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GUIDELINE
FOR
MISDIRECTED LVTS PAYMENTS

October 5, 2000

GUIDELINE FOR MISDIRECTED LVTS PAYMENTS¹

This guideline is to assist parties when an LVTS payment has been misdirected. An LVTS payment shall, for the purpose of this guideline, be deemed to have been misdirected when the payee named in the LVTS payment message differs from the payee named on the transit or account number, at the receiving participant, identified on the payment message and the amount of the payment has been made available to the payee² named on the transit or account number. The guideline is based on the commitment of the receiving participant and the sending participant to work together with the overall goal being the resolution of the issue quickly and fairly. The rights and responsibilities of LVTS participants and their customers in respect of misdirected payments are for the most part covered by the contractual agreements in place between the participant and its customer³. This guideline is not intended to create legal rights and obligations but is an expression of participants' common understanding of how to deal with misdirected payments. Customers are encouraged to contact their financial institution for information regarding their rights and responsibilities vis-à-vis the making and receiving of LVTS payments.

¹ This guideline does not address the legal responsibility for the error, the obligation of a receiving participant to reimburse the amount of a payment message, or the obligation of a receiving participant to disclose the identity of the receiving participant's client.

² If the amount of the payment has not been made available to the payee, section 48 of the LVTS By-law applies.

³ It should be noted that although the LVTS By-law does deal to a very limited extent with the issue of misdirected LVTS payments, it does not affect any right or remedy which a participant or any person may have under the general law.



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1 GLOSSARY OF TERMS

“originator” means the first sender of the first payment order (instruction to a CPA member institution to pay or to cause another CPA member institution to pay) in any LVTS funds transfer.

"participant" means the Bank of Canada and each other member of the CPA which has been admitted to participate in the LVTS.

"PCRN" means an alpha-numeric reference number to be assigned by LVTS to each payment message upon passing the risk control tests identifying the payment as one that has passed all risk control tests within the LVTS application.

"payee" or "beneficiary" means in relation to a payment message received by a receiving participant, the person, including the receiving participant or another financial institution, to whom the amount of the payment message is to be paid or credited whether or not such person is the ultimate beneficiary of the amount of the payment message.

"payment message" means an electronic message sent through the LVTS, in the format set out in the LVTS rules, from one participant to another instructing the receiving participant to pay a fixed amount of money to a payee.

"receiving participant" means a participant who receives a payment message from another participant.

"sending participant" means a participant who sends a payment message to another participant.



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2 CONTACT POINTS

In general, the appropriate contact point for a client to initiate any investigation into a misdirected LVTS payment is the CPA member with which the client has direct dealings related to making or receiving the payment.

The proper point of contact for a client (originator or intended beneficiary) is its CPA member institution. The contact point will normally be the customer representative or branch representative with whom the customer normally deals. This basic principle applies whether the originator or intended payee is dealing directly with an LVTS participant or another CPA member institution (which in turn deals with an LVTS participant). This will permit prompt action to be taken as a financial institution will be able to act on its own client's instructions or on communications from another financial institution with which it has commercial dealings.

Note, notwithstanding the wording of this guideline, in circumstances where the originator or the beneficiary does not deal directly with the LVTS participant involved they should contact the originator's or beneficiary's CPA member institution which in turn will contact the LVTS participant involved. Where the originator or beneficiary does not deal with the LVTS Participant involved, this guideline should be read taking this fact into consideration and applied accordingly.

3 ACTION BY CPA MEMBER INSTITUTION

The information must be conveyed to the LVTS participants involved in the LVTS payment to ensure prompt action.

Once a party to a payment order (originator, sending participant, receiving participant, payee) has reason to believe that an LVTS payment has been misdirected the following steps should be followed to ensure the fastest possible resolution of the issue.

- 3.1 If the originator determines that an LVTS payment has been or may have been misdirected it should contact its LVTS participant financial institution (the sending participant) and provide the sending participant with the pertinent facts. The sending participant will then contact the receiving participant.
- 3.2 If the intended beneficiary determines that an LVTS payment has been or may have been misdirected it should contact the originator of the payment. The intended beneficiary can in this manner determine whether the originator has sent the payment order and if the payment order has been sent, the originator will be in position to contact its LVTS participant financial institution (the sending participant) and provide the sending participant with the pertinent facts.

At this point the LVTS participants will be in position to commence their internal investigations in an effort to determine what error was made and how best to deal with the error.



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4 REQUEST FOR INFORMATION BY SENDING PARTICIPANT

The more information the sending participant can provide the receiving participant, and the sooner such information can be provided, the higher the probability of the receiving participant quickly tracing the disposition of the payment and quickly taking the appropriate action to address any request for rectification made by the sending participant.

When requesting a receiving participant to provide information on a payment that may have been misdirected, the sending participant should provide as many details of the payment as possible to assist the receiving participant in tracing the payment. The information provided by the sending participant must include:

- 4.1 The payment reference number (PCRN and SWIFT reference number);
- 4.2 The amount of the payment message;
- 4.3 The date of the payment; and
- 4.4 The account number and intended beneficiary's name.

Furthermore, the sending participant should be prepared to provide the receiving participant with such other information as may be reasonably requested to assist the receiving participant in tracing the funds or to satisfy the receiving participant of the bona fide nature of the request for the information.

5 RESPONSE FROM RECEIVING PARTICIPANT TO INITIAL REQUEST FOR INFORMATION

Prompt action on any request will keep the lines of communication open, provide confidence in the process, and allow information to be provided to all concerned.

The receiving participant should respond to the request for information as soon as reasonably possible with no unnecessary delay. The initial response will be to either provide all or a part of the information requested or to indicate that the information is not or cannot be made available. Where the information is not or cannot be made available the receiving participant will indicate the reasons why and the estimated time (if any) when the information will be made available.

