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Association canadienne des coopératives financières

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Eleanor Ryan, Director,
Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa, ON, K1A 0G5

Dear Ms. Ryan,

The Canadian Credit Union Association (CCUA) is pleased to share with you our written comments on the second stage of the Department of Finance's consultation on the federal financial institutions statutes.

We begin our response by providing some background on the credit union system and then address some of the questions raised in the consultation document. Our response addresses these questions in the order of importance and urgency to the credit union system and groups them thematically. We start with the "bank / banking issue," then consider the technical issues that concern federal credit unions, move to providing feedback on broader governance-related proposals and then discuss small entity considerations. Finally, we offer some initial views on the open banking proposal and a few miscellaneous items.

A. Credit Union Background

CCUA is the national trade association for 275 independent, co-operatively structured (i.e., one-member, one vote) credit unions in Canada outside of Quebec. Together, these credit unions control more than $210 billion in assets and collectively serve more than 5.6 million member-owners.

Credit unions are, exclusive of federal credit unions, provincially-chartered and regulated co-operative financial institutions that exist to serve their members. There is currently only one federal credit union[1] though we expect more to make the transition over the next few years. While credit unions generate profits for prudential and growth reasons, their primary objective is to meet the financial needs of their members. This focus on service translates into measurable impact for our members. For example, for 13 years running credit unions have earned the top spot in the Ipsos

[1] In 2016, the Caisses Populaires Acadiennes became a federal credit union under the trade name of UNI Financial Cooperation.

"Best Banking" Awards[2] and have similarly been rated the top service provider in repeated surveys of Canadian Federation of Independent Business (CFIB) members.[3]

Credit unions in turn own and control provincial or regional Centrals that provide them with wholesale financial services, liquidity management, payments processing and trade association services. These Central entities include L'Alliance des caisses populaires de l'Ontario limitée (northern Ontario francophone caisses), 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. Credit unions, Centrals and other co-operative partners also own a federally-regulated bank called Concentra Bank that provides wholesale financial and trust solutions to more than 85 percent of credit unions across Canada.

This submission has been prepared in consultation with our provincial and federal members, including credit unions that are currently seeking federal applications, as well as Centrals and Concentra, which are also members of CCUA.

B. Bank / Banking

Credit unions have long supported the view that, as prudentially-regulated non-bank deposit taking institutions, they should be allowed to use the verb "bank" and term "banking" to describe their services and activities while avoiding consumer confusion. This perspective is founded on several inter-related arguments.

To begin, credit unions believe their members already *know* they do business with a credit union.[4] Most use the term "credit union" in their trade name, signage, advertising, websites and contract documents. The "Hands and Globe," an internationally-recognized credit union trademark, is also deployed by many credit unions. Even with the occasional use of "bank words" in a descriptive sense, it is difficult to imagine where confusion could arise in these instances. Where a credit union uses a trade name that does not use the words "credit union," the member has many touchpoints where an opportunity is created to be introduced to, be reminded of, or better understand who they are doing business with. These touchpoints include the new member onboarding process, purchase

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[2] See https://ccua.com/media/2017_08_29_ipsos_best_banking_awards.

[3] For the most recent CFIB survey results, see http://www.cfib-fcei.ca/english/article/8817-battle-of-the-banks-credit-unions-among-the-best-for-small-business.html. For a news story on this topic, see: http://business.financialpost.com/management/credit-unions-lead-the-pack-in-servicing-entrepreneurs-cfib-survey/wcm/b5f0256c-af66-4c1d-a4c2-f02bb34b7cb1.

[4] In saying that credit union members *know* they do business with a credit union, we do not assume an omniscient individual but rather a person of ordinary capacity and level of inquiry who has a general understanding that a credit union is not a bank.

of a membership share (a highly "sticky" event that clearly distinguishes a credit union from a bank), the existence of a "member share account" that appears in account statements online and in print, use of full legal names (i.e., that include the term "credit union") in legal contracts, notices about annual meetings, calls for volunteer board directors, discussions about the credit union in "About" section of websites, interactions with member service representatives, receipt of "member statements," the payment of patronage dividends that are geared to use of the credit union's services, and the fact that members are referred to as "members" or "customer-owners" and not clients. In all these ways and more, credit unions remind their members that they do business with a credit union.

