



**Canadian Restaurant
and Foodservices
Association**

**Association canadienne
des restaurateurs et
des services alimentaires**

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January 18, 2010

The Hon. Jim Flaherty, PC, MP
Minister of Finance
140 O'Connor Street
Ottawa, Ontario
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CRFA Response to Draft Code of Conduct for the Credit and Debit Card Industry in Canada

Dear Minister:

Thank you for providing the Canadian Restaurant and Foodservices Association (CRFA) with an opportunity to respond to the *Code of Conduct for the Credit and Debit Card Industry in Canada*.

The Canadian Restaurant and Foodservices Association is one of the largest business associations in Canada representing one of the largest sectors of the Canadian economy, including liquor licenced restaurants, quick service restaurants, hotel foodservice, take-out, institutional feeders, clubs and caterers. Despite its large size (\$60 billion in sales) and significant employment levels (over 1 million jobs), the foodservice industry operates on very tight profit margins. In 2007, the average pre-tax profit margin for Canadian restaurants was 4% with average margins as low as 2.1% in Newfoundland and Labrador. As a result, the industry is very sensitive to price fluctuations such as sharp increases in credit and debit card processing fees.

The government is to be congratulated for recognizing the imbalance in negotiating power between credit card companies and merchants. The Code of Conduct is an important first step toward ensuring increased transparency and disclosure by credit card companies while allowing merchants choice in the cards they accept and payment options they provide.

In addition to the specific comments, attached, in response to the various policy elements in the proposed Code, CRFA offers the following general comments about the Code's implementation as well as other necessary measures to ensure fair business practices by credit card companies.

CRFA recommends the appointment of a federal body to oversee Code compliance and monitor its effectiveness. This body would monitor and publish annually information on trends in interchange, switch, merchant and other associated payment system fees. In addition, this body would establish practices and processes for setting fees and rates that would provide a fair return to payment networks but would be linked to the cost of the system.

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CRFA appreciates your commitment to regulate if there is not voluntary compliance to the Code of Conduct. In addition to compliance monitoring by an oversight body, CRFA recommends requiring credit card companies to sign a Memorandum of Understanding signaling their commitment to comply with the policy elements of the Code.

CRFA also urges government to preserve our safe, efficient, and cost effective debit system for the benefit of all Canadians by ensuring that Interac remains a viable entity with flat fees linked to costs and an alternative to the systems from multi-national for-profit credit card companies. There is no justification, economic or otherwise for a percentage fee for debit since debit, unlike credit, is equivalent to cash.

CRFA would welcome the opportunity to discuss our response to the policy elements in the proposed Code of Conduct in greater detail with your officials along with the additional recommendations provided to ensure a fair credit and debit card payment system.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'JR', is written over a light blue rectangular background.

Joyce Reynolds
Executive Vice President, Government Affairs

CRFA RESPONSE TO PROPOSED POLICY ELEMENTS

1. ***Increased Transparency and Disclosure by Debit and Credit Card Networks and Acquirers to Merchants.***

Stakeholders are invited to provide input on specific improvements regarding transparency and disclosure in order to ensure that the information is clear and meaningful (e.g. fees disclosed on merchant statements will use wording consistent with the payment card networks' interchange rate schedule, if applicable, and will include the effective merchant discount rate, the number and volume of transactions and the total amount of fees according to each rate). Such information will be taken into consideration when developing more specific criteria for improving transparency and disclosure.

CRFA RESPONSE

- CRFA supports the need for increased transparency and disclosure by debit and credit card networks and acquirers to merchants.
- The credit and debit card fee system is so complicated that most foodservice operators cannot understand it. Base rates are accompanied by a plethora of add-on fees depending on the type of card, type of transaction and type of technology used. Some processor agreements have between 8 and 21 different add-on fees. The complexity of the fee system appears to be intentional as it prevents merchants from predicting the cost of a transaction.
- CRFA supports having a standardized billing system that will provide merchants with detailed information by card type, i.e. breakdown of fees (interchange fee, card type fee, add on fees), the number and volume of transactions, and the total amount of fees per card type. The rationale for charging a higher fee for specific card types, i.e. premium cards, and the benefits associated with these cards types should be provided. There must also be sufficient detail to allow merchants to reconcile statements with their records and track changes in card usage.
- In addition, it is necessary that each customer card is easily identified by card type with wording and/or symbol on card that is consistent with the wording and/or symbol on the rate schedule and billing statement.
- Merchants should, at all times, have easy website access to the rates for all card types, interchange fees, and any other fees.
- Contracts must be written in simple, easy to understand language with terms specific to the merchant agreement clearly identified. Contracts should clearly specify that no changes or amendments can be made to the agreement without permission in writing from the merchant.
- Contracts for different payment options (debit, credit, Interac) should be separate with terms and conditions for each clearly spelled out.

