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DELIVERED VIA ELECTRONIC MAIL TO: legreview-examenleg@fin.gc.ca

Manuel Dussault
Director General
Financial Institutions Division
Finance Sector Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa ON K1A 0G5

Dear Mr. Dussault:

RE: CCUA's Response to Department of Finance Consultation on Strengthening Competition in Canada's Financial Sector

The Canadian Credit Union Association (CCUA) is pleased to respond to the Department of Finance's consultation on Strengthening Competition in Canada's Financial Sector. CCUA welcomes continued efforts to strengthen competition in Canada's highly concentrated financial sector.

Background

CCUA is the national trade association that provides services to Canada's 197 credit unions, caisses populaires (outside of Quebec) – including Canada's three federally regulated credit unions – and five regional central organizations (Centrals). Outside of Quebec, the credit union sector controls approximately $301B in assets – representing a 6.4% share of domestic assets held by all Canadian deposit-taking institutions – and serves more than 6M Canadians. As cooperative financial institutions, credit unions operate from 2,214 locations nationwide and are the only financial institutions (FI) physically located in 380 Canadian communities.

Including Desjardins, credit unions also support 277,000 small and medium-sized businesses in diverse industries and sectors, making them the largest lenders to small and medium-sized businesses at 21% market share and 10% of the agricultural lending market. Additionally, credit unions are among the largest lenders to homeowners, representing 16% of the market share in mortgage lending.

While the credit union sector includes three federal credit unions and one in the process of continuing federally, most credit unions are provincially regulated. Irrespective of whether they are regulated provincial or federally, all credit unions are cooperative financial institutions that exist to serve their members. Unlike banks, which exist to generate profits to increase shareholder value, credit unions generate profits for sustainability and growth reasons. Since 2004, Canadian credit unions have been chosen annually as the overall winners, among all Canadian financial institutions, in retail banking for Customer Service Excellence in the Ipsos Financial Service Excellence Awards.

Introduction

We are pleased to see the government move forward to identify how competition in Canada's financial sector can be strengthened. Canada's top six banks represent 93% of all assets, which will soon increase to 95% after the Royal Bank of Canada (RBC) acquisition of HSBC Canada is completed[1]. As a result of this concentration, innovation in financial services in Canada is being stifled, and consumers at the biggest banks are paying unnecessarily high fees. Changes to Canada's competition framework must be made to enable small and medium-sized financial institutions to grow and remain competitive to provide consumers an alternative to Canada's biggest banks.

Given that Canada's unique financial services sector consists of federally regulated and provincially regulated FIs, a comprehensive approach is needed to ensure that the country's financial sector is not further concentrated but supports greater consumer choice, stronger competition among industry players, and increased innovation.

One of our key recommendations in that regard is that the various segments of the financial sector – e.g., banks, credit unions, federally regulated FIs, and provincially regulated FIs – should not be viewed in isolation but as essential parts of a larger, national financial sector that provides innovative and suitable financial products and services to Canadians across the country. This requires a federal framework that reflects collaboration among federal and provincial regulators and considers impacts on smaller and provincially regulated financial institutions and the Canadians they serve.

Credit unions are an essential component of Canada's larger financial sector framework and must be viewed as part of that larger framework. As such, we urge the government to review mergers between credit unions – whether provincially or federally – in the context of the impact it will have on Canadians and Canada's financial sector as a whole and not solely in the context of other cooperative FIs.

While our responses to the consultation's specific questions on Canada's competition framework are noted below, we also include recommendations for strengthening competition in Canada's financial sector framework generally (i.e., the *Bank Act*, *CDIC Act*, *Income Tax Act*, etc.).

Consultation Questions for Public Comment

1. What existing barriers do Canadian consumers face in accessing banking services? How could these barriers best be addressed within the scope of the acquisitions and mergers framework?

With more than 99% of Canadians having access to an account at a financial institution, Canada is a global leader in financial inclusion[2], and our financial system is the most inclusive among G7 countries[3]. However, more can be done to promote financial inclusion by examining the existing barriers that Canadian consumers face in accessing banking services.

There are two significant barriers to accessing financial services in Canada: (i) digital exclusion – caused by factors such as lack of access to high-speed internet, lack of digital literacy and tools that are not inclusive and/or lack additional protections for vulnerable consumers; and (ii) financial exclusion –

[1] Global News, "How big banks dominate Canada's financial landscape", April 19, 2023, available online.
[2] CBA Briefings, "Accelerating financial inclusion in Canada through digital innovation", May 31, 2023, available online.
[3] World Bank, "The Global Findex Database 2021", 2021, available online.

caused by factors ranging from the high cost of financial services and a lack of suitable products and services. Both barriers are further exacerbated for Canadians with low income, a lack of identification documentation, a lack of trust in financial institutions, low financial literacy, and challenges in receiving in-branch services from financial service providers.

These barriers would be best addressed within the scope of acquisitions and mergers framework by the following:

- ensuring the framework considers the impact of a proposed transaction on Canadians across consumer groups, the various ways Canadians access financial services, and the different types of FIs and financial services providers operating across the territory impacted by the proposed transaction;
- where a merger or proposed merger of FIs is deemed to prevent or lessen, or be likely to prevent or lessen, competition substantially, including under s. 92 (1)(e) and (f) of the *Competition Act*, provide the Financial Consumer Agency of Canada (FCAC) with the ability to order the merged FI to offer credit or alternative lending at a low rate to help the country's most vulnerable consumers and provide financial literacy programs for their customers or members; and
- for transactions at the federal level, the above proposal would be best dealt with when the Minister of Finance is reviewing a proposed transaction and using the terms and conditions provided under the *Bank Act* if the acquisition or merger were to be approved.

Responsibly expanding competition in the financial sector means Canadians will have more choice, earlier access to innovative new payment products and services, and lower costs as greater competition drives down product and service prices.

2. What changes, if any, are required or desirable to the merger and acquisition review process for banks?

The Canadian financial services sector is concentrated in the hands of the country's largest six banks, which, for several decades, have controlled more than 90% of banking assets – soon to be 95% on the closing of the RBC acquisition of HSBC Canada[4]. To prevent further concentration, it is vital that smaller FIs, including credit unions, can grow through mergers and acquisitions.

As such, the review of future mergers and acquisitions processes for smaller FIs should focus on the impact the combination will have on other FIs and continued consumer access to financial products and services. For example, when two credit unions propose to combine, the review should focus on the impact the combination would have on the Canadian financial sector as a whole. Where the impact is minimal, the review of combinations among smaller FIs should be expedited. Given that Canada's financial services are regulated both federally and provincially, the entire financial sector – i.e. both frameworks – must be taken into consideration if competition in the sector is to be sufficiently strengthened.

[4] Global News, "How big banks dominate Canada's financial landscape", April 19, 2023, available online.

We, therefore, recommend that the merger and acquisition review process for banks and other FIs, whether regulated under the *Bank Act* or provincially, be streamlined in instances where the merger or acquisition involves smaller FIs, where there will be a limited impact on consumer access to financial services, and/or where it is unlikely to have a substantial effect on competition within the entire Canadian financial sector (i.e., not solely within the smaller credit union sector).

What new considerations should be included in a review of a merger or acquisition under the Bank Act?

As noted previously, Canada's financial framework should promote competition among all financial sector participants, regardless of whether they are provincially or federally regulated. As Canadian FIs are not regulated solely under the *Bank Act*, we recommend that a review of the merger and acquisition process for FIs not be limited to those under the *Bank Act*; it must also include a review of mergers and acquisitions between federal and provincial FIs, as contemplated by the dual-application, continuance and amalgamation provisions under the *Bank Act*.

Credit unions have a long history of undergoing mergers and acquisitions. Consolidation in the sector has been a critical component of credit union growth, allowing smaller FIs to gain the economies of scale necessary to innovate, compete, enhance product offerings, and reduce pricing to members/consumers. The result is greater competition with larger banks and more choices for Canadians.

As there are currently three federally regulated credit unions and one credit union undergoing federal continuance, most credit union combinations at the federal level will, in the near to mid-term, involve at least one other credit union that is provincially regulated.

