



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

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Ms Delia Rickard
Acting Executive Director, Consumer Protection and International
Australian Securities and Investments Commission
GPO Box 9827
CANBERRA ACT 2600
By email eftreview@asic.gov.au

Dear Delia,

Consultation Paper 90: Review of the EFT Code of Conduct 2007/08

Thank you for the opportunity to comment on ASIC's proposals for changing the EFT Code of Conduct.

Abacus – Australian Mutuals is the industry association for credit unions, mutual building societies and friendly societies. We have 163 member institutions with total assets of \$70 billion and more than 6 million members.

Summary

Abacus broadly supports most proposals in the Consultation Paper. We believe many will improve the operation of the EFT Code by enhancing consumer protection and reducing regulatory burdens on subscribers.

We do though have concerns with a number of proposals:

- **Proposal B1** including a statement of objectives in the Code. Abacus believes the statement should take account of business considerations such as commercial certainty and cost.
- **Proposal B7** extending the Code to small business. Abacus believes the primary focus of the Code should remain consumer transactions, in line with ASIC's proposed statement of objectives.
- **Proposal C2** disclosure of fees by independent ATM operators. Abacus believes the critical issue is to ensure consumers have an effective mechanism for complaining about electronic transactions involving independent operators.
- **Proposal D5** introducing a six year time limit for making complaints. Abacus believes a six year time limit would be impractical, and instead proposes a three year limit.
- **Proposal F3** allowing hyperlinks to deliver disclosures. Abacus believes that the use of hyperlinks is inconsistent with industry practice in relation to phishing.

- **Proposal G3** requiring subscribers to provide information on unauthorised transactions. Abacus believes ASIC should work with the Australian High Tech Crime Centre to develop standardised reporting requirements for unauthorised transactions.

Mutual banking

Credit unions and mutual building societies provide banking services to 4.6 million Australians and are Authorised Deposit-taking Institutions (ADIs) subject to the *Banking Act 1959* and Australian Financial Services Licensees subject to the *Corporations Act 2001* and the *Electronic Funds Transfer Code of Conduct*.

Credit unions and mutual building societies collectively rank equal third, with NAB and ANZ, in their share of the household deposits market, behind CBA and Westpac. The ACCC describes credit unions and building societies as “strong competitors on customer service”, with a 17 per cent share of transaction accounts in the NSW/ACT market and a 24 per cent share in the SA market.

Credit unions and mutual building societies strongly outperform the major banks in customer satisfaction surveys. As member-owned ADIs, credit unions and mutual building societies seek to protect and promote the interests of their customers.

Credit unions and mutual building societies provide their members with access to the payments system through branches and agencies, EFTPOS and ATM networks, the Visa and MasterCard schemes, direct debits and credits, internet banking, BPAY and cheques and issue a range of payment cards including EFTPOS debit cards, scheme debit cards and credit cards.

Discussion of proposals

Statement of objectives

Proposal B1

Abacus supports the inclusion of a statement of objectives under the EFT Code. A statement has the potential to improve subscriber and consumer understanding of their rights and obligations under the Code and provide guidance to how ASIC handles specific issues under the Code.

However we believe the objectives listed do not adequately take into consideration ASIC’s responsibilities under the ASIC Act 2001 to address business considerations such as commercial certainty and efficiency. Section 1 (2) (a) of the Act states:

‘In performing its functions and exercising its powers, ASIC must strive to maintain, facilitate and improve the performance of the financial system and entities within the system in the interests of commercial certainty, reducing business costs, and efficiency and development of the economy.’

Further, Abacus does not believe the objectives fully take account of the Office of Best Practice Regulation (OPBR) requirement that new regulations be effective and efficient - that the benefits of a chosen policy option outweigh the costs and produce the highest net benefits.¹

¹ Office of Best Practice Regulation website: www.finance.gov.au/opbr

In the absence of business considerations in the statement of objectives, there is a strong risk that specific EFT Code issues will be considered solely from an individual consumer perspective, without any regard for cost or practicality. For example, on the issue of mistaken payments, this singular perspective may produce a policy outcome which required the unintended recipient's provider to refund the consumer where the unintended recipient had insufficient funds in their account.

