

---



Scotiabank Submission to the  
Consultation for the Review of the  
Federal Financial Sector Framework –  
Potential Policy Measures to Support  
a Strong and Growing Economy:  
Positioning Canada’s Financial Sector  
for the Future

---





---

## Executive Summary

This submission provides Scotiabank's response to the consultation for the second phase of the Review of the Federal Financial Sector Framework. We are encouraged by the Government's commitment to ensuring the stability, efficiency and utility of the financial services sector and agree that this review offers an excellent opportunity to update the financial services regulatory framework (including the *Bank Act* and its regulations) for the 21st century.

In response to the second consultation paper, Scotiabank would like to highlight the following areas which we believe will modernize the existing financial services legislation to reflect the changing landscape in the financial services sector, while maintaining the safety and security of our banking system and our customers:

- **Seamless Regulatory Framework:** We encourage the Government to pursue legislation aimed at ensuring exclusive federal jurisdiction over the critically important consumer protection framework for the financial services industry in Canada.
- **Embracing Innovation:** The *Bank Act* should be amended to reflect the reality of financial services today and prepare the sector for the future. Initiatives such as implementing a regulatory sandbox and the adoption of less restrictive investment provisions supporting greater collaboration with FinTechs should be considered. As well, we support the Government's proposed study on open banking, particularly as it relates to the safety and security of the banking sector and our customers. Lastly, the modernization of corporate governance should also be addressed in this review.
- **Cybersecurity:** We support the Government's commitment to develop a national cybersecurity strategy and we encourage the development of a comprehensive set of regulatory controls and a collaborative environment. Cooperation between federally regulated financial institutions, other private sector players and the public sector will create a successful strategy to combat more sophisticated and challenging attacks on the Canadian cyber landscape.

---



## Introduction

Scotiabank is pleased to have the opportunity to provide this submission to the Government's second phase of consultation on the review of the Federal Financial Sector Framework. We are encouraged to see that the Department of Finance has taken the feedback from stakeholders in the first phase of consultations, with the second consultation paper highlighting the importance of modernizing the financial services legislative framework to address the needs of today's customers while ensuring the stability of the banking sector.

The Canadian banking system has been a model of stability in the global financial system, ranking among the soundest in the world for the last decade and weathering the financial crisis. Banks in Canada are well capitalized, well managed and well regulated. The principles-based approach has been integral to the systems success and will continue to be essential in the preservation of stability within an ever evolving digital environment. The influence of technology on all sectors of our economy has crafted a financial services environment rich in both bank and non-bank entities. As such, regulation exclusively entity-based, no longer meets the needs of the sector. This review provides an opportunity to take an activity-based approach to regulation, ensuring the safety and security of our banking system and our customers is maintained.

Our recommendations are primarily focused on ensuring that the updated financial sector legislative framework will foster an environment for future innovation in financial services, while safeguarding the sector and maintaining the stability needed for continued consumer trust.

---



---

## Seamless Regulatory Framework

As consumer-driven trends push greater innovation within financial services, we believe the financial industry will be positioned to seize the opportunities and meet the challenges that the new reality presents, if the federal financial framework for banks is seamless and exclusively federal, as it relates to consumer protection. One of Canada's great advantages during the global financial crisis and afterward has been the seamless regulatory framework, with primary responsibility for the financial sector resting with the federal government. We believe this continues to be a source of strength for the sector and a competitive advantage over other jurisdictions, where regulation is further fragmented.

We encourage the Government to further solidify its federal jurisdiction over banking and pursue legislation aimed at reinforcing and ensuring exclusive federal jurisdiction over the critically important financial services industry in Canada. A coherent regulatory framework with respect to consumer protection provides consistency in rules and regulations to foster innovation and competition within the sector, while ensuring the safety and soundness of the banking system.

