FCAC Issues New and Amended Draft Guidance Documents On the Code of Conduct for The Credit and Debit Card Industry in Canada

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In April of 2015, the Financial Consumer Agency of Canada (the "FCAC") released an updated *Code of Conduct for the Credit and Debit Card Industry in Canada* (the "Code of Conduct"). In connection with the update to certain Policy Elements under the Code of Conduct, the FCAC has now released, for public comment, three draft guidance documents (CG-10, CG-15 and CG-16) which provide explanation and guidance on the Code of Conduct. These draft guidance documents are available at this link.

CG-10 — Increased Disclosure in Sales and Business Practices and Cancellation of Contracts without Penalty

This guidance was originally effective on November 12, 2013. It required clear disclosure of key elements of merchant-acquirer agreements on a cover page at the beginning of the agreement and strongly encouraged the adoption of an information summary box.

The draft amended guidance updates the prior guidance to reflect changes made to the Code of Conduct in 2015. This includes amendments to reflect the now mandatory requirement of a cover page on all merchant-acquirer agreements containing an information summary box and fee disclosure box, both of which are discussed in more detail below. In this connection, given that elements of the existing form of this guidance have been added directly to the Code of Conduct, the FCAC has revised the guidance to remove potential areas of overlap, duplication and inconsistency with the amended Code of Conduct.

However, guidance continues to provide that appropriate remedies will be available to merchants in connection with merchant-acquirer agreements entered into in violation of the Code of Conduct, including amending or voiding such agreements. The guidance also provides that merchants are able to cancel their merchant-acquirer agreements

and related service contracts without penalty, following notification of any new or increased fees by any participant or related participants.

CG-15 – Information Summary Box examples for the Code of Conduct for the Credit and Debit Industry in Canada

The 2015 updates to the Code of Conduct add the requirement that a cover page containing an information summary box summarizing the key contractual elements be included in merchant-acquirer agreements entered into or renewed starting November 13, 2016. This new guidance provides examples of information summary boxes for merchant–acquirer agreements with no related contracts and with multiple related contracts.

CG-16 — Fee Disclosure Box for the Code of Conduct for the Credit and Debit Industry in Canada

In addition to the information summary box, the 2015 updates to the Code of Conduct add the requirement that a fee disclosure box setting out the fees for the most common types of card transactions and processing methods be included in merchant-acquirer agreements entered into or renewed starting November 13, 2016. This fee disclosure box and disclosure of all other fees must be included on the cover page immediately following the information summary box. The fee disclosure box requires disclosure for each payment card type broken out by processing method. All other fees must also be disclosed in language that is clear, simple and not misleading.

The guidance recommends disclosing such other fees in a table grouped by theme with descriptive headings. Flat fees must be disclosed as the same fee for each payment card type and processing method in accordance with the template fee disclosure box. Other variables that affect the rate charged must be disclosed in the contract disclosure with footnotes added in the fees disclosure box to explain those variables. International cards are not to be included in the fee disclosure box.

The information summary box and fee disclosure box will be not be required for automatically renewable merchant-acquirer agreements renewed starting November 13, 2016 for a term of no longer than 6 months with no changes to the initial terms and conditions of the agreement.

Next Steps

The FCAC will be accepting comments on these draft guidance documents until April 15, 2016. The guidance documents are set to become effective as of November 13, 2016 at which time payment card networks and their participants will be responsible for ensuring compliance with the guidance documents.

Contact Us

If you would like to know more about these draft guidance documents, have any questions regarding these draft guidance documents and how they affect your business or would like any assistance in commenting on these draft guidance documents, please do not hesitate to call or write the authors or any member of the Financial Services Regulatory Group.

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