

October 14, 2021

Department of Finance Canada  
90 Elgin Street  
Ottawa, Ontario K1A 0G5

**Submitted via email to:** [complaintsconsultation-consultationplaintes@fin.gc.ca](mailto:complaintsconsultation-consultationplaintes@fin.gc.ca)

**Re: Consultation on Strengthening Canada's External Complaint Handling System in Banking**

FAIR Canada welcomes the opportunity to provide comments on the Department of Finance's Strengthening Canada's External Complaint Handling System Consultation (Consultation).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investor' rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy issues, policy submissions to governments and regulators, and proactive identification of emerging issues.<sup>1</sup>

**General Comments**

External complaints bodies (ECBs) are an important component of the Canadian financial services system. They provide an invaluable service to consumers and, if well designed, can advance consumer protection, improve access to justice, and foster fairness and confidence in financial services.

The key attributes and importance of ECBs is reflected in the G20 High-level Principles on Financial Consumer Protection, which states:

Jurisdictions should ensure that consumers have access to adequate

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<sup>1</sup> Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers... Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public.<sup>2</sup>

The Financial Consumer Agency of Canada (FCAC)'s report on the operations of the two ECBs approved by the Minister of Finance left little doubt that the current system is not working as it should, nor as well as it could.<sup>3</sup> The FCAC's report heightened awareness of the need to improve complaint handling, an issue that was also identified by the Ontario Capital Markets Modernization Task Force (Modernization Task Force).<sup>4</sup> Consumers and investor advocates have been calling for action and reform long before the release of these reports.

We applaud the government for finally taking the initiative to address the deficiencies in a comprehensive and meaningful manner – it is long overdue. Some consumers already appear to be giving up on the system and action is needed now to restore public confidence.

The FCAC's report, and our review of international best practice, underscore the need to improve the complaint handling system to better serve Canadians. FAIR Canada's key concerns with the existing system include:

- Canadians are too often induced to accept unfair/low-ball settlements because ECB recommendations are not binding.
- Canadians are discouraged from escalating their complaint to an ECB because the complaint process is confusing, protracted, complex and emotionally taxing.
- The ECBs' deficient funding model and inability to address systemic issues undermines their independence and effectiveness.
- The system is skewed in favour of financial institutions by providing banks, but not consumers, with the choice of directing complaints to another ECB.

FAIR Canada strongly believes that the best and most obvious solution is to build on the Ombudsman for Banking Services and Investments (OBSI)'s strong track record. It should be designated as the sole ECB and its existing mandate and capacity strengthened.

Lastly, we note that there are multiple on-going reviews on external complaint handling:

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<sup>2</sup> [G20 High-level Principles on Financial Consumer Protection, October 2007, page 7.](#)

<sup>3</sup> [Industry Review: The Operations of External Complaints Bodies \(FCAC\) 2020.](#)

<sup>4</sup> [Modernizing Ontario's capital markets: Capital Markets Modernization Taskforce Final Report, 2020.](#)

- The Autorité des marchés financiers (AMF) is currently consulting on proposed draft regulations dealing with complaint handling that will impact consumers based in Quebec.<sup>5</sup>
- The Ontario government and Ontario Securities Commission (OSC) are responding to recommendations from the Modernization Taskforce, including recommendations relating to binding decisions by an ECB that will impact consumers in Ontario.
- OBSI is embarking on two independent evaluations of its operations and practices in 2021. One will be related to investment-related complaints, and the other to banking-related complaints.<sup>6</sup>
- ADR Chambers Banking Ombuds Office (ADRBO) is also conducting an independent evaluation into its accessibility, accountability, impartiality, and independence, and whether it discharges its functions in a transparent, effective, timely and cooperative manner.<sup>7</sup>

Given these reviews, it will not only be important to fully address the deficiencies identified in the FCAC's report, but also to find solutions that promote a harmonized approach across jurisdictions and frameworks. We therefore urge the Department of Finance to engage and coordinate with these other reviews where possible. Canadians will not be well served by further fragmentation and discrepancies in the complaint handling system.

