

May 26, 2022

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## **Comments re: Retail Payments Activities Act**

### **Geographic Scope**

The Electronic Transactions Association (“**ETA**”) submits these comments to the Bank of Canada (the “**Bank**”) in respect of the *Retail Payment Activities Act* (the “**RPAA**”) in response to the *Retail Payments Advisory Committee-Registration Scope* document dated 23 & 24 September 2021 (the “**Document**”) and specifically, the proposed application of the RPAA with respect to transactions that take place entirely outside of Canada.

The ETA and its members support the implementation of the RPAA to ensure that the proper regulatory guardrails are in place to both protect end users and to foster innovation. We hope that these comments will assist the Bank in considering its approach to the proposed geographic scope of the RPAA in a manner that will not place undue regulatory burdens on the FinTech industry.

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, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives. As such, ETA members welcome a sound payment supervisory framework to continue to build confidence in Canada’s retail payment ecosystem.

While ETA and its members support the implementation of a retail payments regulatory framework, we have urge you to adopt our suggestions with respect to safeguarding of funds and the proposed geographic scope of the RPAA as outlined in the Document.

At the outset, we have significant concerns with the proposed geographic scope of the RPAA. In that regard, we note that the Document contemplates that payment service providers (PSPs) will be subject to the requirements of the RPAA, when they are providing services to end-users “in Canada”. To be clear, the ETA and its members have no concerns with the RPAA applying to PSPs transacting with end-users in Canada. However, the Bank’s interpretation of who an end-user “in Canada” is, is very problematic.

The Bank notes in the Document that an end-user will be considered to be “in Canada” if they have a connection or residential ties with Canada”.

Specifically, the Bank proposes that an end-user will be deemed to be in Canada when:

- the end-user’s address is in Canada;
- the document or information used to verify the end-user’s identity is issued by a Canadian province or territory, or by the federal government; or

- the end-user's banking, credit card or payment processing service is based in Canada.

In that respect, for those PSPs that have a global footprint, this approach is not only impractical, but it is also incredibly cumbersome. In the view of the ETA and its members, the costs of building a system to implement the proposed extended geographical reach of the RPAA when weighed against the benefits, is not justified from a policy perspective.

Consider by way of example, a Canadian individual vacationing in Australia that may need to send funds to a child in France. The client approaches a PSP in Australia (that also offers services to people residing in Canada) to engage in a transaction and has a Canadian identity document. The geographic scope of the RPAA as proposed would require the Australian-based PSP some 16,000 kilometers away from Canada to comply with Canadian law in respect of the transaction.

Where no personal identification is required for a transaction, the PSP would also be required to determine the issuing jurisdiction of the payment card used. From a practical perspective, in order to ensure compliance by the PSP with the requirements of the RPAA, a PSP will be required to reprogram their systems globally so as to trigger a flag whenever "a Canadian" or a person with Canadian identification or a Canadian payment card engages in a transaction. Any such system modifications require significant resources and capital investment. Moreover, depending on the business model of the PSP, it may require the co-operation and coordination of both agents and other services providers in numerous countries, some of which the PSP may not be able to directly control. The operational burdens of implementing these changes not only affects efficiency but also diverts resources away from PSPs that could otherwise be allocated to productivity. The ETA and its members do not believe that the compliance costs and related burden for complying with the RPAA globally for those end-users that have a Canadian "connection" contributes meaningfully to public confidence in Canadian retail payment systems - one of the objectives of the RPAA. We do not believe that Canadians would expect the protections of the RPAA to extend to them when they are engaging in a transaction outside of the country where there is no "leg in" or "leg out" of Canada as part of the transaction.

In addition to the foregoing, as a result of the inefficiencies that would be created by the extra-territorial application of RPAA, PSPs will be required to charge higher prices. From the perspective of a PSP, instead of reprogramming its systems globally to recognize transactions with a Canadian connection, it would be more efficient and cost effective for it to instead disallow Canadians from engaging in transactions outside of Canada. Although this will assist PSPs in dealing with their increased compliance burdens, it will lead to a negative customer experience for Canadian end-users, in direct contradiction to the stated goals of the RPAA.

Moreover, any interpretation of the RPAA that provides it with an extended geographical scope as proposed, fails to recognize that a PSP that is based in another country may be subject to different or conflicting requirements from those that apply under the RPAA. As such, it may be impossible for PSPs to properly comply with the requirements of both regimes.

From a policy perspective, the Bank notes in the Document that the approach that it is taking with respect to geographic scope is aligned with that of the Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**"), the regulator which oversees the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "**PCMLTFA**"), Canada's anti-money laundering ("**AML**") regime. With the

greatest of deference, the policy considerations that underlie the PCMLTFA and those which underlie a retail payments framework are completely different. While there may be policy considerations that support the extra-territorial application of the AML laws, the same considerations do not apply to retail payments.

Specifically, the object of the PCMLTFA at its core is to detect and deter money laundering and the financing of terrorist activities. In that respect, as the Bank is likely aware, one of the stages of money laundering is “layering” which often involves moving money out of the country of origin to separate the illicit money from its source. As such, in the AML context, it is justifiable from a policy perspective, to require foreign money services businesses to report to FINTRAC the international movement of funds where a person with a connection to Canada is involved. Receiving these electronic funds transfer reports allows FINTRAC to “follow the money” as part of its role in detecting money laundering. However, in the context of retail payments, it is submitted that there is no similar policy principle that would require a PSP to comply with Canadian law when they carry on business in the normal course outside of Canada. As such, the ETA and its members strongly believe that aligning the approach of the RPAA to the one used in the AML context is misguided.

We note that one of the stated goals of the RPAA is to encourage innovation and competition. Where the regulatory requirements of a regime are too onerous and cost intensive, it may ultimately lead to a decision by a PSP to not offer their services to persons in Canada - in turn lessening competition and innovation in direct contradiction to the policy considerations behind the RPAA.

### **Safeguarding Funds**

The ETA and its members understand and fully support the policy rationale behind the requirement in the RPAA for PSPs to safeguard the funds of end-users. However, in the ETA’s view, the RPAA should not limit how PSPs achieve these objectives and should allow for other alternatives that go beyond the requirement for PSPs to retain dollar-for-dollar matching funds in a trust account.

In that regard, the ETA and its members believe that it is critically important for the RPAA to adopt a principles-based approach providing flexibility to PSPs in how the safeguarding policy objectives of the RPAA are achieved. These would include allowing a PSP to post a letter of credit or surety bond with the Bank as security for end-user obligations in an amount that corresponds to the amount of end-user funds a PSP may be responsible for at any time. Additionally, and as another alternative, PSPs should have the option to hold the required funds in a segregated asset pool in investment grade securities providing PSPs with a measure of flexibility. These alternatives promote the primary objective of end-user protection in a manner that does not place undue burdens or financial costs on PSPs and is consistent with the approaches adopted in other jurisdictions.

We note that the foregoing alternatives are in keeping with the drafting of the RPAA as section 20(1) of the RPAA allows for the holding of end user funds in a prescribed manner, providing for flexibility in different approaches to be outlined in the regulations.

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We hope that the Bank takes the foregoing comments into consideration in respect of the proposed scope of the RPAA and flexibility measures for the safeguarding of funds.

We remain available to discuss these comments at any time.

Thank you,



Scott Talbott  
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