



October 13, 2017,

Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa, Canada
K1A 0G5

SENT VIA E-MAIL

fin.payments-paiements.fin@canada.ca

Re: A New Retail Payments Oversight Framework

Dear Mr. Vaillancourt:

Payments Canada welcomes this opportunity to provide feedback on the Department of Finance's consultation, entitled *A New Retail Payments Oversight Framework*, published July 2, 2017.

Payments Canada convenes and collaborates with a host of stakeholders, across the payments ecosystem. Through formalized processes and regular interactions, we work with financial institutions, various levels of government, the Bank of Canada, national stakeholders and international counterparts to provide and improve the payment clearing and settlement systems in Canada. As an organization, we are vested with a legislative mandate to promote public policy objectives for the Canadian payments system – safety, soundness and efficiency while taking into account our user interests. In line with these roles, Payments Canada welcomes the opportunity to respond to the new *Retail Payments Oversight Framework* Consultation document.

Our response to the Consultation consists of a brief overview of Payments Canada and our role in retail payments, a high-level discussion of the proposed retail Oversight Framework and an analysis of each of the questions raised by the Consultation.

PART 1 - OVERVIEW

A. Role of Payments Canada

Payments Canada ensures that financial transactions in Canada are carried out safely and securely each day. As an organization, we underpin the Canadian financial system and economy by owning and operating Canada's payment clearing and settlement infrastructure, including associated systems, by-laws, rules and standards. The value of payments cleared and settled by Payments Canada in 2016 was C\$51 trillion, or C\$201 billion every business day. These values encompass a wide range of payments made by Canadians and businesses involving inter-bank transactions, including those made with debit cards, pre-authorized debits, direct deposits, bill payments, wire payments and cheques.



A central tenet of our everyday business is consultation with our member financial institutions and key stakeholders. This process includes working together to enable a wide variety of innovative and convenient payment solutions available in Canada. Over the last three decades this has included: wire payments, shared automated banking machine transaction, electronic funds transfers at the point-of-sale, on-line payments from customer accounts, pre-authorized debits (PADs), electronic bill payments and direct deposits.

In managing systems and related operations, we establish a broad framework of by-laws, rules and standards that govern the daily inter-member exchange of payment items that clear and settle through our 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 through our systems. Incorporating the interests and needs of end users into our policies, by-laws, rules and standards is an instrumental component of our overall approach. We achieve this through regular dialogue, consultation, research, policy development and outreach.

In developing rules that govern payment products and services, the industry often looks to Payments Canada to play a role in ensuring that end-user protection is part of overall considerations.

B. Payments Canada, the Retail Oversight Framework and Modernization

Payments Canada's modernization initiative began in 2015. We have now reached the third stage of the four-stage journey, which consists of building a vision for the Canadian payments ecosystem, creating a roadmap and high-level plan for modern systems, compiling requirements for the target end-state and moving to implementation. Our end state vision is a fast, flexible and secure payment system that is efficient, convenient and interoperable—one that will promote innovation and strengthen Canada's competitive position.

A key pillar of Payments Canada's modernization program is the establishment of a national real-time payments rail for Canada, the first phase of which we expect to launch in 2019. An always-available system that delivers funds in less than 60 seconds will satisfy the needs identified in our vision, including real-time clearing, rich remittance information through ISO 20022, and enhanced functionality to better serve consumers, and small and medium sized businesses. In seeking to foster innovation in retail payments and fulfill our mandate, Payments Canada views success as fostering a vibrant ecosystem of services being offered on top of the real-time rail (RTR) by Payment Service Providers.

