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October 6, 2017

VIA ELECTRONIC SUBMISSION
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Department of Finance Canada:

The Electronic Transactions Association (“ETA”) submits these comments in response to the Department of Finance Canada’s (the “Department”) request for comments on “A New Retail Payments Oversight Framework: A Consultation Paper,” published by the Department earlier this year.

ETA is the leading international trade association for the payments industry, representing over 500 companies that offer payment, financial technology (“Fintech”), and other services related to the payments ecosystem. ETA’s membership includes financial institutions, payment processors, independent sales organizations, money transmitters, mobile payment providers, and small business lenders, among others. ETA’s mission is to provide leadership in the payments industry through education, advocacy, and the exchange of information and best practices.

ETA and its members support the Department’s goal to ensure a reliable, safe, innovative, and cost-efficient retail payment system. Accordingly, our comments encourage the Department to pursue a collaborative approach with the payments industry that protects consumers while ensuring that retail payment service providers (“PSPs”) have the flexibility to grow and develop new products and services. In this respect, the retail payments system has taken advantage of the current regulatory environment to provide consumers with access to high quality, innovative, and affordable payment options. It is critical for the Department to recognize these benefits for consumers when considering whether additional regulatory requirements are necessary, and if so, how such requirements should be implemented and tailored for the payments industry. Any additional requirements should be calibrated carefully to ensure they do not overlap or conflict with existing requirements in the retail payments industry.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Talbott". The signature is written in a cursive, flowing style.

Scott Talbott
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Electronic Transactions Association

Comments Enclosed



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COMMENTS OF THE ELECTRONIC TRANSACTIONS ASSOCIATION

ON

**THE DEPARTMENT OF FINANCE CANADA'S REQUEST FOR COMMENTS ON "A NEW RETAIL
PAYMENTS OVERSIGHT FRAMEWORK: A CONSULTATION PAPER"**

October 6, 2017

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I. Introduction and Summary

The Electronic Transactions Association (“ETA”) submits these comments in response to the Department of Finance Canada’s (the “Department”) request for comments on “A New Retail Payments Oversight Framework: A Consultation Paper,” published by the Department earlier this year. ETA and its members support the Department’s goal to ensure a reliable, safe, innovative, and cost-efficient retail payment system. We hope these comments will assist the Department as it continues to explore a regulatory framework for the retail payments industry.

ETA is the leading international trade association for the payments industry, representing over 500 companies that offer payment, financial technology (“fintech”), and other services related to the payments ecosystem. ETA’s membership includes financial institutions, payment processors, independent sales organizations, money transmitters, mobile payment providers, and small business lenders, among others. ETA’s mission is to provide leadership in the payments industry through education, advocacy, and the exchange of information and best practices.

As explained in these comments, ETA encourages a collaborative regulatory approach between the Department and the payments industry that protects consumers while ensuring that retail payment service providers (“PSPs”) have the flexibility to grow and develop new products and services. In this respect, the retail payments system has taken advantage of the current regulatory environment to provide consumers with access to high quality, innovative, and affordable payment options. It is critical for the Department to recognize these benefits for consumers when considering whether additional regulatory requirements are necessary, and if so, how such requirements should be implemented.

Given the success and competitiveness of the industry, a natural question to ask in response to the proposed framework is “what is the problem” the framework is seeking to address? The Department’s paper, which broadly recognizes the benefits provided by payments companies, does not explain in detail how any of the proposed regulatory requirements are tailored to address specific harms observed in the market. The Department should be mindful of the maxim to “first, do no harm,” and avoid implementing a uniform, prescriptive regulatory framework that may stifle consumer choice and creativity and innovation in the market. As the Department recognizes in its paper, any regulatory framework that is adopted should contain measures that are necessary and proportionate to address identified risks in the retail system. ETA therefore encourages the Department to take an incremental and flexible approach that takes into account the dynamic payments market. This approach should also take into account existing regulatory requirements, as well as industry self-regulation, to avoid duplication that would likely burden PSPs and inhibit innovation and competition in the market.

