal review of the effectiveness of the Wireless Code within three years of its implementation.¹⁶⁶ Similarly, we believe the Department of Finance should institute regular, formal reviews of the Financial Code

(4.7) Comprehensiveness

What needs to be included in order to achieve the objective of a comprehensive financial consumer code?

200. PIAC firstly notes that the Government in Budget 2013 promised a “comprehensive financial consumer code”. That statement, together with the principles of comprehensiveness and universality mean that the Code should be as wide a sector-specific framework as possible.

201. Given the federal government’s constitutional jurisdiction, some aspects of a Code that would appear to an average Canadian as surely appropriate subjects for the Code will, for the time being, have to be excluded. This is particularly the case with investment rules, which, despite Canadian consumers using bank-owned investment firms that they identify as players in the market, cannot be regulated without provincial permission. This is highly unfortunate and PIAC is committed to working with the federal Department of Finance, the Department of Justice and the provinces to find eventual cooperative federalism solutions to this problem of split jurisdiction.

202. PIAC also recognizes that some jurisdictions also have included insurance in their banking codes. To the extent that the federal government regulates insurance companies, this could be attempted, however, PIAC believes that this question requires special attention that could delay the implementation of a financial consumer code in the short run. Therefore we recommend that after banking and related issues are covered by a Code, that the federal government re-examine including federally regulated insurance

¹⁶⁵ *Ibid.* at para. 385.

¹⁶⁶ *Ibid.* at para. 393.

products and companies, especially where these products are functionally equivalent to banking products.

203. PIAC has a different opinion, however, as to the possible inclusion in the scope of the financial consumer code the issue of payments systems. These issues should be addressed in the Code.

204. Canadians deal with their financial institutions far more frequently as payments processors and intermediaries than they do for loans and deposits. Most Canadians think much of “banking” as including cheque payments, pre-authorized payments, credit card issuance and payments, point-of-sale payments (debit); online bill payments; electronic banking transfers and now contactless and mobile phone payments.

205. As noted above, PIAC has identified 7 principles specific to payments that could frame a overarching federal payments law. We have noted in the same paper the extremely fragmented and slow-moving approach to payments regulation in Canada – a lack of regulation that is not in the interests of consumers.

206. PIAC also actively participated in the Task Force on the Payments System Review. We had hoped that even some of the recommendations from the Task Force final report and working papers would be implemented.¹⁶⁷ Instead, these appear to be stalled in various low-profile committees, notably “FINPAY”.

207. This Code consultation provides a unique opportunity to make framework level reforms on a principles basis to the fragmented and confusing payments market. There is a lack of such legislated protection for consumers in Canada. This is unacceptable; we note that U.S. consumers have had the Electronic Funds Transfer Act protections for well over 30 years.

208. We recommend that the stakeholder roundtables have a subcommittee struck to consider what aspects of the Task Force on the Payments System Review can be implemented in a comprehensive financial consumer code.

209. If the Department of Finance is planning a parallel framework law for payments instead of including them in the Code we ask that this be clearly stated so that all participants in designing this Code understand that payments issues are to be worked on in a separate forum for inclusion in a separate law.

¹⁶⁷ See Task Force on the Payments System Review, final report, “Moving Canada into the Digital Age” (December 2011), as well as the four attendant policy papers. Online: <http://paymentsystemreview.ca/index.php/papers/moving-canada-into-the-digital-age/index.html>

(5) Continuing the Conversation: Engagement

210. The Consultation Paper states that “the government intends to consider ways to enhance the effectiveness of stakeholder engagement in financial consumer protection issues.”¹⁶⁸ PIAC welcomes this, but suggests that more than an intention is needed to address the issue of effective stakeholder engagement – Canadians deserve action on that issue.

211. As the Consultation Paper notes, many jurisdictions have created mechanisms to promote engagement with groups that represent the interests of consumers as part of their dialogue on consumer protection.

212. As the Consultation Paper further notes, the government sees the use of an advisory group as a potential approach to facilitate ongoing collaboration between the public and private sectors, including consumer groups.

Should the government consider mechanisms for enhancing engagement among stakeholders in regulatory, supervisory and compliance processes related to consumer protection?

213. In PIAC’s answer is “Yes.”

214. The Consultation Paper states that “to position Canada as a leader in financial services regulation, including financial literacy, financial inclusion and financial consumer protection policy [...] will require the active engagement of all stakeholders, including individual Canadians, financial institutions and consumer groups.”

215. PIAC agrees.

The Current Engagement Structure

216. The current nature of consumer engagement on financial consumer protection is *ad hoc* and not institutionalized.

217. In 1999 the Department of Finance wrote that “Given that financial services are a necessity of everyday life and that consumers and financial institutions do not have the same information, understanding or bargaining power, it is critical that consumers be treated fairly in their dealings with financial institutions.”¹⁶⁹

218. Although financial products/services are of fundamental importance to most Canadians, Consumer engagement on financial issues in Canada is low. This is because Canadians do not generally have the resources necessary or the proper channels through which to

¹⁶⁸ Consultation Paper, Section 5.

¹⁶⁹ Department of Finance, *Reforming Canada’s Financial Services Sector - A Framework for the Future* (June 25, 1999) at 46.

input into the financial regulatory process. Financial products/services, and regulation which govern them, are beyond the realistic grasp of most people, and thus Canadians often must rely on public interest groups, including PIAC or *Option Consommateur*s who themselves have limited resources and limited channels to work with.

219. Currently, the Financial Consumer Agency of Canada (**FCAC**) has as its mandate to “consolidate and strengthen oversight of consumer protection measures in the federally regulated financial sector, and to expand consumer education.”¹⁷⁰ Created in 2001 in response to a recommendation in the Government’s policy paper, *Reforming Canada’s Financial Services Sector: A Framework for the Future*, the FCAC has a wide range of legislated objectives¹⁷¹ - these include monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial products and services; and collaborating and coordinating its activities with stakeholders to contribute to and support initiatives to strengthen the financial literacy of Canadians.

220. The FCAC is required, as part of its annual reporting obligations, to report on its collaboration with stakeholders, and the coordination of its activities with those of stakeholders, to contribute to and support initiatives to strengthen the financial literacy of Canadians.¹⁷²

What consumers need: A voice

221. The Government should therefore put in place, mechanisms which institutionalize regular consumer consultation, engagement and representation in regulatory, supervisory and compliance processes relating to financial services consumer protection.

