

April 16, 2014

Ms. Jane Pearse
Director, Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
140 O'Connor St.
Ottawa, Ontario K1A 0G5

Re: Canada's Financial Consumer Protection Framework: Consultation Paper

The Canadian Federation of Independent Business (CFIB) welcomes the opportunity to provide guidance to the federal government in its efforts to create a comprehensive set of principles for financial consumer protection. As you may know, CFIB is a not-for-profit, non-partisan political advocacy organization that represents the views of over 109,000 small- and medium-sized businesses in Canada, in all major sectors of the economy and every region of the country. Small business owners often have many of the same preoccupations as regular Canadian consumers with regard to navigating the financial industry's various products and programs. We feel it is important to identify the challenges faced by small business owners in these circumstances and that they are given the same protections as other Canadians when dealing with financial institutions. To that end, we recommend that the federal government amend the proposed title of the framework to include small business (i.e. *Canada's Financial Consumer and Small Business Protection Framework*).

It is also important to note that CFIB lead the efforts to develop the *Code of Conduct for the Credit and Debit Card Industry in Canada*, which could serve as a guide for the Financial Consumer Framework. Though the Credit Card Code of Conduct needs further strengthening to address new developments in this industry, it nevertheless was a worldwide first, and was effective in providing smaller merchants with some power when dealing with the payments industry. The Code's use of principles instead of more prescriptive language gave the government greater flexibility in oversight and has allowed them to provide additional guidance as the industry evolved without rewriting the Code. One of the lessons learned since the launch of the Code of Conduct, however, is the need for a formal, independent dispute resolution process that would give merchants an easily accessible and inexpensive way to file and resolve complaints. The Financial Consumer Protection Framework should adopt some of the attributes and lessons learned from the Credit and Debit Card Code of Conduct.

Establishing the Principles

CFIB strongly supports a principle-based framework to guide oversight of the financial consumer product industry. Much like the payments industry, there is constant innovation in terms of

product offerings and new entrants. Being overly prescriptive would require the government to constantly review its rules to ensure they were up to date and accounting for new technological developments. A long list of strict regulations would also lead to some industry players to look for workarounds that would obey the wording of the rules, but not their intent.

The themes listed in the consultation paper – stewardship in consumers’ interest, accessibility, disclosure, responsible conduct and redress – are good starting points for discussion on principles. Each of these areas can be fleshed out with some specific actions and/or behaviours that would be required of financial institutions and bring some clarity to consumers on what to expect from them.

To ensure the framework is being properly applied, there will have to be oversight. The *Financial Consumer Agency of Canada* (FCAC) is in many senses a natural fit for this oversight, and already does this to some degree, but they do not provide dispute resolution services to consumers. Traditionally this has been the role of the *Ombudsman for Banking Services and Investments* (OBSI). Though the Banking Ombudsman has lost support from some financial institutions in recent years, CFIB members have had a positive view of the OBSI overall and how it operates. The issues addressed in the consultation document as well as the proposed mechanisms to oversee the industry touch on work already being done by the OBSI and the FCAC. The government should avoid duplication of efforts and consider OBSI and FCAC in their plans for the oversight of the Consumer Protection Framework.

Possible Enhancements to Existing Regime

Dispute Resolution Process

The consultation paper lists the current powers held by the FCAC and notes its ability to impose an administrative monetary penalty of up to \$500,000 on non-compliant financial institutions. As noted above, these powers should also apply to its oversight of the new Consumer Protection Framework principles. Any actions that are contrary to the principles outlined in the Consumer Protection Framework—especially those which result in consumers and small businesses being the target of abusive behaviour—should be acted upon swiftly.

However, Canadian consumers and small business owners also need an easily accessible, cost-effective and independent dispute resolution process to handle and resolve specific complaints. This could be the OBSI, as outlined above, but it has faced challenges from some financial institutions that have since pulled out of OBSI. From a consumer perspective, it would be preferable for there to be just one independent body, paid for by the financial institutions and approved by government to manage dispute resolution. There are many different types of dispute resolution systems - one that has been effective is the *Commissioner for Complaints for Telecommunications Services (CCTS)*. The CCTS acts as an intermediary between the large telecommunications providers and clients, including small business customers, when disputes arise. It has been a very valuable resource for small businesses, and is supported by all the major telecommunications service providers.

CFIB sees great value in this type of service, and supports the development of similar services in other areas of the financial services industry, that can play an active and productive role in the

dispute resolution process. To be effective, it is crucial that these principles have a firm endorsement not only from the designated agency, but also from the Minister of Finance, and that non-compliance going forward would be addressed by tougher, more explicit measures.

Addressing the Needs of Seniors and Vulnerable Canadians

There is no doubt that some Canadians are faced with specific challenges when it comes to navigating the array of financial services and products available to them. Newcomers, seniors and the youth, among others, have a hard time finding the tools and resources they need to make the most informed decisions to meet their financial needs. Financial literacy is a key element, affecting not only the most vulnerable Canadians but all Canadians, including the small business owner. The federal government should play an active role in promoting financial literacy and raising awareness among Canadians. Adoption of plain language is critical to help the consumer navigate through service agreements with financial institutions, as well as in reviewing banking and credit-card statements and all other agreements with financial service providers.