II. Overview of the Retail Payments Industry

The primary goal of the retail payments system is to provide consumers and businesses with access to a variety of safe, high-quality, affordable payment options. ETA and its member companies are working to achieve these goals through the development of safe, convenient, and rewarding payment solutions. These benefits are on display every day in new and exciting ways:

- Consumers continue to benefit from a robust credit card payment system that provides nearly universal payment access and strong consumer fraud protections.
- Consumers can pay for goods and services using their mobile devices, which may incorporate various payment options through “apps,” including payment by credit card, debit card, automated clearing house (“ACH”), virtual currencies, and various closed loop payment systems.

- Other options include prepaid products and services, which have proven extremely attractive to underbanked consumers.
- Various software providers are developing new technologies that allow for the transmission of money between consumers and businesses.
- Virtual currency technology is being incorporated into various payment platforms to provide consumers with new ways to pay for goods and services.

Today is, without a doubt, an exciting time in the retail payments industry for both PSPs and their customers, and ongoing innovation promises an even more exciting future. As the Department continues to explore a new regulatory framework for PSPs, it is important that these benefits be preserved by providing the industry with sufficient flexibility and freedom to innovate and explore new products and services without the risk of excessive or unnecessary regulatory exposure.

III. General Comments on the Proposed Retail Payment Framework

ETA supports the Department's stated policy objectives to ensure a stable, competitive market, public confidence, and customer satisfaction. To achieve these goals, ETA supports a principles-based approach, with a particular focus on necessity and proportionality. Before providing specific comments on the Department's proposal in the next sections, there are a number of general principles that ETA would like to highlight for the Department's consideration as it moves forward with this initiative.

First, ETA encourages the Department to work collaboratively with the payments industry to develop a framework that protects consumers while providing sufficient room for the payments industry to continue to provide the types of innovative and cost-effective products and services that consumers have come to expect. The Department must be sensitive to the risk that applying a uniform regulatory framework for all products and services, without an appreciation of differences in products and services, businesses, and consumer needs, will likely stifle creativity and innovation in the market. This type of approach will harm consumers by limiting the types of rapid developments that have brought consumers new, cost-effective, and safe products and services. A program that is not designed around the unique needs of this industry is unlikely to benefit consumers.

Second, it is important to recognize that innovation requires a regulatory environment that provides sufficient room for "trial and error." The Department should consider the benefits of a regulatory "sandbox" or "greenhouse" as it refines its proposal. The greenhouse concept allows regulators to relax or adjust licensing and other requirements for startups and even established companies so that they have the freedom to develop, test, and experiment with new products and services. This concept, which can take many forms, has been tested in a number of countries, including the United Kingdom, Hong Kong, Singapore, Switzerland, and the United States, among others. In the United States, there are a number of examples, including the Consumer Financial Protection Bureau's Project Catalyst, which allows the Bureau to work directly with fintechs, and the New York Department of Financial Services' digital currency license, which provides a two year transitional license for startups. In Australia, the Australian Securities & Investments Commission ("ASIC") has established a program where fintechs can test new products and services without having to obtain a license, provided that they satisfy certain conditions and remain in communication with the ASIC.

Third, the Department should be mindful that self-regulation may be a better approach – at least in some areas – than a heavy regulatory hand. ETA supports a more overtly collaborative approach between government and industry stakeholders than what is currently proposed by the Department in the white paper. Under this approach, the Department would help define guiding principles and expectations for the

payments industry, but primary responsibility for achieving these goals would be placed on industry and other stakeholders. This could be accomplished, for example, through a self-regulatory organization that establishes industry requirements and best practices for banks, networks, processors, payment facilitators, ISOs, and other payments companies.

