

October 8, 2022

VIA EMAIL

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

**Re: *Corporate Governance Consultation: Improving
Diversity in Federally Regulated Financial Institutions
(the “Consultation”)***

Introduction

One of the purposes of the First Nations Financial Management Board (the “FMB”) is to enable the economic and social development of Indigenous peoples by improving their relationships with financial institutions, business partners and other governments. Canada acknowledged in its Consultation request that Canada’s federally regulated financial institutions (“FRFIs”) should take into account the changing social and economic context in which they operate, which signals to the FMB that FRFIs are open to change. Canada recently adopted into law the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 (“UNDRIP”) which obligates Canada to consult with Indigenous peoples to obtain their free, prior, and informed consent before adopting and implementing any legislative measures that may affect Indigenous peoples. The FMB would be pleased to assist the Department and First Nations in developing policy options for this legally-required process.

Indigenous peoples have been and will continue to be impacted by the decisions made daily by Canada’s FRFIs. Canada has a legal obligation to pursue reconciliation with Indigenous peoples which is set out in the *Constitution Act, 1982*, and appears in federal legislation, provincial legislation, the common law and the Truth and Reconciliation Commission’s Report. At no time in Canadian history has reconciliation with Indigenous peoples been given such elevated importance as it has at this moment. Accordingly, it is imperative that FRFIs approach reconciliation with Indigenous peoples from an



entirely new lens because continuing to disregard reconciliation is causing irreparable harm to Indigenous peoples' ability to exercise their rights which is becoming increasingly costly for the Government of Canada to "fix". We hope that FRFIs take this opportunity to join us and commit to meaningful reconciliation with Indigenous peoples which is clearly what the Government of Canada so dearly desires and is also a result of many court decisions encouraging all parties to actively consider efforts at considering and working together to reconcile pre-existing rights with those of various regulatory frameworks.

Background

For millennia, Indigenous nations managed their lands, people, and economies, while creating trading networks that spanned the continent. Through the impacts of colonization, including the unfair implementation of the treaty process, the enactment of the *Indian Act* of 1876, and more recently the failure of the treaty process in most of British Columbia, Indigenous peoples of Canada were restricted, and in many cases lost the ability to govern their people and lands as well as manage their economies. With dismissive interpretation of Indigenous and treaty rights by Canadian institutions, including courts, throughout the 20th century, the Indigenous peoples' intent to share their land and its bounty with the settlers, instead became an appropriation of the land and a subjugation of Indigenous peoples.

Corporate Canada and its capital markets have benefitted from suppressing and infringing on Indigenous rights and title, and the intentional prevention of Indigenous peoples' participation in the broader economy. FRFIs have chosen to underwrite and finance extractive resource companies, telecommunications companies, railways, and utilities who have exploited our traditional territories to our detriment for over 150 years. Some settler businesspeople became rich while the restraints put on most Indigenous peoples caused them to live in poverty. This economic development was driven by the FRFIs, based mainly in Toronto and Montreal, which became world-leading institutions and a source of great wealth for employees, directors, and shareholders. Capital flowed to non-Indigenous industries and corporations with no regard to Indigenous peoples' inherent rights because financial legislation and regulation did not measure or consider its impact. The system was set up and implemented, at best, to ignore Indigenous peoples.

Now, with the work of the Truth and Reconciliation Commission, the Inquiry into Missing and Murdered Indigenous Women and Girls, the discovery of Indigenous children's unmarked graves at residential schools across Canada, Canada's adoption of UNDRIP at both the federal and provincial level, modern day Canadians are being informed of the tribulations their state has caused to Indigenous peoples and realizing that the old way was unacceptable, offensive, wrong and that reconciliation must be acted upon immediately; simply put - It's the law.

A transformative shift towards Reconciliation for FRFIs

FRFIs are institutions that are more directly driven by profit than most businesses. It is all about the money. Individuals are attracted and rewarded by clear monetary incentives. FRFIs have institutional biases against non-monetary factors including Indigenous reconciliation. It explains why, anecdotally, we see such low or non-existent numbers of Indigenous peoples in senior management, boards, and in the more lucrative business lines (eg. investment banking, sales and trading, asset management, private client service), and why the FRFIs do not service Indigenous communities or service them at a higher cost. They have also underserved our communities through not offering credit, offering expensive credit or insurance products¹ and not providing basic banking services close to Indigenous communities.² We also anecdotally understand that reconciliation principles are not considered in doing business with Indigenous nations.