Innovation

Innovation in the financial services industry can lead to more effective product delivery, better returns on investments, and perhaps improved customer service. However, new developments can also mean unregulated terrain for new products and services. For instance, mobile payments are a great example of innovation within financial services. The major banks and credit card companies are set to team up with the telecommunications companies to allow credit card and debit card processing using a customer's cell phone. While CFIB is in favour of giving customers and businesses more options, the addition of new payment methods shouldn't result in additional fees and costs to the merchant. There are proposed guidelines for mobile payments as a part of the Code of Conduct for the Credit and Debit Card Industry but they have not yet been implemented despite the fact that mobile payments are now available in the market.

Whenever innovation occurs, the proposed Consumer Protection Framework must be adapted quickly to ensure that consumers are protected. We also recommend that financial institutions get their clients' explicit approval to benefit from a new development, product or service. We stress that new developments must be communicated in plain language, with a clear explanation of the benefits and costs of making whatever changes are necessary. In addition, products and programs must be easily accessible to small business owners, with limited amounts of red tape.

Disclosure about Financial Products and Services

In the financial services industry, as with the payments industry, proper disclosure has been difficult to achieve. For their part, card processing statements either suffer from information overload—making the task of distinguishing which information is important and which is not— or the statement lacks sufficient detail, leaving merchants unaware as to the true source of their costs. It is important that information on financial products and services be properly disclosed to consumers so that they can make decisions that suit their needs. We recommend the government present guidelines for the industry as to what does and does not qualify as proper disclosure.

CFIB has engaged many government departments to improve on plain language with some success, but the need is equally great for financial institutions and how they communicate with consumers. If consumers have all the information they need to make proper investment and financial decisions, Canadians will be much better off.

Specifically, we would suggest enhanced disclosure in the following areas:

1. The consequences of credit card debt. Some credit card companies indicate the amount of time required to reduce an outstanding balance to zero based on minimum payments. Further work along these lines would be beneficial.
2. Fund managers and brokers should fully disclose how much they charge in fund management fees and management expense ratios. These amounts can be incredibly high, and may reduce incentives from the general public to keep contributing to their RRSP and mutual funds. Including cost of management fees in financial statements would also increase competition in the marketplace as people are then better able to compare and contrast fees between competitors.
3. The general public's knowledge of credit card fees – both in terms of the cost to them but also to the merchant – is exceptionally low. We recommend that stronger wording of the benefits and costs of using credit cards, including the cost to the merchant, be made more available to consumers when selecting a credit card.

Access to Financial Services

In May 2013, CFIB published the latest edition of its review of Canada's banking sector and its service to small businesses.¹ The report contained feedback from CFIB members on their relationship with their bank, including financial availability, fees, account manager and services. The report also contained recommendations on how the federal government can support SMEs in their relationship with the major banks. One recommendation was geared towards making sure that financial institutions are adhering to the *Small Business Banking Code of Conduct* with regard to financing.² Many principles in the Banking Code of Conduct relate to accessibility and disclosure and could easily be applied to all financial consumers. The banking sector plays a vital role in supporting Canada's entrepreneurial activity and SMEs need to be able to access to clear and objective information in order to make the most informed decisions about their banking needs and to successfully grow their business.

Conclusions and Recommendations

While CFIB recognizes that important work has been done to improve consumer protection, both for small business and general consumers, there remains much to be done to improve the relationship between financial service providers and small business customers. Canadians as a whole would benefit from independent, equal and transparent guidelines and principles in a

¹ The report can be found at <http://cfib.ca/a5171e>

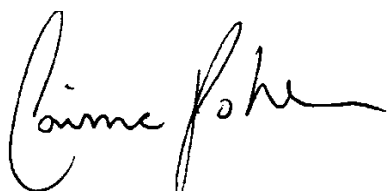
² The Code of Conduct can be found at: <http://www.cba.ca/en/consumer-information/45-small-business-services/71-small-business-banking-code-of-conduct>

financial consumer framework. This letter provided several key recommendations on behalf of small business customers, to strengthen Canada's Financial Consumer Protection Framework, including:

- Strengthen and improve the *Code of Conduct for the Credit and Debit Card Industry* and update it to include new developments, such as mobile banking;
- Ensure that there are clear guidelines and principles for federal bodies in charge of oversight in the financial services industry, such as the *Financial Consumer Agency of Canada (FCAC)* and the *Ombudsman for Banking Services and Investments (OBSI)*;
- Facilitate access to *cost-effective and independent dispute resolution processes* to handle and resolve specific complaints. Consider using OBSI for this purpose or expanding the scope of FCAC;
- Promote the use of *plain language* in contracts and service agreements between small business clients and financial service providers;
- Improve the *financial literacy* of Canadians (e.g. understanding the cost of borrowing, navigating banking statements, etc);
- Ensure that the Consumer Protection Framework contains a *mandatory, fully-enforceable* set of rules and principles with clear and specific consequences in case of non-compliance;
- Strengthen and promote the *Small Business Banking Code of Conduct*; and
- Amend the proposed title of the framework to include small business (i.e. *Canada's Financial Consumer and Small Business Protection Framework*).

We support the federal government's goal to create a more comprehensive consumer code and are grateful for the opportunity to provide feedback on behalf of small- and medium- sized businesses. We hope that our comments will be useful in developing policies going forward to strengthen Canada's Financial Consumer Protection Framework. Should you have any questions, please feel free to contact me directly in Ottawa at 613-235-2373.

Sincerely,

A handwritten signature in black ink, appearing to read 'Corinne Pohlmann', with a stylized, flowing script.

Corinne Pohlmann
Senior Vice-President, National Affairs