222. We reiterate here some of our comments from a previous representation on the establishment of a financial consumer code.¹⁷³

223. For any consultative process on rules affecting financial services there should be early public participation, reasonable time-frames for facilitating full participation, and appropriate information made available in due time to the participants. A balanced, effective and accepted financial consumer framework must necessarily be based on a multilateral, multi-stakeholder approach.

¹⁷⁰ “FCAC celebrates its 10th anniversary!”, online: <http://www.fcac-acfc.gc.ca/eng/about/history/Pages/home-accueil.aspx>

¹⁷¹ See *Financial Consumer Agency of Canada Act*, S.C. 2001, c. 9 at Section 3.

¹⁷² *Ibid.*, Section 34(c).

¹⁷³ *A financial consumer code in Canada: developing an open process* - A position statement of the Consumers Council of Canada, Option consommateur, the Public Interest Advocacy Centre, the Service de protection et d’information du consommateur and Union des consommateurs for the Financial Institutions Division | Division des institutions financières Financial Sector Policy Branch | Direction de la politique du secteur financier|Department of Finance Canada | Ministère des Finances Canada (October 8, 2013).

224. It may be that some would blanch at the notion of putting bankers, consumers, retailers,¹⁷⁴ payment networks and other stakeholders together and opening the floor to a debate. However, the Canadian Payments Association's Stakeholder Advisory Council and rule-making process have proven over the last decade (or more) that it is workable and, indeed, fruitful. We expect FINPAY is currently making a similar demonstration. In other areas, consumer groups have also been involved in constructive dialogue with a broad range of stakeholders, including industry.

225. As discussed in the context of Section 4 – Engagement – the European Banking Authority's (**EBA**) Banking Stakeholder Group (**BSG**) is one possible model of engagement.

226. In the words of the BSG:

The BSG strongly supports all institutional arrangements (including the establishment of the stakeholder groups of the European Supervisory Authorities, ESAs) that facilitate stakeholder inputs into the regulatory process. The BSG was formed as a result of the creation of the EBA for pan-Europe bank regulation and supervision and has faced the biggest-ever changes in bank regulation. The BSG is an integral and important part of the requirement for the EBA to consult with stakeholders in areas relevant to the tasks of the EBA. Discussions at BSG meetings, the work of its Technical Working Groups, and the reports produced by BSG, provide key inputs to the EBA's work.¹⁷⁵

227. The EBA BSG's inaugural membership consisted of 10 banking industry representatives, 6 independent top-ranking academics, 5 service user representatives, 5 consumer representatives, 3 small-and-medium enterprise representatives, and 1 employee representative. That membership structure, in PIAC's view, appropriately balances the interests of a well-financed industry with several elements of consumer representation – academic, user community, and consumer advocate. That model is something PIAC recommends for Canada.

228. The BSG is said to add the following value.¹⁷⁶

¹⁷⁴ Who have a significant interest in payment issues, as well as in credit issues.

¹⁷⁵ *End of Term of Office Report of the Banking Stakeholder Group (BSG) of the EBA – For the BSG's first term of office between March 2011 and September 2013* (October 3, 2013), online: <http://www.eba.europa.eu/documents/10180/17417/BSG+2013+Final+Report.pdf> at 4.

¹⁷⁶ *End of Term of Office Report of the Banking Stakeholder Group (BSG) of the EBA – For the BSG's first term of office between March 2011 and September 2013* (October 3, 2013), online: <http://www.eba.europa.eu/documents/10180/17417/BSG+2013+Final+Report.pdf> at 5.

There are several ways through which the BSG adds value to the regulatory process and contributes to the ultimate objective of effective and efficient regulation in the banking sector:

- By bringing to the process the different expertise, experience and perspectives of the wide range of stakeholders represented in the BSG. In this regard, we believe that the total is greater than the sum of the parts.
- Commenting with strong technical detail on the documents (most especially, but not only, RTSs and ITSs) issued by EBA. This contributes in turn to the key EU regulatory objective of creating a sound single rulebook and supervisory culture.
- The BSG advises and assists the EBA in assessing the potential impact of proposed draft regulation and IT standards, guidelines, and recommendations.
- Providing market intelligence on developments in banking and financial markets and highlighting potential problem areas.
- Contributing to longer-term strategic issues in the regulatory process such as the implications of a Single Supervisory Mechanism (SSM, often referred to as European Banking Union). In this context, we mention the important Position Paper on Liquidity issued by the BSG in October 2012 which was written not in response to any particular regulatory requirement but in order to influence future thinking about liquidity regulation.
- Submission of opinions on the initiative of the Group rather than as a response to an EBA document.

229. The EBA's BSG has four technical working groups, with one dedicated exclusively to consumer protection. The EBA's Consumer Protection Working Group deals with 'pure' banking products (such as mortgages, personal loans, savings products, current accounts, credit cards and payment services) and acts in cooperation with the European Securities and Markets Authority (**ESMA**) and the European Insurance and Occupational Pensions Authority (**EIOPA**) when credit institutions act as intermediaries of investment and insurance products respectively.¹⁷⁷ The Consumer Protection Working Group meet regularly, surveys the BSG for key consumer protection issues, and recommends agenda items for action. The Working Group also facilitated a daylong EBA "Day on Consumer Protection" in 2012, involving 135 participants.

230. The EBA BSG is but one approach to financial consumer protection stakeholder engagement. Other examples include:

- UK Financial Services Authority's advisory Financial Services Consumer Panel (**FCSP**).¹⁷⁸ The FCSP is "an independent statutory body, set up to represent the interests of consumers in the development of policy for the regulation of financial

¹⁷⁷ *End of Term of Office Report of the Banking Stakeholder Group (BSG) of the EBA – For the BSG's first term of office between March 2011 and September 2013* (October 3, 2013), online: <http://www.eba.europa.eu/documents/10180/17417/BSG+2013+Final+Report.pdf> at 17.