## Embracing Innovation

This *Bank Act* Review offers the opportunity for policymakers to ensure Canada has a federal financial services regulatory framework in place that addresses not only the sector today, but prepare it for the unknown disruptions and challenges of the future. The modernization of the *Bank Act* must reflect the reality that financial institutions in Canada are heavily investing resources in digital transformation in an effort to provide the most innovative and advanced services to customers while maintaining the safety and security of the financial system. With the next mandated legislative review of the financial

sector framework for Canada not scheduled to occur until 2024, a flexible, principles based approach will ensure that innovation within the sector is not stifled, as greater advancements in new technologies such as artificial intelligence, quantum computing and blockchain, influence the way commerce is executed.

We encourage the Government to use this review to take an activity-based approach to regulation. With many non-bank entities providing aspects of financial services to customers, the entity-based approach no longer serves the scope of activity within the sector. Proportional but robust regulation should include banks and non-banks in the business of payments, lending and the equivalent of deposit taking offerings, to ensure that the soundness and integrity of the financial services sector in Canada is maintained.

## FinTech Collaboration

As noted in our submission to the first phase of this consultation, we would like to underscore our support for the Government amending the provisions in Part IX of the *Bank Act*. The modernization of these provisions is critically important and required to facilitate the development and delivery of new financial solutions to consumers and encourage collaboration between banks and the FinTech community.

We support legislative changes to modernize the business powers of financial institutions as they relate to "FinTech". In particular, we support amendments to the *Bank Act* investment regime and modernization of Section 409 and 410 as "FinTech" and "technology" are increasingly intrinsic to and intertwined with the business of banking and provision of financial services to our customers. The current wording of Section 410 is out of date for the complexity of today's technologies and not flexible enough for the future. The complex and lengthy approval process

---

for banks to carry out technology activities or partner with non-bank FinTech companies is a major barrier to bank competitiveness and FinTech growth in the economy. In addition, the networking provisions of Section 411 have been interpreted restrictively and require further modernization and clarification in terms of the networking arrangements permitted without ministerial approval.

The scaling up of smaller FinTech firms has been a priority identified by the federal government and its provincial partners. Initiatives between the public and private sector such as ScaleUP Ventures and the Business Growth Fund, aim to improve capital access to small and medium sized enterprises in Canada. We support the government's proposal for establishing a materiality threshold for Superintendent's approval for the acquisition of unregulated entities up to 2% of consolidated assets of the acquirer. This would provide banks the ability to act quickly and with greater flexibility, to provide capital to FinTech businesses with which they may seek partnership.

### **Regulatory Sandbox**

We continue to encourage the Government to explore the regulatory sandbox model to foster greater collaboration in financial services between incumbent providers and FinTech companies. A regulatory sandbox would allow financial institutions to test innovative products and services in specifically approved instances, without the burden of excessive regulation, while maintaining appropriate safeguards to protect consumers. The implementation of the regulatory sandbox in both the United Kingdom and Singapore stands as a strong model for implementation in Canada. In particular, the Financial Conduct Authority's regulatory sandbox in the UK serves as a model for deeper study in Canada. Operational since July 2016, the sandbox has supported 42 firms through testing,

as part of its first two cohorts. While too early to determine the long-term impact of the regulatory sandbox in supporting innovation in financial services in the UK, the strong uptake to date from both incumbent banks and FinTechs suggests the model is worthy of further review.

### **Open Banking**

Scotiabank welcomes the Government's interest in studying the merits of open banking. We are excited by the potential of open banking to bring greater simplicity, security and efficiency to financial services in Canada, but understand there are still many uncertainties. Thoughtful evaluation of the impacts of open banking will be necessary to inform public policy, particularly its impact on customers, the broader stability of the banking system and trust in Canadian financial institutions.

Open banking may enable customers to decide who can access their financial data and the purposes for which they have access. More research is required to fully understand potential consequences and establish accountabilities, particularly for validating the legitimacy of third parties, and identifying responsibility in the event of fraud. Specifically in the scenario where a customer may be subscribing to a service with multiple providers some of which may be unregulated. The impact of large scale breaches, most recently seen in the market, may be amplified.

