

3-18-2016

# Guidance Documents for Card Industry Code of Conduct Open for Public Consultation

Benjamin Geva

*Osgoode Hall Law School of York University*, [bgeva@osgoode.yorku.ca](mailto:bgeva@osgoode.yorku.ca)

Peter A. Aziz

Steven Slavens

Eliot Che

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## Recommended Citation

Geva, Benjamin; Aziz, Peter A.; Slavens, Steven; and Che, Eliot, "Guidance Documents for Card Industry Code of Conduct Open for Public Consultation" (2016). *News, Editorials, and Commentaries*. 139.

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# Guidance Documents for Card Industry Code of Conduct Open for Public Consultation

March 18, 2016

Peter A. Aziz | Benjamin Geva | Steven Slavens | Eliot Che

The Commissioner of the Financial Consumer Agency of Canada (FCAC) is seeking comments on three proposed guidance documents it has published 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). Submissions to FCAC regarding the draft guidance documents are due April 15, 2016.

The April 2015 update amended the code to require, among other things, that all merchant-acquirer agreements include a cover page containing an information summary box and fee disclosure box. The proposed guidance documents (CG-10, CG-15 and CG-16) are meant to clarify the April 2015 update and to provide further guidance with respect to compliance.

## What You Need To Know

- Payment card networks and participants—including card issuers and acquirers, independent sales organizations and other service providers such as terminal lessors—must comply with the amended Code and include any necessary terms and disclosures in their merchant agreements that are entered into or renewed after November 13, 2016. Networks can be expected to revise their operating regulations to reflect the final requirements.
- Guidance on increased disclosure in business practices and contract cancellation without penalty (CG-10): This guidance document was drafted in response to complaints by merchants that: (1) they did not clearly understand their merchant-acquirer agreements due to inconsistent or lack of disclosure about fees and rates, and unilateral modifications of those agreements without adequate notice; and (2) when they engaged in related service contracts, apart from the primary merchant-acquirer agreement, merchants were being subjected to cancellation penalties or fees.

As a result, the FCAC draft guidance 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.

- Guidance providing information summary box examples (CG-15): For illustrative purposes aimed at clearly setting out the Government of Canada’s expectations, the FCAC has provided one example summary box for a merchant-acquirer agreement with no related contracts, and two examples of summary boxes 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.

- Guidance on fee disclosure box (CG-16): To provide a consistent and standard approach across the industry regarding disclosure to merchants of payment options, the FCAC has provided a fee disclosure box template and an example schedule for disclosure of other fees.

The guidance requires that the box 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 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. 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.

- Submissions to FCAC regarding the draft guidance documents are due April 15, 2016. See the [FCAC website](#) for more detail on the submission process.

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

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