At the same time that the Government is working to implement its Oversight Framework, Payments Canada is focusing on setting the rules and policies for our new modernized systems, including the new RTR. Payments Canada is working collaboratively with the Department of Finance, the Bank of Canada, our members and stakeholders to develop risk-based open access criteria for national



payments systems, which will be particularly critical to establishing the RTR as a platform for innovation in payments in Canada. One critical component required to support the launch of the RTR in 2019 will be ensuring our governing legislation, the *Canadian Payments Act*, provides Payments Canada with the legislative powers to set by-laws, rules and standards to govern the RTR and any new players that qualify for access. More generally, with efficiency, safety and soundness at core, we are keen to continue to work collaboratively with the Government to share our payments expertise to ensure that the policy and legal frameworks for our new systems are appropriately positioned relative to new federal government measures in the retail payments space.

C. Government’s Expanded Role in Retail Payments

The Government’s initiative represents the first steps in Canada to define the retail payments ecosystem and its players through a functional approach to regulation. The proposal has come at an opportune time as the breadth of payment technologies and non-traditional players continues to grow.

Creating an oversight framework that is proportionate – fostering innovation, protecting end users and appropriately mitigating risks is a fundamental challenge to the retail payments space. To the degree that the Oversight Framework will help measure and manage risks introduced to the payments ecosystem it will serve to facilitate broader, risk-based access to national payment systems and innovations in payment services to better meets end-user needs.

PART II

A. Response to Consultation

In considering the Department’s consultation questions, we have focused primarily on the potential impact and interaction of the Oversight Framework on Payments Canada’s systems, rules and standards, and our members and stakeholders. It would be beneficial for the Department to continue to engage directly with our Stakeholder Advisory Council and members to also gain their insight and feedback on the proposals, and we hope that the response below will help guide that engagement.

1. Is the proposed perimeter appropriate to mitigate risks in retail payments?

In a function-based regulatory system, precision and clarity around each of the functions is critical. As a result, we suggest that the high-level functions presented in the Consultation be described in greater detail to more thoroughly describe the proposed perimeter.

Generally, while the five core functions identified describe broadly the foundational concepts that currently operate in the retail payments space, core functionality can be fleshed out further. For example, the concept of authorization could be further broken down into additional sub-processes (e.g. consent, withdrawal of consent, notification of unauthorized payment



transactions, etc.). The mitigation of risks is largely tied to accurate definitions of the steps in the payments lifecycle, as broken down by function.

As a point for additional consideration, we note that the Consultation uses some terms that may not be commonly defined by the payments industry. To understand and comment on the boundaries of the perimeter, common definitions of the terms “retail payment” and “electronic fund transfer (“EFT”)” should be established.

As well, with the rise of novel payment solutions using electronic money (“e-money”) in the European Union¹ and other jurisdictions, it may also be helpful to consider whether e-money should be captured by the Oversight Framework, how e-money differs from EFTs and whether a platform that uses pre-funding (and therefore mitigates settlement risk) impacts the boundaries of a perimeter.

We also raise the following observations regarding the proposed regulatory perimeter:

- 1) While the proposed payment functions are currently relevant for developing a fulsome regulatory framework, they may not be future-proof. Innovation of payment technologies, changes in payment flows, or entirely new entrants may render the identified functions inapplicable, or may introduce new functions not contemplated by the proposed Oversight Framework. This struggle to keep pace with innovation within a functional space can be seen in the multiple iterations of the EU’s Payments Services Directive (“PSD”). The European Central Bank (“ECB”) designed PSD to be a method of laying the groundwork for regulating “innovative financial services”. To keep pace with a quick-changing landscape, the ECB ensures regular reviews where there is a need to “complete the legal Framework..., clarify a number of aspects to ensure legal certainty and align the implementation of [the] legal Framework across Member States”². Similarly, as payment technologies evolve in Canada, consistent review of the Oversight Framework functions and accompanying technical standards may be necessary to accurately reflect the payment landscape in a functional manner.

- 2) As described by the Consultation, the retail payments space is one that will involve the coordination of many players, including existing federal regulators and Payments Canada. From a regulatory perspective, multiple bodies might oversee a single payment transaction

¹ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

² <https://www.ecb.europa.eu/press/key/date/2017/html/ecb.sp170518.en.html>



from end-to-end because that payment could be processed by both non-designated and designated systems. Given this arrangement, coordination and transparency across all points of the payment flow will be essential to prevent duplicative regulatory requirements, to ensure equivalent consumer protection for equivalent types of payments and ultimately, to help drive user adoption in the retail payments space, particularly with respect to new and innovative payment methods.