¹⁷⁸ Online: <http://www.fca.org.uk/about/governance/who/statutory-panels/consumer-panel> ; and <http://www.fs-cp.org.uk/> .

services. The FCSP “works to advise and challenge the FCA from the earliest stages of its policy development to ensure they take into account the consumer interest.” The Panel itself is recruited through a process of open competition, and represents “a broad range of relevant expertise and experience” The FCSP is “independent and free to publish its views on our work and to commission research on consumers’ views.”¹⁷⁹

- Ireland: The National Consumer Agency is a statutory body established by the Irish Government in May 2007 to enforce consumer law and promote consumer rights. In the NCA’s own words:

We represent the voice of the consumer, defending consumer interests at the highest levels of national and local decision-making. We provide you with information about your consumer rights and personal finance. We help you to manage your money, with useful tools and information to help you get the most from your money and help you make smart decisions.

We have responsibility for market surveillance in respect of the safety of a wide range of non-food consumer products. Our roles in relation to product safety include enforcing product safety legislation, investigating complaints about unsafe products, carrying out surveillance activities, alerting consumers about unsafe products, advising manufacturers, suppliers, retailers and their representative bodies about their responsibilities and managing Ireland’s input to the EU product safety rapid alert system, RAPEX

We have a Disability Liaison Officer who acts as a point of contact for individual with disabilities. We are committed to providing this service and aim to ensure that all our services and facilities are accessible to all our customers.¹⁸⁰

231. Canadians would benefit from an institution that draws on principles illustrated in these various models: independence, involvement on an equal footing, and informed decision-making. PIAC therefore recommends that the Government adopt a Financial Consumer Advisory Board (**FCAB**), and giving PIAC and other public interest groups a mandated seat at the table and adequate funding to actively represent consumer interests on financial matters.
232. In addition, and regardless of the approach taken, consumers and their representatives need more resource support to be able to make their voices heard and their needs and concerns known.

¹⁷⁹

Online: <http://www.fca.org.uk/about/governance/who/statutory-panels/consumer-panel>

¹⁸⁰

Online: <http://www.consumerhelp.ie/about-us>

How could consumers and consumer groups best contribute to these processes, and what might their role be?

233. Insufficient resources constrain consumer groups' ability to participate on equal footing with the financial industry. Whereas the financial industry is able to fund advocacy efforts, research, and ongoing government relations campaigns through industry associations and dedicated staff, public interest groups face a perpetual struggle to find and commit sufficient time and financial resources to these issues.

234. Consumer groups are painfully aware of this.

235. While consumer groups have abundant anecdotal evidence of consumer concerns regarding financial services, they are currently sorely lacking in well-structured, methodologically reliable data. In order to draft a code that adequately addresses consumer issues, it will be necessary to develop quickly instruments, such as polls, that will enable the collection and analysis of such data. Cooperation between the Department of Finance, the Office of Consumer Affairs and consumer groups may be one avenue to explore in order to create the tools that will be required.

236. Time is also a significant issue for resource-constrained organisations. Most analysts and consumer advocates must share their time between financial and other issues, they often must consult internally with colleagues or decision-making bodies within their organisations, and may of course have prior commitments.

237. And, needless to say, consumer organisations currently have inadequate funding and so cannot allocate to this process the resources that would be required.

238. However willing consumer groups may be, these are issues that will tax their ability to participate, and any process will need to take into account these practical limitations.

Funding Consumer Participation

239. In order to support ongoing consumer representation on financial matters, it is important that consumer groups are able to access a stable source of participation funding.

240. One example of a participation funding model is the Ontario Payday Lending Education Fund (the **OPLE Fund**) which is established under Part VII of the Ontario *Payday Loans Act, 2008*¹⁸¹. The OPLE fund was established for the purpose of "educating persons respecting the rights and obligations of persons and entities under the Act." Under the Act, the Minister of Government and Consumer Services can, by order, establish payments that licensees are required to make to the fund; and can by regulation, designate a not-for-profit corporation to administer the fund. The Minister can also give the Fund any other objective, by regulation, so long as that objective is consistent with the purposes of the OPLA.

¹⁸¹ S.O. 2008, c. 9 (the **OPLA**).

241. Another model which should be explored is a contribution mechanism whereby a certain percentage of contributing businesses' profits, or an annual funding level is pre-determined and then allocated amongst contributing businesses.

242. PIAC notes that a similar mechanism exists for the purposes of helping offset the costs of public interest and consumer groups participating in broadcasting regulatory proceedings before the Canadian Radio-television Telecommunications Commission (the Broadcasting Participation Fund¹⁸²). Unfortunately, the BPF lacks a stable, predictable source of funding, and thus risks not living up to its purpose. Therefore, and to ensure ongoing public interest participation in financial services matters, the contribution mechanism should ensure stable, predictable funding.

243. A contribution mechanism would be familiar to the industry. Already the Office of the Superintendent of Financial Institutions (**OSFI**) exercises its power under its enabling legislation to recover its operational expenses from the industry, based on an assessment of the through assessing the assets, and actual time and resources spent supervising individual institutions.¹⁸³

Specific Recommendations

244. PIAC therefore recommends that the Government formally institutionalize consumers' voices into the regulatory process.

245. A Financial Consumer Advisory Board or functional equivalent would give financial consumers the institutional voice needed to be on the same footing as the financial industry.

246. In that regard, we support the model of the EBA BSG, and in the Canadian context we endorse the 2001 proposal by the Consumers Council of Canada - to create an "independent, well-funded Consumer Advisory Council on Financial Affairs with statutory authority to represent the consumer point of view to the regulator, to the government and to the general public."¹⁸⁴

247. The resulting institution should require authorize and enable consumers and consumer representatives to attend, on equal footing, at financial regulatory discussion forums involving the industry.

248. PIAC suggests that Section 23 of OSFI's enabling legislation could be amended to authorize OSFI to assess an appropriate financial consumer group contribution fund (which may be used to fund the FCAB discussed earlier).

¹⁸² See online: <http://www.bpf-fpr.ca/en/home.html>

¹⁸³ See *Office of the Superintendent of Financial Institutions Act* (R.S.C., 1985, c. 18 (3rd Supp.)); and *Assessment of Financial Institutions Regulations, 2001*, SOR/2001-177.

¹⁸⁴ *The Scorpion and the Frog: A consumer view of Canadian financial services and ways to transform them* (Report submitted to the Office of Consumer Affairs) (2001), at. iii; viii.

C. CONCLUSION

249. PIAC wishes to thank the Department of Finance for this opportunity to comment upon *Canada's Financial Consumer Protection Framework: Consultation Paper*. PIAC believes that Canadian financial consumers deserve a comprehensive financial consumer code and that such a code will greatly assist them in dealing with their federally-regulated financial institutions. We trust that the Department of Finance will give the comments of ordinary Canadians who have written in to this consultation considerable weight in designing such a Code. The development of such a Code is welcome and is long overdue.