We therefore strongly recommend the following amendments to the mergers and acquisitions process under the *Bank Act*:

- where a provincial credit union (PCU) is continuing federally for the purpose of combining with an existing FU, (i) the dual-application (continuance and amalgamation) process should be streamlined, with an approvals process that is comparable to what is required in an asset transaction, (ii) regulatory and Ministerial approvals should be completed on an expedited basis, in proportion to the materiality of the transaction to the FCU, and (iii) a special meeting of the FCU's members and/or shareholders should not be required in circumstances where it is reasonable to conclude that the members and/or shareholders would not be prejudiced by the transaction;
- when an FCU purchases all or substantially all of the assets of a PCU, (i) the PCU's deposit liabilities should be subject to the same transitional deposit insurance as would be applicable in a continuance, (ii) the Minister of Finance should have the same power to grant temporary transitional relief as in a continuance and amalgamation, (iii), the process and mechanisms for PCU members to become members of and acquire shares in the FCU, should be equally clear and straightforward as they are in an amalgamation, and (iv) new regulations should ensure that a PCU's depositors receive appropriate disclosure about changes in deposit insurance resulting from the asset transaction; and
- amend the *Bank Act* to include flexibility for the use of plan of arrangement-type structures while ensuring regulatory approval from both OSFI (from a prudential standpoint) and the Minister of Finance (from a systems perspective). This would align the *Bank Act* with other

corporate statutes, particularly the *Canadian Business Corporations Act*, a key reference point for corporate law provisions in federal corporate statutes.

For additional details on the recommendations above, we encourage the Department of Finance to revisit our response to the December 2023 'Upholding the Integrity of Canada's Financial Sector' consultation and the additional information contained as an Appendix to this submission.

What are the range of appropriate remedies that should be considered to address any competition or concentration concerns?

While FIs in Canada may be regulated federally or provincially, most consumers are generally unaware of that distinction. Instead, most Canadians are concerned with and impacted by their ability to access financial products and services tailored to their needs at a reasonable cost.

Reduced competition and higher concentration within any financial sector can lead to increased consumer costs, decreased innovation, and market power instability. As such, any remedies that mitigate these risks and prevent a merged entity from having the ability to exercise undue market power because of the merger should be considered.

Structural remedies (i.e., involving a divestiture or holding-separate of assets or a maintenance provision) or quasi-structural remedies (i.e., remedies aimed at reducing barriers to entry and ensuring the provision of access to necessary infrastructure or key technology) are typically more effective than behavioural remedies in helping to preserve a competitive environment. However, in the context of the financial sector, either combination or standalone behavioural remedies may be needed to preserve consumer access to low-cost, innovative products and services that meet their specific needs. Because of this, any remedies that mitigate direct impacts on Canadian consumers should be considered. For example, requirements for a specified period, a certain number or percentage of existing branches remain open, that product and service pricing does not increase, and/or that product or service lines are not dropped. Also, as noted earlier, requirements relating to financial literacy and the protection of vulnerable consumers and communities should also be considered.

Additionally, other sectoral remedies in the areas of taxation and/or Bank of Canada rates could be considered to mitigate the disadvantage to smaller FIs and potential barriers to entry caused by reduced competition and/or concentration.

How can federal agencies and authorities better cooperate and share information during reviews of Canadian bank mergers and acquisitions?

Collaboration among federal agencies and authorities should be ongoing and occur regularly outside of a bank merger and acquisitions review. Doing so will likely enhance policymaking, increase productivity, and improve efficiency, especially when a bank merger and acquisition is proposed.

Specifically, there may be a more significant role for the Competition Bureau and the FCAC to collaborate to better educate Canadians on FI mergers and acquisitions, competition in the marketplace, and the role that concentration may take in coordinating pricing. The collaboration could also enable FCAC to identify anticompetitive market behaviour and enable the Bureau to investigate those complaints proactively.

3. Should the government formalize a ban on mergers between large banks, and if so, how? What would be an ideal threshold size for such a ban?

It is known that a high concentration of institutions in any sector can lead to lower levels of competition, innovation, and higher prices for consumers. Canada's financial sector is no different. Given the highly concentrated nature of Canada's financial sector, we support strong protections against mergers of the country's domestically significant banks (D-SIBs) and other large FIs that could reduce competition and consumer choice.

Due to the substantial and significant impacts on financial sector competition and consumer choice caused by the merger of any of Canada's D-SIBs, we would support a ban on mergers between such institutions. All other mergers of large banks and other FIs should continue to be considered on a case-by-case basis with a focus on the impact the merger would have on competition, concentration, consumer access to suitable financial products and services, and prudential and systemic concerns.

4. Should the government consider measures that would limit how large banks can grow through acquisitions, and if so, how?

As noted above, high concentration in the financial sector can lead to low competition and higher prices and increase financial exclusion. As a result, we would support reasonable measures limiting how Canada's D-SIBs can grow via acquisitions.

It is our view that all D-SIB acquisitions should continue to be considered on a case-by-case basis with a focus on the impact the acquisition would have on the safety and stability of Canada's financial sector and the impact on market share, competition, concentration, consumer access to suitable financial products and services, and prudential and systemic concerns.

Should there be limits to acquisitions of FIs by domestic systematically important banks or global systematically important banks?

In principle, we agree that D-SIBs and globally systematically important banks (G-SIBs) should be limited in their ability to acquire other FIs if the acquisition will reduce competition and consumer choice for Canadians. Every proposed acquisition involving a D-SIB or G-SIB must be analyzed to determine its impact on competition across the financial sector.

Should there be limits to banks' ability to acquire other FIs if their combined market share of a particular product exceeds a set threshold? If so, how should those thresholds be set and implemented? What should the remedies be?

We support reasonable measures to promote competition within the financial sector. This includes limits on a large bank's ability to acquire other FIs, where the combined market share of a particular product exceeds a certain threshold such that there is a high risk that product costs may rise and options may decrease. The resulting outcome of such an acquisition may be that they no longer meet the wide-ranging needs of various consumer demographics.

5. What measures would support a stronger tier of smaller, disruptive competitors (e.g., small-and-medium size banks, credit unions and fintechs)?

As previously noted, Canada's financial service sector includes industry players that are both federally regulated and provincially regulated. Therefore, a strong financial framework that fosters competition must consider all FIs, regardless of regulatory jurisdiction.

Canada's credit unions and caisses populaires already provide a tier of strong, regulated, wholly Canadian-owned financial institutions that offer alternatives to the large banks.

A competition framework and financial sector policy approach that considers and includes smaller and provincially regulated entities is vital. Measures to ensure reasonable and proportionate regulatory burden and cost for all FIs are vital to supporting a strong tier of smaller, disruptive competitors. A one-size-fits-all approach benefits only the largest institutions with the scale and capacity to invest in regulatory compliance while maintaining a sharp focus on innovation and growth. Such an approach creates challenges for many small and medium FIs, including even the largest of Canada's credit unions.

We propose the following specific measures to support a stronger tier of small and medium-sized banks, credit unions, and fintechs:

- provide greater access to the federal framework for PCUs through streamlined merger and acquisition options between FCUs and PCUs (as noted above under question 2); and
- bring regulations into force to enact the remaining 2018 Fintech Amendments introduced in Bill C-74, the *2018 Budget Implementation Act*, that would allow banks and other financial institutions to form closer partnerships in five major areas: (i) networking, (ii) expanded ability to connect, manipulate and transmit non-financial information (without the Minister's prior consent), and (iii) expanded ability to invest in fintechs. By bringing the regulations into force, the fintechs will have the ability to increase competition and innovation while also subject to appropriate regulation to ensure an even playing field and protect consumers.

What are the respective roles of the federal government, provinces, and territories? How could different orders of government work together more effectively to support smaller, disruptive companies?

As the regulation of financial services in Canada falls under both federal and provincial jurisdiction, for the different orders of government to effectively support smaller industry participants, including credit unions, there must be a comprehensive review of Canada's financial sector framework. Moreover, a consultation and cooperation approach that includes the federal government, provinces and territories, and each of their financial sector regulators needs to be developed. The current piecemeal approach to addressing Canada's highly concentrated financial sector, in which six D-SIBs hold over 90% of the market, is insufficient to promote competition and support smaller, disruptive companies effectively.

As most credit unions are provincially regulated, we strongly recommend improved and formalized collaboration between provincial and federal governments. We propose the different orders of government could work together more effectively to support Canada's entire financial sector by:

- ensuring active and frequent engagement between the Department of Finance and other federal safety net organizations, the Credit Union Prudential Supervisors Association (CUPSA) and provincial Ministries of Finance;
- ensuring that the design of federal financial sector programs and frameworks accommodate smaller FIs and are not designed solely for larger banks;
- promptly communicating with the credit union sector and other provincially regulated FIs, especially during times of emergency (e.g., during the use of the *Emergencies Act*);
- always including credit unions when designing programs that are to be delivered to Canadians via the financial sector (e.g., the Canada Emergency Business Account (CEBA)); and
- prioritizing ongoing collaboration among all levels of government, especially as financial services modernization efforts, such as the development of a real-time payments system and an open banking framework, to ensure a financial sector framework that is equally accessible to all Canadian financial institutions.

Regulatory harmonization, wherever reasonable, can streamline compliance and reduce the regulatory burden on smaller competitors.