### Comments on Specific Questions

#### 1. Are these principles appropriate to guide future policy directions on the structure and key elements of the ECB system in Canada?

We are generally supportive of the proposed principles set out in the Consultation. We believe, however, that other critical guiding principles are missing and some need to be enhanced.

##### (a) Fairness

Fairness is a fundamental principle for any ECB and should be front and center of any guiding principles. Adopting a fairness principle is paramount for promoting public confidence in the system.

Based on our review of international best practice, fairness is enshrined as a core principle within most, if not all, ECBs.<sup>8</sup> For example, Australia's Financial Complaints Authority (FCA) enshrines fairness as a core principle in its constitution and is required by legislation to operate in a way that is, among other things, fair.<sup>9</sup> The UK's Financial Ombudsman Service (FOS) publicly states it is

<sup>5</sup> [Complaint processing and dispute settlement - AMF publishes draft regulation for comment \(2021\)](#).

<sup>6</sup> [2021 Independent Evaluations of OBSI](#).

<sup>7</sup> [ADRBO - Request for Proposal \(RFP\) Independent Third-Party Evaluator, 2021](#).

<sup>8</sup> [Complaint Handling and Redress System for Retail Investors \(IOSCO\) \(January 2021\)](#).

<sup>9</sup> <https://www.afca.org.au/about-afca/fairness>.

committed to “running a service with fairness at its heart.”<sup>10</sup>

Given the lack of a comprehensive legislative framework for ECBs in Canada, we believe it is even more critical that fairness be a guiding principle.

Being fair includes having effective policies in place to ensure that consumers are aware of and understand how to navigate the complaint handling process. It includes implementing standards about due process. It also means that decisions consider individual circumstances, are impartial and equitable, and are based on relevant laws and regulations, general principles of good administration, good practice, and professional standards. It also means avoiding unduly formal or legalistic processes and decisions.

Moreover, given the inherent asymmetry in resources between banks and consumers, fairness means the ECB must play a role in leveling the playing field and assist consumers. We elaborate further on the issue of assistance in our response to Consultation Question 6 below.

Ultimately, the fairness principle is about ensuring that ECB processes and decisions are visibly fair and equitable.

### **(b) Transparency**

Transparency should be incorporated into the guiding principle on accountability. It is a pre-condition for accountability and is integral to good governance and fostering public confidence. Transparency is also important to support public scrutiny of an ECB’s work and assessing its effectiveness. In short, an organization cannot be held accountable unless it is also transparent.

Other best-in-class ECBs, like Australia’s FCA and the UK’s FOS, operate on the principle of transparency and openness.

Being transparent means publicly disclosing information like operational policies, board composition criteria, annual reports, financial statements, and complaint related data, metrics, and trends. Simply making the information available, however, is not sufficient – the goal should be to ensure the information is comprehensible and provides a clear picture on how the ECB is delivering on its mandate.

### **(c) Accessible**

We agree that accessibility should be a guiding principle. Without it, the fundamental objective for creating the ECB is undermined. Accessibility also supports financial inclusion for more Canadians.

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<sup>10</sup> <https://www.financial-ombudsman.org.uk/who-we-are/aims-values>.

Importantly, accessibility includes ensuring the public is made aware of the ECB and its services. Recent surveys of complainants in Canada suggests that this remains a challenge that needs to be addressed. For example, when asked how easy it was to find out about OBSI and its services, 23% of complainants had an unfavourable response.<sup>11</sup> We suspect the number of unfavourable responses would be higher in respect of ADRBO. This suggests that much more needs to be done in Canada to raise awareness of the ECBs.

In addition, given Canada's multilingual make-up and fragmented regulatory system, accessibility requires raising awareness and providing access across multiple channels in multiple languages. Efforts should not be limited only to Canada's two official languages.

It should also be accessible to people with disabilities, those who live in remote communities, and those who may be from more vulnerable or marginalized groups. In our view, a key measure of accessibility should be how well and easily the system can be accessed by the more vulnerable and less fortunate in our society.