Accordingly, Abacus recommends the following amendment to the statement of objectives:

'In meeting these objectives, ASIC must strive to maintain, facilitate and improve the performance of EFT subscribers in the interests of commercial certainty, reducing business costs, and efficiency and development of the economy.'

One-part structure

Proposal B2

Abacus supports a lighter touch approach for low risk products with low value holdings.

However we believe that this could be achieved in a principles-based model that only prescribed the handling of key issues such as liability allocation and mistaken payments. As part of this, we believe the Code should be more integrated with other industry codes and clearing system rules.

What transactions should the EFT Code cover?

Proposal B3

Abacus supports the inclusion of non-exhaustive lists of applicable and non-applicable transactions. This could simplify the current definition of EFT transactions where terms have been found to be confusing. Any examples should be technology neutral to encourage innovations such as wireless transactions, SMS instructions and developments in direct-entry. ASIC should also try to ensure that definitions are consistent with other regulatory and self-regulatory mechanisms.

Tailored requirements for certain types of electronic transactions

Proposal B4

Abacus supports the introduction of tailored requirements for lower risk products.

However, we believe \$100 is a low cut off point for the lighter touch regime, and suggest raising the value to around \$250 to \$500.

We also question why payment products with the electronic authentication mechanisms should be automatically excluded from the lighter touch regime. So long as a product has a low maximum value, and the product issuer is not able to cancel the product if it is lost or stolen, we see no reason to exclude it because it has an electronic authentication mechanism.

Expanding the membership of the EFT Code

Proposal B5

Abacus believes the best way to protect consumers and create a level playing field for institutions is through universal subscription to the EFT. Unfortunately, low-level consumer

awareness of the Code has meant there is little market incentive for institutions to subscribe, particularly non-banking payments providers.

While stronger promotion of the Code to non-subscribers and consumers may boost consumer awareness, and subscription levels, we doubt that further promotion would produce a significant increase in subscriptions, let alone universal membership. Therefore, in the absence of alternative measures, we support mandatory membership of the EFT Code for all businesses offering EFT products to consumers.

Design and presentation

Proposal B6

Abacus supports the redrafting of the EFT Code in plain English. This should make the Code more accessible to consumers and subscribers.

We also broadly support a principles-based approach to redrafting to allow organisations to tailor the Code's requirements to their particular circumstances. However, we believe some prescription is required in the code to give subscribers certainty around key issues such as liability allocation and mistaken payments.

Small business consumers

Proposal B7

Abacus does not believe there is a strong case for extending the EFT Code to small business. The primary focus of the EFT Code should remain consumer transactions, in line with ASIC's proposed statement of objectives.

Further, the full implications of extending the Code to small business need to be researched to ensure there are no unintended consequences.

If small business transactions are to be included in the Code, Abacus believes the no-fault liability amount should be set at the greater of \$150 or 5% of the amount in dispute.

Abacus supports ASIC's proposal to adopt the definition of 'small business' in Section 761G (12) of the Corporations Act.

Receipts

Proposal C1

Abacus supports an opt-in option for receipt provision for subscribers. This is consistent with consumer needs and expectations and would reduce unnecessary compliance costs and prescription in the EFT Code.

Abacus agrees that subscribers must take reasonable steps to provide a receipt and need not provide one where it is not practical to do so e.g. institutions should be allowed to alert ATM users that due to technical difficulties a receipt could not be provided.

Abacus believes that merchant transaction receipts should include the merchant's name rather than an identification number to help consumers manage their transaction records properly. However, we acknowledge that this requirement is inconsistent with some payments processes. Therefore we do not object to the proposed amendment as long as there is consultation on proposals for invoice requirements, particularly regarding system change issues.

Surcharges charged by independent ATM owners

Proposal C2

Abacus believes that independent ATM owners should be required to disclose charges for using their ATM before a person performs a transaction. However, we do not believe it is necessary to regulate this through individual subscriber agreements, as disclosure of ATM fees will be part of the RBA's designated direct charge regime (NB: The commonly used term is 'direct charge' rather than 'surcharge'.)

