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Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
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Sent by email to LegislativeReview-ExamenLegislatif@canada.ca

Re: Consultation on the Review of the Federal Financial Sector Framework

To whom it is concerned:

Thank you for the opportunity to respond to the questions in Consultation Document for the Review of the Federal Financial Sector Framework. We are extremely fortunate to be living in a democratic society that allows its citizens to participate in public consultation processes with the government. As a citizen, a professional in the industry and a consumer I strongly feel that my enclosed responses provide meaningful insights to opportunities to improve the Federal Financial Sector Framework.

According to the consultation paper, the purpose of this review is to assess whether the financial sector legislative and regulatory framework effectively supports growth and positions the sector to meet the federal government's policy objectives of:

• **stability** - the sector is safe, sound and resilient in the face of stress;
• **efficiency** - the sector provides competitively priced products and services, and passes efficiency gains to customers, accommodates innovation, and effectively contributes to economic growth; and
• **utility** - the sector meets the financial needs of an array of consumers, including businesses, individuals and families, and the interests of consumers are protected.[1]

I strived to answer the questions with these policy objectives in mind, please see my responses as follow:

Q1. What are your views on the trends and challenges identified in this paper? Are there other trends or challenges that you expect to significantly influence the financial sector going forward?

Evolving Financial Marketplace for Consumers (page 26) focuses mainly on services that are unique to chequing and savings accounts and credit cards which are predominantly controlled by banks. However, there are other types of products and services of similar importance,

[1] https://www.fin.gc.ca/activty/consult/ssge-sefc-eng.pdf

manufactured and distributed by entities other than banks that should be mentioned in this section. For example, in the case of mutual funds and ETFs which represent in Canada, $1.3 trillion[2] and approximately $100 billion[3] respectively are currently undergoing evolutionary changes between themselves. These products are significant as they are ubiquitous to Canadians' retirement strategies (RRSPs, RRIFs, pensions, etc.) and serve to assist Canadians with their financial planning needs. Without having mentioned this important segment of the financial marketplace, it downplays the importance of investing.

There is a unique type of evolution that is occurring in the financial marketplace, consumer advocacy. Since the financial crisis and with the advent of social media and mobile internet, consumer behaviours have changed to demand more transparency and accountability in corporations and other types of organisations. One recent example of change driven by consumer advocacy is the disclosure of investor's cost in dollars and cents rather than just in percentages for access to investment management services, a component of the Client Relationship Model - Phase 2 (CRM2).[4] The benefit of this new information allows consumers to weigh the value of service and advice. If consumers feel the cost is too high, then they are more empowered to shop around for what they believe is of better value.

Consumer advocacy on the importance of creating a more sustainable world is a growing trend among various groups including the investment community. The three factors Environmental, Social and Governance (ESG) exist to frame the key issues that are considered risks and opportunities to the world's economic development. These issues can often be measured, but it can be difficult to assign them a monetary value, the following are some examples of ESG issues:

- **E**nvironmental - climate change and carbon emissions, air and water pollution, biodiversity, deforestation, energy efficiency, waste management, water scarcity;
- **S**ocial - customer satisfaction, data protection and privacy, gender and diversity, employee engagement, community relations, human rights, labour standards; and
- **G**overnance - board composition, audit committee structure, bribery and corruption, executive compensation, lobbying, political contributions, whistleblower schemes.[5]

Each ESG factor is represented by various consumer advocacy groups with the mission of raising awareness of the issues and seeking public engagement in working toward a resolution. With the aid of social media technologies, advocates are mobilising crowds to help spread their message across borders and communities for positive change.

