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Canada's Financial Consumer Protection Framework

Submission of the Canadian Payments Association

February 28, 2014

Note: This submission reflects the views of the CPA and not necessarily those of any one of its individual member institutions.



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Executive Summary

The Canadian Payments Association (CPA) is pleased to participate in the government's consultation on strengthening Canada's financial consumer protection framework. The CPA plays an essential function in Canada's financial system through its national clearing and settlement systems for retail and wholesale payments. In pursuing its statutory mandate, the CPA has a responsibility to promote the safety, soundness and efficiency of its systems and to take into account the interests of users.

The CPA welcomes enhancements to the financial consumer protection framework through the development of a comprehensive financial consumer code, as gaps currently exist in the level and type of protection afforded to consumers in Canada, including users of payments services. Over the past few years, the CPA has taken a number of steps to understand consumer needs and incorporate their interests into CPA by-laws, rules and standards as well as its policy frameworks and best practices. The CPA's contributions to this important dialogue are based on this experience. Below is a brief synopsis of our views:

- The CPA is supportive of the government adopting a set of principles to anchor a comprehensive financial consumer code in Canada, replacing a currently dispersed mix of legislation and regulations. That the government is drawing on the experience of other countries; in particular, the *G20 High-Level Principles on Financial Consumer Protection*, helps to ensure an effective and proportionate financial consumer protection framework in Canada.
- While the consumer code should not be overly prescriptive to ensure that the industry has flexibility, the principles underpinning it need to be sufficiently clear because approaches that are too abstract or ambiguous can create uncertainty for the financial industry, challenge enforceability and hinder innovation or consumer confidence. To enhance the effectiveness of a consumer code in terms of desired outcomes, the government may need to consider a combination of broad principles (supplemented with interpretation guidance) and, where appropriate, more prescriptive rules. Optimal solutions are those that address user protection gaps, while promoting competitive markets (both domestic and international).
- A comprehensive financial consumer code should apply to all financial institutions, service providers and scheme operators offering similar payment services. Limiting coverage to federally-regulated financial institutions impacts the overall effectiveness of the proposed code in terms of protecting consumers' rights and promoting consumer confidence with financial products in a rapidly evolving and innovative financial marketplace.
- An oversight authority (e.g. the Financial Consumer Agency of Canada) should have the explicit responsibility for the administration of the principles anchoring the code, with the necessary powers to fulfill this responsibility. If multiple authorities are required (e.g. federal and/or provincial), cooperation and coordination should be encouraged to avoid undue duplication and overlap.



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- The CPA is fully supportive of working together to continue to position Canada as a leader in financial services regulation, including financial literacy, financial inclusion and financial consumer protection policy. As recognized in the consultation paper, the ongoing engagement of all stakeholders is paramount to this goal. In the CPA's experience, engaging with consumer groups, its Stakeholder Advisory Council and CPA membership committees has been instrumental in developing clear and effective by-laws, rules, standards and policies. Engagement mechanisms for financial consumer protection issues would certainly be beneficial.



1. Introduction and Context

The Canadian Payments Association (CPA) welcomes the development of a comprehensive financial consumer code by the federal government and is pleased to participate in this cross-country consultation on strengthening Canada's financial consumer protection framework.¹ Our submission provides general commentary on the themes presented in the consultation paper² and responds directly to questions posed by the government in areas where the CPA's policy and rule-making experience may help to inform and shape this very important framework for the protection of Canadian consumers.

To provide some context for our submission, a brief overview of the CPA and its work with regard to consumer interests is provided below. The remaining sections of this submission follow the structure set out in the consultation paper.

Consumer Interests and the CPA

The CPA has a statutory mandate to design and operate national clearing and settlement systems, facilitate the interaction of its systems with others involved in the exchange, clearing and settlement of payments, and facilitate the development of new payment methods and technologies. In pursuing its mandate, the CPA has a responsibility to promote the safety, soundness and efficiency of its clearing and settlement systems and to take into account the interests of users.

The CPA plays an essential function in Canada's financial system through its national clearing and settlement systems for retail and wholesale payments. Over the past three decades, the CPA has worked with its members,³ stakeholders and government to make a wide variety of payment instruments available in Canada. The CPA assists member financial institutions in providing consumers with innovative and convenient payment mechanisms such as shared automated banking machine transactions, electronic funds transfers at the point-of-sale, on-line Internet payments from customer-accounts, pre-authorized debits (PADs), electronic bill payments and direct deposits.

In managing its systems and related operations, the CPA establishes a broad framework of by-laws, rules and standards that govern the daily inter-member exchange of payment items that clear and settle through CPA systems. This framework, which is developed in an open and transparent manner, defines the attributes of payment items acceptable for exchange, as well as the rights, responsibilities, recourse, liability and minimum security requirements for payments that clear through CPA systems such as PADs and debit card transactions.