250. PIAC wishes to contribute to the creation of a comprehensive financial consumer code as the Department of Finance proceeds with further steps. We ask that PIAC be considered a stakeholder and invited to any roundtables or further sessions to give input on a draft Code.

Appendix A - The Wireless Code

From CRTC Telecom Regulatory Policy CRTC 2013-271, *The Wireless Code*, 3 June 2013.

A. Clarity	
1. Plain language	<ul style="list-style-type: none"> i. A service provider must communicate with customers using plain language. ii. A service provider must ensure that its written contracts and related documents, such as privacy policies and fair use policies, are written in a way that is clear and easy for customers to read and understand.
2. Prices	<ul style="list-style-type: none"> i. A service provider must ensure that the prices set out in the contract are clear and must indicate whether these prices include taxes.
3. Unlimited services	<ul style="list-style-type: none"> i. A service provider must not charge a customer any overage charge for services purchased on an unlimited basis. ii. A service provider must not limit the use of a service purchased on an unlimited basis unless these limits are clearly explained in the fair use policy.
B. Contracts and related documents	
1. Postpaid servicecontracts	<ul style="list-style-type: none"> i. A service provider must give the customer a permanent copy of the contract and related documents at no charge in the following circumstances: <ul style="list-style-type: none"> a. If the contract is agreed to in person, the service provider must give the contract and related documents to the customer immediately after the customer agrees to the contract. b. If the contract is not agreed to in person (i.e. if it is agreed to over the phone, online, or otherwise at a distance), the service provider must send the contract and related documents to the customer within 15 calendar days of the customer agreeing to the contract. If a service provider fails to do this, or if the terms and conditions of the permanent copy of the contract conflict with the terms and conditions that the customer agreed to, the customer may, within 30 calendar days of receiving the permanent copy of the contract, cancel the contract without paying an early cancellation fee or any other penalty. c. The service provider must also provide the customer with a paper copy of the contract upon request at no charge, at any time during the commitment period. ii. The permanent copy of the contract and related documents must be a paper copy, unless the customer expressly and knowingly decides that an electronic copy is acceptable. iii. A service provider must provide a customer with a copy of the contract in an alternative format for people with disabilities upon request, at no charge, at any time during the commitment period. iv. Contracts for postpaid services must set out all of the information listed below in a clear manner (items a-m): <ul style="list-style-type: none"> a. the services included in the contract and any limits on <p>Key contract terms and conditions</p> <ul style="list-style-type: none"> a. the services included in the contract and any limits on

	<ul style="list-style-type: none"> b. the use of those services that could trigger overage charges or additional fees; c. the commitment period, including the end date of the contract; d. if applicable <ul style="list-style-type: none"> i. the total early cancellation fee; ii. the amount by which the early cancellation fee will decrease each month; and iii. the date on which the customer will no longer be subject to the early cancellation fee; e. if a subsidized device is provided as part of the contract, <ul style="list-style-type: none"> i. the retail price of the device, which is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the service provider without a contract; ii. the amount the customer paid for the device; and iii. the fee to unlock the device, if any; <p>Other aspects of the contract</p> <ul style="list-style-type: none"> f. an explanation of all related documents, including privacy policies and fair use policies; g. all one-time costs, itemized separately; h. the trial period for the contract, including the associated limits on use; i. rates for optional services selected by the customer at the time the contract is agreed to; j. whether the contract will be extended automatically on a month-to-month basis when it expires, and if so, starting on what date; k. whether upgrading the device or otherwise amending a contract term or condition would extend the customer's commitment period or change any other aspect of the contract; l. if applicable, the amount of any security deposit and any applicable conditions, including the conditions for return of the deposit; and m. where customers can find information about <ul style="list-style-type: none"> i. rates for optional and pay-per-use services; ii. the device manufacturer's warranty; iii. tools to help customers manage their bills, including notifications on data usage and roaming, data caps, and usage monitoring tools; iv. the service provider's service coverage area, including how to access complete service coverage maps; v. how to contact the service provider's customer service department; vi. how to make a complaint about wireless services, including contact information for the Commissioner for Complaints for Telecommunications Services Inc. (CCTS); and vii. the Wireless Code.
2. Prepaid servicecontracts	<ul style="list-style-type: none"> i. A service provider must inform the customer of all conditions and fees that apply to the prepaid balance. ii. A service provider must explain to the customer how they can <ul style="list-style-type: none"> a. check their usage balance; b. contact the service provider's customer service department; and

	<ul style="list-style-type: none"> c. complain about the service, including how to contact the CCTS. iii. A service provider must provide this information separately if it does not appear on a prepaid card or in the written contract. iv. If a device is provided as part of a prepaid service contract, a service provider must also inform the customer of <ul style="list-style-type: none"> a. where applicable <ul style="list-style-type: none"> i. the total early cancellation fee; ii. the amount by which the early cancellation fee will decrease each month; and iii. the date on which the customer will no longer be subject to the early cancellation fee; b. the retail price of the device, which is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the service provider without a contract; c. the amount the customer paid for the device; d. the fee to unlock the device, if any; and e. where customers can find information about device upgrades and the manufacturer's warranty. v. A service provider must give the customer a copy of the contract in an alternative format for people with disabilities upon request, at no charge, at any time during the commitment period.
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C. Critical Information Summary

1. Critical Information Summary	<ul style="list-style-type: none"> i. A service provider must provide a Critical Information Summary to customers when they provide a permanent copy of the contract for postpaid services. This document summarizes the most important elements of the contract for the customer. ii. A service provider must ensure that the Critical Information Summary contains all of the following: <ul style="list-style-type: none"> a. a complete description of all key contract terms and conditions (see item B. 1. (iv) a-e listed above); b. the total monthly charge, including rates for optional services selected by the customer at the time the contract is agreed to; c. information on all one-time charges and additional fees; and d. information on how to complain about the service provider's wireless services, including how to contact the service provider's customer service department and the CCTS. iii. A service provider must ensure that the Critical Information Summary iv. accurately reflects the content of the contract; v. is either provided as a separate document from the written contract or included prominently on the first two pages of the written contract; and vi. is clear and concise (does not exceed two pages), uses plain language, and is in an easily readable font.
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D. Changes to contracts and related documents

