RE: PROPOSED SENIOR LEADER REGIME

October 31, 2026

CONTENTS

Executive Summary 3

A. Primary Responsibility Rests with the Institution 3

B. OSFI Has Extensive Powers 5

C. The Documentation Sought Is Already Available 7

D. No Evidence That Additional Documentation Improves Governance 8

E. The Causes of Governance Failures Are Not Addressed 8

F. There Is Risk of Harm 9

G. Practices in Other Countries Do Not Establish a Canadian Need 10

Conclusion 11

October 31, 2026

Attention:
pds-epn@osfi-bsif.gc.ca

RE: CONSULTATIVE DOCUMENT ON A PROPOSED SENIOR LEADER REGIME

The Canadian Forum for Financial Markets (CFFiM)/Forum Canadien des Marchés Financiers (FCMFi) is dedicated to advancing proposals that foster healthy, competitive financial markets and a resilient Canadian economy.

CFFiM provides the following analysis of the Office of the Superintendent of Financial Institutions (OSFI) consultative document on a proposed senior leader regime (the "Consultative Document").

EXECUTIVE SUMMARY

OSFI should not proceed with the proposed senior leader regime. It should instead use its existing powers to examine whether institutions' accountability arrangements operate effectively in practice. OSFI has not identified any failure that existing law and guidance cannot address.

Primary responsibility for the suitability and accountability of senior leaders rests with boards and senior management. OSFI has extensive statutory powers and guidance to address suitability and accountability where warranted.

Institutions maintain the documentation the proposal seeks. There is no evidence that additional documentation would improve management, governance or supervision.

The proposal does not address the causes of leadership and governance failures, which lie in culture. It risks substituting defensive compliance for judgment.

Practices in other jurisdictions do not establish a Canadian need.

A. PRIMARY RESPONSIBILITY FOR SUITABILITY AND ACCOUNTABILITY RESTS WITH THE INSTITUTION

Primary responsibility for the suitability and accountability of senior leadership rests with the institution. The board oversees the chief executive officer, and the chief executive officer and senior management oversee the rest of the team. This allocation is generally reflected in federal financial institution legislation and supported by the case law on the duties of directors and officers. The Superintendent's statutory power to remove a director or senior officer who is not suitable to hold office, discussed in Part B, operates solely as a backstop to that responsibility.

With respect to federal legislation, section 157 of the *Bank Act* requires the directors to manage or

supervise the management of the bank's business and affairs.[1] Section 158 imposes on every director and officer, duties of honesty and good faith and of care, diligence and skill.[2]Sections 193 to 195 provide for board committees which give the board a means of overseeing management.[3]

The board must appoint the chief executive officer and may delegate its powers to that officer.[4] The appointment and oversight of other officers may, in turn, be delegated, so that responsibility for the rest of the senior team ordinarily runs through the chief executive officer.[5]

Comparable provisions on the board's duty to manage or supervise, the duties of directors and officers, board committees and, except for cooperative credit associations, the appointment of a chief executive officer, appear in the *Insurance Companies Act*,[6] the *Trust and Loan Companies Act*[7] and the *Cooperative Credit Associations Act*.[8]

Section 4(4) of the *Office of the Superintendent of Financial Institutions Act ("OFSI Act")* states that "boards of directors are responsible for the management of financial institutions".[9] Read with section 157 of the *Bank Act*, "management" refers to the board's overall responsibility for the institution, which the board discharges through supervision.

The courts have confirmed these duties. Directors are responsible for the governance of the corporation[10] and, at a minimum, must ensure that it meets its statutory obligations.[11] The statutory duty of care obliges directors and officers to be diligent in supervising and managing the corporation's affairs.[12] These decisions interpret the *Canada Business Corporations Act* and general corporate law. They apply by analogy to the federal financial institution statutes, which impose duties on directors and officers in materially similar terms.

Competence is contextual. The board is better positioned than a regulator to assess the competence of

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[1] *Bank Act*, S.C. 1991, c. 46, s. 157, https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-157.html.

[2] *Bank Act*, s. 158, https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-158.html.

[3] *Bank Act*, ss. 193–195, https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-193.html.

[4] *Bank Act*, s. 196(1), https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-196.html.

[5] *Bank Act*, ss. 197(1), 198, https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-197.html.

[6] *Insurance Companies Act*, S.C. 1991, c. 47, ss. 165–166, 203–205, https://laws-lois.justice.gc.ca/eng/acts/I-11.8/section-165.html.

[7] *Trust and Loan Companies Act*, S.C. 1991, c. 45, ss. 161–162, 198–200, https://laws-lois.justice.gc.ca/eng/acts/T-19.8/section-161.html.