6 RECEIVING PARTICIPANT'S POSSIBLE COURSES OF ACTION

As part of any investigation in response to a request for information, the receiving participant should attempt to confirm whether the amount of the payment message has in fact been misdirected. If so, the receiving participant should endeavor to take prompt action, which action shall not contravene the LVTS By-law and Rules and which respects the principle of LVTS payment finality. The receiving participant shall endeavor to cooperate with the sending participant and the originator of the payment order on the one hand, recognizing the rights of its clients and any duty of client



confidentiality on the other.

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6.1 Amount of payment not made available to the unintended recipient

Where it is confirmed that the payment is misdirected and where the payment has not been made available to the unintended recipient at the time of the initial notice being received from the sending participant, the receiving participant shall deal with the amount of the payment message in accordance with the terms of the LVTS By-law and Rules.

6.2 Amount of payment made available to the unintended recipient.

Where it is confirmed that the payment is misdirected and where the payment has been made available to the unintended recipient at the time of the initial notice being received from the sending participant, the receiving participant shall use its best efforts in the circumstances to investigate with a view to obtaining as much information as possible pertaining to the disposition of the amount of the payment message. Without undue delay following such investigation, the receiving participant shall attempt to contact the unintended recipient of the funds to obtain a reimbursement of the amount of the payment or to obtain permission to debit that recipient's account and the receiving participant shall take such remedial action, to the extent permitted by law, as is reasonably possible in the circumstances. Note: prior to any reimbursement of any funds or the provision of any particulars as to a customer's identity, the receiving participant may request an indemnification, in such form which is acceptable to the receiving participant, from the sending participant. An example of such indemnification is attached as appendix A.

6.2.1 Unintended recipient consents to effect a reimbursement of funds

If the unintended recipient consents to the receiving participant debiting its account or the unintended recipient reimburses the receiving participant for the amount of the misdirected payment, the receiving participant shall redirect the funds according to instructions from the sending participant, provided the intended payee's account is with the receiving participant, or make an LVTS payment to the sending participant in the amount of the original payment.



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6.2.2 Unintended recipient does not consent to effect a reimbursement of funds

6.2.2.1 Funds in the account - If the funds are in the unintended recipient's account and the unintended recipient does not consent to the receiving participant debiting its account, the receiving participant shall, subject to receipt of appropriate indemnification if any, promptly provide as much information as possible to the sending participant consistent with its duty to its customer. In addition, the receiving participant shall comply with the terms of any court order which might be obtained by the sending participant or other party, such as the originator, requiring the receiving participant to freeze the account of the unintended recipient, debit such account and reimburse the sending participant or reapply the funds. The sending participant will give the receiving participant prior written notice of its application for any such court order.

6.2.2.2 Funds no longer in the account - If the funds are no longer in the unintended recipient's account and the unintended recipient does not reimburse the receiving participant for the amount of the misdirected payment, the receiving participant shall without undue delay notify the sending participant of this fact, along with all pertinent details, subject to receipt of appropriate indemnification if any, to the extent permitted by law, as to the problem delaying the reimbursement of the funds to the sending participant.

7 RESPONSIBILITY OF THE LVTS PARTICIPANTS TO KEEP PARTIES INFORMED

The LVTS participants have an obligation to keep their clients and other parties informed.

It is important that the LVTS participants keep their clients, and to the extent permitted by law all other parties, fully informed of the investigation and the progress (or lack of progress) in retrieving the funds. This will ensure that the parties are, to the extent possible, in possession of all relevant facts to permit them to consider all of their options. These options, which are outside of the purview of the CPA, could include an originator taking proceedings against an unintended recipient which is improperly retaining the funds or bringing a motion to freeze the account where the funds were deposited, until outstanding issues/claims can be resolved.



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APPENDIX A

FORM OF INDEMNITY

IN CONSIDERATION OF *[insert name of Receiving Participant] [insert description of reason for indemnification e.g. providing particulars on a customers identity or reimbursement of a misdirected payment],*

[insert name of Sending participant] **COVENANTS AND AGREES:**

1. To save harmless and indemnify *[insert name of Receiving Participant]*, its successors and assigns, from and against any liability which *[insert name of Receiving Participant]* may incur in connection with *[insert description of reason for indemnification e.g. providing particulars on a customers identity or reimbursement of a misdirected payment]* (excepting always any liability for a reimbursement of the amount of any payment message that is not in accordance with the LVTS By-law), provided that *[insert name of Sending Participant]* shall not be liable to pay any amounts which exceed that total amount reimbursed by *[insert name of Receiving Participant]* to *[insert name of Sending Participant]*, plus any costs or expenses incurred by *[insert name of Receiving Participant]* in defending, compromising or otherwise dealing with any claim with respect to *[insert description of reason for indemnification e.g. providing particulars on a customers identity or reimbursement of a misdirected payment]*.

2. This indemnity agreement is subject to the following terms and conditions:

- a. *[insert name of Receiving Participant]* will notify *[insert name of Sending participant]* in writing of any claim being asserted by anyone in respect of the reimbursed misdirected payment, within five business days of receipt by *[insert name of Receiving Participant]* of any such claim or notice of claim.
- b. *[insert name of Receiving Participant]* shall not pay any amount to any claimant in respect of such claim and shall not compromise or deal with such claim without first obtaining the prior written approval of *[insert name of Sending participant]*
- c. *[insert name of Sending participant]* shall have the right to take such action, including the defense of any action instituted by anyone with respect to *[insert description of reason for indemnification e.g. providing particulars on a customers identity or reimbursement of a misdirected payment]*, as it may deem appropriate, at its own cost and expense.

Executed by authorized signing officer for Sending Participant