FRFIs are also primarily based in a bubble around Toronto and Montreal. There is much less understanding of Indigenous people and reconciliation in these markets. To paraphrase Gord Downey of The Tragically Hip, Indigenous people are the people that Torontonians have been trained their entire lives to ignore. Although we applaud the BlackNorth initiative, and the large number of FRFIs that have signed up, we feel an emptiness that these same FRFIs did not recognize the same need for such an initiative for Canada's First Peoples – the Indigenous. At best, we are treated as just another minority, undermining our constitutionally protected place in Canada and bringing in U.S. concepts of DEI.

¹ Online: The Roadmap Project [roadmap_project_chapter1_intro_final.pdf \(fnfmb.com\)](https://www.fnfmb.com/roadmap_project_chapter1_intro_final.pdf)

² Online: Bank of Canada paper [Economic reconciliation: Supporting a return to Indigenous prosperity - Bank of Canada](https://www.bankofcanada.ca/2021/05/economic-reconciliation-supporting-a-return-to-indigenous-prosperity/)



The Truth and Reconciliation Commission of Canada (the “TRC”) released its Calls to Action in 2015 to further reconciliation between Canada and Indigenous peoples, with Call to Action #92 requiring Canada’s corporate sector to actively engage in reconciliation. UNDRIP was endorsed by Canada in 2016 and recently came into force in both federal and provincial legislation. Article 19 of UNDRIP provides that states shall consult with Indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative measures that may affect them. These institutions have a statutory obligation to familiarize themselves with and implement the principles crystallized in UNDRIP in all dealings that impact Indigenous peoples. We are concerned that the Ministry of Finance is not meeting its obligations to consult and cooperate with Indigenous peoples as disclosure, or lack of disclosure of Indigenous people in FRFIs, has had a profound effect on Indigenous participation in the core financial decisions and flow of money in Canada.

The sector represented by FRFIs play important roles across Canada in the creation of economic conditions that support business and investment, creating free and fair capital markets and creating investor confidence. However, Indigenous peoples do not yet see themselves reflected in the boardrooms of Canada, or more broadly, in the finance industry, or, in fact, in the many FRFIs. The diversity disclosure requirements under the *Canada Business Corporations Act* for non-FRFIs painted a bleak picture of Indigenous representation, particularly within the ranks of senior management or around the boardroom table. There were ZERO Indigenous senior executives in TSX-V reporting issuers; for board representation; other metrics indicate a 20-30 times under-representation when considering Indigenous people make up almost 5% of the total population of Canada. This lack of representation which includes FRFIs, undermines Indigenous confidence in markets. These problems are indicative of a system that excludes Indigenous people. This initiative and our response are timely as it is fundamentally addressing an issue that should be of interest for all FRFIs: Economic Reconciliation.

FRFIs have some of the most lucrative jobs in Canada. Senior executives, investment bankers and asset managers make millions of dollars a year. But there is nary an Indigenous person. We think the banks must provide comprehensive reporting on Indigenous inclusion by each business line, both representation across the business line and in senior management to properly demonstrate this great disparity (We also think

that similar disparities would exist for Black Canadians and women). We note that some issuers instead of having Indigenous board members are instead creating an Indigenous advisory committee. While we laud the creation of such committees, they must not be at the expense of true representation at the board level. It will be incredibly difficult to achieve Indigenous diversity goals without Indigenous representation at the senior level.

We estimate Indigenous governments have at least \$20 billion of assets under management with registrants. Yet, there are only a dozen Indigenous CFA charter holders in North America. We can identify only a handful of senior Indigenous finance executives or asset managers. We are aware of only one full-time staff member across all the Canadian Securities Administrators who is Indigenous. We do not know of a senior Indigenous person at OSFI or the Bank of Canada.

Bay Street and francophones, particularly Quebecois, expect representation on our corporate boards from Canada's other constitutionally protected group, francophones—why is this not the case for Indigenous peoples?

Reporting provides the sunlight that Indigenous peoples and their allies need to measure systemic change. To incent behaviour that encourages Indigenous reconciliation, there must be prescriptive reporting that holds FRFIs accountable. We recommend that the Ministry of Finance immediately strike a round-table of Indigenous finance leaders to discuss the amendments and immediately begin a program of outreach to Indigenous nations. The FMB would be pleased to advise on how to do this.

Best regards,



Geordie Hungerford
CEO, First Nations Financial Management Board

To address the lack of Indigenous representation in FRFIs, we have responded to the questions set out in the Consultation:

Consultation Questions

The Government is seeking feedback on measures that would align the financial institutions statutes with the diversity disclosure requirements in the *Canada Business Corporations Act*.

1. *What are the potential benefits and limitations of applying the CBCA diversity disclosure model to financial institutions?*

It would provide a baseline of data that would assist in developing comprehensive strategic plans for respective FRFIs. Tracking diversity would allow institutions to better understand the representation gap and provide an incentive to become more diverse. It would allow external stakeholders and rights holders (Indigenous nations) to ask informed and pertinent questions concerning gaps in representation. It would demonstrate a commitment to compliance with UNDRIP and support for the Calls to Action. Reporting could also be done in conjunction with more comprehensive Reconciliation Reporting that would show compliance with TRC Call to Action #92.