¹ We use "federal financial consumer protection framework" to refer to the consumer protection provisions set out in the *Bank Act*, regulations, voluntary codes, sector commitments, and Commissioner's guidance by the Financial Consumer Agency of Canada. See Appendix B of *Canada's Financial Consumer Protection Framework: Consultation Paper* (December 3, 2013).

² *Canada's Financial Consumer Protection Framework: Consultation Paper* (December 3, 2013).

³ CPA members include the Bank of Canada, chartered banks, trust and loan companies, credit union centrals, federations of *caisses populaires* and certain other financial institutions, both federally and provincially regulated.



Consumers are a very important constituent of the financial industry and payments market. Over the past few years, the CPA has taken a number of steps to understand consumer needs and incorporate their interests into CPA by-laws, rules and standards, as well as its policy frameworks and best practices. For example, the CPA has been involved in developing:

- Enhanced Pre-Authorized Debit (PAD) rules, providing greater flexibility for consumer redress and recourse, simplified and flexible PAD agreement forms, sample cancellation forms and mandatory disclosure requirements for PAD agreements (e.g. contact information for redress, clauses regarding consumer cancellation and recourse rights, notification if a service provider is being used and requirements for waiver clauses to be prominently displayed);
- Improved disclosure requirements and clearer liability structure and authorization requirements for pre-funded debit arrangements;
- A *Best Practice for the Uniform Treatment of Wire Payments* to provide assurances for businesses and consumers regarding finality, timing and notification related to on-us wire payments;
- A framework for correcting electronic bill payment errors made by consumers;
- A new Consumer Group to discuss payments-related issues and seek input on CPA initiatives impacting consumers; and
- Flexible rules governing cheque image exchange that enable the industry to offer customer remote deposit capture and that set out clear recourse provisions.

In developing rules that accommodate customer-facing payment products, the industry often looks to the CPA to play a role in ensuring end-user needs are being considered. The CPA works collectively with industry members, scheme operators and stakeholders to discuss the needs of consumers and achieve desired outcomes. The introduction of consumer protection principles related to matters such as timely access to funds, disclosure and recourse may have an impact on CPA by-laws, rules or processes. The CPA welcomes the opportunity to be involved in any ongoing dialogue on consumer protection issues related to payments, clearing and settlement.



2. Establishing a Comprehensive Set of Principles for Consumer Protection

The CPA is supportive of the government adopting a set of principles to anchor a comprehensive financial consumer code in Canada, replacing a currently dispersed mix of legislation and regulations.

While the consumer code should not be overly prescriptive to ensure that the industry has flexibility, the principles underpinning it need to be sufficiently clear because approaches that are too abstract or ambiguous can create uncertainty for the industry, challenge enforceability and hinder innovation or consumer confidence. To enhance the effectiveness of a consumer code in terms of desired outcomes, the government may need to consider a combination of broad principles (supplemented with interpretation guidance) and, where appropriate, more prescriptive rules.

Should the government adopt a set of principles to govern financial consumer protection that would be applicable even where specific regulations have not been enacted? If so, how should a set of principles be administered?

The lack of a common legal framework for electronic payments in Canada, coupled with the growing number of payments falling outside of the scope of CPA rules,⁴ suggest differences and/or gaps in the level and type of protection afforded to users of payment services. This may create consumer risk (e.g. security, privacy, unauthorized payments, redress, etc.); it also creates differing outcomes for consumers (despite similar payment types).

Although differences in consumer protection are not necessarily negative from the perspective of overall competition and innovation, they do impact consumers in terms of transparency and, perhaps, the uniformity of consumers' rights. It also places a greater burden on consumers to understand their responsibilities and liabilities between competing payment schemes and products, which are ever increasing in complexity (e.g. players, roles, responsibilities). The proliferation of electronic payments and the varied levels of public disclosure among schemes may lead to heightened confusion among end users.

The establishment of a comprehensive financial consumer code, anchored by principles, could assist in addressing this issue. However, limiting the coverage to federally-regulated financial institutions will impact the overall effectiveness of Canada's financial consumer protection framework in terms of protecting consumers' rights and promoting consumer confidence with financial products in a rapidly evolving and innovative financial marketplace.