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[2] As of July 2016, IFIC Statistics https://www.ific.ca/wp-content/uploads/2016/08/2016-07-IFIC-Industry-Overview.pdf/14951/

[3] Estimated as of May 2016, http://business.financialpost.com/investing/etfs/the-market-share-battle-between-etfs-and-mutual-funds-heating-up-as-canadian-etfs-pass-100-billion-milestone?__lsa=03f0-b3d4

[4] http://www.osc.gov.on.ca/en/Dealers_crm2-faq-planning-tips.htm

[5] http://www.sustainalytics.com/sites/default/files/cfa-esgissuesinvesting2015.pdf

Institutional investors such as pension plans, foundation and endowment funds are using ESG data to help in the investment decision-making process as they tend to have a financial impact on the investments. For example, the scandal of Volkswagen cheating on its emissions test for diesel cars caused more than 30% loss of its market cap in a short time. Before the scandal breaking ESG analysts had concerns about Volkswagen for some time as the company scored lower than 72% of companies globally on corporate governance. Volkswagen corporate governance score at MSCI had been falling since 2014 due to management and board turmoil.[6]

Pension plans in Ontario are now mandated to include information on whether ESG factors are incorporated into their Statement of Investment Policies and Procedures (SIPP) - the legal binding contract among all parties involved - and if they are, how are they incorporated. Alberta, British Columbia and Nova Scotia are considering to follow.[7] Currently, there is no requirement to share this type of information with retail investors, but with consumer advocacy growing, other types of investors are requesting ESG data to aid in the investment decision-making process from either understanding their risk exposure beyond price volatility or an alignment of personal values. Access to the information is not free and paid through a subscription at private institutions making it a benefit to only some and not all.

Q2. How well does the financial sector framework currently balance trade-offs between the three core policy objectives of stability, efficiency and utility?

The Bank of Canada (est. 1934), a crown corporation and a federal oversight body of the Government of Canada, actively reviews and reports twice yearly on the stability and efficiency of the financial system. The Financial Consumer Agency of Canada (FCAC, est. 2001), an independent agency of the Government of Canada, works to protect consumers and foster their understanding of financial products and services. Through their mandate of promoting financial literacy, their goal is to empower consumers with the knowledge, skills, and confidence to make responsible financial decisions. In 2013, the Financial Consumer Agency of Canada Act (short title: Financial Literacy Leader Act) was amended to allow for the appointment of a Financial Literacy Leader to exercise leadership at the national level to strengthen the financial literacy of Canadians. Since then Canada’s first leader was appointed, a National Steering Committee on Financial Literacy formed and a national strategy developed - National Strategy for Financial Literacy – Count me in. However, as this strategy is relatively new, there is no data to measure the effectiveness of the strategy. “*Progress on the strategy will be measured using a range of evaluation tools supported by research, for example, on effective methods of delivering initiatives to Canadians. The Canadian Financial Capability Survey, conducted every five years (next in 2019), has helped to identify goals and will be a key reference point for measuring change in Canadians’ financial literacy over time. Tracking, measurement and reporting mechanisms will be established to ensure individual programs are consistently evaluated and, if necessary, improved upon. Best practices will be shared.*”[8]

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[6] https://www.ft.com/content/6af071a8-6205-11e5-a28b-50226830d644

[7] http://www.pionline.com/article/20150109/ONLINE/150109915/ontario-requiring-all-db-funds-to-disclose-esg-data

[8] http://www.fcac-acfc.gc.ca/Eng/financialLiteracy/financialLiteracyCanada/strategy/Pages/home-accueil.aspx

In the past policy objectives tilted more to the stability and efficiency than to the utility of the financial sector framework, however, this may change with the amendment to the Financial Literacy Leader Act and the creation of a national strategy that should collect feedback from consumers.

The Government of Canada should also work with other types of financial services institutions beyond banks in developing the new financial consumer framework, for example; innovative organisations such social finance where consumers can participate in providing capital to improve social and economic outcomes for Canadians and make a positive impact on society.

Q3. Are there lessons that could be learned from other jurisdictions to inform how to address emerging trends and challenges?