1. Changes to key contract terms and conditions	<ul style="list-style-type: none"> i. A service provider must not change the key contract terms and conditions of a postpaid wireless contract during the commitment period without the customer's informed and express consent. ii. When a service provider notifies a customer that it intends to change a key contract term or condition during the commitment period, the customer may refuse the change. iii. As an exception, a service provider may only change a key contract term or condition during the commitment period without the customer's express consent if it clearly benefits the customer by either <ul style="list-style-type: none"> reducing the rate for a single service; or
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	<ul style="list-style-type: none"> v. increasing the customer's usage allowance for a single service.
2. Changes to other contract terms and conditions or related documents	<ul style="list-style-type: none"> i. If, during the commitment period, a service provider wishes to change other contract terms and conditions or the related documents, it must provide the customer with at least 30 calendar days' notice before making such changes. This notice must explain the change and when it will take effect.
E. Bill management	
1. International roaming notification	<ul style="list-style-type: none"> i. A service provider must notify the customer, at no charge, when their device is roaming in another country. The notification must clearly explain the associated rates for voice, text messaging, and data services. ii. Customers may opt out of receiving these notifications at any time.
2. Cap on data roaming charges	<ul style="list-style-type: none"> i. A service provider must suspend national and international data roaming charges once they reach \$100 within a single monthly billing cycle, unless the customer expressly consents to pay additional charges. ii. A service provider must provide this cap at no charge.
3. Cap on data overage charges	<ul style="list-style-type: none"> i. A service provider must suspend data overage charges once they reach \$50 within a single monthly billing cycle, unless the customer expressly consents to pay additional charges. ii. A service provider must provide this cap at no charge.
4. Unsolicited wireless services	<ul style="list-style-type: none"> i. A service provider must not charge for any device or service that the customer has not expressly purchased.
5. Mobile premium services	<ul style="list-style-type: none"> i. If a customer contacts their service provider to inquire about a charge for a mobile premium service, the service provider must explain to the customer how to unsubscribe from the mobile premium service.
F. Mobile device issues	
1. Unlocking	<ul style="list-style-type: none"> i. A service provider that provides a locked device to the customer as part of a contract must <ul style="list-style-type: none"> a. for subsidized devices: unlock the device, or give the customer the means to unlock the device, upon request, at the rate specified by the service provider, no later than 90 calendar days after the contract start date. b. for unsubsidized devices: unlock the device, or give the customer the means to unlock the device, at the rate specified by the service provider, upon request.
2. Warranties	<ul style="list-style-type: none"> i. A service provider must inform the customer of the existence and duration of a manufacturer's warranty on a device before offering an extended warranty or insurance on that device.
3. Lost or stolen devices	<ul style="list-style-type: none"> i. When a customer notifies their service provider that their device has been lost or stolen, <ul style="list-style-type: none"> a. the service provider must immediately suspend the customer's service at no charge; and b. the terms and conditions of the contract will continue

	<p>to apply, including the customer's obligation to pay</p> <ul style="list-style-type: none"> i. all charges incurred before the service provider received notice that the device was lost or stolen; and ii. either the minimum monthly charge (and taxes), if the customer continues with the contract, or the applicable early cancellation fee, if the customer cancels the contract. <p>ii. If the customer notifies the service provider that their device has been located or replaced and requests that their service be restored, the service provider must restore the service at no charge.</p>
4. Repairs	<p>i. A service provider must suspend wireless service charges during device repairs upon request if all of the following conditions are met:</p> <ul style="list-style-type: none"> a. the device was provided as part of a contract with the service provider and is returned to the service provider for repair; b. the device is under the manufacturer's or the service provider's warranty; c. the service provider did not provide a free replacement device for use during the repair; and d. the customer would incur an early cancellation fee if they were to cancel their wireless services.
G. Contract cancellation and extension	
1. Early cancellation fees – General	<p>i. If a customer cancels a contract before the end of the commitment period, the service provider must not charge the customer any fee or penalty other than the early cancellation fee. This fee must be calculated in the manner set out in sections 2. and 3. below.</p> <p>ii. When calculating the time remaining in a contract to determine the early cancellation fee, a month that has partially elapsed at the time of cancellation is considered a month completely elapsed.</p>
2. Early cancellation fees – Subsidized device	<p>i. When a subsidized device is provided as part of the contract,</p> <ul style="list-style-type: none"> a. for fixed-term contracts: The early cancellation fee must not exceed the value of the device subsidy. The early cancellation fee must be reduced by an equal amount each month, for the lesser of 24 months or the total number of months in the contract term, such that the early cancellation fee is reduced to \$0 by the end of the period. b. for indeterminate contracts: The early cancellation fee must not exceed the value of the device subsidy. The early cancellation fee must be reduced by an equal amount each month, over a maximum of 24 months, such that the early cancellation fee is reduced to \$0 by the end of the period. <p>ii. When calculating the early cancellation fee,</p> <ul style="list-style-type: none"> a. the value of the device subsidy is the retail price of the device minus the amount that the customer paid for the device when the contract was agreed to; and b. the retail price of the device is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the service provider without a contract.
3. Early cancellation fees – No subsidized device	<p>i. When a subsidized device is not provided as part of the contract,</p> <ul style="list-style-type: none"> a. for fixed-term contracts: The early cancellation fee must not exceed the lesser of \$50 or 10 percent of the minimum monthly charge for the remaining months of the contract, up to a maximum of 24 months. The early