Additionally, there must be clarity around the impact that a future “prominent” designation will have on a retail payments system, insofar as we understand that such a designation would exclude clearing and settlement on that system from the Oversight Framework. This exclusion means that is important for all participants to understand the boundaries of both the proposed Framework and that of the designated system (including those operated by Payments Canada). We would also note that, with Payments Canada’s planned introduction of the RTR, there will need to be clarity regarding whether that retail system and its underlying rule set will be subject to the Oversight Framework, should it not be designated as a prominent system.

- 3) The Consultation proposes disclosure requirements for PSPs that have a direct end user relationship. While these requirements are certainly important, two things could be further articulated:
 - a. The underlying Oversight Framework must be fair and clearly disclosed to the end user across all functions even in cases where the PSP does not interact with each party, if the end user could reasonably be impacted by that party’s actions;
 - b. Disclosure requirements may vary across functions. For instance, payments that clear and settle through Payments Canada’s systems are subject to the rules we set around payment finality and irrevocability, among others; however, payments outside our systems are governed by different rules. It is our view that all retail payments should share the same level of transparency and disclosure.

2. Is the proposed requirement to place end-user funds in trust accounts combined with detailed record keeping, annual filing and the regulator’s compliance tools (described in Annex C) appropriate?

The placement of end-user funds in trust accounts combined with detail record keeping, annual filings and the regulatory tools described in Annex C are important components of an effective



oversight regime. As Payments Canada moves toward broader, risk-based access to our national payments systems (in particular, to the RTR), we would anticipate relying in the future on the Oversight Framework's registration and oversight regime as a key safeguard to provide assurance as to a PSPs suitability for connecting to our systems.

On a high-level, the proposed requirements described in Annex C appear to be appropriate, however more information on the specific tools that are proposed is necessary before we can provide more detailed commentary.

It is also important to understand the implications of these requirements from the perspective of payment service providers and end users. For instance: How will consumers be affected if a flexible approach is taken to requirements? Will requirements differ by payment types? To what extent might requirements serve as barriers to entry for newer participants? These are examples of important questions that would benefit from more specific analysis.

3. Should any exemptions from the trust account requirements exist (e.g. where funds held are below a specified per-user threshold (e.g., \$100) or where funds are only held for a short period of time)? Would additional measures be desirable?

At its core, trust account requirements ensure both security and availability of funds. Such requirements are benchmarks for consumer protection and exemptions to these requirements should be carefully considered, taking into account the interests of consumers and other end users. We recommend that this issue be studied further, with the input of key stakeholders.

4. Are the proposed measures to address operational risks appropriate?

While we recognize that operational standards must balance effective safeguards and the practicalities of business continuity, it is difficult to opine on the appropriateness of the proposed measures given that they are high-level and principle-based objectives. Given our desire to rely in the future on the Oversight Framework to help define PSPs eligible for participation in Payments Canada systems, we look forward to collaborating with the Department of Finance to help define the specific details of these measures necessary to provide assurances that operational risks will be appropriately managed.

5. Are the proposed essential elements for a complaint handling process appropriate?

Under the current description of drafting of the Oversight Framework, complaints regarding PSPs who provide services that clear and settle on a Payments Canada payment system could be handled differently, depending on whether the Payments Canada system has been designated under the *Payment Clearing and Settlement Act*. If the system is not designated, to what extent



would Payments Canada rules play a role in complaint handling? As a result, the same concerns outlined in our response to Question 1 above with respect to transparency and coordination apply to this question as well. Consumers should be able to easily understand which dispute resolution process applies to them, under what circumstances they can access it, and in what manner.