#### **(d) Impactful decisions**

The purpose of having an impartial ECB is undermined if, at the end of the process, there is no ability to secure redress or bring finality to the complaint. This is a significant problem with the current system, which permits financial institutions to ignore the ECB's final decisions.

Empowering ECBs to make binding recommendations will enhance both the fairness and the effectiveness of the system. We discuss the issue of binding recommendations in greater detail in our response to Consultation Question 7 below.

In addition to binding recommendations, we believe that to be impactful, decisions must be timely. In our view, avoiding "undue delay" should not be the aim of the guiding principle on timeliness. This principle should aim higher and be reframed to mean resolving complaints "quickly and on an expedited basis."

Unlike financial institutions, most consumers cannot afford to sustain long delays in the complaint handling process. Each delay exposes consumers to on-going harm. Therefore, the system needs to prioritize speed and quick resolutions to minimize adverse consequences for consumers, particularly in situations where they have suffered financially.

This means the system should strive for no more than a 60-day period at the firm stage, and a hard 90-day deadline for final recommendations from the date the complaint was escalated at the ECB stage.

Given the procedural fairness afforded to financial institutions throughout the process, they should not be able to delay complying with the ECB's final decision beyond a fixed period. For

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<sup>11</sup> [2020 OBSI Consumer Survey Results.](#)

example, if the consumer agrees with the decision, the institution should have thirty days to comply with and satisfy the terms of the decision. To be impactful, there should also be a quick and direct method for enforcing compliance after the 30-day period has elapsed. This may include regulatory penalties and sanctions if necessary.

Finally, we believe that to the extent there are any rights of appeal, they should be narrowly prescribed to minimize risks that the appeal process be weaponized against the consumer and used to further prolong the complaint process.

## 2. What ECB system structure would best address the deficiencies identified in the FCAC report and most effectively uphold the guiding principles outlined in the previous section?

The FCAC's report identifies numerous deficiencies and discrepancies in the current system, including differences in service standards, transparency, reporting and effectiveness. This should not be a surprise given that each ECB is structured differently, led by different people, has different governance systems, and very different financial imperatives.

Though only two ECBs are currently approved by the Minister of Finance, the system is structured to permit additional ECBs to operate in the financial services space.

In our view, a structure that allows for multiple ECBs will merely propagate the types of deficiencies identified by the FCAC's review. This includes ongoing one-sided competition that offers choice for banks but not for consumers. The current system structure also perpetuates inconsistent processes and decisions, makes oversight more difficult, and adds unnecessary costs. It is also inconsistent with international best practice.

For example, the World Bank Group undertook an extensive diagnosis of South Africa's multiple financial ECBs and made numerous recommendations to enhance consumer protections and promote good-quality outcomes. It concluded that South Africa's system of multiple ECBs created a highly complex and fragmented system that increases costs for providers and is difficult for consumers to navigate. Ultimately, the World Bank Group recommended that South Africa establish a centralised and comprehensive ECB system to support greater accessibility and efficiency across the financial sector.<sup>12</sup>

The World Bank's recommendations for South Africa are consistent with the direction other countries have been moving. For example, the UK moved away from having multiple ECBs and established the FOS, a single ECB, more than 20 years ago. Australia consolidated multiple ECBs in 2008, when it created its Financial Ombudsman Service Limited (FOS). Ten years later, following on the heels of an expert panel review, Australia's system was further consolidated by combining

<sup>12</sup> [South Africa - Financial Ombuds System -World Bank \(2021\), page 161.](#)

FOS with two other ECBs to create the new FCA.<sup>13</sup>

We also note a World Bank report from 2012 raised significant concerns with a system structure that permits multiple ECBs. It states:

A few countries have **the unusual idea of ‘competitive’ ombudsmen**, where – subject to specified minimum standards – the financial industry is able to choose between two or more competing financial ombudsmen.