In Europe, there are some recent legal changes along with a series of public consultations with the European Commission on reform. One example of a legal change that primarily driven by demands of the investor community is the European Directive on Non-Financial Information Disclosure (the Directive). It mandates that large public-interest entities with more than 500 employees are required to disclose in their management report relevant and useful information on their policies, main risks and outcomes relating to at least; environmental matters, social and employee aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors on an annual basis.[9] Although this information falls under the ESG topics, under this legislation it is described collectively as corporate social responsibility or sustainability.

The collaborative process began with the European Commission back in 2011 when the Commission launched public consultations on corporate governance and corporate social responsibility as an initiative to redefine the role of businesses in today's economy and strengthen confidence in the economy. In February 2013, the Parliament adopted two resolutions on corporate social responsibility (resolutions are instruments that enable the European institutions to suggest guidelines for coordination of national legislations in a non-binding manner).[10] In April 2013, the Commission adopted a proposal to enhance business transparency on social and environmental matters and acknowledged the change was about providing useful information for companies, investors, and society as a whole - much demanded by the investor community.[11] In 2014, the Parliament adopted the Directive which will transpose into national legislation by December 2016. Companies concerned will have to adapt to the new requirements and start reporting as of their financial year 2017.

Some other jurisdictions have created legislations around corporate governance. For example, In the US, in 2010 shareholder advocates won a significant victory when the Dodd-Frank Wall Street Reform and Consumer Protection Act came into law. It gave explicit authority to the Securities

[9] http://ec.europa.eu/finance/company-reporting/non-financial_reporting/index_en.htm#news
[10] http://www.europedia.moussis.eu/books/Book_2/2/3/3/index.tkl
[11] http://europa.eu/rapid/press-release_IP-13-330_en.htm

and Exchange Commission (SEC) to implement a rule to allow shareholders to nominate directors to the boards of their portfolio companies and to have access to the company's proxy statement to make a case for their nominees.[12] The law specified, too, that publicly-traded companies must allow shareholders, at least once every three years, the option to vote on executive compensation ("say on pay") and provide disclosure regarding whether, and if so how, companies have considered the results of this vote. Then in August 2015, the SEC mandated that a public company must disclose the ratio of the compensation of its chief executive officer (CEO) to the median of its employees to help inform shareholders when voting on "say on pay".[13]

Another reform that being pushed from the investment community and advocacy groups is for the SEC to adopt a new regulation requiring disclosures on ESG matters. In April 2016, the SEC launched a public consultation on hundreds of topics relating to business and financial disclosure requirements for publicly-traded companies. Several topics addressed the disclosure of company information relating to ESG concerns and public policy issues. Although many of the largest companies in the US voluntarily publish annual sustainability/ESG reports, the issues are to what extent should publicly-traded companies be required to report on ESG matters and to establish a standard for ESG reporting that will be effective when comparing companies across ESG factors. Currently, the concept is still in the review process. However, the regulators do recognise that there is a trend among investors to incorporate ESG information into the decision-making process and that the current reporting methods do not make such information readily accessible.[14]

[12] http://www.gsi-alliance.org/wp-content/uploads/2015/02/GSIA_Review_download.pdf
[13] https://www.sec.gov/news/pressrelease/2015-160.html
[14] http://www.lexology.com/library/detail.aspx?g=8148a821-b3d0-4e23-b7de-55b06f9ed7da

Q4. What actions could be taken to strengthen the financial sector framework and promote economic growth, including with respect to the identified themes? How should those actions be prioritised?

Restoring investor confidence in the financial markets can help strengthen the financial sector with increased participation thereby promoting economic growth. Investor education and the creation of mechanisms to protect investors through transparency and fairness are baseline approaches to achieving these goals.