ETA, for example, has worked with industry and government regulators in the U.S. to publish various guidelines and similar documents that promote best practices in the merchant acquiring and card processing industries. The “Guidelines on Merchant and ISO Underwriting and Risk Monitoring,” first published in 2014, provide more than 100 pages of methods and suggested best practices to detect and halt fraudulent actors. Similarly, ETA’s “Payment Facilitator Guidelines,” first published in 2016, provide payment facilitators with guidance on settlement, registration, funding delays, fraud, security, and related issues. These documents were developed by ETA’s member companies after months of discussions and sharing of techniques to prevent fraud. During this process, ETA sought comments from the U.S. Federal Trade Commission (“FTC”), which had strongly encouraged the industry to strengthen its anti-fraud efforts. Now, ETA is actively encouraging its members and companies across the payments ecosystem to make use of the guidelines, especially smaller companies that may not have the resources to develop such advanced practices on their own.

There are a number of other examples where the payments industry has taken the lead in developing programs to protect consumers. Over the past several years, the payments industry has implemented new technology in the form of EMV chip cards to improve security for credit card transactions. This technology offers a higher degree of security throughout the transaction process, as opposed to the old magnetic-stripe cards, which could easily be compromised and duplicated. And, of course, the payments industry took the lead in developing the PCI-DSS security standard for handling the safety of cardholder data. These are just a few examples of how industry self-regulation can play an important role in protecting industry and consumers.

Finally, the Department should strive to stream line any new regulatory requirements to avoid duplication and overlap with other existing government or industry requirements. PSPs are already subject to numerous laws and regulations in Canada related to consumer protection, combatting anti-money laundering, ensuring safety and stability, and promoting competitiveness and innovation. The Code of Conduct for the Credit and Debit Card Industry in Canada, overseen by the Financial Consumer Agency of Canada (FCAC), applies to payment card networks and card issuers and merchant acquirers. These requirements flow down to processors, payment facilitators, and independent sales organizations through contractual arrangements. Similarly, Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act, overseen by the Financial Transactions and Reports Analysis Centre (FINTRAC), and the Money-services Businesses Act (Quebec), overseen by the Autorité des marchés financiers (AMF), create obligations for certain financial and non-financial entities with respect to customer identification, record keeping, and internal compliance. There are many other laws of general application that govern the activities of the payments industry, including provincial consumer protection statutes and privacy legislation. And, of course, those PSPs that operate internationally are also subject to overlapping requirements in every country in which they operate. All of these requirements must be considered by the Department to ensure that any proposed requirements do not overlap or conflict with existing regulatory requirements or expectations.

IV. Specific Comments on the Proposed Retail Payments Framework

1. Scope of Entities and Services Covered by Proposed Framework

A. Entities Covered by the Framework

ETA generally supports the scope of entities that the Department has proposed for coverage under the retail payments framework. The Department should take into account whether any of the covered entities are already subject to regulatory requirements and ensure that these entities are not subject to duplicative or overlapping requirements. Payment processors, for example, are already subject to industry's Code of Conduct for the Credit and Debit Card Industry in Canada. These types of entities – in fact any entity subject to the Code or other applicable consumer protection laws and regulations – should not be subject to additional, duplicative requirements. ETA requests that the Department take a closer look at this issue and whether there are ways to limit the scope of entities covered by the framework to better minimize regulatory overlap.

The scope of entities subject to the proposed framework is an issue that might benefit from a greenhouse approach. Establishing a greenhouse environment with reduced regulatory requirements for certain companies or products or services would have the benefit of ensuring that higher risk companies are appropriately regulated, while providing startups and lower risk companies with sufficient room to grow and innovate.

B. Services Covered by the Framework

The retail payments industry covers a broad range of products and services. The Department appears to have identified the primary services provided by companies in this space. One area where ETA cautions the Department to take a measured approach is with respect to outsourcing responsibility. The Department's paper states that if a PSP outsources any services it would be required to ensure that the outsourced operations "meet the same requirements as if they were provided internally." This may prove a difficult concept to implement in practice. Many PSPs outsource certain services to bank or other business partners under circumstances where the PSPs have limited bargaining leverage to ensure compliance by the partners to the same extent as if the services were provided internally (a process that would require PSPs to seek various representations and warranties from their partners, audit rights, etc.). The Department's proposal, if not carefully implemented, would put PSPs in the difficult position of having to push their regulatory obligations to banks or other heavily-regulated entities (in effect requiring PSPs to push regulatory obligations upstream). Even assuming that PSPs have the bargaining leverage to do so, it may create challenges for the business partners which would potentially be subject to overlapping regulatory expectations.