How can the federal government's commitment to deliver Consumer-Driven Banking, also known as open banking, support competition in the financial sector?

The framework will increase financial sector competition by allowing consumers to safely and securely direct their FI to share their financial data with other FIs and fintechs using a standard API.

Requiring banks to share data as directed by a consumer provides an opening for significant competition in the financial sector as smaller FIs and fintechs will be able to access more robust data about customers and their financial needs and develop products and services specifically tailored to meet those needs. With increased competition comes increased consumer choice, as Canadians can engage with multiple financial institutions and fintechs to obtain the best products and services for their specific situation.

The UK is a great example of open banking supporting competition and innovation. Since their nine largest banks and building societies have been required to open their customer data using secure data protocols with fintechs, neobanks, as a result, have been gaining significant popularity – specifically, a 28% user penetration rate with over 19 million users[5].

The Canadian Consumer-Driven Banking framework will provide space for smaller, disruptive entities, such as credit unions and fintechs, to compete with larger FIs. Promoting competition and innovation in a highly concentrated and low-innovative financial sector is one of the two officially stated objectives behind the framework set by the Department of Finance.

How could the Real-Time Rail support competition in the financial sector?

A modern real-time payments system that allows for the sharing of significant information with payments would help drive competition and innovation in the Canadian economy. Examples of how the

[5] Statista, "Neobanking – United Kingdom", 2024, available online.

system supports competition can be found in jurisdictions that already have a real-time payments system in place. For example, when connected with the UK's Faster Payment System, Wise, a payment transfers fintech company, could lower fees for their customers by 20%[6]. Moreover, by allowing non-bank payment companies direct access to the Faster Payments System, the UK is now a global fintech hub.

By broadening access to the new Real-Time Rail (RTR) to include payment service providers (PSPs), they will be given greater control over how they innovate and build financial products and services. This contrasts with the current structure, which requires fintechs to partner with direct participants to access the country's payment systems.

To sufficiently support competition, however, the RTR must be implemented to include all FIs and consider their various capabilities. To date, the 'one-size-fits-all' implementation approach, spiraling costs, and frequent delays are making it extremely difficult for smaller institutions to prepare.

Without flexible implementation, credit unions could have significant limitations in providing Canadians with products and services comparable to those offered by other FIs, thereby significantly reducing competition in the sector.

6. Could the framework better ensure a more level playing field for all participants to support competition?

To better support competition, the framework should be designed to ensure a level playing field for all participants and recognize and mitigate the disproportionate costs for and impact on smaller institutions. This includes ensuring the following:

- that the framework and processes are proportionate and designed with more than just D-SIBs and other large banks;
- that the impact on competition, not scale, is the principle that drives federal policymaking, specifically in this era of elevated inflation; and
- that the financial sector and competition framework support a strong and sustainable credit union sector and an innovative ecosystem of fintechs and other players.

The framework must consider scale, costs, and proportionality to ensure that developments and initiatives, such as open banking and the RTR, are designed for the capabilities and needs of all financial institutions. As our response to question #5 noted, not doing so can lessen competition and increase concentration, leaving smaller FIs and their members/customers behind.

We also recommend that the Minister of Finance consider the regulatory burden on FIs and ensure that no new legislation or policy unintentionally slows down decision-making or impedes FI responsiveness in protecting consumers and their data. As noted earlier in this submission, the costs associated with compliance with regulatory reforms can be significant. If smaller FRFIs cannot meet these costs, as may be the case with the RTR, they will be significantly disadvantaged compared to their larger competitors.

[6] Policy Options, "A guide to modernizing payments in the financial sector", May 2023, available online.

The framework must also ensure that fintechs and other non-banks in the Canadian financial services sector, whether regulated at the federal or provincial level, abide by standards similar to those of regulated entities that offer substantially similar products. Otherwise, there is a risk that Canadians who use such products will be less protected.

We also reiterate the need for ongoing provincial and federal collaboration for regulatory harmonization across different levels of government where reasonable.

Should large banks be required or incentivized to offer third-party products and services?

Incentivizing or encouraging large banks to offer third-party products or services could promote innovation and competition across the sector.

However, if large banks were encouraged or incentivized to offer third-party products or services, the opportunity for innovation outside of the large banks must not be reduced. Given that the largest six banks in Canada already control 93% of banking assets, further concentrating the sale of third-party products and services could be counterproductive to growing competition.

7. Should there be a regular public report on concentration and competition in Canada's banking sector? What would be important areas to consider in such a report?

In theory, we support a regular public report on concentration and competition in Canada's banking sector to demonstrate competitive gaps and further inform how to focus on growing competition and consumer choice. However, given the already significant regulatory burden and cost for FIs, we would be concerned with the impact new information-gathering powers of the Competition Bureau could have on the burden and cost for smaller FIs.

We recommend that concentration, industry dynamism, profits and markups, and resulting recommendations be considered in the report. The Competition Bureau's report that tracked indicators of competition across the economy from 2000 to 2020 is an excellent model to be used.

We also recommend that the report be scoped to analyze the entirety of the Canadian financial services sector, including provincially regulated institutions like credit unions.

8. What other measures, if any, should the government take to address factors that affect competition, such as market concentration, barriers to entry and expansion, regulatory burdens, switching costs, and the conditions facilitating coordinated behaviour in the banking sector?

The competition and financial sector frameworks should be designed to prevent anticompetitive mergers, extreme market concentration, anti-competitive conduct, and abuse of dominance. Rather than imposing barriers to entry, competition may be better achieved by reducing regulatory barriers to entry. This can include removing anti-competitive regulations and making the entry process easier and less expensive.

As previously noted in this submission, strong coordination and cooperation between competition authorities and financial regulators, and between federal and provincial governments and regulatory bodies, is vital. We again reiterate the need for a streamlined process for mergers and acquisitions

between FCUs and PCUs, as well as subsequent legislative changes, as noted above in our response to question #2.

What is the role of provinces in supporting more competition in the financial sector and are there issues that should be addressed with better coordination and collaboration?

As noted above, collaboration and coordination should occur on an ongoing basis across regulatory bodies and authorities to ensure a strong, safe, and competitive financial sector in Canada.

Expertise should also be shared among authorities on the financial regulation of new entrants and incumbents, and policies should be coordinated – and not only engaged in such a process when a merger or acquisition is reviewed.

Issues that should be addressed include streamlining and simplifying compliance obligations. Credit unions, for example, abide by a complex patchwork of federal and provincial privacy legislation that can often be situational in its application and, as a result, costly and challenging to navigate. Harmonization across jurisdictions would help alleviate this burden.

9. What measures to encourage competition could also support the creation of new jobs and the protection of existing jobs in the Canadian financial sector?

We reiterate our recommendations above on mergers and acquisitions, remedies to concentration and competition concerns, measures to support smaller, disruptive competitors, and efforts to ensure a more level field. All recommendations made in this submission for a competitive financial sector will support the creation of new jobs and protect existing jobs.

Additionally, when competition is supported, it will exert downward pressure on prices and reduce the rates that financial institutions charge. Consumers and other businesses will thereby have more money to spend and, as a result, cause firms to demand more labour (i.e., to create jobs) to meet the increased output demand. FIs can also invest their productivity gains to expand their activities in other markets, raise their demand for labour, and create jobs.

Over the long term, these mechanisms will increase the demand for jobs and bring new, more, and better jobs into the economy.

What could be the potential implications for the Canadian financial sector workforce from your suggestions to the above question?

Competition in the financial sector will drive innovation, better allocate resources, and force efficient institutions to enter and improve their market share and keep markets competitive.

In Canada's financial services sector, credit unions are the biggest competitors to the big banks and have a much bigger footprint in the country's local communities due to their focus on local communities rather than Bay Street.

For example, credit unions provide directly and indirectly over 60,000 full-time jobs, are governed by 4,300 directors from local communities, and are the sole financial institution in 380 communities in Canada.

Improving the ability of smaller FIs to better compete in the broader financial sector will enable them to continue to provide jobs in their communities.

Conclusion

CCUA welcomes the opportunity to comment on the Department of Finance's consultation on strengthening competition in Canada's financial sector. As cooperative financial institutions that exist to improve their members' economic and social well-being, credit unions support efforts to bolster competition and offer more choice and value to Canadians. Such efforts will only make Canada's financial sector stronger.

We strongly encourage the federal government to not view Canada's financial sector as one that only includes the largest banks but to recognize and accommodate the wide variety of FIs, all of which are important to ensuring that the financial needs of Canadians are met. Similarly, in the context of the competition framework and mergers and acquisitions involving FIs, we urge the government to consider the impact on Canadians and the financial sector as a whole and not on a particular segment.

If you have any questions regarding this submission, please don't hesitate to contact the undersigned.