Such a choice presents severe risks to independence and impartiality – because financial businesses may favour the ombudsman they consider likely to give businesses the best deal.

It overlooks the role of financial ombudsmen as an alternative to the courts and creates one-sided competition – because, unlike the financial businesses, the consumers are not given any choice of ombudsman.<sup>14</sup> (emphasis added)

We believe that having a single, not-for-profit ECB would best address the deficiencies identified in the FCAC’s report and most effectively uphold the guiding principles. It would also result in a simpler system, reduce consumer confusion, be easier to navigate, lead to more consistent outcomes, be less costly to operate, and would be better prepared to meet the future needs of consumers.

Stated differently, when the ECB makes an unfavourable recommendation against a financial institution, consumers are better served by a system that leads the institution to turn its mind to changing its practice, as opposed to changing its ECB.

The current deficiencies in the complaint handling system do not necessitate the creation of an entirely new ECB. The obvious and better approach is to strengthen OBSI’s capacity and mandate consistent with international best practice. Given its track record and results over the past 25 years, we believe OBSI should be designated as the only ECB for banking and securities related complaints in Canada.

### 3. To what extent does the profit structure of an ECB have a real or perceived impact on the impartiality and independence of an ECB?

<sup>13</sup> [Review of the financial system external dispute resolution and complaints framework \(Commonwealth of Australia 2017\)](#). When it was established on November 1, 2018, AFCA replaced the Financial Ombudsman Service Limited (FOS), Credit and Investments Ombudsman (CIO) and the statutory Superannuation Complaints Tribunal (SCT).

<sup>14</sup> [Resolving disputes between consumers and financial businesses: Fundamentals for a Financial Ombudsman - World Bank \(January 2012\), pages 38-39.](#)



The profit structure of an ECB has a significant impact on the public's perception of impartiality and independence. Maintaining the existing for-profit structure will simply increase the apprehension of bias that currently exists among consumers.

Like the issue of permitting multiple ECBs, permitting for-profit ECB services falls below international standards and norms. For example, both the UK and Australia have adopted not-for-profit ECBs. As noted by the World Bank, ECBs "must operate on a not-for-profit basis."<sup>15</sup> The International Network of Financial Services Ombudsman Schemes (INFO Network)<sup>16</sup> also issued guidance that makes it clear that a financial services ECBs scheme should only operate on a not-for-profit basis.<sup>17</sup>

Given the important role the ECB plays in promoting confidence and integrity, we believe the inherent incentive in a for-profit structure to side with banks when issuing recommendations is corrosive to public trust and confidence in the system.

#### 4. To what extent could an ECB's assessment formula impact the real or perceived impartiality and independence of the ECB?

Most Ombudsmen are funded through a variety of means, including an annual levy on member institutions, and case fees payable by member institutions that have complaints brought against them, or a combination of the two.

Levies tend to focus on the fact that all financial institutions benefit from the increase in consumer confidence of knowing an ECB is there to deal fairly with their complaints. Case fees, on the other hand, tend to focus on the view that financial institutions with more complaints should pay more fees.

While industry will invariably take issue with any assessment formula, their concerns relate more to their own sense of what is fair in their circumstances. From the consumer's perspective, we do not believe the assessment formula significantly impacts their perception of impartiality and independence. The much bigger impact on perception, as noted above, is allowing the ECB to operate on a for-profit basis.

In our view, what is most critical is to ensure that the assessment formula provides sufficient funding to enable the ECB to carry out its mission effectively, and in a manner consistent with the

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<sup>15</sup> [Ibid, page 73.](#)

<sup>16</sup> INFO Network (<http://www.networkfso.org/>) is a worldwide association that brings together ombudsman practitioners from around the world. for financial services ombudsmen. It was formalized in 2007 and facilitates co-operation among its members to build expertise in external dispute resolution, by exchanging experiences and information.

<sup>17</sup> [Guide to setting up a Financial Services Ombudsman Scheme - INFO Network \(2018\).](#) The guide was developed by two senior financial ombudsmen who have advised 35 countries worldwide on best practices for ombudsman.



guiding principles.