The RBA's December 2008 Consultation Document on ATM reform says the proposed new regime will "result in fees for cash withdrawals being more transparent to customers. The direct charge will be disclosed at the time of the transaction and the cardholder will be given an opportunity to cancel the transaction at no cost."

We believe the more important issue around independent ATM owners is how consumers can complain about fees charged. In line with our response to Proposal B5, we believe this issue could be addressed by requiring independent ATM operators to subscribe to the EFT Code.

Abacus recommends that part (b) of the proposal should be deleted as redundant.

Changes to fees

Proposal C3

Abacus supports amending the EFT Code to allow media and email notifications of changes to existing fees and charges to reduce compliance burdens on subscribers.

Section 17.4 of our [Mutual Banking Code of Practice](#) (beginning 1 July 2009) adopts a similar procedure:

'We may use various methods to notify you of changes to your account referred to in this section. Subject to applicable laws, these may include one or more of: notification on or with your account statement; notification by letter or other direct communication; announcement via our newsletter or website; or advertisement in the local media or national media. In deciding the method of notification, we will consider the nature and extent of the account change, as well as the cost and effectiveness of different methods of notification.'

Statements

Proposal C4

Abacus supports the proposal. This is consistent with Section 16.5 of our Mutual Banking Code of Practice.

New Australian Standard on complaints handling

Proposal D1

Abacus supports the proposal. There is considerable confusion about the definition of 'complaint' under the EFT Code (reflected in part in inaccuracies in monitoring data on EFT Code compliance, and potential capture of queries and inquiries).

Further, our Mutual Banking Code of Practice adopts the same definition of complaint:

'Any expression of dissatisfaction made to us related to our products or services, or to our complaints handling process, where a response or resolution is explicitly or implicitly expected.'²

Complaints that are not immediately settled

Proposal D2

Abacus supports the proposal to give subscribers a brief period to investigate a complaint before being required to provide written notice about how complaints are resolved.

However we do not believe it is necessary for ASIC to prescribe the exact number of business days allowed for an institution to investigate a complaint before writing to consumers. We propose that 'Immediately settled' be replaced with 'Promptly settled', together with a footnote clarifying that this refers to a matter of days.

Complaints involving two or more subscribers

Proposal D3

Abacus supports the proposal. Our Mutual Code commits members to try to resolve complaints with customers as soon as possible – 'on the spot' if they can.³

If this cannot be achieved, members are required to provide a final response to complaints within 21 days if possible, and otherwise within 45 days.⁴

For complaints involving the recovery of mistaken payments, Abacus believes much shorter time frames are required. Accordingly, we believe receiving institutions should be required to respond to requests for information from a sending institution as soon as possible – at most within one or two business days.

Providing information to external dispute resolution schemes

Proposal D4

Abacus supports the proposal in principle, however we consider this issue is more appropriately addressed through ASIC's current review of dispute resolution procedures – RG 139 and RG 165.

Limitations period for complaints

Proposal D5

Abacus supports the introduction of time limits for making complaints. Timely reporting of errors or unauthorised transactions is critical for institutions seeking to investigate and rectify these matters.

We also support the trigger point for the commencement of the time limit to run from the time that the complainant first became aware, or should reasonably have become aware, of the event that the complaint is about. This would be consistent with the approach taken in comparable court cases.

² Appendix, Mutual Banking Code of Practice

³ Clause 28.2

⁴ Clauses 28.3 and 28.4

However, we believe a six year limit would be impractical, as supporting documentation can often be difficult to obtain by this time, both for complainants and members. To minimise compliance burdens, Abacus believes a more appropriate time limit would be three years.

Liability for losses caused by a person leaving their card in an ATM

Proposal E1

Abacus supports the proposal. Abacus believes that such occurrences are examples of carelessness and thus included by reference to cl.5.6(e). Leaving a card in an ATM is a failure to keep the access method secure and a customer should, generally, be liable, subject to the ATM satisfying minimum standards in terms of automatic-shutdown procedures.

Book up

Proposal E2

Abacus supports the proposal.

In submissions to ASIC and the Northern Territory Government, Abacus has called for a prohibition on PIN disclosure in book-up arrangements without exception. We maintain the view that such disclosure exposes cardholders to loss from unauthorized transactions due to forfeiture of protection under the EFT Code.