Sincerely,

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Appendix

Please see attached CCUA's Response to the Department of Finance's Consultation on Upholding the Integrity of Canada's Financial Sector (December 2023).

December 4, 2023

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Financial Institutions Division
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Department of Finance Canada
90 Elgin Street
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Delivered by Email: legreview-examenleg@fin.gc.ca

Re: Financial Institutions Statutes Review

The Canadian Credit Union Association (CCUA) is pleased to share with you our written comments on the Department of Finance's consultation (the "Consultation") on how the federal *Bank Act*, the *Insurance Companies Act,* and the *Trust and Loan Companies Act,* and related federal safety-net legislation, regulations, and policies should respond to emerging financial sector trends, and whether technical changes are needed.

Background

CCUA is the national trade association that provides services to Canada's 197 credit unions, caisses populaires (outside of Quebec) – including Canada's three federally regulated credit unions – and five regional central organizations (Centrals). The credit union sector, outside Quebec, controls approximately $301 billion in assets – representing a 6.4 percent share of domestic assets held by all Canadian deposit-taking institutions – and serves more than 6 million Canadians. Credit unions are cooperative financial institutions that operate from 2,214 locations nationwide and are the only financial institutions in 380 Canadian communities.

Credit unions support 277,000 small and medium-sized businesses in diverse industries and sectors and are the largest lenders to small and medium-sized businesses at 21% percent market share and 10% of the agricultural lending market. Credit unions are also among the largest lenders to homeowners, representing 16% market share in mortgage lending. [1]

While the credit union sector includes three federal credit unions, and others in the process of continuing federally, the majority of credit unions are provincially regulated. Irrespective of whether they are regulated provincial or federally, all credit unions are cooperative financial institutions that exist to serve their members. Unlike banks, which exist to generate profits to increase shareholder value, credit unions generate profits for sustainability and growth reasons, and their primary objective is to meet the financial needs of their members. This focus on service translates into measurable impact for Canadians. For example, since 2004, Canadian credit unions have been chosen annually as the overall winners, among all Canadian financial institutions, in retail banking for Customer Service Excellence at the Ipsos Financial Service Excellence Awards.

Provincial / Regional Centrals provide credit unions with wholesale financial services, liquidity management,

[1] Credit union lending include $150 Billion in residential mortgages, $87 Billion in commercial loan, and $11 Billion in personal loans.

and payments processing services. These Central entities, which are owned and controlled by credit unions, include Atlantic Central (for credit unions in the Atlantic provinces), Central 1 Credit Union (for credit unions in Ontario and British Columbia), and Centrals in each of Manitoba, Saskatchewan, and Alberta.

As the national trade association for Canada's credit unions, CCUA plays an essential role in convening the credit union sector around critical matters. This submission has been prepared in consultation with our provincial and federal members and Centrals, which are also members of CCUA.

Overview

This submission contains (i) responses to the questions posed by the Department of Finance in the Consultation, and (ii) several recommendations on how the federal legislative and policy framework should adapt to help address the challenges Canadians face in accessing financial services and responding to technological and geopolitical trends. The recommendations, relating to issues specific to the credit union sector, technical amendments for credit union framework efficiency, credit union combinations, and expansion of business activities, are included in the appendix, "Credit Union Sector Recommendations", which forms a part of this submission.

Consultation Questions for Public Comment

National security and integrity

1. *What are emerging risks to the security and integrity of the Canadian financial sector, whether from national security threats, foreign interference, technological changes, or other developments?*
2. *What if any additional measures are needed to protect the security and integrity of the financial sector and maintain Canadians' confidence in their financial institutions?*

Responses:

1. As failures in the financial sector impact the safety and soundness of Canadian financial institutions, thereby affecting depositors, policyholders, creditors, and Canadians' wealth and economic well-being, financial sector integrity and security are vital to maintaining public confidence. Cyber fraud is a significant risk to the security and integrity of the Canadian financial sector and that risk has been growing. Since 2020, Canadians and Canadian financial institutions have been increasingly targeted via calls, emails, social media posts, advertisements, and fraudulent websites by diverse and coordinated domestic and foreign fraudsters and cybercriminals.

   Credit unions and other smaller and medium-sized financial institutions may face significant challenges managing the burgeoning technology costs and acquiring the expertise necessary to mitigate the increasing cybersecurity risk to themselves and their customers. To protect the security and integrity of Canada's highly interconnected financial sector, maintain Canadians' confidence in their financial institutions, and safeguard customer personal and financial data, Canada needs a robust regulatory environment that bolsters financial institutions' efforts to respond to the growing number of cyber fraud incidents, increasingly sophisticated fraudsters, and the rapid evolution of data-driven technologies.

However, to ensure that such regulation does not unduly add to the regulatory burden on smaller and mid-sized financial institutions, such regulation must be proportionate.

2. A safe and sound financial sector is critical to Canadians' ability to meet their day-to-day and longer-term financial needs. As noted above, strong, principles-based, and proportionate cybersecurity protections and regulations are needed, as is additional clarity regarding liability when financial institutions or their customers have been victims of cyberattacks or cyber fraud, and when customer data is compromised would be beneficial.

   Additionally, to foster a resilient financial sector, we recommend enhanced collaboration and information sharing among financial institutions, regulatory bodies, and law enforcement concerning undue influence, foreign interference, and malicious activity.

   As the costs associated with compliance with regulatory reforms will be significant, we urge the Department of Finance to consider the impact of the regulatory burden on all financial institutions and ensure that any new legislation does not have the unintended consequence of slowing down decision-making or impeding financial institution responsiveness to ensure the safety of members and customers in the face of cybersecurity attacks.

Sectoral structure

3. *What would be the risks and benefits of potential consolidation in the federal financial sector?*
4. *How should the federal legislative and policy framework adapt to protect Canadian consumers' interests and uphold the financial sector's integrity?*
5. *What are the risks and benefits from the emergence of new financial services providers, and how should the federal legislative and policy framework adapt?*
6. *Are changes needed to Canada's financial sector legislative framework, as federally regulated financial institutions continue to expand abroad, to ensure the sector continues to serve the best interests of Canadians?*

Responses:

3. While consolidations of larger federally regulated financial institutions (FRFIs) carry a significant risk of weakening the already limited competition within Canada's financial sector, efficient and timely consolidations are a critical component of growth and allow smaller institutions – in particular, credit unions, which are not able to access capital markets – to gain the economies of scale necessary to innovate, compete, enhance product offerings, and reduce pricing to customers.

4. In order to protect Canadian consumers' interests and uphold the financial sector's integrity, we recommend several changes to the federal legislative and policy structure, including:

   (i) amending the *Canadian Payments Act*, as outlined in the 2023 Fall Economic Statement, to expand eligible membership in Payments Canada to include credit unions; imposing more rigorous oversight on the implementation of payments modernization to ensure timely execution and appropriate costs, and timeframes that accommodate the technical

requirements and resources of a range of financial institutions – not just Canada's domestic systemically important banks (D-SIBs) – and allowing financial institutions the flexibility to adopt products at a time and sequence that is appropriate for their business and customers' needs;

(ii) confirming the application of the *Winding-Up and Restructuring Act* (WURA) to Centrals;

(iii) ensuring that the provincial credit union sector can access the Bank of Canada's emergency lending assistance and standing term liquidity facility;

(iv) providing options for efficient provincial-federal credit union consolidation and access to the federal framework; as consolidation in our sector will increase, rather than detract from, competition in financial services, we recommend that the processes for credit union consolidation at the federal level be streamlined; and

(v) repealing section 417 and the reference to section 417 in section 468(3)(a) of the *Bank Act* to remove restrictions on personal and motor vehicle leasing, and repeal the provisions under the *Bank Act* and *Insurance Business Regulation* that prevent federal credit unions from making referrals to insurance brokers, including insurance-related content on their websites, advertising insurance products to their members, and sharing their premises with insurance providers, even when such providers are related to the credit union sector.

These changes to the federal financial structure will be necessary if the credit union sector is to continue providing competition and choice for Canadian consumers.

For further details regarding the above recommendations, please refer to: section 1(a) "Payments Modernization"; section 1(b) "Winding-Up and Restructuring Act (WURA)"; section 1(c) "Emergency Lending Assistance (ELA) and Standing Term Liquidity Facility (STLF)"; sections 3(a) "Amalgamations"; 3(b) "Asset Purchases", and 3(c) "Plans of Arrangement", and section 4 "Expanded Ability to Invest" in the appendix "Credit Union Sector Recommendations."

5. While the emergence of new financial services providers (FSPs) has the potential to increase competition and innovation in the financial sector, thereby providing downward price pressure in financial services, it will be vitally important that all FSPs are subject to appropriate regulation to ensure an even playing field, including appropriate consumer protections, sanctions screening measures, and anti-money laundering and anti-terrorist financing provisions comparable to those applicable to FRFIs, irrespective of the size, structure, or operations of the FSP.