[8] *Cooperative Credit Associations Act*, S.C. 1991, c. 48, ss. 167–168, 199–200, https://laws-lois.justice.gc.ca/eng/acts/C-41.01/section-167.html.

[9] *Office of the Superintendent of Financial Institutions Act*, R.S.C. 1985, c. 18 (3rd Supp.), Part I, s. 4(4) (hereafter *OSFI Act*), https://laws-lois.justice.gc.ca/eng/acts/O-2.7/section-4.html.

[10] *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, para. 36, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/6238/1/document.do.

[11] *BCE*, para. 38.

[12] *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 S.C.R. 461, para. 32, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2184/index.do.

the chief executive officer, and the chief executive officer is better positioned to assess the competence of the senior team. Judgment is not easily standardized; evaluating business judgment involves both experience and subjectivity. The courts have recognized this in describing their own role. Directors are in an advantageous position to consider first-hand the circumstances before them,[13] and courts are "ill-suited and should be reluctant to second-guess the application of business expertise."[14] By analogy, the same reasoning applies to a regulator assessing the judgment of an institution's leaders.

B. OSFI HAS EXTENSIVE POWERS TO ADDRESS SUITABILITY AND ACCOUNTABILITY

OSFI holds extensive statutory powers to address suitability and accountability, supplemented with guidance.[15]

(i) Through Federal Legislation

Federal financial institution legislation establishes director qualifications and governance requirements, and gives the Superintendent statutory powers concerning the suitability, disqualification and removal of directors and senior officers. The *Bank Act* provides an example, principally in Part VI (Corporate Governance), Part XIII (Regulation of Banks — Superintendent) and, for bank holding companies, Part XV.

For example, with respect to director qualifications, the Superintendent may determine that the director's relationship with the bank "can reasonably be expected to affect the exercise of the director's best judgment."[16]

The Superintendent must examine each bank at least once a year and has the right of access to records and to require directors and officer to provide information in respect of the conditions and affairs of the bank.[17] If in the opinion of the Superintendent, a bank is committing or is about to commit an unsafe or unsound act or course of conduct , the Superintendent may direct that the bank refrain and perform such acts as are necessary to remedy the situation.[18] Where a bank is subject to supervisory measures, the Superintendent may, by order, remove a director or senior officer (defined to include the chief executive officer and any other officer reporting directly to the board or the chief executive officer) if the Superintendent is of the opinion that the person is not suitable to hold that office, either on the basis of competence, business record, experience, conduct or character, or because the person has contravened, the Act, a direction, a prudential agreement or other specified requirements. The Superintendent may also disqualify nominees for director or senior officer before they take office.[19]

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[13] *UPM-Kymmene Corp. v. UPM-Kymmene Miramichi Inc.* (2004), 42 B.L.R. (3d) 34 (Ont. C.A.), para. 6, aff'g (2002), 214 D.L.R. (4th) 496 (Ont. S.C.J.), https://www.canlii.org/en/on/onca/doc/2004/2004canlii9479/2004canlii9479.html.

[14] *Peoples*, para. 67.

[15] *OSFI Act*, s. 5(1), https://laws-lois.justice.gc.ca/eng/acts/O-2.7/section-5.html.

[16] *Bank Act*, s. 162.1, https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-162.1.html.

[17] *Bank Act*, ss. 643(1), 644, https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-643.html.

[18] *Bank Act*, ss. 644.1, 645(1), 646, https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-645.html.

[19] *Bank Act*, s. 647(1), (4), https://laws-lois.justice.gc.ca/eng/acts/B-1.01/section-647.html.

The *Insurance Companies Act*,[20] the *Trust and Loan Companies Act*[21] and the *Cooperative Credit Associations Act*[22] contain generally comparable governance requirements and comparable powers to disqualify and remove directors and senior officers.

Among OSFI's statutory objectives is to advise the management and board of an institution promptly where it is not in sound financial condition, is not complying with its governing statute or supervisory requirements or lacks adequate policies and procedures to protect against threats to its integrity or security, and in such a case to take, or require the management or board to take, the necessary corrective measures without delay.[23]

(ii) Through Guidance

OSFI guidelines set out supervisory expectations rather than statutory requirements. In practice, however, federally regulated financial institutions treat them as compulsory.