There is also outside objective evidence to support this proposition. For instance, when banks close branches, it is not uncommon for residents of the affected community to reach out to a local credit union to take over the operation, suggesting some level of understanding of the difference between for-profit banks and co-operatively structured credit unions.[5] Surveys by Ipsos Canada ("Best Banking Awards") and the Canadian Federation of Independent Business ("Battle of the Banks") draw on the fact that respondents know they do business with a credit union. That is, the surveys are designed such that respondents, in most instances unprompted by a trade name as they are in the case of the banks, must actively choose "credit union" as their primary financial institution, a choice that depends on some non-trivial level of awareness about the nature of the institution they do business with.[6] Both surveys poll tens of thousands of respondents. It is also important to bear in mind, that many credit union members do business with both a bank and a credit union and yet are clearly able to distinguish between the two in these third-party surveys (we find similar results in our own internal survey work).

We are also mindful that the English language does not offer a ready alternative to the verb "to bank" and gerund "banking" to describe what people do at a credit union. This point has long been understood by a broad range of commentators and is reflected in the federal government's own use of the term "banking" to describe what credit unions do. The inability to use these words could have a serious impact on competition. If credit unions cannot describe their services in a way that Canadians understand, this will necessarily undermine their ability to compete effectively with the banks, meaning higher prices, less product choice, and lower service quality around.

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[5] See for example http://www.haliburtonecho.ca/wilberforce-scotiabank-to-close and http://www.haliburtonecho.ca/wilberforce-scotiabank-to-close.

[6] In the CFIB survey for example, respondents have to choose among a list of banks, a "credit union" category and an "other" category.

If we look to the international sphere, the guidance from the Basel Committee on Banking Supervision (BCBS) is focused narrowly on limiting the use of the word "bank" in the names of non-banks, not the verb/gerund forms as descriptors of the services provided by non-banks. Principle 4 of the BCBS's Core Principles for Effective Banking Supervision says "the permissible activities of institutions that are licensed and subject to supervision as banks are clearly defined and the use of the word 'bank' in names is controlled."[7] Further, the BCBS has drawn a line between non-banks that are regulated deposit taking entities and those that aren't, noting that the "taking of deposits from the public should be reserved for banks and non-bank deposit taking institutions that are licensed and subject to supervision."[8] In this sense, OSFI's interpretation of the section as a blanket prohibition in its June 30th advisory was out-of-step with international guidance and practice.

Our scan shows that different jurisdictions interpret this guidance in different ways but nevertheless allow for some scope of usage. In the United States for example, federal credit unions – which are prudentially regulated very differently than banks, have free reign to use the terms to describe their services, the premise being the terms are deeply embedded in the culture and essentially generic in their connotations. In New Zealand, non-banks can use the terms in advertising provided they include a disclaimer to the effect that they are not banks. In Australia, credit unions that are listed "authorized deposit-taking institutions" or "ADIs," similarly have the right to use the terms "banker" and "banking" to describe their banking activities[9] in marketing and branding materials, but not as part of a registered, corporate, business or trading name or internet domain name. In each case, the exemptions have been predicated on the existence of a prudential regulatory framework and a licensing/registration regime for deposit-taking institutions.

Until as recently as this past June, policymakers in Canada applied an unstated and common-sense approach to interpreting and enforcing the *Bank Act* restrictions that effectively align with international guidance, providing space for credit unions, as regulated deposit-taking entities, to use the terms in their verb and gerund sense grounded in the policy objective of avoiding consumer confusion. This understanding – and decades of related enforcement practice – were well understood by the credit union and legal communities.