   For further details regarding how the federal legislative and policy framework should adapt to the emergence of new financial services providers, please refer to section 4(a)(iii) "2018 Fintech Amendments" in the appendix "Credit Union Sector Recommendations."

6. The credit union sector is consistently recognized for its customer service excellence and unwavering commitment to member service. As cooperative, community-based organizations, we are supportive of efforts to ensure that all federally regulated financial institutions in Canada serve the best interests of Canadians.

Consumer protection

7. *What additional protections could help ensure Canadians receive high-quality, low-cost banking services?*
8. *What barriers do Canadians face in accessing banking services, including cost barriers? How could these barriers be addressed?*
9. *Do financial consumers benefit from sufficient protections when using innovative or digital financial products and services?*

Responses:

7. The Financial Consumer Protection Framework (FCPF) includes a variety of protections to help ensure that Canadians receive high-quality, low-cost banking services. However, the FCPF is overly rigid in certain areas such as arrangements with affiliates under sections 627.15 – 6.27.16 of the *Bank Act*, the complaints process under section 627.43(1) of the *Bank Act*, and the calculation of borrowing costs under section 47 of the *FCPF Regulations*. These provisions create unintended operational challenges for smaller FRFIs and there are opportunities to clarify or simplify the FCPF to increase consumer protection while taking into account the operational realities of smaller and mid-sized FRFIs.

   For further details and recommendations for amendments to the FCPF to help ensure Canadians receive high-quality, low-cost banking services, please refer to section 2(a)(v) "Financial Consumer Protection Framework" in the appendix "Credit Union Sector Recommendations."

8. Canadians currently face cost barriers to financial services largely due to low levels of competition in the sector: a very small number of institutions control the vast majority of financial sector assets. Ensuring that federal laws and regulations are proportionate and designed with more than just the large banks in mind will enhance competition and consumer choice in Canada by ensuring a growing and sustainable credit union sector, as well as an innovative ecosystem of financial technology (fintech) firms and other players.

   While scale can be important in delivering cost savings to consumers, more frequently it has instead delivered outsized returns to bank shareholders, leaving consumers with a dearth of product choices and high-cost financial services. Competition, not scale, should be the principle that drives federal policymaking, particularly in an era of elevated inflation.

9. Canadian financial consumers do not yet benefit from sufficient protections when using innovative or digital financial products and services. As noted above, a safe and sound financial sector requires strong cybersecurity and privacy protections, irrespective of whether the product or service is traditional or innovative. In particular, additional clarity regarding security and liability would be beneficial in the event that customer data is compromised – for example, in an open banking framework and modernized payments ecosystem. However, as the costs associated with compliance with regulatory reforms will be significant, we urge the Department of Finance to consider the impact of regulatory burden on FRFIs and ensure that any new legislation or policy does not have the unintended consequence of slowing down decision-making or impeding financial institution responsiveness to ensuring the protection of financial consumers and their data.

Framework modernization

10. *How could artificial intelligence and other innovations be used in the financial sector, and how should the framework adapt to harness the benefits and manage any risks and ensure responsible innovation?*
11. *How can the framework be updated to ensure it remains effective, technically sound, and reflects modern business practices and technologies?*

Responses:

10. As there are potentially many ways in which artificial intelligence and other innovations could be used in the financial sector, the framework should be sufficiently flexible to permit the development of products, services, and processes using artificial intelligence and other innovations that may not yet be contemplated, in a manner that is safe and secure for financial institutions and protects the interests of financial consumers and their personal information. Furthermore, the framework should ensure that all financial institutions, regardless of their size or structure, are equally able to harness benefits, manage any risks, ensure responsible innovation, and are subject to a regulatory framework that is proportionate.

11. As noted above, to ensure that the framework remains effective, technically sound, and reflects modern business practices and technologies, we recommend several changes to the federal legislative and policy structure, including:

    (i) amending the *Canadian Payments Act* to expand eligible membership in Payments Canada to include credit unions; imposing more rigorous oversight on the implementation of payments modernization to ensure timely execution and appropriate costs, and timeframes that accommodate the technical requirements and resources of a range of financial institutions – not just Canada's largest banks – and allowing financial institutions the flexibility to adopt products at a time and sequence that is appropriate for their business and customers' needs;

    (ii) confirming the application of the *WURA* to Centrals;

    (iii) ensuring that the provincial credit union sector can access the Bank of Canada's emergency lending assistance and standing term liquidity facility;

    (iv) providing options for efficient provincial-federal credit union consolidation and access to the federal framework; as consolidation in our sector will increase, rather than detract from, competition in financial services, we recommend that the processes for credit union consolidation at the federal level be streamlined; and

    (v) repealing sections 417 and the reference to 417 in 468(3)(a) in the *Bank Act* to remove restrictions on leasing activity, and repealing the provisions under the *Bank Act* and *Insurance Business Regulation* that prevent federal credit unions from making referrals to insurance brokers, including insurance-related content on their websites, advertising insurance products to their members, and sharing their premises with insurance providers, even when such providers are related to the credit union sector.

    In the "Credit Union Sector Recommendations" document, we have recommended several technical amendments, which, taken together, will contribute greatly to a sounder financial system, and to more consumer choice and competition for Canadian consumers.

For further details regarding the above recommendations, please refer to: section 1(a) "Payments Modernization"; section 1(b) "Winding-Up and Restructuring Act (WURA)"; section 1(c) "Emergency Lending Assistance (ELA) and Standing Term Liquidity Facility (STLF)"; sections 3(a) "Amalgamations"; 3(b) "Asset Purchases", and 3(c) "Plans of Arrangement", and section 4 "Expanded Ability to Invest" in the appendix "Credit Union Sector Recommendations."

Federal-provincial co-operation

12. *What role can the federal government play to improve and formalize collaboration with provinces and territories and ensure that Canada is better able to address pressing financial sector policy issues, given shared responsibilities for the financial sector?*

Responses:

12. CCUA is pleased to see the Department of Finance recognize the shared responsibility for the financial sector between the federal and provincial governments. As most credit unions are provincially regulated, we are keen to see an improved and formalized collaboration between the provincial and federal governments to address financial sector policy issues.

    While there are many policy levers possible, one mechanism we would propose is for the Department of Finance and other federal safety net organizations to engage more actively and frequently with credit union regulators through the Credit Union Prudential Supervisors Association (CUPSA).

    There is also a need, especially during times of emergency, to ensure that provincially regulated financial institutions are communicated with promptly. As seen throughout COVID-19 and most recently with the use of the *Emergencies Act*, it is critical to have a plan to include and communicate effectively with provincially regulated financial sector entities and to ensure the involvement of the entire Canadian financial sector in emergency circumstances.

    Furthermore, we urge the Department of Finance and all actors at the federal level to consider credit unions when designing programs to be delivered to Canadians via the financial sector. When the Canada Emergency Business Account (CEBA) program was first rolled out in the early days of the pandemic, it was originally designed to be delivered only through federally regulated banks. This was only the most egregious case of the federal government overlooking smaller and non-federal financial institutions and there are many others. The CEBA issue was potentially existential for the credit union sector, and ultimately the government made the right decision to make it available to all financial institutions.

    As we look ahead to a financial services environment that includes real-time payments and open banking, it is imperative that these frameworks are designed with the goals of enhancing competition and ensuring access by all Canadian financial institutions. Achieving these goals requires coherent regulation that minimizes federal-provincial jurisdictional friction.

    Credit unions provide the only competition to traditional banks and as such provide a key service to Canadians and to the economy: the enhanced affordability that only comes with rigorous competition.

Federal policy that actively undermines the sector must be avoided if we are to contribute to the solution to the ongoing cost of living crisis.

Additional Recommendations

For additional comments and recommendations on issues specific to the credit union sector, technical amendments for credit union framework modernization, credit union combinations, and expanded ability to invest, please refer to the appendix, "Credit Union Sector Recommendations", which forms a part of this submission.

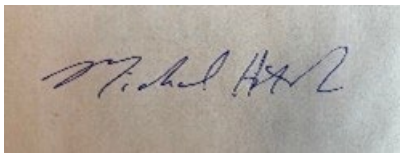
Conclusion

CCUA is grateful for this opportunity to provide our views and those of the Canadian credit union sector on the issues raised in the Consultation.

Thank you very much for the opportunity to contribute to this process. We look forward to continued dialogue with the Department of Finance on these vital issues in 2024.

Please do not hesitate to contact the undersigned if you have any questions regarding this submission or if we can provide further information.

