



Stephen Frank
President and CEO

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Ms. Lisa Pezzack
Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5

Sent by email to: fin.payments-paiements.fin@canada.ca

Re: Consultation on the Review of the Canadian Payments Act

Dear Ms. Pezzack,

The Canadian Life and Health Insurance Association Inc. (CLHIA) appreciates the opportunity to provide comments on the Department of Finance's consultation on the *Canadian Payments Act*.

About CLHIA

The CLHIA represents life and health insurance companies accounting for 99% of the business in Canada. The industry provides a strong social safety through a wide range of financial security products that protect over 28 million Canadians. In 2016, the industry paid about \$88 billion in benefits to Canadians through life and health insurance products including annuities, RRSPs, disability insurance and supplementary health plans. This was up 4.6% from 2015 and makes the life and health insurance industry one of the heaviest users of the payments system in Canada.

General Comments

We commend the Government of Canada for making the 2015 legislative changes that were brought into effect to reform the governance structure of Payments Canada with the objective of ensuring that its core systems are operated for the benefit of Canadians and to support competition and innovation in the payments space. Similarly, we also support the opportunity to review the changes to determine if they have had their desired effect. To this end, we would suggest a regular review period going forward to ensure the legislation remains current and effective in light of changes that might take place in the market. This approach has proven effective in other areas, notably with the 5-year review of the federal financial institutions legislation.

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The remainder of this document sets out the industry's comments in response to the specific questions raised in the consultation paper.

Questions for Consultation

1. *Have the 2015 changes to Payments Canada's governance been successful in better enabling the organization to achieve its public policy mandate to promote the efficiency, safety, and soundness of its systems while taking into account the interests of users?*

It is difficult to state with certainty whether the changes to Payments Canada's governance have had the intended effect to allow it to better achieve its public policy mandate. In our view, it will be important to look at the pattern of decisions taken by Payments Canada's Board over time to see if they are better aligned with its public policy objectives. As Payments Canada is currently in the process of modernization, which is a long-term initiative, more time will be required to appropriately assess the impact of the governance changes.

While it is early to know how the full modernization program will unfold, we do have some concerns with the pace of implementation of shorter-term, user friendly priorities. For example, ISO 20022 offers the significant benefit of allowing enhanced remittance data to be sent with electronic payments. The industry, along with other stakeholders, have consistently indicated ISO 20022 is a key priority for users. Despite the fact that the benefits of ISO 20022 are widely recognized by the payments ecosystem, the adoption of ISO 20022 by other international jurisdictions and its approval by Payments Canada several years ago, a date has not yet been set at which time it will be mandatory for financial institutions to offer ISO 20022 solutions to users in the Canadian market. Without such a date, the benefits to users will be limited as only select financial institutions might be using ISO 20022 and therefore offering the benefits of the standard. Implementing a mandatory effective date for all financial institutions would be well received by users in the system and would demonstrate the Board's commitment to its broad public policy mandate.

2. *Are there aspects of Payments Canada's governance structure that could be improved to better allow Payments Canada to carry out its mandate and serve its public policy objectives?*

The Stakeholder Advisory Council (SAC), which was formalized in the *Canadian Payments Act* in 2001, provides advice to the Board of Directors on payment, clearing, and settlement matters, and contributes input on proposed initiatives. The Member Advisory Council (MAC) was brought into effect as part of the 2015 governance changes and is made up of members of Payments Canada with the objective of reflecting its diverse membership.

We believe that the intent behind this structure is sound in that there is a mechanism for user perspectives (SAC) and technical or operational perspectives (MAC) to be provided to the Board. The key to effectiveness and to ensuring that Payments Canada is able to meet its mandate and serve its public policy objectives is that generally the Board will take decisions that balance the perspectives of the communities that the two Councils represent. However, as noted above, we are early in the modernization journey and believe more time is needed to see how the Board balances the input from the two Councils over time.

There has been some good progress on certain initiatives, such as Lynx or meeting the Bank of Canada's systemically important system standards for the LVTS in 2017. However, those have been driven by requirements of the Bank of Canada. The true test of whether Payments Canada, under the new governance structure, will be able to deliver on the public interest element of its mandate will be based on how it is able to drive change that is not directly attributable to requirements by a regulator or in the direct interest of its members. In this regard, we note that there have been challenges to date with moving ahead in a timely manner with ISO 20022 and the RTR.

RTR Settlement

1. *Should the government create an associate membership class to facilitate access to the RTR? Should alternate approaches be considered?*

We support opening up access to the payments system as a means to fostering competition and innovation. We recognize that in opening up access it will be important not to bring undue risk to the payments system. In this regard, we support a risk-based approach to access.

Whether the new member class is defined as an Associate Member, Limited Member or otherwise could be considered as options. What is important is to consider the types of entities that may seek such membership status and to ensure that risk is managed appropriately.

As a means to managing access and risk, it would be appropriate for a non-traditional payments service provider to be required to meet the requirements set out by Payments Canada and the Bank of Canada in order to be able to directly exchange and settle payment items as an Associate Member. Requirements that could be required to be met include those related to operations, security and risk management practices, user fund safeguarding, and market conduct.

Consideration should also be given to how new members could fit within the funding model and governance structure, which is discussed below.

2. *Should registration and regulation under the proposed retail payments oversight framework be a pre-condition for associate membership?*

Currently, existing categories of Payments Canada members are defined by reference to entities that have easily identifiable attributes, such as legal status or incorporation under a statutory regime (e.g., financial institutions). Defining a new member class for non-traditional and potentially less structured entities that seek to become Associate Members may be challenging. To this end, we would suggest that a payment service provider could be required to be regulated and registered under the federal retail payments oversight framework for Associate Member status. A key issue, however, is that it is uncertain at this time that the legislation and regulation for the federal retail payments oversight framework will be in place in a timeframe that will allow such an approach to be pursued effectively in the short-term.

3. *How could Payments Canada's governance structure be adapted to allow for appropriate reflection of associate member views into Payments Canada's decision-making process? In what ways could this be designed?*

The governance structure will need to account for the perspectives of Associate Members. One option is for future Associate Members to have a voice through the existing SAC. However, this may not be adequate for an Associate Member. We would therefore suggest that consideration be given to changes

that would allow Associate Members to potentially have one or more seats set aside on the Payments Canada Board.

Membership – Lynx and Systemically Important FMIs

1. *What are your views on whether and how to broaden membership so that systems that are designated by the Bank of Canada as systemically important financial market infrastructures (FMIs) can directly access Lynx?*

As a systemically important system, the primary concern for Lynx is safety. This is reflected in the greater degree of robust oversight of the system that includes capital requirements, resolution frameworks and that only prudentially regulated financial institutions have direct access.

Allowing designated FMIs to have direct access to Lynx would allow them to directly send and receive Lynx payments rather than relying on the Bank of Canada. Since designated FMIs are managed and meet stringent Bank of Canada requirements, we believe that risk can be adequately managed within the real-time gross settlement environment.

Conclusion

On behalf of the Canadian life and health insurance industry, the CLHIA appreciates the opportunity to submit comments to the Department of Finance on its consultation regarding the *Canadian Payments Act*. We would be pleased to provide further information or to discuss any issues with you, at your convenience, if you would find it helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Frank' or similar, with a stylized, cursive script.

Stephen Frank