We agree with the Government that it will be important to look to other jurisdictions for lessons learned and best practices for an open banking framework. Scotiabank would like to underscore the importance of a regulatory framework around open banking which is grounded in activity-based regulations as opposed to an exclusively entity-based approach to regulation. Open banking initiatives in the European Union and United Kingdom are still in

---

their infancy and it remains too early to gauge the scope of unintended consequences. We encourage the Government to work closely with Canadian sectors likely to be impacted by open banking, to understand potential benefits and risks, and to determine the policies that will best serve Canadian consumers.

### **Corporate Governance**

This *Bank Act* Review is the optimal time to modernize provisions related to corporate governance. As efforts to improve and update legislation to meet today's corporate environment are underway, we should acknowledge that the principles based approach to managing corporate governance has served the financial industry well to date.

With the Government and industry having the shared desire for simplified legislation, we note that many of the proposed changes in the consultation document are already addressed in the existing securities law regime and stock exchange requirements, and should be looked to as models. Scotiabank supports gender diversity, the establishment of annual elections and mandating individual director elections, as well as a majority voting policy consistent with the TSX requirements. As well, we fully support the permitted use of "notice and access". The Canadian financial services sector has been a leader in corporate governance and the proposed changes will further modernize the financial services framework.

### **Cybersecurity**

Scotiabank's priority is the success of our customers, and delivering financial services through digital channels, brings both opportunities for improved customer service, but also additional challenges through cyber security threats. The protection of our customers' information demands continuous strategies

and controls and we are constantly working to preserve their data availability and confidentiality.

We are supportive of the Government's commitment to bring forward a national cyber security strategy, binding critical elements to derive specific controls to support the changing digital landscape. We encourage the Government to consider the adoption of Information Technology risk management principles aligned with practices and existing regulatory guidelines in other geographies to better manage cyber risks.

Along with the Government's cyber security strategy, the deployment of controls related to strong customer authentication for electronic banking services performed through digital self service delivery channels will be a key component to encourage the evolution of digital banking in Canada. Over the last decade, several jurisdictions around the world have proven that specific electronic banking regulatory requirements have;

- 1) Enhanced customer protection controls, decreasing external and internal fraud rates;
- 2) Led to the promotion of competition within the financial services sector specifically in terms of information security controls;
- 3) Embraced innovative information security solutions and encouraged the growth of disruptive technologies in financial services, supporting the digitization of banking from end to end of the customer experience.

There is opportunity for Canada to leverage the experience of Mexico, Singapore and Europe to prescribe additional operating controls applicable to digital banking channels. These efforts may reinforce fraud management capabilities, as well as, the customer claims processes, strengthening the existing controls to prevent cyber risk related frauds.

---

Open banking must also be addressed in the cybersecurity discussion. With market players having varying levels of security safeguards, the increased exposure of customer information heightens the risk of data being compromised and misused.

As the financial services sector evolves through enhancements in digital technology and disruptive innovation, the private and public sector must seek to maintain the robust security controls that are required to protect customers

and enhance cyber risk management capabilities. We encourage the Government to continue to foster a collaborative environment between federally regulated financial institutions to share cyber threat information through a formal secure channel and support the co-ordination of intelligence exchange related to national cyber security incidents. Fostering an environment for Canadian innovation in the area of cybersecurity will further support Canadians confidence in our financial system.

---



## Conclusion

We conclude by reiterating our support for the Government's modernization of the federal financial sector framework. Canada's financial industry has demonstrated that it is capable of competing and innovating on a global scale, while maintaining the safety and soundness customers rely on. A flexible, principles based, exclusively federal framework will ensure the stability, efficiency and utility of the financial services sector in Canada is maintained within the reality of both the economy of today and the economy of the future.

---