Sincerely,



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Appendix: Credit Union Sector Recommendations

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1. Sectoral Issues

a. Payments Modernization

i. Credit Union Membership in Payments Canada

Allow credit unions to become members of Payments Canada

Credit unions welcome the announced changes to the *Canadian Payments Act* in the 2023 Fall Economic Statement that would enable local credit unions that are members of a provincial central to also become members of Payments Canada. This change would allow credit unions to serve their consumers and small business members better and offer enhanced electronic payment services that can compete with those provided by the banking sector. However, this policy change will require significant time and resources to fully operationalize.

While we acknowledge that the Department of Finance is responsible for tabling the necessary legislative amendments, Payments Canada also has a fundamental role in defining the terms and conditions of expanded membership with respect to governance, rules, costs, liability, etc. We strongly urge that this matter be given a high priority for resolution.

Credit unions support an expanded membership framework that provides greater access; however, it is critical that the existing group clearer structure through which all provincial credit unions participate remain viable. The national group clearing arrangement provides essential economies of scale for credit unions and ultimately to the millions of Canadians they serve. The scale and resulting savings achieved through the group clearing structure are essential to the sector remaining competitive against existing and emerging competitors in the financial services industry. As a result, the group clearing construct needs to be preserved as Payments Canada adopts expanded membership.

Recommendation: Act swiftly on the commitments made in the 2023 Fall Economic Statement to expand membership in Payments Canada and require that Payments Canada explicitly preserve access to Canada's payment systems by smaller financial institutions specifically those that participate through the current group clearer structure.

ii.Real Time Rail Implementation

Ensure effective implementation of RTR

Payments Modernization (PayMod) is a multi-year Payments Canada initiative to modernize Canada's payments systems and rules. The Real Time Rail (RTR) project involves a complete overhaul of Canada's retail payments infrastructure and is intended to provide a capability to deliver low-cost, real-time payments and encourage competition in the financial services sector. RTR implementation is behind schedule, over budget, and off-track.

The unique requirements of credit unions are not accounted for in the current approach to PayMod and the RTR project is being implemented with a "one-size-fits-all" approach. Moreover, the spiraling costs and shifting timelines are making it extremely difficult for smaller financial institutions to prepare to participate in

the RTR project.

Without flexible implementation, credit unions and other smaller financial institutions are at risk of being unable to participate in the RTR and potentially at risk of being prevented from offering e-transfer products outside of the RTR. Were this to occur, it would place significant limitations on the ability of credit unions to continue to provide Canadians with products and services comparable to those offered by FRFIs, thereby substantially reducing competition in the financial sector. Preventing credit unions from participating in the retail payments infrastructure would be a serious competitive issue.

Recommendation: Impose more rigorous oversight of RTR implementation, to ensure timely execution and appropriate costs.

Recommendation: Mandate that Payments Canada adopt an approach to and timeframes for implementation of PayMod that accommodate the technical requirements and resources of smaller financial institutions. This includes reasonable implementation timeframes, technical requirements, and service-level agreements that reflect the unique structure of the credit union sector.

Recommendation: Require that Interac and Payments Canada commit to the same reasonable approach they have taken in the past and allow financial institutions the flexibility to adopt products at the time and cadence that makes sense for their business and customer needs, without a penalty on current products or services.

b. Winding-Up and Restructuring Act

Ensure application of WURA to cooperative credit associations

The *Winding-Up and Restructuring Act* (*WURA*) is designed for the winding up of certain corporations and the restructuring of financial institutions in a manner that is efficient and certain. Through section 10.1 of *WURA*, if the Superintendent of Financial Institutions has taken control of a FRFI or its assets the court has discretion to issue a winding-up order in respect of the financial institution. The legislative structure that ensures this quick and efficient winding-up – to protect depositors, policyholders, and other creditors of the institutions and to reduce the exposure of taxpayers to the insolvency – is a function of both the host statute of the financial institution and *WURA*.

Prior to 2017, Centrals that had received approval under Part XVI of the *Cooperative Credit Associations Act* (*CCAA*) were subject to this legislative scheme. However, with the repeal of Part XVI, Centrals may no longer be approved under the *CCAA*, with the result that the provisions of the *CCAA* incorporated into section 10.1 of the *WURA* would no longer apply to them.

While it can be argued that the liquidation of a Central remains subject to the *WURA* by virtue of section 6 and the definition of a "trading company", section 10.1 would have no application to the process for obtaining the winding-up order. As a result, the process for dealing with the insolvency of a Central is neither efficient nor certain.

Recommendation: Amend s. 10.1 of *WURA* to include Centrals and credit unions in circumstances where a provincial regulator has taken control.

c. Emergency Lending Assistance & Standing Term Liquidity Facility

Implement a legal framework that would operationalize Emergency Lending Assistance & Standing Term Liquidity Facility for provincial credit unions and Centrals.

Section 18(h) of the *Bank of Canada Act* enables the Bank of Canada to provide two types of lending facilities to support the ability of deposit-taking institutions to cover their liabilities during a liquidity event: Emergency Lending Assistance (ELA) and Standing Term Liquidity Facility (STLF). ELA offers extraordinary bilateral lending to address liquidity issues at a financial institution, while STLF offers bilateral lending to address idiosyncratic liquidity issues at an institution where the Bank of Canada has no financial soundness concerns.

While this legal framework is in place for FRFIs, it is not readily adaptable for provincial credit unions or Centrals. The Bank of Canada has been unwilling to consider transactional structures that would allow Centrals and credit unions to access liquidity facilities.

In order to ensure a stable and competitive financial sector in Canada, provincial credit unions and Centrals should have equal access to liquidity facilities as FRFIs in times of stress.

Recommendation: Request that the Bank of Canada implement a legal framework that would operationalize ELA & STLF for provincial credit unions and Centrals.

2. Technical Amendments for Efficiency

a. Efficient Administration

i. Electronic Delivery of Governance Documents

Permit a "notice and access" approach to the delivery of governance materials

Section 311 of the *Bank Act* requires FRFIs to send to each shareholder or, in the case of a federal credit union (FCU), each member and shareholder, paper financial statements, auditor's reports, and any information related to the financial position or operations of the FI that are required by its bylaws not less than 21 days prior to each annual meeting or the signing of a resolution in lieu of an annual meeting (collectively, "AGMs").

This is particularly challenging for credit unions because their cooperative structure means their members are both owners and customers. As a result, an FCU with hundreds of thousands of members – all of whom have voting rights – could easily incur governance-related mailing costs running into the millions of dollars. In effect, section 311 of the *Bank Act* requires FCUs and other FRFIs to mail a large volume of printed paper, which causes unnecessary waste and is inconsistent with environmental sustainability.

We suggest that the use of "notice and access" would be a better approach to making essential material such as financial statements, auditor's reports, and proposed bylaw changes available for consideration at AGMs. Such an approach is not without legislative precedent in Canada: provincially, in all jurisdictions except for PEI, credit unions have explicit permission or may rely on implied consent to send governance documents electronically. A specific example can be found in the British Columbia *Credit Union Incorporation Act*, which

was modernized four years ago to provide for electronic communications and permit British Columbia credit unions to communicate in a manner of their members' choosing, which for many credit unions is overwhelmingly electronic.

Recommendation: Amend section 311 of the *Bank Act* by introducing a "notice and access" approach for the delivery of governance documents to the owners of FRFIs.

Recommendation: Should securities regulators move to an "access equals delivery" approach to financial information, we would recommend that the approach between our sectors be harmonized.

ii. Sending Electronic Notices Without Consent

Permit more flexible communication methods

From both a technological and sustainability perspective, FRFIs should be permitted to communicate electronically with their customers unless they have been specifically advised by the customer that another form of communication is preferred.

Recommendation: Amend section 995 of the *Bank Act* to permit more flexible communication between FRFIs and their customers. In the alternative, amend the provisions of the *Bank Act* that require FRFIs to send notifications and disclosures to customers within specific time frames to clarify that FRFIs are able to send such notifications and disclosures by electronic means without express consent (e.g., *Bank Act* section 627.6 for products that automatically renew, and section 627.61 for promotional offers).

iii. Access to Federal Credit Union Membership List

Limit access to member personal information

Sections 254 and section 145 of the *Bank Act* collectively compel an FCU to maintain (i) a register of its members (i.e. its owners and customers) listing, among other things, their names and addresses, (ii) a list of members entitled to receive notice of a meeting, and (ii) a list of members entitled to vote at a meeting. These sections also require that the FCU share the personal information of its members in these registers and lists with any member who wishes to see it or make copies of them, upon payment of a reasonable fee, during the course of normal business hours.

