

Agenda Item 5(b)

January 14, 2014 EOC Meeting

FEDERAL GOVERNMENT CONSULTATION PROCESS FOR A NEW CONSUMER CODE

On December 3, 2013, the Minister of State (Finance), the Minister of State (Small Business and Tourism, and Agriculture) and the Commissioner of the FCAC announced the start of a 12-week public consultation process for developing a new and comprehensive financial consumer code for institutions. The concept of a financial consumer code was first announced in the federal government's Economic Action Plan 2013, published on March 21, 2013. The newly released Consultation Paper seeks input from the industry and the public at large on new approaches to financial consumer protection regulation in Canada, which, if implemented, will significantly alter the regulatory landscape for institutions. The Consultation Paper is a concepts-based policy document and does not propose specific legislative amendments at this stage. The comment period ends on February 28, 2014.

Three main topics are canvassed in the Consultation Paper: a principles-based approach to market conduct regulation, enhancements to the existing regulatory framework (including the possible introduction of a general duty of fairness that institutions will owe to their customers), and stakeholder engagement in financial consumer protection issues. These topics are discussed in more detail below.

Principles-Based Regulation: Drawing on the G20 High-Level Principles on Financial Consumer Protection, the federal government is seeking consultations on the merits of adopting standards or principles that would underpin the financial consumer protection regulations. The principles would set general expectations for institutions for complying with the legislation and would offer a degree of flexibility in implementation of the legislative requirements. The principles would be supplemented by prescriptive rules and guidelines that would set out more detailed requirements to allow an objective assessment of whether the principles are being met. In this context, the government seeks comments on the following approaches to principles-based regulation:

- **Financial institution stewardship of the consumer's interest:** Institutions could be required to consider the needs of, and impacts on, the consumer when developing, marketing and delivering a financial product or service. This would require institutions to have policies in place to ensure that employees are sufficiently trained and have access to adequate resources to address consumer needs.
- **New disclosures:** Institutions could be required to provide information on the benefits, risks and features associated with the offered financial product or service, which goes beyond disclosing the associated charges and borrowing costs.
- **Responsible business conduct:** Institutions could have a positive obligation to develop financial products and services and adopt practices that are in the interests of consumers, while ensuring that consumers are free to exercise their choice based on a competitive marketplace.

- **Access to financial services and adequate redress mechanisms:** These concepts are already the focus of financial consumer protection regulation for institutions and could be further enhanced in the consumer code.

Based on the foregoing, the Consultation Paper seeks comments on what should be included in the set of principles that would underlie the regulatory framework in the consumer code and what elements should be set out for each principle to ensure that compliance with the principles are measurable and meaningful.

Possible Enhancements to the Existing Framework: The Consultation Paper is also seeking comments on specific possible enhancements to the existing regulatory framework in the following areas:

- **Responsibility of financial institutions to consumers:** Based on international experience, the government is considering the merits of introducing a broad standard of fairness for how financial institutions are to treat consumers. Aimed at protecting consumers against mis-selling, a broad duty of fairness could require institutions to know their customer and conduct an assessment of whether certain financial products or services are suitable for the consumer (the Ireland model). Institutions could also be required to make an assessment of whether a credit contract is suitable for the consumer (the Australian model). In addition, regulators, such as the FCAC, could be granted statutory powers to intervene and prohibit or set limits on the design or marketing of certain risky or complex financial products or services (the U.K. model).
- **New supervisory powers:** The government is considering whether the FCAC should have authority to direct institutions to compensate consumers for contraventions of legislative or regulatory requirements. This could provide a basis for early intervention and an alternative to class action suits.
- **Addressing the needs of seniors and vulnerable Canadians:** The government is also asking for ways to address the challenges for seniors and other vulnerable groups to accessing financial products and services and making sound financial decisions.
- **Disclosures:** The government is seeking comments on the types of disclosures that would enable consumers to make informed financial decisions, in addition to the disclosures currently required.
- **Access to financial services:** The government is asking for examples where access to financial services is difficult or constrained and how these situations could be addressed in the consumer code.
- **Innovation:** The government is seeking comments on the approach to ensuring that the financial consumer protection framework remains technology-neutral so that consumer protection continues to apply, notwithstanding changes in technology.
- **Comprehensiveness:** The government is also seeking views on any other elements that could be considered in order to achieve the objective of a comprehensive consumer code.

Engagement: As part of the consultation process, the federal government is considering ways to enhance the effectiveness of stakeholder engagement in financial consumer protection issues. In particular, the government sees the use of an advisory group as a potential approach to facilitate ongoing collaboration between the public and private sectors, including consumer groups.

The consultation process is a key opportunity for institutions to have their input in the policy design of the new consumer code, which may usher in significant changes to financial consumer protection in Canada. Institutions will be considering the consultation paper in detail, but we note that some key issues to consider include:

- Who would be entitled to the protections offered by the new consumer code? As it stands, there are numerous "consumer provisions" that are not limited to business with individuals, but apply to all customers.
- Should there be exceptions to the application of the "consumer provisions" and the new consumer code for sophisticated individuals?
- Would the new consumer code "replace the currently dispersed mix of legislation and dozens of regulations as stated in the Economic Action Plan 2013 or add a principles-based layer to the already complex regulatory framework?
- Would the FCAC be required to develop and implement a rulings process pursuant to which institutions could obtain certainty regarding the compliance of product proposals? This could be particularly important under a principles-based system, which allows greater regulatory discretion in the interpretation of what is compliant.

The federal government will provide a summary of views gained from the Consultation Paper in summer 2014 and input from the consultation process will be used in developing consumer protection policies. No timeline is set for releasing a draft of the consumer code.

Comments on the Consultation Paper can be submitted to the Department of Finance at code.consult@fin.gc.ca or to the address below. The closing date for comments is February 28, 2014.

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