It will be important to ensure that any assessment formula:

- Provides sufficient funding to the ECB to operate effectively, independently, and expeditiously on a sustainable and not-for-profit basis.
- Addresses the risk of one or more financial institutions' ability to threaten the ECB by delaying or withholding fees.
- Enables the ECB to control its operating budget and not be required to seek approval for reasonable increases.
- Permits an adequate reserve, so that existing service standards can be maintained during unexpected changes in complaint levels, or the levels of collectable levies and fees.
- Does not require consumers to pay fees, even very modest fees.

#### 5. What are the benefits to consumers from a banking ECB that provides non-bank dispute resolution services? Are there drawbacks.

We believe there are many benefits to consumers to having a single, integrated ECB.

A single ECB will reduce consumer confusion and deliver more consistent decisions and consumer experiences. It will also improve accessibility because consumers will not have to learn how to navigate different ECBs because of an institution's choice or the type of product that is the subject of the complaint. It should also improve accountability and remove discrepancies in service standards that exist in the current system.

Historically ECBs tended to be created to deal with a particular type of product or a sector of financial services (such as banking, insurance, or securities). Today, the lines between the different sectors have become blurred, and the business lines and product offerings are becoming more and more intertwined within the same financial institution.

For consumers, who may buy a security product (like a mutual fund) and a bank product (like a GIC) from the same bank branch, it makes little sense to have to go to two different ECBs based on the product. From their perspective, their complaint lies with the conduct of the financial institution, not the product.

We anticipate this blurring will only accelerate as new digital tools emerge to provide greater access to a wider range of financial products and services to everyday consumers. As such, perpetuating different ECBs based on different products will simply lead to Canada falling further behind international best practice.

Again, many countries, including the UK and Australia, have come to recognize that there are far more benefits than drawbacks in having a single ECB handle complaints about financial

institutions and products.

As alluded to in our response to Consultation Question 2 above, Australia undertook several consolidations of its ECB framework. In 2008, it created the FOS by combining the Banking and Financial Ombudsman Service, Insurance Ombudsman Service, and the Financial Industry Complaints Service. At the time, the following benefits were identified with having one ECB deal with complaints regarding different products:

- greater sophistication in infrastructure and dispute resolution;
- better learning and training;
- better ability to identify industry-wide systemic issues;
- specialisation in dispute resolution by product rather than by financial services providers;
- greater consistency in approaches and outcomes for consumers, including adoption of best practice;
- easier for consumers to know which scheme to use if they have a dispute; and
- efficiency benefits from sharing resources or from economies of scale and scope.<sup>18</sup>

Subsequently in 2016, the Government of Australia undertook another extensive review. The driving impetus for the review was to design a new ECB framework that “delivers effective outcomes for users in a rapidly changing and dynamic financial system.”<sup>19</sup>

The review compared Australia’s existing system of multiple ECBs against the core principles of efficiency, equity, complexity, transparency, accountability, comparability of outcomes and regulatory costs, as well as best practice developments in other sectors and jurisdictions. Following the review, the Government of Australia decided to further consolidate FOS with two other ECBs and created the FCA to deliver more effective outcomes for consumers.

Both the UK and Australian integrated ECB structures appear to be effective in delivering on their mandate. To date, to our knowledge no one has raised any meaningful drawbacks to the integrated model used in these jurisdictions. In addition, we note that the World Bank Group recently recommended that South Africa also amalgamate its multiple ECBs into a single ECB.

Closer to home, OBSI is a great example of how well an integrated ECB can work. Based on our inquiries and review, no one has raised any obvious disadvantages regarding its joint mandate of dealing with both banking services and investments.

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<sup>18</sup> [Review of the financial system external dispute resolution framework - FOS - \(October 2016\), page 6.](#)

<sup>19</sup> [Review of the financial system external dispute resolution and complaints framework. \(Commonwealth of Australia 2017\), page 3.](#)

## 6. Should an ECB be required to provide complainant assistance, and what type of complainant assistance should be provided?