Guideline E-17, Background Checks on Directors and Senior Management of Federally Regulated Entities (FREs) (2008) **s**ets expectations for assessing the suitability and integrity of directors, senior management, and other Responsible Persons, before appointment and periodically thereafter. Parts IV to VII address the assessment policy, assessment procedures, the role of senior management, and the information to be made available to OSFI. OSFI states that it "relies on the FRE's own internal processes for assessing the ongoing suitability and integrity" of these individuals after authorization.[24]

Sections II, III and V of Corporate Governance Guideline (2018) set out expectations concerning board oversight of senior management, risk governance, and OSFI's supervisory assessment of corporate governance. The guideline states that "The Board and Senior Management are ultimately accountable for the safety and soundness of the FRFI."[25]

Section 3 of Integrity and Security Guideline (2024). sets out expectations concerning integrity including:[26]

- 3.1 Character: responsible persons and leaders are of good character and demonstrate integrity through their actions, behaviours, and decisions.

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[20] *Insurance Companies Act*, ss. 165–167, 678.01–678.2, https://laws-lois.justice.gc.ca/eng/acts/I-11.8/section-678.2.html.

[21] *Trust and Loan Companies Act*, ss. 161–163, 509.01–509.2, https://laws-lois.justice.gc.ca/eng/acts/T-19.8/section-509.2.html.

[22] *Cooperative Credit Associations Act*, ss. 167–170, 441.01–441.2, https://laws-lois.justice.gc.ca/eng/acts/C-41.01/section-441.2.html.

[23] *OSFI Act*, s. 4(2)(b), (b.1), https://laws-lois.justice.gc.ca/eng/acts/O-2.7/section-4.html.

[24] OSFI, *Background Checks*, pt. I.

[25] OSFI, *Corporate Governance Guideline*, pts. II, III, V.

[26] Office of the Superintendent of Financial Institutions, *Integrity, and Security Guideline* (Ottawa: OSFI, January 31, 2024), s. 3, https://www.osfi-bsif.gc.ca/en/guidance/guidance-library/integrity-security-guideline.

- 3.2 Culture**:** a culture that demonstrates integrity is deliberately shaped, evaluated and maintained.
- 3.3 Governance**:** governance structures subject actions, behaviours and decisions to appropriate scrutiny and challenge.
- 3.4 Compliance**:** effective mechanisms exist to identify and verify compliance with regulatory expectations, laws, and codes of conduct.

Section 4.2.1 also addresses risk-based background checks for responsible persons, employees, and contractors.[27]

In summary, OFSI's existing guidance already expects that a culture of integrity be "deliberately shaped, evaluated, and maintained," and its examination powers allow it to evaluate whether that expectation is met.[28]

C. THE DOCUMENTATION SOUGHT IS AVAILABLE

OSFI proposes that each institution develop an Accountability Framework comprising suitability criteria, maps of individual responsibilities and of governance and oversight arrangements, regular individual attestations by senior leaders, compensation practices linking remuneration to governance outcomes, and practices for addressing lapses and breaches. The board would approve the framework and submit it to OSFI annually, the board chair may be required to provide an annual attestation to OSFI, and institutions would file their assessments and responsibility maps with OSFI, possibly through a standardized regulatory return.[29]

OSFI states that the framework would draw "from existing governance documents, risk management structures, and internal control practices."[30] Federally regulated financial institutions already maintain substantial documentation identifying responsibilities and reporting relationships, including organizational charts, executive job descriptions, board and committee mandates, delegations of authority, risk management frameworks, internal control procedures, escalation protocols and internal audit reports. Much of this documentation reflects statutory requirements and existing OSFI expectations, and all of it is available for OSFI examination.[31] Consolidating existing information into another standardized document may improve presentation or supervisory convenience, but it does not improve accountability.

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[27]OSFI, *Integrity and Security Guideline*, s. 4.2.1.

[28]OSFI, *Integrity and Security Guideline*, s. 3.2; *Bank Act*, s. 643(1).

[29]Office of the Superintendent of Financial Institutions, "Consultative Document on a Proposed Senior Leader Regime" (Ottawa: OSFI, January 29, 2026), "Proposing a Principles-Based Accountability Framework," https://www.osfi-bsif.gc.ca/en/guidance/guidance-library/consultative-document-proposed-senior-leader-regime.

[30]OSFI, "Consultative Document," "Proposing a Principles-Based Accountability Framework."

[31]See, e.g., *Bank Act*, ss. 643(1), 644; OSFI, *Corporate Governance Guideline*, pt. V.

D. NO EVIDENCE THAT ADDITIONAL DOCUMENTATION IMPROVES GOVERNANCE

OSFI cites "recent events, including governance cases in Canada and the failures of several banks globally" as highlighting the need for stronger measures.[32] It does not identify those events or show that any of them resulted from a gap in existing law or guidance that the proposal would fill. Nor has OSFI produced evidence that additional responsibility maps, attestations, compensation requirements, and annual regulatory filings would materially improve the effectiveness of boards, senior management, or prudential supervision.

