

FINANCIAL CONSUMER PROTECTION FRAMEWORK CHANGES¹

Bill C-86: Division 10

Corporate Governance (clauses 316 – 318)

- **New** requirement for banks to **designate a committee of the board** to oversee all of a bank's procedures established to comply with the consumer provisions (clause 316 – Bank Act s.157 (e) and (f))
- **New** requirement for at least **three directors to sit on the committee** tasked with reviewing a bank's procedures established to comply with the consumer provisions (clause 317 – Bank Act s.195.1(1))
- **New** requirement that the **majority** of the committee members **must not be officers or employees** of the bank or its subsidiary (clause 317 – Bank Act s.195.1(2))
- **New** requirement for the **committee** to require the management of the bank to **establish procedures** for complying with the consumer provisions (clause 317 – Bank Act s.195.1(3))
- **New** requirement that the committee **review the appropriateness** of the **procedures** established to comply with the consumer provisions, and any other consumer protection activities the bank undertakes (clause 317 – Bank Act s.195.1(3))
- **New** requirement that the **bank report** to the **Commissioner** of the Financial Consumer Agency on the mandate and responsibilities of the committee, and that the **committee report** to **Commissioner** on the performance of its duties (clause 317 – Bank Act s.195.1(4) and s.195.1(6))
- **New** requirement that the **committee report** to the **board** after each meeting on the matters it reviewed (clause 317 – Bank Act s.195.1(5))
- **New** requirement that **auditors** are entitled to receive notice of every meeting of the committee (clause 318 – Bank Act s.330(1))

Fair and Equitable Dealings – General Requirements (clause 329)

- **New** requirement for institutions to ensure **officers and employees are trained with respect to the policies and procedures** it has established for complying with the consumer provisions (clause 329 – Bank Act s.627.02)
- **New prohibition** on institutions communicating or otherwise providing **false or misleading information** to a customer, the public, or the Commissioner (clause 329 – Bank Act s.627.03)
- **New** definition of the term 'undue pressure' and **enhanced prohibition** on institutions applying **undue pressure or coercing** a consumer for any purpose, including tied selling (clause 329 – Bank Act s. 627.04 (a))
- **New prohibition** on **taking advantage** of consumers (clause 329 – Bank Act s.627.04(b))

- **New** requirement for institutions to establish and implement **policies and procedures** to ensure **products and services offered or sold are appropriate** given a customer's circumstances, including their financial needs (clause 329 – Bank Act s.627.06)
- **New** requirement that **remuneration and incentive arrangements** cannot be not be structured in such a way as to interfere with the polices and procedures to account for the customers circumstances, including their financial needs, when offering or providing a product or service (clause 329 – Bank Act s.627.07)
- **Enhanced** requirement that institutions must **obtain express consent** before providing a consumer with any product or service (clause 329 – Bank Act s.627.08)
- **Enhanced** requirement to provide **cancellation periods** for most ongoing products and services (clause 329 – Bank Act s.627.1)
 - Specific cancellation periods for certain products can be set by regulation (clause 329 – Bank Act s.627.11)
- **Enhanced** requirement that an institution **may not impose a charge or penalty** on a person **unless** the institution obtained the persons **express consent for the provision of the product or service**, the **agreement expressly allows for such charge or penalty**, and the charge or penalty is disclosed (clause 329 – Bank Act s.627.12)
- **New** requirement to **send electronic alerts** (e.g., low balance on deposit products, near limit on credit products) to consumers when they are at **risk of incurring fees**, and for the alert to explain to the consumer what they can do to avoid incurring fees (clause 329 – Bank Act s.627.13)
- **New** requirement that **advertisements be clear, accurate and not misleading** (clause 326 – Bank Act s.627.14)
- **New** requirement that where an **institution is acting as an intermediary** in the sale of a product or service, that institution must follow requirements that can be set in regulation (clause 329 – Bank Act s.627.16)

Access to Basic Banking Services (clause 329)

- **Enhanced** the types of documents that a bank must accept when opening a deposit account or cash a Government cheque (clause 329 – Bank Act s.627.17)

Credit (clause 329)

- **Enhanced** requirement to **obtain express consent before raising a credit limit** on revolving credit product (line of credit and credit card) (clause 329 – Bank Act s.627.32(1))
- **New** requirement that the **maximum liability for an unauthorized credit card transaction is \$50, unless the borrower was grossly negligent** in safeguarding the credit card or specified information about the credit card (clause 329 – Bank Act s.627. 33(1))
- **New** prohibition **against establishing a consumer was grossly negligent** by relying solely on the fact that **personal authentication information** (e.g., PIN) was used to complete an unauthorized transaction (clause 329 – Bank Act s.627.33(3))

Optional Products or Services (clause 329)

- **New** requirement for a **separate product agreement** for any **optional product or service** (clause 329 – Bank Act s.627.41)
- **New** prohibition against **automatically charging** for an **optional product or service** following a **free or reduced-fee trial period** (clause 329 – Bank Act s.627.42(1) and 627.42(2))

Complaints Processes (clause 329)