	<p>cancellation fee must be reduced to \$0 by the end of the period.</p> <p>b. for indeterminate contracts: A service provider must not charge an early cancellation fee.</p>
4. Trial period	<p>i. When a customer agrees to a contract through which they are subject to an early cancellation fee, a service provider must offer the customer a trial period lasting a minimum of 15 calendar days to enable the customer to determine whether the service meets their needs.</p> <p>ii. The trial period must start on the date on which service begins. A service provider may establish reasonable limits on the use of voice, text, and data services for the trial period.</p> <p>iv. During the trial period, customers may cancel their contract without penalty or early cancellation fee if they have</p> <ul style="list-style-type: none"> a. used less than the permitted usage; and b. returned any device provided by the service provider, in near-new condition, including original packaging. <p>v. If a customer self-identifies as a person with a disability, the service provider must extend the trial period to at least 30 calendar days, and the permitted usage amounts must be at least double the service provider's general usage amounts for the trial period.</p>
5. Cancellation date	<p>i. Customers may cancel their contract at any time by notifying their service provider.</p> <p>ii. Cancellation takes effect on the day that the service provider receives notice of the cancellation.</p>
6. Contract extension	<p>i. To ensure that customers are not disconnected at the end of the commitment period, a service provider may extend a contract, with the same rates, terms and conditions, on a month-to-month basis.</p> <p>ii. A service provider must notify a customer on a fixed-term contract at least 90 calendar days before the end of their initial commitment period whether or not the contract will be automatically extended.</p> <p>iii. At the time that a service provider offers a customer a device upgrade, the service provider must clearly explain to the customer any changes to the existing contract terms caused by accepting the new device, including any extension to the commitment period.</p>
H. Security deposits	
1. Requesting, reviewing, and returning a security deposit	<p>i. If a service provider requires a security deposit from a customer, the service provider must</p> <ul style="list-style-type: none"> a. inform the customer of the reasons for requesting the deposit; b. keep a record of those reasons for as long as the service provider holds the deposit; c. specify in the written contract the conditions for the return of the security deposit; d. review the continued appropriateness of retaining the deposit at least once per year; and e. return the security deposit with interest to the customer, retaining only any amount owed by the customer, no more than 30 calendar days after <ul style="list-style-type: none"> i. the contract is terminated by either the customer or the service provider; or ii. the service provider determines that the conditions for the return of the security deposit have been met. <p>ii. A service provider must calculate interest on security deposits using the Bank of Canada's overnight rate in effect at the time, plus at minimum one percent, on the basis of the actual number</p>

	<p>iii. of days in a year, accruing on a monthly basis. A service provider may apply the security deposit toward any amount past due and may require customers to replenish the security deposit after such use in order to continue providing service.</p>
I. Disconnection	
1. When disconnection may occur	<p>i. If the grounds for disconnecting a customer are failure to pay, a service provider can disconnect a customer's postpaid service only if the customer</p> <ul style="list-style-type: none"> a. fails to pay an account that is past due, provided it exceeds \$50 or has been past due for more than two months; b. fails to provide or maintain a reasonable security deposit or alternative when requested to do so by the service provider; or c. agreed to a deferred payment plan with the service provider and fails to comply with the terms of this plan. <p>ii. Except with customer consent or in other exceptional circumstances, disconnection may occur only on weekdays between 8 a.m. and 9 p.m. or on weekends between 9 a.m. and 5 p.m., unless the weekday or weekend day precedes a statutory holiday, in which case disconnection may not occur after noon. The applicable time is that of the customer's declared place of residence.</p> <p>iii. If a service provider disconnects a customer in error, the service provider must restore service to the customer by the end of the next business day and must not impose reconnection charges.</p>
2. Notice before disconnection	<p>i. If a service provider intends to disconnect a customer, it must notify the customer before disconnection, except in cases where</p> <ul style="list-style-type: none"> a. action is necessary to protect the network from harm; or b. the service provider has a reasonable suspicion that fraud is occurring or likely to occur. <p>ii. In all other cases, a service provider must give reasonable notice to the customer at least 14 calendar days before disconnection. The notice must contain the following information:</p> <ul style="list-style-type: none"> a. the reason for disconnection and amount owing (if any); b. the scheduled disconnection date; c. the availability of deferred payment plans; d. the amount of the reconnection charge (if any); and e. contact information for a service provider representative with whom the disconnection can be discussed. <p>iii. A service provider must provide a second notice to advise a customer that their service will be disconnected at least 24 hours before disconnection, except if</p> <ul style="list-style-type: none"> a. repeated attempts to contact the customer have failed; b. action is necessary to protect the network from harm; or c. the service provider has a reasonable suspicion that fraud is occurring or likely to occur.
3. Disputing disconnection charges	<p>i. A service provider must not disconnect a customer if</p> <ul style="list-style-type: none"> a. the customer notifies the service provider on or before the scheduled disconnection date listed in the notice that they dispute the reasons for the disconnection; b. the customer pays the amount due for any undisputed portion of the charges; and c. the service provider does not have reasonable grounds to believe that the purpose of the dispute is to evade or delay payment.

J. Expiration of prepaid cards	
1. General	<p>i. A service provider must keep open the accounts of customers with prepaid cards for at least seven calendar days following the expiration of an activated card, at no charge, to give the customer more time to "top up" their account and retain their prepaid balance.</p>

The Wireless Code – Definitions	
Canadian Radio-television and Telecommunications Commission (CRTC)	A public organization that regulates and supervises the Canadian broadcasting and telecommunications systems to ensure that Canadians have access to a world-class communication system.
Commissioner for Complaints for Telecommunications Services Inc. (CCTS)	An independent organization dedicated to working with customers and their telecommunications service providers to resolve complaints relating to their telecommunications services. The CCTS (i) responds to and resolves complaints from customers in order to ensure that they are treated in a way that is consistent with the Wireless Code; and (ii) collects data on complaints related to the Wireless Code. This data will be published on the CCTS's website at www.ccts-cprst.ca .
Commitment period	The term or duration of the contract. For fixed-term contracts, the commitment period is the entire duration of the contract. For indeterminate contracts, the commitment period is the current month or billing cycle.
Contract and written contract	<p>A contract is a binding agreement between a service provider and a customer to provide wireless services.</p> <p>A written contract is a written instrument that expresses the content of the contract.</p>
Customers	Individuals or small businesses subscribing to retail mobile wireless services.
Device subsidy	The difference between (i) the lesser of the manufacturer's suggested retail price of a device or the price set for the device when it is purchased from the service provider without a contract; and (ii) the amount a customer paid for the device when they agreed to the contract.
Disconnection	The termination of wireless services by a service provider.
Early cancellation fee	A fee that may be applied when a customer's service is cancelled before the end of the commitment period.
Fair (or acceptable) use policy	A policy that explains what is considered to be unacceptable use of the service provider's wireless services and the consequences of unacceptable use (e.g. using the service to engage in an activity that constitutes a criminal offence). Violations of a fair or acceptable use policy may result in (i) disconnection or service suspension; or (ii) a modification of the services available to the customer.
Fixed-term contracts	Contracts that have a set duration (usually one, two, or three years).
Indeterminate contracts	Indeterminate contracts do not have a set duration. They automatically renew each month.
Key contract terms and conditions	The elements of the contract that the service provider cannot change without the customer's express consent. Key contract terms and conditions are listed in section B. 1. (iv) a-e of the Code.
Locked device	A wireless device that is programmed to work only with the network of the service provider that sold the device to the customer.
Minimum monthly charge	The minimum amount that customers will have to pay for wireless services each month if they do not use optional services or incur any additional fees or overage charges. This charge may be subject to taxes, as set out in the contract.
Mobile premium services (or premium text messaging services)	Text message services that customers may subscribe to for an additional charge, usually on a per-message basis.
Optional services	Services that a customer can choose to add to their wireless plan, usually for an

