

## Compliance Framework Summary of consultation responses

### Broadened definition of a reportable complaint (N.B.: All relevant complaints received at the reportable level must be forwarded to FCAC.)

#### Comments from stakeholders

In its initial consultations with the financial industry, FCAC indicated that financial institutions would have the opportunity to respond to each complaint before it became reportable. The broadened definition in FCAC's revised compliance framework represents a significant change in FCAC policy, to prevent financial institutions from resolving complaints at the first point of contact. It was understood that the July 2003 review of certain financial institutions addressed any concerns with respect to the reportable complaint process.

Moreover, since financial institutions often deem communications with the Ombudsman's office to be confidential, this conflicts with the requirement to report complaints that were first lodged at a level higher than the reportable level.

#### FCAC comments

The realities of the implementation of the May 2002 Compliance Framework caused FCAC to change the definition of a reportable complaint to ensure effective and consistent compliance monitoring.

The July 2003 review brought several concerns to the forefront; namely, that not all financial institutions were reporting complaints in a consistent manner. The broadened definition will ensure consistency in reporting across all financial institutions.

Moreover, FCAC's review of reportable complaint processes identified that financial institutions were often not reporting complaints lodged at a higher level, even though these complaints fell within the definition of a reportable complaint. The financial institution's internal ombudsman is not excluded from this process.

The broadened definition does not affect a financial institution's responsibility to respond to complaints at all levels of the organization.

Consequently, FCAC has not made any substantial changes to the draft framework that it released previously.

### Public consultations

#### Comments from stakeholders

Policy should not be subject to public debate, once legislation has been put in place. If the policy intent of a law is not clear, consultations should be undertaken with the Department of Finance.

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Such practices will ensure that the consultation process is transparent and accessible to the public.

#### FCAC comments

The industry has had opportunities in the past to comment on compliance issues. In order to maintain transparency with all stakeholders involved, it is reasonable that this process also be available to consumer groups.

The Commissioner may seek views regarding compliance issues of concern to FCAC. However, FCAC will not discuss matters involving policy intent in any public consultations.

Consequently, FCAC has not made any substantial changes to the draft framework it released previously.

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### Commissioner's Report to the Board

#### Comments from stakeholders

FCAC should consult with management of the financial institution before submitting a Commissioner's report to the Board. Similar to the process of a Compliance Report, this is to ensure that the information to be submitted is accurate.

FCAC should also make available to all stakeholders information on the criteria it uses to determine whether it is necessary to submit a report to the Board.

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FCAC should send such reports to the Boards of all financial institutions, since Boards have a fiduciary relationship with the corporations they represent.

#### FCAC comments

Since many financial institutions do not have any compliance-related activity, there is no need to submit a Commissioner's report to the Board. This would create an unnecessary administrative burden.

Other regulators have established processes to communicate with the Board of Directors when deemed necessary. Although FCAC makes management aware of the issues to be discussed, the regulator manages the communication process, which is meant to build on matters that were discussed previously.

Consequently, FCAC has not made any substantial changes to the draft framework it released previously.

Prior to submitting a report to the Board, FCAC will send a copy of the report, for information purposes only, to the Compliance Liaison person and the CEO.

### Reporting on targeted codes of conduct and public commitments

#### Comments from stakeholders

There are concerns that increased monitoring is "out of sync" with the size of the problem, and that it will create an unwarranted regulatory burden. Moreover, additional reporting will divert resources away from resolving complaints.

FCAC should use its examination powers to review code of conduct and public commitment issues with specific financial institutions, where warranted. Monitoring as such should be targeted to the area(s) of concern.

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There is a significant information imbalance between retail customers and financial institutions. Such reporting will allow consumers to be better informed on how financial institutions are performing with respect to codes of conduct and public commitments.

FCAC should conduct examinations on codes of conduct and public commitments, above and beyond reporting on the complaints related to them.

#### FCAC comments

Subsection 5(3) of the *FCAC Act* states that the Commissioner may make or cause to be made any review necessary to monitor compliance with a code of conduct or public commitment. To this effect, the Commissioner may use the established reportable complaint process to obtain the necessary information to conclude on a financial institution's compliance.

The first three years of FCAC's operations were focused on assessing compliance with the consumer provisions. In light of established processes for consumer provision oversight, FCAC is now in a position to focus on activities related to the monitoring of codes of conduct and public commitments.

Because FCAC is sensitive to the administrative burden this additional reporting may create, reporting will only be required for *targeted* codes and commitments. This means that training will only be required for complaint-handling staff who deal with those specific codes or commitments.

Since the complaint-resolution process and reporting process are interdependent but separate functions, the burden of reporting complaints should not be substantial for most financial institutions.

Consequently, FCAC has not made any substantial changes to the draft framework it released previously.

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### Legislative filings

#### Comments from stakeholders

The financial institutions have concerns about the wording of information that FCAC “encourages” financial institutions to provide, over and above what is legislatively required. The purpose of the Compliance Framework is to establish a supervisory process to oversee requirements set out in legislation. It should not establish new requirements.

#### FCAC comments

FCAC often requests additional information regarding legislated filings, namely branch closures, once it has received the Notice to the Commissioner. Encouraging financial institutions to provide this information upfront will make the process more efficient.

However, financial institutions are required to file only those documents for which there is a legislative requirement to do so.

Consequently, FCAC has made a change to the draft framework it previously released to this effect.

FCAC may request additional information regarding filings, if necessary.