While section 242 of the *Bank Act* outlines the intended uses for this information, significant concerns remain about sharing what is, in essence, a listing of the FCU's customers and their personal information. These provisions are particularly concerning given that federal privacy standards, such as the *Personal Information Protection and Electronic Documents Act* (*PIPEDA*) and the *Canadian Anti-Spam Law* (*CASL*), impose a high bar for the protection of personal information on all FRFIs.

Recommendation: Remove sections 254.1 and 145 (5) of the *Bank Act*, so that FCUs will not be required to share the personal information of their members. FCU members already have a means of communicating with other members by submitting a proposal according to section 144.1 of the *Bank Act*.

iv. Staff Redemption of Membership Shares

Permit an FCU Board to delegate its power to authorize the redemption of membership shares

Section 198.1(f) of the *Bank Act* prohibits the board of directors ("Board") of an FCU from delegating the power to authorize the redemption of membership shares. By virtue of this section, frontline staff of an FCU are unable to process membership redemptions in the normal course of business and instead require Board approval. From a practical standpoint, FCU staff would be required to delay membership redemptions until Board approval is obtained. The prohibition in section 198.1(f) is impractical and unnecessary as it delays individual members' ability to redeem their shares in a timely manner, instead requiring that they wait until Board approval is received at the next regularly scheduled Board meeting.

Recommendation: Amend section 198.1(f) of the *Bank Act* to permit an FCU Board to delegate its power to authorize the redemption of membership shares.

b. Consumer Protection

Enhance flexibility in certain areas of the Financial Consumer Protection Framework and increase consistency in others

The *Financial Consumer Protection Framework* (FCPF), while vitally important to ensure enhanced protection for all FRFI customers, is overly rigid in many areas, which creates unintended operational challenges. These areas include arrangements with affiliates, procedures for dealing with complaints, and the calculation of borrowing costs.

Sections 627.15 and 627.16 of the *Bank Act* prohibit a FRFI from entering into any arrangement or cooperating with its representatives, agents, intermediaries, or affiliated finance entities, or any other proscribed entity (collectively, "affiliate suppliers") to sell or further the sale of a product or service unless the affiliate suppliers comply with provisions of the FCPF. This is unduly onerous as it is often difficult for smaller FRFIs to obtain the requisite assurances from affiliate suppliers in a timely manner: big companies often refuse; small companies often say they lack resources. This has the unintended effect of limiting the number of suppliers able to provide services to a FRFI, which in turn reduces competition. As there are currently no regulations in place relating to section 627.16, which applies when a bank is acting as an intermediary for another entity, there is a risk that these already onerous requirements could become even stricter when regulations are developed.

Section 627.43(1) of the *Bank Act* and associated section 14 of the *FCPF Regulations*, prescribe a 56-day response time for all consumer complaints. While our sector is committed to strong customer service and consumer protection, this timeline is overly rigid and often insufficient for complex complaints (e.g., when a customer responds with additional comments). A more flexible timeframe would enhance, not detract from, a FRFI's ability to deal effectively and appropriately with consumer complaints.

Section 47(1) of the *FCPF Regulations*, sets out the annual percentage rate (APR) formula for calculating borrowing costs. Currently, this formula is so vague (i.e., it is unclear how many decimal points the final number should be) that it results in numerous discrepancies. As a result, the calculation of borrowing costs is uncertain for both FRFIs and their customers.

There are opportunities to clarify or simplify both the *Bank Act* and the *FCPF Regulations* in a way that would meet the goal of increasing protections for consumers while taking into account the operational realities of FRFIs, particularly FCUs and smaller FRFIs with more limited resources.

Recommendation: Amend sections 627.15 and 627.16 of the *Bank Act* to make the requirements less onerous for FRFIs to utilize the services of trusted affiliate suppliers.

***Recommendation*:** Amend section 627.43(1) of the *Bank Act* and associated section 14 of the *FCPF Regulations*, to remove the prescribed 56-day response time and replace it with a more flexible, principles-based timeframe that enables FRFIs to address consumer complaints in a manner that is both timely and effective, in order to account for the operational realities of smaller FRFIs and the fact that complex complaints may require more time to resolve.

***Recommendation*:** Further to section 47(1) of *FCPF Regulations*, APR formulas should be revised to ensure consistent calculation of borrowing costs across the financial sector.

c. Voting

Establish a threshold for member proposals aligned to other Acts and clarify if binding

Sections 144.1(1) and (2) of the *Bank Act* permit any member of an FCU to (i) submit to the FCU notice of any matter that the member proposes to raise at an annual meeting and (ii) discuss at an annual meeting any matter in respect of which they would have been entitled to submit a proposal. As written, it remains unclear as to whether the FCU would be bound by a resolution brought forward by a member pursuant to section 144.1(1) and (2). This should be clarified and a threshold of members required to bring forward proposals should be added.

A member threshold is common in the legislation applicable to provincially regulated credit unions (PCUs). All provinces outside of Quebec have thresholds for member proposals ranging between 1% and 5% of the membership. For example, in section 76(4.2) and section 77(4) of B.C.'s *Credit Union Incorporation Act,* the threshold for member proposals is as follows: (i) in the case of a credit union with 6,000 or fewer members, 5% of the members; and, (ii) for larger credit unions, (a) the sum of 300 members and (b) 1% of the number of members greater than 6,000. Here we observe a degree of proportionality, but the 1% threshold appears common for larger institutions.

Furthermore, in subsection 144.1 (7) of the *Bank Act* – just a few subsections after subsections 144.1 (1) and (2) noted above – the *Bank Act* provides a sample threshold required to bring forward a proposal specifically related to the nomination of directors, which is the lesser of 250 or one percent of members. We suggest that similar language be added to subsections 144.1 (1) and (2).

Recommendation: Amend the *Bank Act* to stipulate minimum thresholds to bring forward a member proposal.

Recommendation: Amend the *Bank Act* subsections 144.1(1) and (2) to clarify whether an FCU is bound by a resolution brought forward by a member.

d. Alignment with Other Acts

Align security interest regimes

Two competing personal property security regimes exist in Canada: federal *Bank Act* security and provincial *Personal Property Security Act* (*PPSA*) regimes.

Bank Act security is only available to banks, and as such, provincially chartered credit unions and other financial institutions not governed by the *Bank Act* are unable to take advantage of the security regime available to banks and the doctrine of federal paramountcy that gives that regime precedence over provincial laws.

The existence of universally accessible *PPSA* regimes makes *Bank Act* security an anachronism; *PPSA* regimes modernize and harmonize secured transaction rules and provide one legal structure for all commercial and consumer financing transactions which create, in substance, a security interest in personal property. Numerous court challenges have shown an unacceptable degree of legal uncertainty and unpredictability surrounding the priority rules under the *Bank Act* security provisions and the *PPSA* security regimes due to the lack of conceptual compatibility between federal and provincial/territorial secured transactions law [2]. While the *PPSA* has rules that resolve internal priority issues, these rules have no application to the federal *Bank Act*, and there are no provisions in either regime for resolving conflicts between the two systems.

In addition to the uncertainty and confusion created by these two competing regimes, maintaining a priority security regime available only to banks is anti-competitive.

Recommendation: Repeal sections 425 through 429 of the *Bank Act* to align with *PPSA* regimes.

e. Director Representation

Permit the Board of an FCU to temporarily appoint additional directors

Section 179.1 of the *Bank Act* provides that the directors of a bank, that is not an FCU, may, for a temporary term (until the next annual meeting of the shareholders) appoint a certain number of additional directors if the bank's bylaws allow them to do so, and the bylaws determine the minimum and maximum numbers of directors.

FCUs want to have the same right as other FRFIs to have the Board temporarily appoint additional directors. From a governance perspective, there would be numerous benefits to permitting a democratically appointed FCU Board to temporarily bolster its number as needed, and if permitted by its bylaws. Like other FRFIs, an FCU Board may see the need to temporarily expand its number for several reasons, including, but not limited to in the event of a combination with another credit union (e.g., an asset transaction or merger), to temporarily address a critical skill gap on the Board or other exceptional circumstances.

Recommendation: Amend section 179.1(1) of the *Bank Act* to remove the FCU exclusion, thereby providing FCUs the same ability as other FRFIs to temporarily appoint additional directors to its Board.

[2] The priority rules were tested by the Supreme Court of Canada in late 2010, with two decisions released in tandem, Bank of Montreal v. Innovation Credit Union (2010 SCC 47)and Royal Bank of Canada v. Radius Credit Union Ltd. (2010 SCC 47). In each case, the banks argued for a "first to perfect" approach in relation to *Bank Act* security and lost.

3. Credit Union Combinations

Credit unions have a long tradition of mergers and acquisitions. Efficient and timely consolidations are a critical component of credit union growth that allow credit unions to gain the economies of scale necessary to innovate, compete, enhance product offerings, and reduce pricing to members. Credit union combinations are also a key element in ensuring that FCUs can continue to provide vital competition and consumer choice within the financial sector.