2. Proposed Regulatory Framework Requirements

A. End-User Fund Safeguarding

The Department has proposed to require PSPs to hold customer funds in a government-insured, trust account that meets certain specific requirements, including that the funds be held in cash or highly secure financial assets. ETA encourages the Department to consider an alternative approach – requiring Canada Deposit Insurance Corporation ("CDIC") pass-through insurance to customer funds held in FBO (for the benefit of) accounts.

If the Department moves forward with its current proposal, the Department should consider implementing a materiality threshold, below which funds would not need to be held in trust accounts. The Department

should also avoid adopting overly-prescriptive requirements. A few important concepts to keep in mind with respect to trust accounts:

- There are a number of potentially secure financial assets that should qualify, including, but not limited to,
 - Cash
 - Certificates of deposit
 - Senior debt obligations of insured banks
 - Investment-grade securities
- The Department should take into account the fact that many PSPs are already required to maintain surety bonds or accounts with permissible investments to cover transaction liabilities.
- The Department should take into account differences in customer expectations. The Department requirements, for example, should not interfere with arrangements negotiated between PSPs and commercial customers.
- If the Department requires PSPs to report on their trust accounts in annual filings, such reports should be kept confidential by the Department and exempt from any public inquiries or reporting.

In any event, the Department should not impose limitations on a PSP's ability to hold funds in a reserve account where financials warrant it, or to hold transaction funds in instances of suspected fraudulent activity.

B. Operational Standards

The Department should take into account the various industry self-regulatory efforts that have established widely-adopted operational standards for the payments industry. In Canada, the credit and debit card networks and their participants have adopted a Code of Conduct for the Credit and Debit Card Industry in Canada that establishes numerous operational and compliance standards for the industry. The Department's paper does not explain why entities that are already subject to regulation should be subjected to additional requirements, or identify any specific market failures or consumers harms that would be addressed by doing so. Any additional or overlapping operational standards required by the Department should take into account existing regulatory frameworks and requirements, including the Code of Conduct, privacy, anti-spam legislation, and provincial consumer protection laws and regulations. Otherwise, PSPs will be faced with the difficulty of having to understand and implement multiple sets of guidelines and requirements – a situation that makes compliance difficult and is likely to harm innovation.

The Department should also take into account whether any operational standards that are adopted should be adjusted as part of a greenhouse approach to the payments industry. This type of approach might relax or adjust standards for companies, products, or services operating under certain circumstances (such circumstances might account for startup companies, for example).

C. Disclosures

The Department should avoid overly-prescriptive disclosure requirements that may interfere with the ability of PSPs to provide convenient and innovative products and services. The Department should take a more flexible, principles-based approach that allows PSPs to implement disclosures that are tailored for their

specific products and services. There are a number of examples where attempts to establish prescriptive disclosure standards have caused unintended challenges for an industry. Recently, for example, the U.S. Consumer Financial Protection Bureau (“CFPB”) adopted a rule that established specific disclosure requirements for prepaid cards and other similar products. Since the rule was finalized, however, the CFPB has proposed amendments to the rule to provide additional flexibility for some of the disclosure requirements.

D. Dispute Resolution

ETA and its members support customer service and dispute resolution, but suggest that this may be an area where industry self-regulation is a better solution. If the Department moves forward with the proposed requirement, PSPs should have the flexibility to implement programs built around the unique circumstances of each PSP. Smaller companies may not have the need (in terms of volume of complaints) or internal resources to satisfy all of the Department’s proposal (such as reviewing and auditing the complaint process). In addition, if the Department adopts a dispute resolution requirement, it will be necessary for the Department to define the parameters of the term “complaint” as there are many different types of communications with consumers that may, or may not, qualify as a complaint depending on definition of that term. The Department should also make sure to limit the obligation to consumer-facing PSPs – there is no need for the Department to force customer service requirements on PSPs that focus on commercial customers.