### Increased time to respond to investigations and compliance reports

#### Comments from stakeholders

An increased response time will allow banks to respond fully while meeting FCAC’s expectations regarding timing.

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Ten business days are sufficient for the financial institution to review the complaint. Additional time will unnecessarily delay both the response and any non-compliant practices from being corrected.

#### FCAC comments

The proposed increased response time should not have an impact on the efforts of the financial institution to deal with its customers in a timely fashion, with respect to potential redress issues.

Given the fact that the process mandated under the *FCAC Act* can have substantial consequences, it is imperative that the Commissioner have all the necessary facts when making a determination. The increased response time should allow financial institutions to submit a more comprehensive response.

Consequently, FCAC has not made any substantial changes to the draft framework it released previously.

### Publication of violations

#### Comments from stakeholders

Banks should have the opportunity to take full advantage of the right to appeal, before a decision is made public.

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All violations should be made public. Consumers have a right to know whether or not their financial institution is meeting its legal obligations.

#### FCAC comments

Financial institutions have the right to appeal a determination made by the Commissioner. The appeal process itself is public.

The Commissioner will use his discretion as to the timing of the publication, and will take into account the facts of each case when making such a decision.

Consequently, FCAC has not made any substantial changes to the draft framework it released previously. The Commissioner will continue to exercise his discretion. Transparency and the protection of consumers’ interests will be the guiding principles.

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### Mystery shopping

Comments from stakeholders
FCAC should clarify that it will release mystery-shopping results to the public in <i>aggregate</i> form only, and that it will not disclose the name of the financial institution.
FCAC should consult with the financial institutions prior to publishing any mystery-shopping results. The institutions' comments should be published along with the results.
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When releasing the results of the mystery-shopping exercise, FCAC should make public the names of the financial institutions.
The results should be reported to the Minister on a mandatory basis.

FCAC comments
Section 17 of the <i>FCAC Act</i> requires FCAC to consider the individual results of such an exercise as confidential and to treat them as such. Therefore, FCAC will make public <i>aggregate</i> results only, and will not release the names of specific financial institutions at that time. FCAC will inform the industry before releasing the results to the public.
As provided for by section 17(2) of the <i>FCAC Act</i> , the Commissioner may release financial institution-specific results to the Minister.
If it suspects that there is a compliance issue, FCAC will open a compliance case and investigate it, as per the normal process. If, as a result of a mystery-shopping exercise, a violation is found, the Commissioner may publish the name of the financial institution, using his discretion under section 31 of the <i>FCAC Act</i> .
Consequently, FCAC has not made any substantial changes to the draft framework it released previously.

### Questions and clarifications

Comments from stakeholders
The Compliance Framework should specify the information that FCAC will provide to the financial institution at the outset of an investigation, similar to what it requests with respect to reporting complaints.
FCAC should only send the CEO those Commissioner's decisions that are more serious (e.g., Notices of Violation).
FCAC should not include non-compliance with codes of conduct and public commitments in the bank's compliance history, since no appeal provision exists for this.
FCAC should consult with the financial institutions regarding the wording of case summaries involving codes of conduct and public commitments. This is similar to the existing process for the consumer provisions.
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FCAC should publish all incidents of non-compliance with a code of conduct or a public commitment.
Following an examination, FCAC should also send the financial institution the report to the Minister.

FCAC comments
Under the current process, an officer will not pursue a complaint with a financial institution if there is a lack of key information to conduct an investigation.
FCAC will try to obtain the necessary information from the consumer, to ensure the effectiveness of the compliance investigation.
FCAC will send Letters of Reprimand to the Compliance Liaison person, and Notices of Violation to the CEO.
Although FCAC enters them into its tracking system, it does not record, in the financial institution's compliance history, incidents of non-compliance with codes of conduct or public commitments, in keeping with subsection 20(c) of the <i>FCAC Act</i> .
Tracking of non-compliance is necessary for the purposes of subsection 5(3) of the <i>FCAC Act</i> , since repeated instances of non-compliance may trigger a review.
With respect to case summaries involving the consumer provisions, FCAC will inform the financial institution concerned about the wording of the summary for cases involving codes of conduct or public commitments.
The financial institution would already be aware of the subject matter and conclusions, following an examination. FCAC files these reports exclusively with the Minister, as required by the <i>FCAC Act</i> .

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<b>Comments from stakeholders</b>
FCAC should put moral suasion back into the Compliance Framework. This is an effective compliance tool in a risk-based oversight regime.
FCAC's Glossary suggests that codes of conduct and public commitments may be adopted or promoted by an industry association. This is contrary to 3(2)(c) of the <i>FCAC Act</i> , which only makes reference to codes of conduct and public commitments adopted exclusively by a financial institution. Certain industry associations do not require their financial institutions to adopt such practices as a condition of membership.
Reference should be made to external dispute-resolution bodies to reflect the reality of limited oversight for some industry sectors.

<b>FCAC comments</b>
FCAC often uses, and will continue to use, moral suasion when discussing compliance-related matters that may not clearly involve a violation of the law. Moral suasion is not used as a compliance measure. It is used to improve the policies and practices of financial institutions, for the benefit of consumers.
FCAC monitors commitments made by industry associations on behalf of their members where the financial institutions are bound by the code of conduct or public commitment as part of the membership requirements. The obligation to comply inherently remains with the financial institution, not the industry association.
When responding to a complaint, FCAC promotes the financial institution's complaint-handling process, including the independent dispute-resolution body.