FCAC

FCAC's national strategy for financial literacy is driven by three goals: 1. Manage money and debt wisely; 2. Plan and save for the future and; 3. Prevent and protect against fraud and financial abuse. As mentioned earlier in this submission the strategy is relatively new and is in its preliminary stage, however, it is an opportunity to expand the definition of financial literacy to include other important information that can impact consumer financial well-being. There is a growing number of investors who are looking beyond returns and capital preservation to making a positive impact to society when investing in financial products and services aligned with their personal values. In the past, the challenge was being able to identify and measure specific non-financial factors that would provide transparency for the governance and operations of a company, however, today with decades of work of many NGOs and individuals most of this information is collected. With sustainable development rapidly evolving as a global concern especially in the face of climate change, investors are looking for guidance in this space. FCAC can be the leader in helping educate millions of Canadians beyond developing healthy personal finance habits and incorporate how their investments impact communities and societies at large.

Canada Business Corporations Act

The Canada Business Corporations Act (CBCA) provides the necessary corporate governance framework for many small and medium-sized Canadian enterprises as well as many of the largest corporations operating in Canada. Nearly 265,000 companies were incorporated under the CBCA in 2015. CBCA corporations make up approximately 40 percent of Canada's largest publicly-traded business corporations.[15]

On December 11, 2013, the Minister of Industry (now Ministry of Innovation, Science and Economic Development) launched a public consultation on the CBCA to help identify ways in which the CBCA can better promote policy objectives on several issues. Some of these matters included corporate governance, diversity of corporate board members and management teams to the role of corporate social responsibility (CSR).[16] The initiative attracted participation from various stakeholders from for-profit, not-for-profit, and hybrid organisations. Some submissions addressed the issues including that of corporate social responsibility; as to whether the existing provisions of the CBCA adequately promote CSR objectives and whether additional measures to promote

[15] http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_cl00022.html
[16] http://news.gc.ca/web/article-en.do?nid=801219

CSR objectives are warranted in the CBCA.[17] Then on September 28, 2016, as a result of consultative process Bill C-25, *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act*, was introduced. However, the proposed changes focused on corporate governance and board diversity issues and negated any recommendations on improving CSR through a regulatory framework.

CSR behaviours are becoming mainstream issues with investors and consumers. The Government of Canada should reopen this discussion with the necessary departments and agencies to promote policies on the disclosure of non-financial information by corporations, as this will help provide the necessary transparency instead of speculation required for investors and consumers to consider before making an investment decision.

Provincial Securities Regulators

At this point, Canada does not have a securities regulator at the federal level. Each province has its own securities regulator that administers its own act thus promoting its own set of rules and regulations[18]. During 2010, the Ontario Securities Commission (OSC) conducted a review to assess the adequacy of corporate governance disclosure (National Instrument 58-101 Disclosure of Corporate Governance Practices) and provided guidance on compliance with existing environmental disclosure requirements (National Instrument 51-102 Continuous Disclosure Obligations). Both part of OSC's Corporate Sustainability Reporting Initiative — a result of a non-binding resolution "**to undertake a broad consultation to establish best practice corporate social responsibility and environmental, social and governance reporting standards.**"[19] The outcome of such an initiative provided regulatory changes to improve certain aspects of corporate governance for example; TSX-listed issuers are required to disclose their policies, targets and other information on women on boards and senior executive position. However, the outcome under CSR ended around the middle of 2010 with an extensive review of disclosure requirements for social matters conducted by the Hennick Centre for Business and Law and Jantzi-Sustainalytics with no apparent 'next steps' from the OSC in the creation of a policy or action plan. As the OSC regulates the largest market in Canada and their actions have impacts for Ontario and the rest of Canada, the OSC can demonstrate its leadership and acknowledge the issue of CSR reporting as an outstanding issue and reopen it in its Statement of Priorities. The OSC can lean on the SEC's recent public consultation as mentioned earlier in this submission for guidance.