Serious governance failures can occur in institutions with clearly defined executive responsibilities, established reporting structures, extensive compliance functions, and detailed internal controls. Evidence that governance failures occur is not evidence that additional governance requirements are necessary. The relevant consideration is whether those failures arose from deficiencies in existing requirements, inadequate implementation, ineffective supervision, or other causes.

E. THE CAUSES OF GOVERNANCE FAILURES ARE NOT ADDRESSED

The most consequential weakness in the Consultative Document is its limited examination of why existing governance arrangements fail. A responsibility map can establish that an executive has been assigned responsibility for a function. It cannot establish that the executive exercises sound judgment, challenges inadequate decisions, responds effectively to warnings or takes corrective action.

The problem is often not that executives and boards do not know their responsibilities. They may know exactly what they are responsible for but operate in a culture that discourages independent judgment and challenge. That culture may include:

- Managing upward**.** Executives prioritize pleasing superiors over identifying problems or delivering unwelcome advice.
- Fear of consequences**.** Employees learn that challenging decisions, escalating concerns or exposing failures can damage their careers.
- Consensus over judgment**.** Committees become mechanisms for validating decisions rather than challenging assumptions.
- Diffused responsibility**.** Everyone participates in decisions, but no one takes ownership when something goes wrong.
- Career preservation**.** Advancement rewards conformity, political skill, and the avoidance of visible mistakes rather than competence and independent thinking.

These behaviours can exist in institutions with impeccable organizational charts, detailed job descriptions, and sophisticated risk management frameworks. The more serious governance risk may be institutional conformity: executives who avoid challenging authority, boards that receive filtered information, and management cultures that reward agreement over judgment.

[32]OSFI, "Consultative Document," "Responding to a Rapidly Evolving Landscape."

F. THERE IS RISK OF HARM

OSFI states that it does not intend to adopt a system of regulatory approvals for the appointment of senior leaders or to insert itself into the senior management appointment process.[33] The strongest argument in favour of the proposal is that, if its requirements merely consolidate existing documents, require little additional work and improve supervisory visibility, any harm would be modest. That argument understates the effect of OSFI guidance. As noted in Part B, federally regulated financial institutions treat OSFI's supervisory expectations as compulsory in practice.

A further mandatory compliance exercise, backed by personal attestations, annual filings and compensation requirements, risks making institutions spend more time demonstrating accountability than exercising it. The harms include:

- Distraction**:** Senior executives, boards and legal, risk and compliance teams spend additional time maintaining maps, attestations, and assessments instead of addressing actual business and prudential risks. Boards become focused on satisfying OSFI's prescribed processes rather than exercising independent judgment about how best to govern their institutions.
- Defensive decision-making: Personal attestations and regulatory scrutiny can encourage executives to prioritize protecting themselves over exercising commercial judgment.

The proposal could also reinforce the behaviours described in Part E. If executives are already reluctant to challenge authority, personal attestations and formal responsibility maps may encourage more defensive conduct, escalation for self-protection and bureaucratic consensus. Compliance then becomes a substitute for judgment, and the appearance of effective oversight replaces its substance.

OSFI describes accountability as "linking individual competence and integrity to governance outcomes and consequences, leaving no room for complacency."[34] Institutions, not OSFI, are responsible for their culture and their leaders. Senior management, under the board's oversight, sets the institution's culture and selects, rewards, and removes its executives. Relevant considerations include whether executives are rewarded or penalized for challenging management, whether boards receive candid information, including dissenting assessments, whether serious concerns are escalated promptly even when commercially inconvenient, whether ineffective executives are retained because they are politically adept, whether internal audit and compliance functions exercise genuine independence, and whether individuals who identify problems are protected from retaliation.

OSFI's role is to supervise the prudential consequences of conduct and to intervene where warranted, using the powers described in Part B. That role does not extend to managing, through prescribed documents, whether individual executives and directors are sufficiently motivated or free from complacency.

[33]OSFI, "Consultative Document," "Proposing a Principles-Based Accountability Framework."

[34]OSFI, "Consultative Document," "Responding to a Rapidly Evolving Landscape."

G. PRACTICES IN OTHER COUNTRIES DO NOT ESTABLISH A CANADIAN NEED

OSFI states that it has reviewed the senior leader regimes of the United Kingdom's Prudential Regulation Authority, the Australian Prudential Regulation Authority, the Monetary Authority of Singapore, and the Central Bank of Ireland, "among others," and lists elements of those regimes. It concludes that its research points toward "a scaled and moderated approach that aligns with international trends."[35] The consultation does not describe how any of these regimes operates in practice, compare them with the totality of Canada's legislative, supervisory and governance framework, or assess their costs, benefits, or effectiveness. Nor does it consider the United States.