ETA also encourages the Department to be mindful of existing data reporting requirements and to avoid, to the extent possible, duplication of reporting. In this respect, many PSPs are already required to provide data to the payment networks on a quarterly and annual basis (with the data then provided to the FCAC, which oversees compliance with the Code of Conduct). This is one example of duplication in reporting that should be avoided. As such, ETA does not support additional data reporting requirements, unless the intent is for the new requirements to replace the existing (current) requirements. In any event, any data provided should be maintained as confidential by the government regulator to the greatest extent possible.

E. Liability

ETA supports processes and procedures that protect consumers from theft and fraud. ETA also generally supports the Department’s proposal that a payor would not be liable for unauthorized transactions, except under certain circumstances, including, for example, where the payor did not take reasonable care to protect the security of its password. ETA suggests that the Department expand the number of exceptions in which the payor would be responsible to also include instances of fraud by the payor. In addition, a PSP should not be liable for accounts that are not registered or verified at the time the error is reported. This is a particular risk with prepaid accounts where a consumer might withdraw funds and then falsely claim fraud on accounts that have not yet been registered or verified. Finally, ETA suggests that the Department provide an additional exception for commercial entity payors, as the standards for liability with respect to such customers are often the function of commercial negotiations between the payor and commercial customers.

F. Registration

ETA suggests that the registration requirement include an exception for entities that are already registered with the payment card networks. The proposed additional layer of administration is not necessary and would be burdensome and costly for those PSPs that would face multiple registration requirements. If the Department implements a registration requirement, the process should incorporate due process protections for PSPs. Any company denied a registration, or that has one revoked or suspended, should have due process rights to challenge the adverse action and stay in business until a final determination (after a right of appeal).

The Department has proposed that all owners and directors undergo a criminal background check. ETA requests additional clarification on how such information would be used by the Department. ETA has concerns that the requirement for all owners and directors to undergo a criminal background check will discourage companies from entering the market and thereby inhibit the development of new technologies, etc. Our members' experience is that PSPs – for privacy and other legitimate reasons – are frequently hesitant to require their executives to submit personal information to regulators or to undergo invasive background checks and other requirements. If the Department decides to move forward with requiring background checks, ETA requests that the Department provide additional clarification (and limits) on how such information would be used by the Department, and whether it would be made publicly-available. ETA suggests that all such data should be kept confidential to the greatest extent possible.


Finally, with respect to compliance with Canada's anti-money laundering ("AML") laws and requirements, ETA encourages a flexible approach that takes into account the fact that AML risk can vary greatly from company to company based on customer base, products and service, geographic focus, etc. As just one example, ETA supports less stringent monitoring and AML compliance burdens for PSP transactions linked to customer bank accounts and certain payment cards, which are completely cashless and monitored by other regulated financial entities. In addition, along the lines of the due process concerns raised above, ETA has concerns about tying registration eligibility to compliance with AML or other similar regimes. It's not difficult to be found in serious violation of AML for what are effectively technical breaches. Under the current proposal, being found in serious violation would place the entire business at risk of de-registration and shut-down.

V. Conclusion

ETA appreciates the opportunity to comment on the Department's paper proposing a regulatory framework for retail payments in Canada. The retail payments industry provides secure, cost-effective, and flexible payment options for consumers, businesses, and government entities. The Department should look to preserve these benefits without imposing an undue burden on PSPs. In closing, ETA encourages the Department to revisit and better identify "the problem" the framework is seeking to address. From ETA's perspective, the retail payments system has worked well to encourage innovation, preserve competition, and provide consumers with access to affordable and convenient payment options. The Department's paper, which broadly recognizes the benefits provided by payments companies, does not explain in detail how any of the proposed regulatory requirements are tailored to address specific harms observed in the market.

We look forward to working with the Department to develop practical rules that promote consumer protection without limiting the ability of consumers to access these valuable products and services.

Respectfully submitted,



Scott Talbott
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Electronic Transactions Association