- **Enhanced definition** of the term '**complaint**' (clause 329 – Bank Act s.627.01)
- **New** requirement for the institution to establish **complaints handling procedures** that are **satisfactory** to the Commissioner, and to respond to complaints within the prescribed period (clause 329 – Bank Act s.627.43(1))
- **New prohibition** on institutions from using misleading terms like '**ombudsman**' to describe their internal dispute resolution processes (clause 329 – Bank Act s.627.43)
- **New** requirement for institutions to **keep records of all complaints** and to ensure these are **accessible to the Commissioner** (clause 329 – Bank Act s.627.44 and s.627.45)
- **New** requirement for institutions to **report complaints data** to the Commissioner quarterly (clause 329 – Bank Act s.627.46)
- **Enhanced** requirement for institutions to **make public specified information about complaints** (clause 329 – Bank Act s.627.47)
- **Enhanced** conditions that **external complaint bodies** must meet in order to obtain and maintain approval, including **enhanced public reporting** and a **new** requirement to **publish summaries of their recommendations** (clause 329 – Bank Act s.627.48 and s.627.49)
- **New** requirement that FCAC annual report **include specified information about complaints** from institutions and ECBs (clause 329 – Bank Act s.627.54)

Disclosure and Transparency for Informed Decisions (clause 329)

- **Enhanced** provision that all **disclosures are to be clear, simple and not misleading** (clause 329 – Bank Act s.627.55)
- **Enhanced** requirement to provide **information boxes** for all products and services (clause 329 – Bank Act s.627.57)
- **Enhanced** disclosure for products and services (clause 329 – Bank Act s.627.59)
- **New** requirement for institutions to disclose to consumers 21 days in advance that a product is scheduled to be **renewed or automatically rolled over**, and to provide a follow-up reminder 5 days before the end of the term (clause 329 – Bank Act s.627.6)
- **New** requirement for institutions to disclose to consumers 21 days in advance that a **promotional product** is scheduled to be **renewed or automatically rolled over**, and to provide a follow-up reminder 5 days before the end of the term (clause 329 – Bank Act s.627.61)

- **New** requirement for institutions to disclose the **voluntary commitments and codes of conduct** to which they are signatories (clause 329 – Bank Act s.627.66)
- **New** requirement for a bank’s **Public Accountability Statement** to report on measures to provide products and services to low-income persons, senior persons, persons with disabilities and persons who face accessibility, linguistic or literacy challenges (clause 329 – Bank Act s.627.996)

Redress (clause 329)

- **New** requirement for institutions to **refund a consumer** where a charge or penalty was incorrectly imposed (clause 329 – Bank Act s.627.997)

Regulations (clause 329)

- **New** regulation making authority to make regulations in respect of any **matters involving an institutions’ dealings**, or the dealings of its employees, representatives, agents or other intermediaries, with customers or the public, and **any matters involving products or services** that are subject to those dealings (clause 329 – Bank Act s.627.998)
- **New** regulation making authority on **the use of titles** by employees dealing with customers and the public (clause 329 – Bank Act s.627.998 (f))

Special audits (clauses 331(1) – 331(3))

- **New** power permitting the **Commissioner to direct a special audit** of an institution and to **appoint a firm** to be an auditor (clause 331(1)– 659(1.1))
- **New** requirement for the institution to **provide the results of the audit** to the Commissioner (clause 331(1) – Bank Act s.659(1.2))

Compliance direction (clause 332)

- **New** power permitting the **Commissioner to direct** an institution or person **to take action to comply** with a compliance agreement, a consumer provision or Part XIV of the Act (clause 332 – Bank Act s.661.1)
- **New** power permitting the **Commissioner to apply to a Court** for an order requiring the bank, authorized foreign bank, or person **to comply with the Commissioner’s direction** (clause 332 – Bank Act s.661.2)

Whistleblowing (clause 334)

- **New** definition of **wrongdoing** (clause 334 – Bank Act s.979.1)
- **New** requirement to keep **confidential** the identity of any employee who **reports wrongdoing** to the institution, a regulator, or a government agency or body (clause 334 – Bank Act s.979.2)

- **New** requirement for institutions to establish and implement procedures for dealing with **matters that what been reported** to it by its employees (clause 334 – Bank Act s. 979.3)
- **New** prohibitions against dismissal or discipline of an employee that has **reported wrongdoing** (clause 334 – Bank Act s.979.4)

Financial Consumer Agency of Canada (FCAC) Mandate (clauses 337, 338, 342(2))

- **New purpose clause** to ensure that financial institutions, external complaints bodies and payment card network operators are supervised by an agency of the Government of Canada so as to contribute to the protection of consumers of financial products and services and the public, including by strengthening the financial literacy of Canadians (clause 337 – FCAC Act s.2.1)
- **New** object that the FCAC strive to **protect the rights and interests of consumers** of financial products and services and the public, taking into account the need of financial institutions to efficiently manage their business operations (clause 338 (1) – FCAC Act s.3(2)(b))
- **New** requirement for the Agency to submit forward looking **business plans** to the Minister of Finance (clause 342(1) – FCAC Act s.5.01)

Administrative Monetary Penalties (clauses 344 and 345)

- **Increased** maximum penalties, from \$500,000 to **\$10M** per violation **for entities** and from \$100,000 to **\$1M** per violation **for individuals**, , that can be imposed where the Commissioner finds a breach of a legal obligation under the framework (clause 344 (2) – FCAC Act s.19(2))
- **Additional** criteria to be considered by the Commissioner when **determining the amount** of the AMP (clause 345 – FCAC Act s.20)

Naming (clause 347)

- **New** requirement to publically disclose the penalty, nature of the violation, and the **name of a violating entity** (clause 347 – FCAC Act s.19(1))

¹ Source: Finance Canada