We have in our records correspondence between our predecessor organization, Credit Union Central of Canada, and OSFI that illustrate the nature of these unstated practices. In 2006, for example,

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[7] See BCBS, *Guidance on the application of the Core Principles for Effective Banking Supervision to the regulation and supervision of institutions relevant to financial inclusion*, p. 8.
[8] *Ibid*., p. 9.
[9] Banking activities include both taking money on deposit and making advances of money as well as, other financial activities prescribed by regulations for the purposes of the definition of *banking business.*

CUCC's chief executive officer wrote to OSFI informing the regulator of the system's intention to begin a national advertising campaign to raise awareness about the services credit unions offer to small business in Canada. The letter went on to say that "it is likely that the campaign will feature messaging that makes use of the word 'banking' in the context of credit union business services" and stressed that in CUCC's view, these references were "consistent with and comply with what we understand to be the policy underlying the restrictions," namely to "guard against consumer confusion that could lead to financial loss" and, in particular, "preventing unregulated entities from holding themselves out to the public as having the status of a bank as a means of attracting deposits, possibly as part of a fraudulent scheme." The letter was framed strictly as "for your information" purposes. To our knowledge, OSFI did not respond nor did it take action against the sector as a result of this campaign.

Finally, we think that a careful reading of Section 983 would suggest that the restrictions only apply to the use of the terms "bank," "banker" and "banking" to describe an entity – a business – rather than its activities. We are also cognizant that leading authorities on banking law such as Bradley Crawford and Margaret Ogilvie have called for the repeal, or at a minimum, a reconsideration of these restrictions given the unclear jurisprudence on what precisely constitutes *banking* but also because they recognize that regardless of the definition chosen, credit unions provide the same services – i.e. fulfill the same *function* – as banks. As has been pointed out, the federal credit union framework is itself premised on this understanding. In short, we think there is good reason to introduce clarifying amendments.

Recommendation: With these considerations in mind, CCUA recommends the federal government introduce an amendment to the *Bank Act* to explicitly allow prudentially regulated deposit-taking entities to use the bank terms – bank and banking – to ***describe*** their services provided the terms are not used in a name, trade name or mark and provided such use could not reasonably be expected to lead a member of the public to believe that they are dealing with a federal bank. Under our proposal, the amendment would also outline the policy intention of the section to avoid any future misunderstanding about the purpose of the section.

C. Repealing the CCAA

Under the heading of "modernizing the framework," the Department asks about the merits of maintaining or repealing the *Cooperative Credit Associations Act.* In our view, the CCAA has the virtue of providing a clear separate identity rooted in the cooperative model and a ready-made structure to accommodate future changes in the credit union system.

While no institutions are currently subject to the CCAA, there is reason to believe that there could be renewed interest in the future as more credit unions take up the federal option and consider the possibility of creating the kind of shared-service entities (i.e., a league or Central) that were the impetus for the introduction of the CCAA. There is reason to believe that day may not be far off, with already one federal credit union in place, two more currently with applications underway, and a number of others giving the option serious thought.

Recommendation: CCUA recommends against repealing the *Cooperative Credit Association Act* for the short term but would support revisiting the issue in three to five year's time.

D. Federal Credit Union Issues

The technical Annex to the consultation document seeks stakeholder views on two federal credit union-specific issues, namely setting a threshold around member proposals and limiting access to membership lists. CCUA strongly supports both measures.

With respect to member proposals, we note that currently, a single member can advance a proposal and the federal credit union must oblige. However, registered bank shareholders/beneficial owners must hold a prescribed number of shares for a prescribed period, or have the support of persons who in aggregate meet these requirements (section 143 (1.1)) to be eligible to submit proposals. This is potentially a highly punitive lack of regulatory symmetry. The costs related to printing additional proxy materials can be quite significant. The imposition of a threshold would prevent a single member (or a relatively small number of members) from presenting a frivolous and costly proposal. This is of particular concern given the growing size of some credit unions.

Second, there are precedents for setting thresholds in the credit union system and in federal statutes. In British Columbia for example, special resolutions must obtain a minimum of 300 signatures prior to being considered at a meeting of members. In the federal *Insurance Companies Act (Canada)*, a proposal made by a participating policyholder in a mutual (structured similarly to a co-operative) must be signed by at least 500 policyholders entitled to vote or 1% of the total number of those policyholders, whichever is lesser.