There are limitations with this model, if left as is. For example, CBCA's definition of "Senior Level Management" includes "anyone who performs a policy-making function within the corporation," which on plain reading does not require such person to be in a senior management position. Seeing these broadly defined categories creeping into the reporting model, while failing to provide statistical breakdowns of the subcategories, will open the door to FRFIs being tempted to engage in Redwashing.³ Indigenous peoples want reconciliation, not deception. Well designed disclosure should mitigate Redwashing, including our suggestion that disclosure be more comprehensive, providing statistical breakdowns within subcategories, and for each business line (eg. investment banking, sales and trading, asset management, private client service) within the FRFI.

³ Online; [Redwashing-Extraction-YI-Special-Report-8.22-1.pdf \(yellowheadinstitute.org\)](#) 'Red washing' – a generally corporate response to an urgent social and or legal issue that merely co-opts language and symbols but offers little transformative or meaningful change. Redwashing is an attempt to craft an appears of reconciliation or being generous – reconciliation is a purely superficial conceptualization.

2. Are the scope and content of the CBCA's disclosure requirements appropriate for financial institutions? Please explain.

There should be broader and more comprehensive disclosure, disclosure by business line (rather than just senior management), a requirement to create a Reconciliation Plan and to show compliance with TRC #92.

As information gets reported, the reporters may voluntarily refine their data sets or more refined disclosure requirements may be required. Disclosing information on the number and percentage of directors and officers from each of the designated groups is adequate. Disclosing their policies and targets for representation or explain why they do not have a policy and targets is also adequate.

3. Are the four designated groups outlined in the CBCA model (i.e., Indigenous peoples, members of visible minorities, persons with disabilities, and women) adequate for capturing the information investors and the public require in order to assess the state of diversity on the boards and senior management of financial institutions? If not, how should this be modified?

We have been disappointed with Canadian FRFI's intentionally not reporting Indigenous representation at all levels of the organization and only reporting total staff as opposed to senior management (e.g. Bank of Montreal). Some FRFIs are bundling Indigenous into the American "BIPOC" concept (e.g. Royal Bank) in their sustainability reporting. The adverse inference is that these FRFIs have very few Indigenous senior managers.

We have concerns about the Department of Finance and Bay Street's understanding of why Indigenous peoples are to be dealt with differently from other categories of diversity. Canada has a constitutionally protected relationship with Indigenous peoples. The treaties mean a sharing of lands and resources. FRFIs, as financial intermediaries, play a key role in determining what economic activity occurs in Canada, at what price, or failing to properly consult with Indigenous peoples, at what cost.

We note that the Department also seems to not understand the special constitutional nature of Indigenous peoples as the consultation paper refers to "Black, Indigenous, and people of colour." BIPOC is not an appropriate lens for Canada and diminishes Indigenous peoples as merely a "minority" in Canada. We are not. This is not merely about mitigating

section 15 Charter rights. This is about including people from a constitutionally protected nation-to-nation relationship in the commercial mainstream of Canada. This BIPOC wording in the consultation paper also gives us concern about whether Canada is meeting its obligations under TRC Recommendation #57 to educate bureaucrats on Indigenous reconciliation.

Investors and the public would benefit from the category of Indigenous peoples being split up into three separate categories; First Nations, Métis and Inuit as these are three unique classes of people with varying perspectives on reconciliation and rights.

4. For investors and owners of FRFIs, are the CBCA diversity disclosures adequate to inform your investment/voting decisions for directors?

For investment, the CBCA diversity disclosure is not thorough enough to determine an issuer's commitment to Indigenous reconciliation. There needs to be additional disclosure of the FRFI's Reconciliation Plan and whether the FRFI is meeting goals under that plan. We would be happy to assist the Department in coming up with Indigenous reconciliation disclosure requirements.

We are concerned that retail investors may not be aware of the benefits of having Indigenous peoples on boards or in management positions. The Department should utilize educational outreach programs to educate retail investors about the benefits of considering diversity as an investment decision-making factor.

5. Should the requirements apply to all federally incorporated financial institutions, or should they be differentiated based on the institution's ownership or type? If differentiation is preferred, why?

The requirements should be applicable to all FRFIs. Indigenous peoples expect transparency on their inclusion (or lack thereof) on all institutions that are determining where capital goes and who is eligible for insurance.

6. In your view, what is the impact of these disclosure requirements on non-distributing FRFIs (i.e., credit unions, small- and medium-sized banks, and certain insurance companies)?

