Enhanced code of conduct for the payment card industry in Canada takes effect

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As of Oct. 30, 2024, the Financial Consumer Agency of Canada's (FCAC) updated Code of Conduct for the Payment Card Industry in Canada (the Code) is in effect. The Code is a set of policies that govern payment card network operators (PCNOs) that have agreed to adopt it, which include Visa, Mastercard, Interac, Amex, Discover, and UnionPay.

The federal government announced on Oct. 1, 2024 that the Code, originally published in 2015, has been revised to include several substantive changes intended to promote transparency, strengthen merchant rights, and increase fairness in the payment card industry.

What you need to know

1. Expanded scope

The new Code has an expanded scope that now requires downstream participants, in addition to issuers and acquirers, to comply with the Code. Downstream participants are defined in the Code as a person or entity that that (1) has a direct or indirect relationship with an acquirer; (2) is directly or indirectly covered by a PCNO's network rules, and (3) interacts with a merchant located in Canada to provide or offer any payment processing services and/or processing equipment for payment card transactions. Downstream participants include but are not limited to payment processors, payment facilitators, and aggregators.

2. Expanded definitions of payment cards and related service agreements

The new Code defines "payment card" as any digital or physical card from an issuer that provides the ability to conduct a debit, credit, or prepaid transaction and is linked to a specific cardholder account. This definition is broad and replaces outdated terms that were previously defined in the Code.

In addition, the new Code provides a definition for "related service agreements" that includes agreements related to payment processing services between a merchant and

downstream participant where there is a contractual agreement between the acquirer and the downstream participant and both provide payment processing related to the merchant; or there is a contractual agreement between two or more downstream participants, and all provide payment processing related services to the merchant. The Code further clarifies that where a merchant enters into a separate contractual arrangement with an unrelated downstream participant, the contract with that separate entity is not required to comply with the Code.

3. Expanded disclosure and communication requirements

In addition to the requirement that all disclosures, notices, and communications be presented in a clear, simple, and non-misleading manner, the revised Code now indicates that acquirers and downstream participants should make information easily available for merchants on their websites. It also requires that PCNOs make all applicable standard interchange rates, wholesale discount rates, and acquiring network assessment fees easily available on their websites.

Further, the revised Code requires that all merchant agreements that include card processing contain a cover page containing: (1) a summary of the key elements of the agreement, (2) cost per transaction disclosure, and (3) disclosure of fees.

4. New complaint handling process

The new Code provides an updated complaint handling process that shortens the wait time for complaints and requires PCNOs, acquirers, and downstream participants to have clear and transparent processes for handling merchant complaints. The new Code requires that PCNOs, acquirers, and downstream participants ensure that:

1. Merchants have access to a clear, simple, and transparent complaint handling process;
2. Merchants are provided information about how and where to make a complaint;
3. Adequate training is in place for all applicable employees; and
4. A summary of the complaint handling process is posted on the acquirer's or downstream participant's website.

Further, the new Code shortened the wait time for handling complaints and now requires that complaints be acknowledged within five business days and investigated within 20 business days (30 days for PCNOs) according to order of urgency. If a response cannot be provided within 20 business days (or 30 days for PCNOs), the merchant must be informed for the reason for the delay and expected response time.

5. Increased notice requirements for fee changes

Effective Apr. 30, 2025, the revised Code requires that PCNOs provide at least 120 days' notice to acquirers for non-structural fee changes and 210 days' notice for structural fee changes, an increase from the former 90- and 180-days' notice requirements in the previous Code. The new Code also requires PCNOs to post any new or upcoming changes to standard interchange rates, wholesale discount rates, and acquiring network assessment fees on their websites at least 30 days prior to the effective date.

6. Increased notice requirements for fee changes and merchant's ability to cancel agreements without penalty

Effective Apr. 30, 2025, acquirers and downstream participants are required to notify their merchants between 30 and 60 calendar days prior to the effective date of a fee increase, introduction of a new fee, or any reduction to PCNO core fees that are not passed on in full to merchants. The notice must include the content prescribed in the Code. As in the previous Code, the right to cancel agreement without penalty does not apply for fee increases made in accordance with pre-determined schedules.

7. Compliance requirements

Under the new Code, PCNOs are required to establish and implement measures, controls, and tools to prevent non-compliance; monitor the market conduct of their participants and take appropriate enforcement action; and require their participants to comply with the Code. Additionally, on an annual basis, acquirers must provide PCNOs with their current internal policies and procedures related to Code compliance, and downstream participants must provide their acquirers with their current internal policies and procedures related to Code compliance. Finally, PCNOs must be informed of all Code-related complaints received by acquirers and their downstream participants on a semi-annual basis, and in-turn, must report that information to the FCAC on a semi-annual basis.

Next steps

For proactive strategies and tailored advice on managing compliance with the new Code, please reach out to the key contacts listed below or any lawyer from BLG's Financial Services Regulatory Group.

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Expertise

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