Recommendation: We recommend the federal government introduce an amendment to the *Bank Act* to require a threshold for members to advance a proposal equal to the lesser of 500 members or 1 per cent of a credit unions' membership with the caveat that the credit union could set the thresholds lower if they wish. Our recommendation allows for some flexibility for lower thresholds that might be more appropriate for smaller credit unions.

With respect to limiting access to membership lists, the federal credit union framework currently makes these available to any member, a situation that may expose competitively sensitive information and which is based on a misleading analogy between a joint-stock bank, where the owners are often distinct from the customers, and a credit union where the members are also the shareholders/owners.

Recommendation: CCUA recommends the federal government introduce an amendment to the *Bank Act* that would only allow membership lists to be made available indirectly through the credit union to facilitate communication between a member and the broader membership. In this way, members could continue to communicate with their peers – and support good co-operative governance practices – without ever permitting direct access to the list. In support of our position, we note there is a precedent for this: the *Insurance Companies Act (Canada)* contains a prohibition about disclosing a policyholder list for insurance mutuals.

E. Governance Matters

The consultation document addresses other governance issues that could have a significant impact on federal credit unions even though they are framed from the perspective of publicly listed institutions. These governance issues includes the Department's request for views on technical matters like the possibility of increasing electronic participation in meetings, advance voting (electronic and otherwise) and more foundational matters (inspired by Bill C-25) like promoting gender diversity on boards, setting fixed one-year terms for directors at all federally-regulated financial institutions (FRFIs), mandating individual director elections, majority voting for directors in uncontested elections, and distributing meeting materials.

Electronic and Advance Voting

We begin first with the technical matters. CCUA strongly supports legislative changes that would facilitate increasing electronic participation in meetings and advance voting. As co-operative financial institutions, the legitimacy of our governance structure depends on member engagement. Given busy lifestyles and a growing credit union membership that makes mass attendance at physical meetings difficult, a shift towards electronic voting (paired with a physical in-person meeting for those able and willing to attend) both on the meeting date and in advance adds an important component of credit union democracy.

To support this view, we note that electronic voting – both on the day of the annual general meeting and in advance – is already practiced at many credit unions in many provinces (provincial credit union legislation is generally permissive in this respect) and has helped support voter turnout, particularly around important matters like mergers or federal continuance votes for example.

Recommendation: CCUA recommends the federal government introduce an amendment to the *Bank Act* to allow electronic voting both in advance of annual general meetings (AGMs) and on the day of an in-person meeting.

Gender Diversity

The Department of Finance frames its discussion around the idea of a "comply and explain" model for board diversity from the perspective of publicly listed institutions although it later broadens the discussion to federally-regulated financial institutions (FRFIs) generally. It is therefore unclear whether this policy would apply to federal credit unions because they are *not* publicly listed but are FRFIs. If the idea is to extend the policy to FCUs, we think some consideration needs to be given to the interaction between the "comply or explain" model and the co-operative nature of FCUs.

Unlike publicly listed institutions, federal credit unions are required to have a minimum of two-thirds of their directors who are members, or be representatives of members. As a result, they must draw the majority of their directors from a restricted pool of potential candidates who have the requisite skills, experience and willingness to serve to achieve gender diversity objectives.

While credit unions have developed a variety of practices to encourage individuals with the needed skills to engage in the board election process, there needs to be recognition that co-operatives have much less ability to influence the director election process than would a publicly-listed company. We would not be supportive of a legislative *requirement* that compels a credit union to circumvent these democratic practices in favour of gender diversity but we *are* supportive of the proposed "comply or explain" approach. Survey data collected by CCUA of our member credit unions suggests that there is already a good – but not perfect – gender balance on credit union boards, with women representing 45 per cent of credit union directors. We would moreover support *extending* the "comply or explain" approach to other aspects of diversity such as cultural, ethnic or geographic for example bearing in mind that there might be in the future some "common bond" or "closed bond" credit unions – credit unions with a defined affinity group – that could limit the applicability of this broader lens.

