



## **ISSUE PAPER: ELECTRONIC FUNDS TRANSFER CODE OF PRACTICE**

*Last Reviewed: August, 2009*

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### **SUMMARY:**

**In 2008 the Department of Finance commenced a consultation process for the development of a new Electronic Funds Transfer Code of Practice. The new EFT Code is intended to replace the existing *Canadian Code of Practice for Consumer Debit Card Services*. The scope of the proposed new Code would be broadened to cover all types of electronic payment methods, not just debit card transactions.**

### **CURRENT STATUS:**

**August, 2009:** Development of the new EFT Code remains on hold due to competing priorities within the Department of Finance. In the Fall of 2008, the Code fell in priority due to the volatility of the world financial markets. The Department of Finance is to provide a revised draft of the Code for the next phase of consultations. It remains unknown at this time when the next draft will be provided to stakeholders.

Also, in January 2009, the Interac Association enacted a new regulation (Operating Regulation 9.9) which makes compliance with the existing Code - *the Canadian Code of Practice for Consumer Debit Card Services* – mandatory for its members when transmitting messages using the Interac Shared Services (SCD and IDP). Credit unions will have to comply with the provisions of the Code in respect to transactions conducted on the Interac network.

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### **DESCRIPTION OF THE ISSUE:**

The new EFT Code is intended to expand the existing *Canadian Code of Practice for Consumer Debit Card Services* to apply to all electronic payment methods. There have been many new electronic payment options introduced to the market since the Code was developed in the early 1990's by the EFT Working Group. This working group is made up of representatives from the financial services industry, provincial and federal governments, consumer and retail groups. The EFT Working Group is again involved in the consultation process for the new Code.

The new draft Code outlines the respective responsibilities of various parties in the electronic payment process (including provisions relating to liability, disclosure requirements and dispute resolution). The new Code is also being used as a tool to promote public confidence in electronic payment methods. It has been suggested that the new Code be principle based so that it may more easily be applied to new payment methods as they emerge.

The first round of consultation for development of the new Code concluded that the draft Code lacked clarity and consistence in terms of its applicability to all types of electronic payment. The Department of Finance subsequently met individually with stakeholders for feedback to be incorporated in the next draft of the Code. The next round of consultation is to include meetings of "communities of interest". This will enable the drafters of the

new Code to have a better understanding of the practical application of the provisions of the Code to all forms of electronic payments. Although it was expected that the new Code would be finalized by yearend 2008 it has now been delayed.

#### **GENERAL BACKGROUND:**

The existing Code has long been considered a best practice by financial institutions when resolving consumers' claims of unauthorized debit card transactions. Specifically, the Code requires that consumers are reimbursed when they are victims of fraud, theft, or have been coerced by trickery, force or intimidation. An example of when reimbursement is required is when a loss occurs as a result of the skimming of a debit card's magnetic stripe. It should be noted that the Code does not require reimbursement if the member has been found to have contributed to the loss, such as in cases of "familiar fraud". This is when a member discloses their Personal Identification Number (PIN) to someone (possibly a family member) who ultimately uses the card without the member's permission. Credit unions maintain the discretion of relieving such members of responsibility based on the details of each incident.

The Financial Consumer Agency of Canada (FCAC) oversees the compliance of the federally chartered financial institutions with the EFT Code. Although credit unions are not federally regulated and do not therefore fall under the purview of the FCAC, they are members of Interac and as such are obligated as of January 2009 to comply with provisions of the Code in respect of transactions conducted on the Interac network.

Interac has not yet advised how it plans to monitor compliance with the Code and whether it plans on establishing a centralized consumer complaint/mediation service to monitor compliance.

#### **SIGNIFICANCE FOR CREDIT UNIONS:**

Once approved the new EFT Code will apply to products and services offered by the credit union system. Credit unions will therefore need to review their present service agreements and practices for electronic services offered to members in order to determine whether or not they are compliant with the new EFT Code.

**However, credit unions should note that as of January 2009, Interac members are required to comply with the existing Code for transactions conducted on the Interac network.**

#### **CANADIAN CENTRAL POSITION AND OBJECTIVES:**

In its submission to the Department of Finance, Canadian Central expressed its concern that that the lack of clarity and consistency in some of the basic provisions of the proposed Code would make it very difficult for a complete assessment to be conducted to determine compatibility with CPA rules

Canadian Central further submitted that the new Code should be principle-based, technologically neutral, and include clear and consistent provisions which support, and are compatible with, current CPA and Interac rules.

Canadian Central has indicated its interest in participating in the continued consultation process with the goal of developing a clear and effective Code for electronic payment services in Canada.

**CONTACTS:**

**Committees/organizations overseeing issue: Canadian Central's Payments Policy Committee and the Cooperative EFT Development Association (CEDA)**

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