	additional charge, such as caller ID or call forwarding.
Overage charge	A charge for exceeding an established limit on the use of a service.
Pay-per-use services	Services that a customer can choose to add to their wireless plan, such as international roaming, which are typically measured and charged on a usage basis.
Permanent copy	An inalterable copy (e.g. a paper copy or PDF version) of the contract, as of the date of signing or the date of the latest amendment.
Postpaid services	Wireless services that are paid for after use, usually upon receipt of a monthly bill.
Prepaid services	Wireless services that are purchased in advance of use, such as the use of prepaid cards and pay-as-you-go services.
Privacy policy	A policy that explains how service providers will handle customers' personal information.
Related documents	Any documents referred to in the contract that affect the customer's use of the service provider's services. Related documents include, but are not limited to, privacy policies and fair use policies.
Roaming	The use of wireless services outside the service provider's network area.
Service coverage maps	An illustration of the extent of the service provider's network, showing where coverage is available.
Service provider	A provider of retail mobile wireless voice and data services.
Subsidized device	A wireless device that is sold to a customer by a service provider at a reduced price as part of a contract. A wireless device that is (i) purchased by the customer at full price; or (ii) not purchased as part of the contract is not a subsidized device.
Suspension (of a customer's service)	A temporary halt in wireless service that can result from a lack of payment or hitting a pre-determined spending or usage limit. The customer's account and contract remain in force during service suspension.
Unlimited services	The unlimited use of specific services (e.g. unlimited local calling), for a fixed price.
Wireless services	Retail mobile wireless voice and data services.

Appendix B – Charts of Canadian Consumer Banking Complaints

Banking Complaints and Issues

Ombudsman for Banking Services and Investments (OBSI) ¹⁸⁵										
Category	2008 ¹⁸⁶		2009		2010		2011		2012 ¹⁸⁷¹⁸⁸	
	#	%	#	%	#	%	#	%	#	%
Fraud	20	32%	53	14%	66	17%	74	17%	37 ¹⁸⁹	14%
Service Issues	18	29%	169	43%	98	25%	138	31%	92	26%
Fees/Rates	n/a	n/a	58	15%	111	28%	64	14%	60	23%
Collection Activity	2	3%	13	3%	10	3%	7	2%	13	5%
Transactional Error	6	10%	66	17%	80	20%	116	26%	39	15%
Other	17	27%	32	8%	32	8%	49	11%	15	6%
Total	63		391		397		448		256	
Files Closed			787¹⁹⁰		397		448		256	
Withdrew			7	1%						
Compensation			222	28%	97	24%	66	15%	39	15%
Sided with Firm			558	71%	300	76%	382	85%	217	85%
Total Compensation					\$442,758		\$487,546		\$123,938	
Average					\$5,676		\$7,387		\$3,178	
Median					\$2,000		\$1,100		\$900	

¹⁸⁵ All data taken from annual reports found at: www.obsi.ca

¹⁸⁶ Some categories were consolidated into “other” to create consistency across years.

¹⁸⁷ OBSI changed reporting categories in this fiscal year; categories were consolidated and fit into approximate categories to match other years for comparison purposes.

¹⁸⁸ OBSI released its Annual Report 2013 during compilation of this table but it has not been included. Please see:

https://www.obsi.ca/images/Documents/Annual_Report/EN/obsi_ar2013_en.pdf

¹⁸⁹ Includes category “misrepresentation”.

¹⁹⁰ This is the total banking and investment files; no breakdown provided.

ADR Chambers Banking Ombuds Office (ADRBO) ¹⁹¹				
	2009	2010	2011	2012 ¹⁹²
Most common complaints	Mortgage foreclosure; notice Euro account / facility RBC Visa travel rewards refund Line of credit reporting error Overdue Visa payment debited from current account Scope of VIP account benefits Termination of banking relationship Money order / wire fraud Debt consolidation Account opening promotional offer Validity of ATM deposit Mortgage holdback; rate type adjustment Automatic mortgage renewal at unfavourable rate	Mortgage prepayment penalty Credit line interest increase Debit and credit card fraud Disputed Visa charges Account garnishment Disputed Visa charges Termination of banking relationship Money order / wire fraud Tax rollover, RRIF, RRSP Account name changes Cheque forgery Automatic mortgage renewal at unfavourable rate	Mortgage prepayment penalty Debit and credit card fraud Disputed Visa charges Termination of banking relationship Money order / wire fraud Account signatories	Powers of Attorney / Estate Issues Old and Lost Accounts / Document Retention Periods Debit and credit card fraud Termination of banking relationship Mortgage prepayment penalty Account Signatories
Initial Contacts ¹⁹³	541	456	312	976
Files closed	27	96 ¹⁹⁴	60	183
Reports Issued	12	31	32	46
Compensation	6 (22%)	12 (13%)	13 (22%)	18 (10%)
Initial View Letters ¹⁹⁵	2	27	14	4

¹⁹¹ All data taken from annual reports found at: www.bankingombuds.ca. ADRBO does not provide a breakdown by category of complaint.

¹⁹² TD joined ADRBO in 2012.

¹⁹³ A large number of files opened are referred back to the bank for further resolution of the bank's own customer complaint process. For example, in 2009, there were over 300 files that were referred back.

¹⁹⁴ This includes both files received during the current year and files opened in the previous year.

¹⁹⁵ These letters uphold whatever the bank's original offer to settle the matter was; no breakdown is given as to whether or not this included compensation.