Recommendation: CCUA supports the government's proposal to require federal credit unions – and other FRFIs – to abide by a "comply or explain" model around diversity in general (gender, cultural, ethnic, geographic, etc) bearing in mind there may be limits to what federal credit unions can do in this respect given their co-operative democratic structure. Nevertheless, CCUA views this policy as a positive step to helping remind credit unions and their members of the importance of striving for diversity in governance.

Setting fixed one-year terms for directors

The discussion about setting fixed one-year terms for board members of publicly listed companies – if extended to federal credit unions as FRFIs – could have unintended consequences.

As indicated, there is generally less ability to determine the outcome of a board election process in a co-operatively governed credit union than at a joint-stock bank. By setting fixed one-year terms, the federal government could be setting up a situation where federal credit unions have to manage frequent board turnover and all that entails, including bringing new board members up-to-speed on the nature of the business, the unique co-operative governance structure, the way in which the federal credit union interacts with the rest of the credit union system, as well as the quotidian but important issues of budgeting, technology, marketing and so on.

These are not trivial considerations. And there are others of equal importance. It takes time for management to develop a good working relationships with board members. It similarly takes time for a board to "gel" and develop the kind of cohesion needed to provide strong strategic direction to management. As the Department notes elsewhere in the consultation document, "it is important …to limit disruptions to the operations of a board and allow for the board to maintain its requisite mix of skills." In short, the possibility of frequent board turnover could seriously affect the operations and stability of a federal credit union.

Recommendation: CCUA recommends against imposing fixed one-year terms on federal credit union board members.

Majority Voting for Directors of Boards in Uncontested Elections

The idea of requiring a candidate obtain more votes in favour than against in the case of an uncontested election would pose some practical challenge to federal credit unions. These challenges, again, tie back to the co-operative structure.

First, credit unions currently do not ask members to vote *against* candidate(s) but rather to vote in favour of their preferred candidate(s). This proposal would amount to a significant departure in current practices and is unusual in a one-member, one-vote democratic structure that parallels political democratic structures.

Second, this same democratic structure means that it is uncommon– but certainly not unheard of – for elections to go uncontested. Again, credit unions can only encourage members to run but cannot incent or otherwise compel that to happen. The idea of imposing majority voting requirements

could, again, create a very unstable board situation which would be to the detriment of the credit union's overall wellbeing. CCUA has no views on the applicability of this standard to publicly listed entities.

Recommendation: CCUA recommends against the idea of a majority voting standard for federal credit unions.

Distributing Meeting Materials

CCUA strongly favours the idea of permitting the use of "notice and access" approaches to making available essential material such as financial statements, auditor's reports and proposed by-law changes for consideration at annual general meetings and other governance-related occasions.

As indicated by the Department, a "notice and access" approach would minimize the costs associated with sending out by mail extensive meeting materials. This is particularly important for credit unions because their owners are also their customers. As a result, a federal credit union with hundreds of thousands of members – all whom have voting rights – could easily incur governance-related mailing costs running into the millions of dollars. Making these documents available upon request would not in any way reduce access but would arguably make it more likely that members would read them (as opposed to discard them as many people do upon receiving conventional Canada Post-delivered mail) and reduce on the environmental impacts of printing and delivering large volumes of paper documents.

Recommendation: CCUA recommends the introduction of a "notice and access" policy for distributing governance-related material.

F. Competitive Impacts of Small and Mid-Sized Banks

CCUA was pleased that the Department made a concerted effort to address the perspective of small and mid-sized banks (defined in the broad sense to include federal credit unions) in the consultation document. This is reflected in consultation questions around the role smaller entities can play in enhancing innovative and competitive outcomes for the Canadian economy and a dynamic and contestable Canadian market. It is also reflected in the sensitivity demonstrated in the document to small/medium entity concerns around a range of other policy considerations such as the governance matters raised elsewhere.

In an attached paper, we provide a review of some of the relevant literature. In our view, the literature shows that smaller, locally-based institutions – community banks and credit unions – excel in providing services and funding to the small and medium-sized business (SME) sector and do so

without incurring undue risks. These findings, which align well with the CFIB survey results, address the Department's comment that there is a need for "further analysis on the important role that small and mid-sized banks play in promoting competition and innovation, and the contribution they can make to increasing capital formation and efficient credit allocation in Canada." It also addresses the Department's concern with balancing efficiency consideration with stability and consumer utility objectives.