Another area the provincial regulators should become involved in is the sector of Responsible Investing (RI). According to the latest survey on the Canadian responsible investment report published by the Responsible Investment Association (RIA), as of December 31, 2013, assets in Canada being managed using one or more RI strategies increased by 68% in RI assets under

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[17] http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_cl00867.html#p3.10

[18] A number of provinces including British Columbia and Ontario are transitioning to a single set of provincial/territorial laws under the Cooperative Capital Markets Regulatory System https://goo.gl/ea81Hv

[19] http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20091218_51-717_corp-gov-enviro-disclosure.htm

management in just two years.[20] The growth in this sector has attracted the attention of many firms such that there is a risk that some are joining trade associations to create the perception and not a policy that responsible investing is part of their core investment philosophy. This perception is something referred to as greenwashing — when a company, government or other group promotes green-based environmental initiatives or images but operates in a way that is damaging to the environment or in an opposite manner to the goal of the announced initiatives. It can also include misleading customers about the environmental benefits of a product through misleading advertising and unsubstantiated claims.[21] Usually, trade associations are funded by members and serve for the purpose of education and advocacy in raising public awareness and do not hold their members accountable through any by-laws. Being a member of a trade association provides marketing benefits but lacks transparency.

The United Nations-supported Principles for Responsible Investment (PRI), the world's leading proponent of responsible investment through supporting its signatories to incorporate ESG issues into their investment decision-making and ownership practices, is experiencing its own challenges with 'signatories' RI implementation still lacking depth'. The issue has caused 'disgruntlement among some signatories that others are not doing enough to live up to the principles and that there is a lack of differentiation'.[22] As a result, the PRI is looking into adopting rules by next year that allow the delisting of companies that fail to put its principle into practice.

Simultaneously, most Canadians do not know what RI is but are willing to adopt it. Using Ontario as the example; a recent Desjardins Group survey revealed more than three-quarters of Ontarians never heard of RI yet 55% are willing to adopt the strategy once they learn the details.[23]

Given this growth and interest in the RI market, it is essential that clearer guidance is given by governments and the provincial regulators catch up with the sector particularly in protecting investors with formalised definitions of what constitute an investment firm and its products and services of being 'responsible'.

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[20] https://riacanada.ca/trendsreport/

[21] http://www.investopedia.com/terms/g/greenwashing.asp

[22] https://www.ipe.com/news/esg/pri-must-push-signatory-practice-says-independent-review/10012944.fullarticle

[23] http://www.newswire.ca/news-releases/what-is-responsible-investing-most-ontarians-have-no-idea-596930991.html

Q5. What other actions should be taken to ensure the financial sector framework remains modern and technically sound?

The world is increasingly changing, and economies have to adapt continually. The financial sector framework that can anticipate and manage threats, promote transparency and fairness, hold offenders accountable, foster innovation and encourage collaboration among all stakeholders to evolve its economy is a benefit to all types of consumers.

Consumers who are becoming more aware because of access to information to help in the decision-making process, are also becoming more empowered to change the status quo when they are not accepting of the choices available. Technology is helping to alter the culture by providing consumers with tools to take action through civic engagement. For example, in the US there is a social media technology (Brigade.com) that consumers, under their civil rights, can use to vote on policy issues, connect with the communities they vote with, share their views and influence others to help elect the leaders that support their views. It is a relatively new tool; however, it has the potential to expand its usage beyond its borders and apply its technology in other ways to foster civic engagement.[24] When consumers become more engaged, they are more likely to vote on policy issues that affect them most, and if critical mass is achieved, status quo changes.

In conclusion, to ensure that the financial sector framework remains modern and technically sound, the Ministry of Finance should step ahead and encourage more participation from citizens in the democratic process when seeking public input. By raising the awareness that such opportunities exist, a wider range of perspectives can be collected and allowed for insights that would not be gained through its general audience. Technology can be leveraged to analyse all responses and provide the most popular recommendations, assist in developing new policies or modify existing ones early enough and avoid current policy issues becoming a political platform to campaign on. Technology can help improve efficiency in the democratic process and contribute positively to the evolution of the financial sector.

Thank you again for the opportunity to participate in the consultation on the Review of the Federal Financial Sector Framework. If you have any questions regarding this submission, please do not hesitate to contact me at

Sincerely,
Kim Shah

[24] Forbes business article, November 3, 2016 https://goo.gl/I2CUvt