

July 24, 2018

Delivered via e-mail: fin.payments-paiments.fin@canada.ca

Comments re: Consultation on the Review of the Canadian Payments Act

The Electronic Transactions Association (“**ETA**”) submits these comments in response to the Department of Finance’s request for comment on its review of the *Canadian Payments Act*. ETA and its members support the Department’s vision for modernization of the payments systems, and especially the introduction of Real-Time Rail (“**RTR**”), to serve as platforms for innovation in the Canadian payments ecosystem. We hope that these comments will assist the Department of Finance in developing fair governance and access rules for the payments systems.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, mobile payment service providers, mobile wallet providers and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services and revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives. As a result, ETA applauds the Department of Finance’s commitment to innovation and its efforts to develop the payments systems in a manner that will benefit both consumers and businesses.

General Comments

ETA and its members support an inclusive financial system that provides secure and faster payments with enhanced functionality to benefit consumers and businesses. In that regard, ETA believes that it is important that the eligibility criteria to participate in the RTR, Settlement Optimization Engine (“**SOE**”) and Lynx (collectively, the “**Payments Systems**”), and the accompanying legal rules and framework, be developed by Payments Canada in a manner that allows access to the payments ecosystem (whether directly or indirectly) for market participants and facilitates continued innovation and development in the FinTech industry while maintaining a proper risk management framework. ETA and its members believe that broader access to the Payments Systems will ultimately enable more market participants to deliver innovative payment overlay services to customers at a more favourable cost through increased competition.

I. Proposed Associate Membership Class

ETA and its members understand the importance of establishing eligibility requirements for obtaining access to the Payments Systems. In that regard, in framing the eligibility criteria, ETA and its members caution that if the ability to participate in RTR is too restrictive or overly cumbersome, this will have a negative impact on competition. As such, ETA and its members support the creation of an associate membership class to facilitate risk-based access to the

RTR, as well as the proposed access for associate members to the exchange networks for electronic payments streams that will clear through the SOE, subject to the comments below.

In determining eligibility for access to the RTR, the gatekeeping function should be proportional to the risks that the system aims to mitigate. In that regard, ETA and its members believe that in allowing entities to access the RTR, the rules should take into consideration an entity's risk profile, size, entity type, the products it offers and what regulatory regime it is subject to. ETA believes that proper access rules formulated using objective, risk-based criteria will serve as a platform for innovation in the Canadian payments ecosystem and will be in line with the stated policy objectives of the Department of Finance.

In formulating the access rules, the Department of Finance should tailor the approach so that it is appropriate for the FinTech industry's participation. In that regard, the access rules should provide equal opportunity and ensure that the FinTech industry is provided with a level playing field so that it can effectively compete in the Canadian market and have a positive regulatory framework for innovation. Where the regulatory requirements are too onerous and are not developed in accordance with sound risk management practices, it will be more difficult for the FinTech industry to participate and competition and innovation will be lessened. Given this, ETA supports leveraging the Retail Payments Oversight Framework ("RPOF") as a precondition for associate members to access the RTR and the exchange networks of the SOE. ETA and its members recognize that while the goal of fostering competition and innovation is important, it needs to be balanced against mitigating risks in the payment system. The RPOF and its prudential regulatory controls will generally avoid duplicative sets of regulation to address similar risks and appropriately ease barriers of entry into the Payments Systems.

ETA and its members believe greater access for non-traditional payment services providers using objective, risk-based criteria will serve as a platform for innovation in the Canadian payments ecosystem. At the same time, regulation of associate members under the RPOF and oversight by Payments Canada through its compliance and enforcement standards will ensure that the safety and soundness of the Payments Systems are preserved. Experiences elsewhere in the world have found that easing barriers to entry into payment systems balanced with the appropriate controls to maintain safety and soundness, leads to increased competition and innovation in the provision of payments services, this ultimately benefits both consumers and businesses. ETA and its members support the Department of Finance in its work to pursue this objective.

II. Governance Structure Applicable to Associate Members

ETA and its members support a governance structure that reflects the views of a broad range of participants in the Payments Systems to facilitate decision-making that supports competition and innovation, while at the same time maintaining safety and soundness. The broader access to the Payments Systems facilitated by the associate membership class should be accompanied by a means for the expertise and experience of both non-traditional and traditional payment services providers to be reflected in Payments Canada's decision-making, possibly through advisory or other governance processes.

ETA and its members support participation in Payments Canada's governance structure by a range of members and stakeholders, including by incorporating associate members into the advisory councils. ETA and its members recognize that several non-traditional payment services providers currently participate on the Stakeholder Advisory Council as non-member stakeholders, but that this may no longer be appropriate for non-traditional service providers who become associate members. As such, incorporating associate members into the Member Advisory Council ("MAC") forum would support the MAC in its role to provide counsel and advice to Payments Canada's Board on clearing and settlement systems, the interaction of those systems with other systems involved in the exchange, clearing or settlement of payments and the development of new technologies. Further, any changes to the core governance structure of Payments Canada should respect the existing level of independence for Payments Canada's Board.

Broad participation in Payments Canada's governance structure will ensure that future decision-making continues to foster competition and innovation while also balancing this against the need to safeguard against risk in Canada's Payments Systems. In order to support a competitive marketplace, it is important that decisions regarding the Payments Systems take into account the costs of participation that may be imposed on FinTech participants so that all participants are on a level playing field. Any proposed governance structure should be modeled such that this objective is adequately monitored by Payments Canada's governance and advisory bodies. In addition, broad participation in Payments Canada's governance structure may facilitate collaboration and information sharing between a wide range of participants to support enhanced cyber security threat protection to protect Canada's Payment Systems. Decision-making that results in increased innovation while preserving the safety and soundness of the Payments Systems will be best achieved when the views and experience of the full range of Payments Canada's members are reflected.

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ETA thanks you for the opportunity to submit these comments.

Sincerely,



Scott Talbott
Senior Vice President of Government Affairs
Electronic Transactions Association