The question next becomes how to ensure the policy framework is fair to smaller entities so they can deliver on these economic benefits. In our view, there is good reason to believe the current framework could be improved notwithstanding the very good and ongoing efforts to consult regularly with smaller entities and to apply the proportionality principle. From our experience and analysis of the literature, the "room for improvement" arises from the disproportionate effects of non-prudential regulations (e.g., Common Reporting Standard requirements) and capital/liquidity expectations relative to the larger banks. These regulatory burden effects are real. In our research, we have found for example that even within the credit union system, there is a large disparity in the relative cost of regulations between smaller and larger credit unions.[10]

From a policy perspective, the Bank for International Settlements (BIS) recently reviewed a range of practices used in different jurisdictions to deploy the proportionality principle in prudential regulation.[11] The BIS identifies two broad approaches, the first being what they call the "categorization" approach (CAP) and the second being the "specific standard approach" (SSAP). The former has the advantage of setting consistent prudential rules for entities with shared characteristics while the latter is, according to the BIS, "more likely to achieve the objective of reducing the regulatory burden without unduly weakening overall prudential standards, i.e., solvency or liquidity safeguards."

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[10] In 2016, Central1 conducted a study of its member credit unions and found smaller credit unions (with less than $250 million in assets) incur regulatory burden costs equal to $75 per member, more than three times the $22 per member worth of costs incurred by larger credit unions (more than $1 billion in assets). Earlier studies show similar results. A 2013 study by Panu Kalmi and Giovanni Ferri found for example that small credit unions in Canada devote resources equivalent to 21% of their full-time equivalent (FTE) staff to regulatory matters, more than five times the 4% of staff devoted to regulatory matters at the largest credit unions. See Giovanni Ferri and Panu Kalmi, "Only Up: Regulatory Burden and Its Effects on Credit Unions," Filene Research Institute, available at: https://filene.org/research/report/only-up-regulatory-burden-and-its-effects-on-credit-unions. Similar results have been found in the United States and Italy. See Credit Union National Association (CUNA), *Regulatory Burden Financial Impact Study*, available at: http://www.cuna.org/regburden/ and Giovanni Ferri and Giovanni Pesce, "Regulation and the Viability of Cooperative Banks," available at: https://www.sommetinter.coop/sites/default/files/article-scientifique/files/22-ferri.pdf.

[11] Bank for International Settlement (BIS), *Proportionality in banking regulation: a cross-country comparison,* available online at: http://www.bis.org/fsi/publ/insights1.pdf

From CCUA's perspective, we would express a preference for a CAP-based approach because we think it would be more sensitive to the unique co-operative features and behaviours of federal credit unions. We would also support the idea of considering higher capital requirements paired with "offsetting regulatory relief in compliance and operational costs" as also discussed by the BIS.[12] For reasons discussed in work by Andrew Haldane, Bank of England chief economist and executive director, we think there is reason to believe that simpler, less detailed and prescriptive regulations can enhance, not harm, stability.[13]

In suggesting a CAP-based approach, the question arises as to the regulatory dividing line. In this respect, we would suggest consideration of the degree to which the entity is internationally active as the key criterion. This would align well with the BCBS's clear and unequivocal statements that its guidance is aimed solely at internationally-active banks.

While the CAP versus SSAP distinction is useful for thinking about ways of addressing inequities on the prudential side, there remains the larger question of embedding the small entity lens in other areas of policymaking, particularly around issues like tax evasion, and tax policy more generally (i.e., tax rates). In our view, the most effective way to institutionalize the small business perspective would be to embed a formal "competitive balance" lens into the policy formulation process by analyzing the differential impact of a proposed policy or regulatory change on small versus large banking entities, including federal credit unions (and also provincial credit unions where appropriate (e.g., common reporting standard)). This lens or filter could be integrated into policy template documents much like the gender-based analysis lens is currently.