Financial Consumer Agency of Canada (FCAC)¹⁹⁶											
Compliance-Related Complaints Received from Consumers											
	2008-09		2009-10		2010-11		2011-12		2012-13		
	#	%	#	%	#	%	#	%	#	%	
Consumer Provisions											
Branch Closures	1	0%	8	6%	5	4%	1	0%	8	2%	
Cheques	12	6%	4	3%	9	7%	3	1%	8	2%	
Coercive Tied Selling	n/a	n/a	5	4%	1	1%	3	1%	2	1%	
Complaint-handling procedures	4	2%	1	1%	11	9%	15	4%	18	5%	
Compliance of affiliate	n/a	n/a	0	0%	1	1%	0	0%	0	0%	
Cost of borrowing – credit cards	41	21%	28	20%	66	54%	92	22%	0	0%	
Cost of borrowing – general	n/a	n/a	2	1%	0	0%	2	0%	48	12%	
Cost of borrowing – lines of credit	5	3%	3	2%	9	7%	8	2%	7	2%	
Cost of borrowing – loans	7	4%	0	0%	3	2%	11	3%	3	1%	
Cost of borrowing – mortgages	n/a	n/a	38	27%	29	24%	35	9%	15	4%	
Credit business practices	n/a	n/a	n/a	n/a	n/a	n/a	20	5%	5	1%	
Deposit Accounts	25	13%	11	8%	19	14%	40	10%	31	8%	
Deposit-type instruments	n/a	n/a	n/a	n/a	n/a	n/a	1	0%	0	0%	
Disclosure of charges for services	3	2%	0	0%	0	0%	0	0%	0	0%	
Disclosure of interest rates	3	2%	0	0%	1	1%	1	0%	0	0%	
Failure to inform how to reach FCAC	n/a	n/a	0	0%	0	0%	0	0%	0	0%	
Index-linked deposit accounts	n/a	n/a	1	1%	0	0%	0	0%	0	0%	
Mortgages	25	13%	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
Principal protected notes	n/a	n/a	n/a	n/a	0	0%	0	0%	0	0%	
Public Accountability Statements	5	3%	3	2%	1	1%	0	0%	4	1%	
Registered products	n/a	n/a	n/a	n/a	n/a	n/a	1	0%	3	1%	
Codes of Conduct											
Authorized Insurance Activities	12	6%	4	3%	11	9%	26	6%	13	3%	
Credit and debit card code	n/a	n/a	n/a	n/a	12	10%	75	18%	187	48%	
Debit card code	22	11%	10	7%	10	8%	32	8%	14	4%	
Protection for e-commerce	n/a	n/a	n/a	n/a	0	0%	0	0%	0	0%	

¹⁹⁶ Data taken from annual reports found at www.fcac-acfc.gc.ca.

Financial Consumer Agency of Canada (FCAC)¹⁹⁶										
Compliance-Related Complaints Received from Consumers										
	2008-09		2009-10		2010-11		2011-12		2012-13	
	#	%	#	%	#	%	#	%	#	%
Small business banking code	n/a	n/a	3	2%	2	1%	0	0%	1	0%
Public Commitments										
Accessibility of complaint-handling procedures	1	0%	1	1%	1	1%	0	0%	1	0%
Agreement to offer low-cost accounts	n/a	n/a	0	0%	0	0%	0	0%	0	0%
Credit cards – general	1	0%	0	0%	0	0%	0	0%	0	0%
General	1	0%	0	0%	n/a	n/a	n/a	n/	n/a	n/a
Guidelines for the Transfer of Registered Plans	4	2%	2	1%	5	4%	13	3%	3	1%
Hold periods on cheques	2	1%	0	0%	0	0%	0	0%	1	0%
Interac	n/a	n/a	0	0%	0	0%	0	0%	0	0%
Mortgage plain language	n/a	n/a	n/a	n/a	0	0%	0	0%	0	0%
Online security	n/a	n/a	n/a	n/a	1	1%	0	0%	0	0%
Undertaking on unsolicited services	1	0%	1	1%	1	1%	8	2%	0	0%
Visa E-promise	n/a	n/a	3	2%	1	1%	1	0%	0	0%
Zero liability credit cards	19	10%	9	6%	12	10%	20	5%	16	4%
Zero liability prepaid cards	2	1%	0	0%	0	0%	0	0%	0	0%
General	n/a	n/a	n/a	n/a	0	0%	0	0%	0	0%
Total	199		139		122		409		388	
Commissioner's Decisions:	(not posted prior to 2009-10 year)		1 violation for failing to disclose line of credit terms; no penalty		1 violation for failing to disclose credit card interest rates set aside because FCAC did not act within limitation period		1 violation for failing to disclose full information on a consumer purchase plan using Bank credit card; AMP of \$150,000		3 orders for public meetings made for Banks to consult on closing branches	
			2 violations (same bank) for charging a fee to cash a federal cheque; no penalty		1 non-compliance order issued for bank that improperly held customer liable for stolen PIN		general examination of new requirements in the <i>Cost of Borrowing Regulations</i> resulted in 30 notices of violation which included 9 fines being levied (6 for \$25,000; 3 for \$12,500)		1 finding of non-compliance issued for bank that improperly held customer liable for stolen PIN	
			1 instance of no violation regarding inconsistent information on credit card statements; Bank ordered to correct		2 orders for public meetings made for				4 violations (same Bank) for failing to disclose credit card interest rates properly;	

Financial Consumer Agency of Canada (FCAC)¹⁹⁶											
Compliance-Related Complaints Received from Consumers											
	2008-09		2009-10		2010-11		2011-12		2012-13		
	#	%	#	%	#	%	#	%	#	%	
			1 violation (same Bank as above) for having inconsistent information on credit card statements; AMP of \$50,000 same Bank subsequently did not bring itself into compliance; additional AMPs totalling \$450,000		Banks to consult on closing branches		1 deemed violation ¹⁹⁷ for not providing complete information about calculating interest on a savings account 1 order for public meeting made for Bank to consult on closing branches 2 violations (same Bank) for non-disclosure of mortgage prepayment penalties; AMP of \$50,000		1 deemed violation for not providing complete information about calculating interest on a savings account 1 order for public meeting made for Bank to consult on closing branches 2 violations (same Bank) for non-disclosure of mortgage prepayment penalties; AMP of \$50,000		AMP of \$225,000 1 deemed violation for improper bank communications on mortgage payment due dates; AMP of \$50,000 1 violation for not fully disclosing the method used to calculate the exchange rate on credit card statements; AMP of \$25,000

¹⁹⁷ When the Bank does not provide written representations to the FCAC in response to a Notice of Violation, they are deemed to be in violation.

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