Increasingly, Canadian consumers are using many different kinds of payment products from a variety of payment service providers. Some of these providers may be federally or provincially regulated

⁴The CPA estimates that its systems process just over half of the volume of non-cash retail payments made in Canada with the remaining volume of Canadian payments (i.e. credit card, on-us and other payments) not subject to CPA by-laws or rules.



financial institutions and others may be telecommunications companies, unregulated service providers or intermediaries. To ensure the universal implementation of financial consumer protections from the consumer's perspective, the code should apply to all financial institutions, service providers and scheme operators offering similar payment services (not just federally regulated financial institutions). Any discrepancies in application between federally-regulated and non-regulated financial service providers could lead to uncertainty for all parties, including consumers.

An oversight authority (e.g. the Financial Consumer Agency of Canada) should have the explicit responsibility for the administration of the principles anchoring the code, with the necessary powers to fulfill this responsibility. If multiple authorities are required (e.g. federal and/or provincial), cooperation and coordination should be encouraged to avoid undue duplication and overlap.

What should be included in a set of principles that would form the basis for financial consumer protection? What elements should be set out under each principle to ensure that the principles are meaningful, measurable and fair to consumers and financial institutions?

That the government is drawing on the experience of other countries; in particular, the *G20 High-Level Principles on Financial Consumer Protection*, helps to ensure an effective and proportionate financial consumer protection framework in Canada. The principles set out in the consultation paper regarding access to financial services, disclosure, business conduct and redress are relevant principles for a consumer protection framework. Based on its work with consumer groups regarding payments, clearing and settlement, the CPA offers the following suggestions for consideration:

- **Transparency & Timely Disclosure** – The principle of transparency is an essential component of disclosure. The end users involved in a transaction should have the opportunity to understand the rights and responsibilities of the parties involved and be duly informed in clear, simple and understandable language of all fees, penalties and interest charges, as well as any changes in terms that may take effect. For example, recognizing the importance of transparency and timely disclosure, the CPA has adopted requirements to ensure that consumers are made aware of their rights and responsibilities at the time they authorize a PAD agreement. Requirements also exist to prominently display certain elements of an agreement.⁵ The CPA also provides templates for sample agreements and cancellation notices on its website for use by consumers and businesses.
- **Redress** – Where appropriate, consumers should have flexible options for pursuing recourse. Clear, simple and readily available information regarding redress is important. Consumers should be able to easily find the information they need to cancel or dispute a payment in accordance with any applicable rules/policies.

⁵ See CPA Rule H1, section 15 (e), 16(g), 25, available at http://www.cdnpay.ca/imis15/pdf/pdfs_rules/rule_h1.pdf



- **Privacy and data protection** – The issue of protecting consumers' privacy and data has also been raised in past CPA consultations by consumer groups. A principle on the protection of consumer data and privacy forms part of the *G20 High-Level Principles on Financial Consumer Protection*.

To ensure that the principles that anchor the code are meaningful, measurable and fair, an approach for interpretation and enforcement should focus on desired outcomes and emphasize ongoing dialogue between the oversight authority and those offering financial products. This approach is discussed later under "Supervisory Powers for Accountability and Enforcement"; and "Continuing the Conversation: Engagement".

3. Possible Enhancements to the Existing Framework

Consolidating the currently dispersed mix of legislation and regulations would certainly simplify and enhance Canada's financial consumer protection framework. It is important that solutions to address user protection gaps promote transparency, while maintaining flexibility to adapt to a payments marketplace that is dynamic and evolving. As recognized in the *G20 High-Level Principles on Financial Consumer Protection*, nationally and internationally competitive markets should be promoted to provide consumers with greater choice amongst financial products or services and create competitive pressure on providers to enhance innovation.⁶

3.1 Addressing the Needs of Vulnerable Canadians

What are the unique challenges faced by vulnerable populations? How should the consumer code address these challenges?

In developing a consumer protection framework, it is important to be mindful of the varying needs of all parties involved. The measures discussed in section 2 under Disclosure help to address the informational needs of vulnerable Canadians. In past CPA consultations, challenges related to mobility (i.e. difficulty in accessing physical locations/branches) and access to Internet have been issues raised by consumer groups. Where appropriate, the CPA has made efforts to ensure its rules are not restrictive with respect to consumer dispute channels. The CPA accomplishes this by, for example, facilitating enhanced service flexibility in allowing remote authorizations.⁷ Encouraging the industry to provide flexibility in the channels offered for recourse is one way in which the consumer code can address the challenges faced by vulnerable Canadians.

⁶ *G20 High-Level Principles on Financial Consumer Protection* (see principle No. 10 on Competition), p. 7.

⁷ For example, PAD agreements can be established and revised through both paper and remote/electronic means and PADs can be disputed via remote/electronic means.



3.2 Supervisory Powers for Accountability and Enforcement

What tools and authorities will the FCAC need in order to effectively supervise and enforce the implementation of a principles-based financial consumer protection framework?