Recommendation: CCUA recommends the federal government put in place a categorization (CAP) approach to regulating smaller banking institutions based on a distinction between domestic and internationally-active FRFIs. We recommend the federal government pair this prudential approach to addressing competitive/efficiency considerations related to smaller entities with the formal application of a competitive balance policy lens.

G. Open Banking

As noted earlier, credit unions have an enviable track record of member service rooted in their co-operative structure. From that perspective, they are receptive to the idea of an "open banking" framework because they have good reason to believe high-quality member service makes their

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[12] BIS, p. 13.
[13] See for example, "The Dog and the Frisbee," available at : http://www.bis.org/review/r120905a.pdf

members loyal and would likely find appeal with new members who have been reluctant to leave their bank because of the costs and complexities of that kind of move.

That said, CCUA is mindful of two important considerations related to the possibility of introducing this kind of framework. The first consideration is regulatory burden. The development of an open banking framework will have to be mindful of the large costs that could be imposed on smaller entities by compliance with the relevant application program interface (API) standards. As noted earlier, these costs would tend to land disproportionately on smaller institutions like credit unions and the resulting cost pass-through effects could offset in large measure the credit union system's competitive advantage around member services. Policymakers should give some consideration to the competitive (price-side) impacts of moving to this kind of framework.

The second consideration is jurisdictional in nature. The Department of Finance has been very clear about the need to clarify federal and provincial jurisdictional responsibilities. As we understand it, this objective was a key motivation for the measures in C-43 and has also had some influence on the bank/banking issue. At the same time, and somewhat at odds with this objective, the Department of Finance is currently investigating the possibility of a function-based retail payments regulatory system that would bring, at some level, credit unions under federal supervision. This idea has obvious ties to an "open banking" framework in that the latter essentially implies increased possibility of payments related activities originating from non-banks, including presumably credit unions. We discuss our understanding of the Open Banking framework and its possible tie-in to the retail payments consultation in a second, accompanying discussion paper (enclosed).

Recommendation: While CCUA welcomes the conversation around open banking, we recommend the Department of Finance consider a separate, in-depth consultation that explicitly addresses competitive and jurisdictional issues before proceeding with an "open banking" framework.

H. Other Matters

The consultation document addresses other issues that while of importance to credit unions, and federal credit unions in particular, are relatively lower on the priority list. That said, CCUA is pleased to share some initial reflections grounded in our earlier emphasis on the need to ensure more formal emphasis on aligning with the proportionality principle given the objective of improving economic efficiency.

With respect to, for example, providing FRFIs with flexibility around making non-controlling investments in FinTechs, we are supportive of any policy changes that move in this direction. We would suggest, however, that the Department approach these policy changes through the "competitive balance" lens discussed earlier – will a one-size-fits-all regime advantage large banks

for example, creating opportunities for them to buy up large parts of the FinTech sector? Is there some way to imagine a more of a permissive regime for smaller institutions, one that would make an investment-based partnership with them relatively more attractive despite their smaller coffers? This could help act as a check on the market power of large incumbents in this area.

With respect to modernizing legislation to align OSFI's practices around publishing basic banking information, we are supportive of embedding these practices in legislation in support of Pillar III objectives in the Basel framework. From our member-centric perspective, we further support the notion of broadening the list of approvals that require advance publication in the *Canada Gazette*. With respect to unclaimed balances, we think this is another area that argues for its own separate consultation given the complexity of the issue and potential federal/provincial jurisdictional issues.

Conclusion

CCUA is grateful for this opportunity to provide our views and those of our federally regulated and provincially regulated members on the issues raised in the consultation document. While we have tried to provide thorough responses to many of the issues raised here, we welcome ongoing dialogue with the Department on any of the issues discussed. We would especially encourage the Department to consider additional consultations around some of what might be termed the "green paper" elements of the consultation document, particularly issues like open banking, small entity concerns and unclaimed balances.

If you have any questions, please do not hesitate to contact me.

Best regards,

Marc-André Pigeon
Assistant Vice President, Financial Sector Policy
Canadian Credit Union Association