Responsibility maps are central to OSFI's proposal. OSFI observes that in all the regimes it reviewed, "institutions are expected to comprehensively map the responsibilities of their senior leaders," and proposes that clear lines of accountability, "supported by responsibility maps," will help eliminate areas of unaccountable risk.[36] OSFI also acknowledges that "a few" of the jurisdictions it reviewed "are currently reviewing their senior leader regimes."[37] Those reviews are simplifying responsibility maps and reducing the associated reporting to regulators, the same tools OSFI proposes to rely on:

- Australia**:** On August 31, 2026, the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission began a joint consultation on proposals to streamline administration of the Financial Accountability Regime. They propose that accountability maps no longer be expected to show reporting lines to accountable persons, and that key functions no longer be reported. The consultation closed on October 2, 2026, and the changes are expected to take effect in early 2027.[38] The regulators estimate the changes will reduce reporting for approximately 4,500 accountable persons and halve the number of accountability map updates.[39] The Australian government has also proposed amending the legislation so that accountability statements and accountability maps need be provided to the regulators only on request, rather than up front, and APRA is consulting on removing all reporting requirements under its fit and proper regime.[40]

[35]OSFI, "Consultative Document," "Learning from International Best Practices."

[36]OSFI, "Consultative Document," "Learning from International Best Practices" and "Proposing a Principles-Based Accountability Framework."

[37]OSFI, "Consultative Document," "Learning from International Best Practices."

[38]Australian Prudential Regulation Authority and Australian Securities and Investments Commission, "Consultation on Streamlining FAR Administration," letter to all entities covered by the FAR, August 31, 2026, https://www.apra.gov.au/news-and-publications/consultation-streamlining-far-administration.

[39]Australian Securities and Investments Commission, "ASIC and APRA Commence Consultation on FAR Streamlining," media release 26-204MR, September 2, 2026, https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2026-releases/26-204mr-asic-and-apra-commence-consultation-on-far-streamlining.

[40]Australian Securities and Investments Commission, "ASIC and APRA Announce FAR Changes to Reduce Administrative Burden," media release 26-121MR, June 16, 2026, https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2026-releases/26-121mr-asic-and-apra-announce-far-changes-to-reduce-administrative-burden.

- United Kingdom**:** On October 22, 2026, the Financial Conduct Authority and the Prudential Regulation Authority published parallel consultations on the second phase of reforms to the Senior Managers and Certification Regime. The proposals would remove ongoing submissions of Statements of Responsibilities and Management Responsibilities Maps and streamline the Prescribed Responsibilities. Comments are due by January 22, 2027.[41] The proposals would also remove the Certification Regime, which currently subjects around 139,000 individuals below senior manager level to annual certification checks, and replace regulatory pre-approval with notification for a range of senior roles. The regulators state that firms "will remain responsible for ensuring their employees remain competent, suitable and meet appropriate standards of conduct."[42]

In any event and importantly, the existence of a regulatory requirement in another jurisdiction does not establish that the requirement is effective, that it is needed in Canada, or that it is superior to Canada's existing arrangements.

CONCLUSION

OSFI justifies the proposal, in part, by reference to a financial landscape that is "increasingly complex and uncertain," shaped by new technologies, products and organizational structures.[43] Financial institutions have long operated in such environments. As explained above, a deficiency in existing suitability standards or accountability mechanisms has not been demonstrated.

Respectfully submitted,

Canadian Forum for Financial Markets

www.CFFiM-FCMFi.Ca

[41]Financial Conduct Authority, *Senior Managers & Certification Regime Review: Phase 2*, Consultation Paper CP26/37 (London: FCA, October 2026), https://www.fca.org.uk/publications/consultation-papers/cp26-37-senior-managers-certification-regime-review-phase-2; Prudential Regulation Authority, *Review of the Senior Managers and Certification Regime (SM&CR) – Phase 2*, Consultation Paper CP14/26 (London: Bank of England, October 2026), https://www.bankofengland.co.uk/prudential-regulation/publication/2026/october/review-of-the-smcr-phase-two-consultation-paper.

[42]Bank of England, "Regulators Unveil Plans to Simplify Senior Manager and Certification Regime," news release, October 22, 2026, https://www.bankofengland.co.uk/news/2026/october/regulators-unveil-plans-to-simplify-senior-manager-and-certification-regime.

[43]OSFI, "Consultative Document," "Responding to a Rapidly Evolving Landscape."