As part of its approach to exercising its rule-making powers, the CPA has conducted research on the use of broad principles, particularly with regard to the oversight, administration and/or implementation of rules. Below are some research highlights that may contribute to this discussion. In particular, the CPA understands that an approach to rule-making that uses principles can operate best when it:

- Sets achievable, measurable and easy-to-understand objectives and desired outcomes;
- Generates on-going dialogue between those setting the principles and those required to adhere to them;
- Uses definitions, interpretations, guidelines and rules to remove ambiguities and further explain the principles;
- Employs responsive enforcement techniques; and
- Enables financial institutions to exercise discretion on how to best achieve the desired outcomes by leveraging their core business activities and in-house expertise.

3.3 Innovation

One of the biggest challenges for the CPA is to ensure that the rules supporting the clearing and settlement framework keep up with the relentless pace of innovation. Embracing a technology-neutral approach within rules and policies helps to enable innovation. Limiting the development of a rule to a specific “form factor” (e.g. a card) provides very little benefit to payment system users given the rapidly changing technological environment. Particularly in the development of its framework related to point-of-sale products, the CPA continues to improve its rules by embracing this approach.

How should the consumer protection framework accommodate emerging technologies and financial products?

With respect to promoting new or emerging payment methods, the CPA relies on the market to bring about efficient solutions and enables innovation by setting mandatory minimum requirements in its rules for payments that are exchange and cleared through its systems. This encourages competition, and enables the market to develop beyond the minimum mandatory requirements. Financial



institutions and service providers should have the ability to respond to a changing market environment and leverage emerging technologies.

A consumer protection framework with clear objectives and desired outcomes to address public policy concerns would allow financial institutions to determine how best to achieve them, while maintaining the ability to offer consumers new payment channels and innovative financial products and services in ways that comply with the framework's objectives. This would help protect consumer choice, as innovative products and services increasingly enter into the marketplace.

By embracing a principle of transparency, whereby the benefits, risks, responsibilities and liabilities of the innovative products are clear and understandably communicated to consumers, the framework can protect consumers (given the increasing complexity of such products), without hindering innovation. Consistent and even application of a framework across the various parties that offer similar products is important to ensure that all parties have equal opportunity to be innovative.

3.4 Disclosure about Financial Products and Services

What key information do consumers need and how should it most effectively be presented to allow consumers to make informed financial decisions? Are there particular products or circumstances in which disclosure is not sufficient to provide consumers with the information needed to make responsible financial decisions? What enhancements to disclosure would provide Canadians with information to make responsible financial decisions?

Complete pertinent information (i.e. avoiding confusion-inducing information overload) on the risks, responsibilities and liabilities of individual product and service offerings best serves consumer interests. In the CPA's experience dealing with consumer inquiries and conducting consumer focus groups on PADs, the CPA has learned that plain-language information as well as prominent disclosure of waivers and readily available contact information for disputes is very important. Informed consumers are able to make the best decisions for their circumstances.

3.5 Comprehensiveness

What needs to be included in order to achieve the objective of a comprehensive financial consumer code?

Consumers will not be effectively protected in a regulated environment that does not cover all financial product providers. The application of the proposed code should not be limited to federally-regulated financial institutions. It would be preferable that similar products be similarly regulated in order to avoid consumer confusion as to the applicable rules and requirements. A consumer protection code may set a regulatory 'floor' and encourage unregulated institutions and service providers to voluntarily adopt its standards and processes. However, a coverage gap can also create confusion among consumers and opportunities for fraudulent/misleading claims by unregulated



service providers as to their business practices and standards.

A consistent and fair application of a financial consumer code across the entire industry is essential. This includes having clearly communicated and understood objectives underlying the broad principles anchoring the code, effective enforcement as well as having broad coverage making the code binding across the entire financial industry, including segments of the financial industry not currently under federal regulation.

4. Continuing the Conversation: Engagement

Should the government consider mechanisms for enhancing engagement among stakeholders in regulatory, supervisory and compliance process related to consumer protection?

The CPA is fully supportive of working together to continue to position Canada as a leader in financial services regulation, including financial literacy, financial inclusion and financial consumer protection policy. As recognized in the consultation paper, the ongoing engagement of all stakeholders is paramount to this goal.

With respect to payment instruments or financial products, due to the broad range of stakeholders, users, systems and service providers, there can be confusion regarding who is responsible and accountable for consumer protection. In the CPA's experience, engaging with consumer groups, its Stakeholder Advisory Council and CPA membership committees has been instrumental in developing clear and effective by-laws, rules, standards and policies. Engagement mechanisms for financial consumer protection issues would certainly be beneficial.

5. Conclusion

The CPA welcomes the opportunity to participate in future dialogue on enhancing the financial consumer protection framework as it relates to payments in Canada.