As there are currently only three FCUs, most credit union combinations at a federal level will, in the near- to mid-term, involve at least one other credit union that is provincially chartered. We therefore encourage government and regulatory bodies to adopt legislation and regulation that facilitate effective and efficient consolidations between FCUs and PCUs.

Currently, there are two structures for FCU and PCU combinations: (i) federal continuance of the PCU followed by immediate amalgamation with an existing FCU, and (ii) an asset transaction, in which a PCU sells all or substantially all its assets to an FCU. Despite both structures achieving the same end – i.e., a larger FCU – the processes, approvals, and available relief are not comparable, and the process and mechanisms through which members of the purchased PCU may become members of and acquire membership shares in the acquiring FCU in an asset transaction are less clear than in an amalgamation.

Additionally, the current process for PCU continuance followed immediately by amalgamation with an existing FCU is unnecessarily burdensome, given that the smaller PCU will be combined with an existing, larger FCU – i.e., similar effect to an asset transaction.

Finally, a plan of arrangement may be the most efficient way to deal with complex tax and structuring issues for some credit union transactions between FCUs and PCUs. Although plans of arrangement are now the predominant way that mergers and acquisitions are implemented if the legislation allows it – for example, the *Canada Business Corporations Act* (*CBCA*) and *Ontario Business Corporations Act* (*OBCA*) – no plan of arrangement-type powers currently exists in the *Bank Act*.

a. Continuance & Amalgamations

Streamline the federal continuance and amalgamation process for credit unions

Where a PCU is continuing federally for the purpose of combining with an existing FCU, the continuance and amalgamation process should be streamlined.

Recommendation: (1) PCUs should be subject to an abbreviated continuance process when intending to immediately amalgamate with an FCU, and (2) where an FCU intends to amalgamate with a significantly smaller PCU, the approvals process should be the same as those required in a comparable asset transaction.

Recommendation: Amend section 33 of the *Bank Act* to permit regulatory and Ministerial approvals in a continuance and amalgamation to be completed on an expedited basis, in proportion to the materiality of the transaction to the FCU, as the Office of the Superintendent of Financial Institutions (OSFI) would have already assessed the risk appetite, risk monitoring, and governance structures applicable to the amalgamated entity through its existing supervision of the FCU.

Recommendation: Amend the *Bank Act* to permit a PCU and FCU amalgamation to proceed without a requirement that the larger FCU send a notice of a special meeting to and seek approval from its members and investment equity shareholders in circumstances where it is reasonable to conclude that the members and/or shareholders would not be prejudiced by the transaction. If the transaction may prejudice the rights of holders of membership shares or investment equity shares or result in significant dilution, we believe that it should be necessary to seek member and shareholder approvals, as applicable. Further, amendments to the *Bank Act* should be considered so that the regulatory approval process is the same as in a comparable asset transaction – i.e., only approval from the Superintendent of Financial Institutions when the acquired assets represent more than ten percent of the existing FCU's assets.

b. Asset Purchases

Ensure comparable processes, approvals, and available relief for amalgamations and asset transactions.

When an FCU purchases all or substantially all of the assets of a PCU, (1) the PCU's deposit liabilities should be subject to the same transitional deposit insurance as would be applicable in a continuance, (2) the Minister of Finance should have the same power to grant temporary transitional relief as in a continuance and amalgamation, (3) the process and mechanisms for PCU members to become members of and acquire shares in the FCU, should be equally clear and straightforward as they are in an amalgamation, and (4) new regulations should ensure that a PCU's depositors receive appropriate disclosure about changes in deposit insurance resulting from the asset transaction.

Recommendation: Amend the *Canada Deposit Insurance Corporation Act* (*CDIC Act*) to provide that, where an FCU purchases all or substantially all of the assets of a smaller PCU, the PCU's preexisting deposit liabilities will be subject to the same transitional relief regime that is available under section 12.1 of the *CDIC Act* in a federal continuance or a federal continuance and amalgamation – i.e., that the provincial deposit insurance coverage levels, which are higher than federal coverage levels, will be maintained during the transition period.

Recommendation: Amend the *Bank Act* to allow the Minister of Finance to permit temporary transitional relief allowing for a continued FCU to, for a temporary period, carry on certain pre-existing business activities and hold certain investments of the acquired PCU, that would otherwise not be permitted by the *Bank Act*, where a merger between an FCU and PCU is structured as an asset purchase. Similar provisions exist in section 231 of the *Bank Act* relating to amalgamations, but these provisions do not extend to a transaction that is structured as an asset purchase. Regardless of the structure of a transaction between a PCU and an FCU, the same transitional relief provisions should apply.

Recommendation: Amend sections 65, 79.1, and 482 of the *Bank Act* to clarify the process by which PCU members can become members of and acquire shares in the purchasing FCU. Currently, the process and mechanisms through which members of the purchased PCU may become members of and acquire membership shares in an FCU in an asset transaction, are less clear than in an amalgamation.

Recommendation: Amend the *Bank Act* to permit regulations, and then implement such regulations, ensuring that a PCU's depositors receive appropriate disclosure about the changes in deposit insurance that would impact them in order to make an informed decision about the asset transaction; these disclosures should be comparable to those required under the *Disclosure on Continuance (Federal Credit Unions) Regulations*. While we expect that credit unions will provide fair disclosure to members regardless, this is nevertheless a related

gap in the legislative regime.

c. Plans of Arrangement

Permit plans of arrangement under the Bank Act

FCUs, and other banks, would benefit from the same ability as companies under the *CBCA* and the *OBCA* to use plan of arrangement-type structures, subject to regulatory approval from both the Superintendent of Financial Institutions and the Minister of Finance.

In a plan of arrangement combination, transitional relief and transitional deposit insurance, should be available, and member approval should be required in a manner that is consistent with the principles outlined in the proposals related to amalgamations and asset purchases above - i.e., irrespective of whether an FCU and PCU combine via amalgamation, asset purchase or plan of arrangement, the processes, approvals, and available relief are comparable and efficient.

Recommendation: Amend the *Bank Act to* include flexibility for the use of plan of arrangement-type structures, while ensuring regulatory approval from both OSFI (from a prudential standpoint) and the Minister of Finance (from a systems perspective). This would align the *Bank Act* with other corporate statutes and, in particular, the *CBCA*, which is a key reference point for corporate law provisions in federal corporate statutes.

4. Expansion of Business Activities

a. Restrictions on Leasing

Remove leasing restrictions for deposit-taking institutions

Deposit-taking institutions would benefit from the ability to conduct leasing activities without restriction. Section 417 of the *Bank Act* prohibits leasing activities for FCUs and other banks, but the *Specialized Financing Regulations* provides an exception for types of investments that can be made by way of specialized financing activities, including acquiring or holding control of, or a substantial investment in, a Canadian entity: (i) that acts as an insurance broker or agent in Canada; or (ii) that is primarily engaged in the leasing of motor vehicles in Canada. The individual investment threshold, outlined in the *Specialized Financing Regulations*, was increased to$250 million in 2001 (from the previous threshold of $90 million). However, restrictions on leasing should be removed entirely to enhance leasing activities for FRFIs.

Recommendation: Repeal section 417 and amend section 468(3)(a) of the *Bank Act* to remove the reference to section 417, and make corresponding changes to the *Financial Leasing Entity Regulations* and the *Specialized Financing Regulations*, to remove restrictions on leasing activity for FRFIs.

b. Restrictions on Insurance

Amend the Act and Regulation to repeal the restrictions on insurance

Under the *Bank Act* and the *Insurance Business Regulation*, FCUs cannot make referrals to insurance brokers, cannot include insurance-related content on their websites, cannot advertise insurance products to their

members, and cannot share premises. These restrictions make it difficult for FCUs to offer a seamless service to members and offer products that meet members' financial needs.

Recommendation: Amend the *Bank Act* and *Insurance Business Regulation* to repeal these provisions.

c. 2018 Fintech Amendments

Bring regulations into force to enact the fintech amendments

The *2018 Budget Implementation Act*, Bill C-74, introduced amendments to the *Bank Act*, *Trust and Loan Companies Act*, and *Insurance Companies Act* to provide banks and other financial institutions with new or broader powers to invest in fintechs. While Bill C-74 obtained Royal Assent on June 21, 2018, those amendments were subject to regulations that were never published.

The fintech amendments were aimed at broadening investment in fintechs in five major areas: (i) networking, (ii) expanded ability to collect, manipulate and transmit non-financial information (without the Minister's prior consent) (iii) identification, authentication and verification services, and (iv) expanded ability to invest in fintechs.

Recommendation: Bring regulations into force to enact the 2018 fintech amendments.