Mistaken payments

Proposal E3

Abacus supports ASIC's revised approach to dealing with mistaken payments. We participated in the stakeholder roundtable and we will be responding to ASIC's draft discussion paper on mistaken payments early in 2009.

Clarifying the requirements for electronic communication

Proposal F1

Abacus supports the proposal to allow subscribers to use electronic communication to meet their disclosure requirements under the Code. This is consistent with Section 18 of the Mutual Banking Code.

We question though the need for ASIC to impose specific conditions for allowing electronic communication, beyond requiring consent from a consumer to receive information this way. Many of the conditions are either part of Section 18 of our Mutual Code or standard customer service practices.

We also query the meaning of condition (ii) 'the email notice must clearly describe the information so consumers can make an informed decision whether to get the information this way.' Should ASIC include conditions in the Code, we recommend that this condition be revised in the plain English version.

Privacy issues for receipts

Proposal F2

Abacus supports the proposal. Truncation is standard industry practice under APCA rules and credit card scheme requirements.

Further, the proposal is consistent with Section 23.3 of our Mutual Banking Code, which requires members to take reasonable steps to protect personal and financial information from misuse or loss, and from unauthorised access, modification or disclosure.

Hyperlinks

Proposal F3

Abacus strongly opposes the proposal, as it is inconsistent with good industry practice in relation to phishing messages. Section 23.10 of our Mutual Banking Code states, *inter alia*:

‘We will avoid communications practices that are inconsistent with our messages about avoiding fraud. For instance, we will not:

- Send you emails that include hyperlinks in the message.’

Even if hyperlinks were limited to accessing non-secure pages, there is a risk that consumers could be tricked by phishing messages into revealing personal information by being transferred from a ‘disclosure’ page to a page requiring a user name and password.

Abacus instead proposes that subscribers be allowed to advise their customers of relevant disclosure information via non-hyperlinked website addresses or pdf attachments in solicited emails.

Modifying the EFT Code

Proposal G1

Abacus supports the proposal to give ASIC general modification power, as the current modification powers are unnecessarily restrictive. However any modifications must be preceded by full consultation with industry and be subject to a proper cost-benefit analysis as required by the Office of Best Practice Regulation.

Reviews

Proposal G2

Abacus supports the proposal. We believe the current system of three yearly reviews is costly, impractical and unnecessary.

Our Mutual Code adopts similar timeframes to what is proposed.

Monitoring compliance

Proposal G3

Abacus supports the proposal as it may help identify systemic problems in electronic funds transactions.

However, our members already report unauthorised transactions to the Australian Federal Police’s Australian High Tech Crime Centre (AHTCC). To avoid duplication and additional compliance burdens, we believe ASIC should work with the AHTCC to develop a standardised reporting requirements for unauthorised transactions.

Proposal G4

Abacus supports a targeted approach to compliance monitoring. We agree that the existing compliance monitoring process has failed to properly measure the effect of, or adherence to, the EFT Code, in part due to difficulties extracting and reporting data in a consistent fashion across subscribers.

We suggest that monitoring could be improved with the following options:

- an issues-based survey approach where relevant hot topics can be reviewed (this might allow qualitative responses on how institutions deal with particular situations, as opposed to time consuming tick-a-box detailed surveys);
- complaints data on EFT matters could be sourced more effectively from the EDR schemes, avoiding data inconsistency and time consuming review of IDR matters (and issues with definitions of complaint); and/or
- improved communication by ASIC to EFT Code subscribers on any 'issues of interest' or proposed monitoring focus throughout the year.


Conclusion

Abacus believes most proposals in the Consultation Paper will improve the regulation of electronic payments for the benefit of both consumers and subscribers.

However we are concerned about the potential compliance burdens, consumer risks and regulatory duplications associated with some proposals, and would urge ASIC to reconsider aspects of proposals B1, B7, C2, D5, F3 and G3.

Thank you again for the opportunity to comment. If you have any questions, please contact Sean Johnson, on (02) 8299 9033 (or sjohnson@abacus.org.au) or myself on (02) 6232 6666 (or lawler@abacus.org.au).

Yours sincerely,



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