In light of potential modifications to provincial diversity disclosure, we would welcome your views on the following measures, including the use of a prescribed form to ensure data consistency and reliability, targets for directors and executive officers, director term limits, and compliance measures (i.e., penalties for non-compliance and/or benefits for those who comply). A prescribed form to ensure data consistency would be useful. Benefits for compliance would also assist in ensuring these reporting requirements are met.

The federal government has passed UNDRIP legislation. We expect the Governments of Canada and British Columbia to create an expectation in reporting for issuers, which should be a baseline that other provinces should follow. We think there should be penalties and/or benefits for compliance with mandatory Indigenous inclusion benchmarks and for the adoption and satisfactory reporting of Reconciliation Plans.

7. What are the benefits and limitations of introducing targets to achieve broader diversity goals? Should federally regulated financial institutions be required to set their own targets, or should Government introduce suggested targets or guidance in this area?

We believe that those in the majority at the senior management level subconsciously think that expanding diversity will provide less opportunity for their “in group,” however, diversity leads to conversations on new perspectives, which creates new opportunities for everyone. Targets should be mandatory, as failing to set targets often leads to those failing to meet objectives, failing to measure progress, failing to identify hurdles and failing to take corrective action. What is not targeted cannot be achieved.

It is clear that there is massive under-representation of Indigenous people in the finance industry and that there is a systemic problem that has existed for 150 years and at a level of under-representation that exceeds other equity seeking groups. There should be a 5-year comply or explain, followed by mandatory targets for Indigenous people in board and senior management roles (by business line).

8. In your view, do director term limits create more opportunities to recruit diverse candidates? What are the potential challenges to achieving this outcome?

- a. *Should federally regulated financial institutions be required to set their own term limits, or should Government prescribe term limits?*

In the absence of a comprehensive skills and experience matrix combined with a director evaluation program, term limits are required for good governance and ensuring diversity of perspectives. Term limits help ensure that director independence is not eroded over time. There should also be comprehensive evaluation processes for the board beyond the informal self-assessment usually conducted annually. There is a lot of research conducted by entities like the Institute of Corporate Directors on this topic. With that said, there should be prescribed term limits.

9. *What are the benefits and limitations of introducing a prescribed form for reporting?*

A prescribed form creates clear expectations and assists in meeting reporting requirements. Like securities reporting, there should be an opportunity for additional disclosure.

10. *In your view, what are effective approaches and policies to achieve compliance?*

In cases of ongoing systemic problems, prescribed reporting is necessary—otherwise, firms will be tempted to engage in Redwashing. It is crucial that FRFI's publicly declare their targets and report their results as this will increase transparency with owners and stakeholders and cause pressure to achieve those stated targets.

We also think there should be mandatory annual Indigenous reconciliation education for board, senior management and staff of FRFIs.

11. *In your view, what are effective approaches and policies to increasing diversity in financial institutions?*

Launching and sustaining initiatives that include sponsoring candidates from outside the traditional hiring sectors and creating a culture that is inclusive and open to accepting new ideas and ways of doing business. FRFIs should be required to adopt CFA Institute's Diversity Code, which contains many guidelines for increasing diversity in finance.



All FRFIs should be required to create a Reconciliation Action Plan with measurable outcomes and report on an annual basis. They should be obligated to comply with TRC Recommendation #92. They should be required to follow a federally mandated diversity code, similar to the CFA Diversity Code.

FRFI's should include Indigenous peoples not just in senior management roles, but also on their interview panels. We believe that Indigenous peoples would be less likely to accept a role within a firm if that firm did not already have other indigenous peoples within their culture.

FRFIs should be reporting on their accessibility to Indigenous peoples and the amount of business they are doing with Indigenous nations and Indigenous owned businesses. They should report the average extra spread that their financing models charge for Indigenous people, nations and businesses. They should also report of the cost of insurance.

All federal advisory bodies such as the Sustainability Finance Advisory Council (SFAC) should mandatorily have Indigenous representation.

All federal boards and regulatory agencies, such as OSFI, Bank of Canada, and OBSI, and the Ministry of Finance, should have mandatory Indigenous representation at senior levels and on boards. Only by bringing on Indigenous peoples, will these institutions understand what needs to be done.

Closing Comments

We thank you for allowing us to provide comments on this topic as we see FRFI's as having the opportunity, if they so choose to act, to have a profound effect on Indigenous reconciliation and participation in the core financial decisions and flow of money in Canada. We would be happy to address any questions you may have and to assist the Department in any way to move this initiative forwards. Please feel free to contact me directly at Geordie_Hungerford@fnfmb.com.

(Signed) *The First Nations Financial Management Board*