Yes, an ECB should be required to provide complainant assistance. FAIR Canada believes this is consistent with the guiding principles of fairness, accessibility, and efficiency.

Most Canadians have limited understanding of their rights or the process for making a complaint. Most also have little to no experience interacting with the system, unlike financial institutions which build up institutional knowledge and expertise over time. Financial institutions also have resources at their disposal that are not available to consumers.

In short, most consumers are at a significant disadvantage when they need to engage with the system. Many may not know where to start, how or with whom to file a complaint, or even what would be required to support their complaint. And this disadvantage is magnified when more vulnerable or less affluent consumers have complaints.

Providing assistance to consumers is critical to level the playing field and promote accessibility. We believe the ECB should aid consumers through the process as much as possible, including by:

- helping them articulate their complaint;
- advising on who to contact with any questions;
- explaining what documentation would be helpful to support their complaint and where they can find any needed documents;
- clearly explaining the steps in the complaint handling process, their rights and responsibilities, as well as timelines or any limitation periods;
- helping them understand applicable rules and terminology;
- regularly updating them about the status of their complaint;
- explaining the criteria used by the ECB when making recommendations; and
- explaining other options available if they are not satisfied with the ECB's final decision.

Assistance should also include providing services in multiple languages where possible. The UK FOS, for example, offers free third-party translation services for individuals whose first language is not English.<sup>20</sup> Assistance should also be provided in a manner that complies with government accessibility standards for people with disabilities.

## 7. Do you have views on whether the decisions of an ECB should be binding or non-binding on banks? Please refer to the guiding principles to support your position

This issue has been endlessly debated in Canada for well over a decade. It is time we act and

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<sup>20</sup> <https://www.financial-ombudsman.org.uk/accessibility>.

move forward with implementing binding decisions.

The absence of binding decisions unfairly skews the complaint process in favour of the financial institution. And while data on the banking side appears to suggest the system is operating reasonably well without binding decisions, there is no data on how many consumers have been prejudiced by this skewing. In short, the fact that to date no bank has refused an ECB recommendation does not necessarily mean that consumers have not been harmed.

On the investment side, where there have been outright refusals by financial institutions to accept OBSI's final recommendations, as well as documented cases of low-ball settlement offers, the data paints a clear picture of consumer prejudice and harm.

We should not have to wait for a bank to follow suit before implementing binding decisions for all financial institutions. We firmly believe that the absence of binding decisions creates unacceptable risks for all consumers, has failed to bring real closure in many cases, and has been eroding public confidence for too long.

For the reasons set out below, FAIR Canada strongly supports making ECB decisions binding on financial institutions. Without it, the consumer is exposed to a potentially ineffective process and unfair outcome, whereas the financial institution is not.

As noted, the absence of binding decisions skews the power imbalance between the financial institutions and consumer, and results in the consumer having to accept a low-ball settlement offer to secure some level of compensation. In other cases, it has led to ECB recommendations being ignored by the financial institution, leaving the consumer with nothing at the end of a long and difficult process. And while some will point out that the consumer can always pursue legal action against the institution, we all know this will rarely happen, if ever, because of the costs involved.

We further believe that a lack of binding decisions has discouraged some consumers from escalating legitimate complaints because they already feel there is no point – the institution will simply ignore the ECB recommendations, just like the institution ignored them when they filed the complaint with the firm. Bluntly stated, consumers may not be bringing complaints forward because they do not believe it would accomplish anything.

All this calls into question the system's effectiveness, as well as whether there is any real accountability within the financial system more broadly. This concern is not new. It was clearly raised in 2016:

The real mischief, however, is not that some consumers receive less, but that OBSI's current mandate allows this to happen. It, in effect, tilts the playing field in favour of firms. The fact this is happening in a complex industry that has a significant impact on people's well-being, and in which customer literacy

is generally low, is of concern.<sup>21</sup>

Like other aspects of our complaint handling system, the lack of binding decisions in Canada is inconsistent with international norms. Both the UK's FOS and Australia's FCA have been equipped to carry out their mandates with binding decisions.

