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FCAC: More Transparency in Merchant-Acquirer Agreements to Protect Merchants

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On July 29, the Financial Consumer Agency of Canada (the FCAC) published final versions of three guidance documents to assist with the implementation of new disclosure requirements set out in the April 2015 update to the *Code of Conduct for the Credit and Debit Card Industry in Canada* (the Code). The guidance documents (CG-10, CG-15 and CG-16) require greater transparency and disclosure detail in merchant-acquirer agreements in the interest of merchant protection.

The guidance documents come into effect on November 13, 2016.

What You Need To Know

- All merchant acquirer agreements entered into or renewed on or after November 13, 2016 must include a cover page containing an information summary box providing key contract terms, a fee disclosure box and the disclosure of all other fees, in forms set out in the guidance. Agreements in place before that date that renew automatically for terms of less than six months with no other changes are exempt.
- The Code permits merchants to choose the type of card and network brand (e.g., credit, debit or prepaid from Visa, MasterCard or Amex) they will accept. The new detailed interchange, merchant discount, and other fee disclosures are intended to enable merchants to make informed decisions about the types of cards they will accept.
- The Minister of Finance negotiated average credit card interchange rates with two of the major card networks. The new disclosures give merchants visibility into where their merchant discount rates stand in relation to the negotiated average interchange rates. Requirements include the following:

The Code and its guidance apply to payment card networks and participants—including card issuers and acquirers, independent sales organizations and other service providers such as terminal lessors. The guidance documents are substantially the same as draft versions published for comment in March 2016 (see our March 18, 2016 bulletin "[Guidance Documents for Card Industry Code of Conduct Open for Public Consultation](#)" for a description).

- **Amended Commissioner's Guidance 10 (CG-10) – [Increased Disclosure in Sales and Business Practices and Cancellation of Contracts without Penalty](#).** CG-10 addresses and provides direction on two credit and debit card industry practices (sales and business practices and multiple contracts cancellation, penalties, costs or fees) that the FCAC observed do not comply with Code requirements. CG-10 requires that payment card networks work with participants to ensure that information is provided in a clear, simple and not misleading manner, address merchant concerns in a timely manner, and that appropriate remedies are available in a timely manner (including amending or voiding contracts that were entered into in violation of the Code). The draft guidance also provides that merchants must be permitted to cancel the merchant-acquirer agreement and all related services contracts without penalty following any notification of new or increased fees by participants or related participants.
- **Commissioner's Guidance 15 (CG-15) – [Information Summary Box examples for the Code of Conduct for the Credit and Debit Card Industry in Canada](#).** CG-15 provides examples of the information summary boxes required by the Code. One summary box example is provided for a merchant-acquirer agreement with no related contracts, and two summary box examples are provided for merchant-acquirer agreements with multiple related contracts.
- The summary box includes: (1) date of contract; (2) acquirer name and address; (3) contract cancellation, renewal and penalties; (4) complaint handling procedures; (5) payment terminal lessor information; (6) contactless payment acceptance; (7) transaction return policy; (8) link to the Code; and (9) method by which merchants can access their statements. Summary boxes for agreements with related contracts are required to also include the independent sales organization or referral agent information and information about other debit or credit service providers if different from the acquirer.
- **Commissioner's Guidance 16 (CG-16) – [Fee Disclosure Box for the Code of Conduct for the Credit and Debit Card Industry in Canada](#).** The Code requires that a fee disclosure box be included in all merchant-acquirer agreements. CG-16 provides that the fee disclosure box must include payment card types and the associated fees for local device processing and non-device processing (e.g., by mail, telephone, online or recurring payment). The terminology used in the fee disclosure box must be identical to that used in the merchant-acquirer agreement. A single rate must be disclosed for each common payment card type and processing method, and that single rate must be the sum of the network's interchange rate plus the network assessment fee plus the per-transaction processing fee.
- Acquirers must disclose all other fees charged to the merchant (e.g., interchange fees, monthly minimums, administration fees, etc.). The schedule of other fees must be grouped by theme, use descriptive headings, emphasize important information, and employ common and standard language used across the industry.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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