We believe that dispute resolution and complaint handling offers an opportunity for Payments Canada and the Department of Finance to work together to ensure that users are appropriately protected. As an organization, our mandate has not historically extended to the adjudication of user complaints. The establishment of a new retail payments system will mean a new set of Payments Canada rules, outlining the roles and responsibilities of participants along functional lines. To protect end users and to support a safe and efficient ecosystem, it is important for Payments Canada and the Department of Finance to work collaboratively to clearly define the perimeter of Payments Canada's rules relative to that of the new Oversight Framework.

Complaint-handling processes and disclosure requirements are beneficial to not only eliminating knowledge gaps between PSP and consumer, but also for providing recourse to aggrieved parties. While we agree that the principles behind these proposals are a step forward in consumer protection, we are unable to comment more specifically on the appropriateness of the proposals because of their high-level nature. As an operator of clearing and settlement systems, we view clear complaint-handling procedures and speedy resolution of disputes to be tied to faster and more ubiquitous adoption of new payment methods and technologies.

6. Are the proposed measures regarding liability in case of errors and unauthorized transactions appropriate?

Liability assignment rules are focused on fairness and user protection. Clear and unambiguous liability measures can promote speedy resolution of unintended transactions and support the adoption of new payment technologies³. For the purposes of providing greater certainty and transparency, we recommend more dialogue on the degree to which liability assignment should move beyond high-level liability principles toward a more prescriptive process, where each party is aware of the circumstances under which they will be held accountable for an error or unauthorized transaction. Clear assignment of liabilities for errors and unauthorized

³ <http://www.ey.com/ca/en/industries/financial-services/ey-2017-fintech-adoption-index-canadian-findings#>



transactions has the potential to support consumer adoption for real-time payments systems like Payments Canada’s real-time payments system.

7. Is the level of information that would be required at registration appropriate?

We believe additional details are required to assess the appropriateness of the level of information set out by the registration program. However, we welcome the opportunity for continued participation in the development of the registration program. As Payments Canada proposes a broader, open and risk-based access Oversight Framework, we will be seeking amendments to the *Canadian Payments Act* that broaden membership/participation to include non-FIs. A robust registration system for PSPs, established by the Oversight Framework, will help ensure continued safety and soundness in Payments Canada’s systems by ensuring that the PSPs operating in the retail payments space are subject to some type of compliance regime. Current Payments Canada Members are all prudentially regulated to some degree, which ensures that they are subject to a variety of rigorous standards that ensure stability in the payments systems in which they participate. Most PSPs will not be subject to similar prudential oversight. As such, Payments Canada would support a robust registration scheme to support and enhance its plans for more open, risk-based access.

8. Are the proposed criteria for registration adequate?

We have addressed this question in Question 7.

9. Stakeholders are invited to provide views on approaches for tiering of specific proposed measures.

We are of the view that tiering specific measures may be appropriate. A tiered approach is generally most effective when measures and tiers are appropriately defined for organizations of different forms and sizes. To this degree, tiering can enable a degree of “sandboxing” to promote innovation and competition. The Government should carefully consider its approach to tiering and the relevant cut-off points for different firms, in consultation with stakeholders.

10. Would the Framework sufficiently promote innovation and competition?

We have addressed this question in Question 9.

Payments Canada is headquartered in Ottawa with approximately 110 full-time staff and operates under a board of directors. We are a public purpose, non-profit organization fully funded by the financial institutions that participate in our systems. Payments Canada is committed to supporting a vibrant economy by helping to meet the payment needs of consumers and business, and empowering a new era of modern payments. Through our Modernization initiative, we are working



to provide a platform that enables those in the payments ecosystem to innovate and provides Canadians with convenient, safe, and efficient payment options. Part of our day-to-day business in delivery of our commitment is consulting across the payments ecosystem, particularly when dealing with new payment methods and technologies. In this regard, we appreciate the opportunity provided to share a response to the new Retail Payments Oversight Framework.

Kind Regards,

Anne Butler
Vice-President, Research, Policy and Legal