In 2017, the World Bank Group also explicitly stated that if consumers are unsatisfied with the decision resulting from the internal complaints process at the financial service provider, they should have the right to use an ECB mechanism **“that has powers to issue decisions on each case that are binding on the financial service provider (but not binding on the consumer).”**<sup>22</sup> (Emphasis added.)

This past summer, the World Bank Group recommended that South Africa create a new National Financial Ombud (NFO), independent of both industry and government, and be given the power to issue binding decisions “enforceable in the same way as a court judgement.”<sup>23</sup>

To be credible, binding decisions that are enforceable as if they were court orders is what we should all expect from the ECB system.

Ontario's Modernization Task Force also recognized this issue and stated that:

Enhancements are also needed for investor protection, including by designating a dispute resolution services organization that would have binding decision-making power to provide harmed investors an efficient and cost-effective way to obtain compensation where appropriate.<sup>24</sup>

The Modernization Task Force went on to state:

In the Canada Financial Sector Assessment Program: Technical Note — Oversight of Securities Market and Derivatives Market Intermediaries (2019), the International Monetary Fund note that providing binding authority for OBSI would improve investor protection...

...

One of the cornerstones of healthy capital markets is democratizing access to capital, while still protecting retail investors. A binding, reputable and efficient [dispute resolution services] framework in Ontario would be a significant improvement to the retail investor protection framework.<sup>25</sup>

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<sup>21</sup> [Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' \(OBSI\) Investment Mandate \(May 2016\), page 1.](#)

<sup>22</sup> [World Bank - Good Practices for Financial Consumer Protection \(2017\), page 51, \(in connection with complaints about deposit taking institutions\), and page 163 \(for complaints against the securities industry\).](#)

<sup>23</sup> [South Africa - Financial Ombud System Diagnostic \(2021\), pages 24 and 25.](#)

<sup>24</sup> [Capital Market - Modernization Task Force – \(January 2021\), page 87.](#)

<sup>25</sup> *Ibid*, page 105.

In our view, it is critical that ECB decisions be made binding on financial institutions. Binding decisions will improve complainants' ability to seek redress, bring closure to their complaints, and allow the ECB to deter unfair practices in line with the 'impactful decisions' principle. Without binding decisions, consumers will continue to be exposed to unacceptable risks of either being forced to settle for amounts well below the ECB's recommendations or receiving nothing after their complaint has been upheld and found to merit compensation.

**8. Should the government establish requirements for representation on the board of directors of an ECB? To what extent should an ECB be required to make public its governance process?**

Governance is an important consideration in ensuring that the ECB effectively executes on its mandate. Given that the ECB serves an important public interest role, we believe that representation on its board of directors should include individuals with diverse perspectives and experience. And while some should have industry experience, the majority should be independent of industry and reflect broader consumer interests.

We are not of the view, however, that the government should get directly involved in the selection or appointment process as this could undermine the principle of impartiality and independence.

Finally, the ECB should be required to be fully transparent when it comes to its governance process. In this regard, it should make public information such as:

- the composition and selection criteria for its board of directors;
- the list of board members, their background, and any compensation received;
- any board policies or codes of conduct;
- the ECB's goals and mandate;
- terms of reference for any board level committees;
- board meeting minutes and board attendance at those meetings;
- its corporate by-laws and audited financial statements; and
- any independent evaluations or reports on the effectiveness of the ECB.

Making this type of information public will promote the accountability and transparency principle.

## **Conclusion**

We congratulate the Department of Finance for taking the lead on this significant issue, one that directly impacts the lives of many Canadians.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. We would be pleased to discuss our submission with the Department of Finance should you have questions or require further explanation of our views on these matters. Please contact me at [jp.bureaud@faircanada.ca](mailto:jp.bureaud@faircanada.ca).

Sincerely,



Jean-Paul Bureaud,  
Executive Director