- The need for disclosure and transparency is not restricted to small and medium-sized merchants. This provision and code must be applicable to all businesses regardless of type and size.

2. Merchants will receive a minimum of 90 days notice on any fee changes related to any credit or debit card transactions.

Payment card networks will provide acquirers with sufficient notice of any changes to their interchange rates and structure, as well as other fees. Acquirers will provide merchants with at least 90 days notice of changes to merchant fees.

CRFA RESPONSE

- Currently fees are changed in a unilateral way, without negotiation, and without any additional value or benefit to merchants. Merchants are notified that there will be a fee increase, but they are not even quoted a rate and there is no explanation what the increase is for.
- Restaurants on average reprint their menus once a year. They must have cost certainty about fees and other costs associated with debit and credit cards throughout their contract period. Ideally, agreements between merchants and processors should be binding with no additional fees or increases imposed on merchants without re-negotiating the agreement.
- CRFA recommends a notice period of 180 days of any change in fees, or additional costs to merchants. Notice must be clear and specific about the changes and delivered by letter and not as a buckslip inserted into statement.

3. Following notification of a fee change merchants will be allowed to cancel their contracts without penalty.

By signing a contract with an acquirer, a merchant will have the right to cost certainty over the course of their contract. As a result, in the event of a fee change, merchants will be allowed to opt out of their contracts, without facing any form of penalty within 90 days following notification.

CRFA RESPONSE

- CRFA would prefer agreements between merchants and processors to be binding with no additional fees or changes to service, equipment lease or rental, supplies, etc. without a re-negotiation of the contract. This would make the need for an opt-out provision unnecessary since opting out is not a simple process and can result in other expenses and complications (i.e. staff training, equipment and wiring changes, accounting).
- As per two above, CRFA recommends a 180 day period in which merchants can cancel their contracts following a notice of change of fees or other terms of the contract without termination, cancellation fees or any other penalty.

- In addition, CRFA recommends a 60-day notice period prior to the end of a contract, giving merchants the opportunity to respond in writing whether or not they wish to renew their contract. Automatic renewal of contracts without written agreement of merchant should not be permitted.

4. *Merchants who accept credit card payments will not be obligated to accept debit card payments from the same payment network and vice versa.*

Payment card networks will not require merchants to accept both credit and debit payments from their payment network. A merchant can choose to accept only credit or debit payments from a network without having to accept both.

CRFA RESPONSE

- CRFA agrees with this policy element but believes it could go further. In addition to choosing whether they want to accept both credit and debit cards from the same payment network, they should have the ability to choose whether they want to accept “premium” cards.
- In 2008 when new premium credit cards were introduced, issuing banks began offering cards with additional benefits at no additional cost to cardholders. The cost of the new reward programs were reflected in higher interchange fees charged for processing those transactions.
- The higher fees charged to merchants do not reflect an increase in service or value. Credit card companies have argued that premium cardholders or high-spending cardholders are more attractive to merchants because they spend more. They have also argued that they need a premium card to compete with American Express. Restaurateurs argue that a premium cardholder will not necessarily spend more in their restaurant as opposed to their competitor’s and therefore they receive no additional value. Additionally, if cardholders get benefits at no cost to them, they are encouraged to use their premium card more than they would another method of payment and it’s the merchant who bears the cost. In these tough economic times, many restaurant operators are actually paying higher fees on a lower volume of transactions.
- One way to resolve these two differing perspectives is to allow merchants to choose whether they wish to honour premium cards. Currently Visa and MasterCard require merchants to accept all cards if they are to accept payment using their networks.
- This section of the Code should also specify that no amendments to credit card merchant agreements or debit card agreements can be made without the express, written authorization of the merchant.
- CRFA is hearing of processors using negative option acceptance to introduce new debit products to merchants. In these scenarios, merchants are instructed to go online or call to decline new debit payment methods – otherwise, these products are automatically added by their processor.

- Some CRFA members have been told they can only opt out of Visa debit face-to-face transactions, but keyed in and “card not present” debit transactions will automatically go through the Visa network.
- Members have also been informed they cannot opt out of MasterCard’s debit unless they stop accepting MasterCard entirely, including its credit card.
- In addition, members have been told that once they process their first Visa debit transaction, their merchant agreement will automatically modify to include new Visa debit provisions.
- CRFA is concerned that members subjected to negative option acceptance of new debit products will be caught in unfair agreements, inconsistent with the Code, after the Code is finalized. It is therefore critical that there be no “grandfathering” of debit card agreements in place prior to code completion.

5. *Merchants will be allowed to provide discounts for different methods of payment (e.g. cash, debit card, credit). Merchants will also be allowed to provide differential discounts among different brands.*

Discounts will be allowed for any payment method. As well, differential discounting will be permitted between payment methods and brands. The advertised price must be available for all payment options. Any discounts must be clearly marked at point-of-sale.

CRFA RESPONSE

- CRFA supports this but again believes it should go further.
- Currently merchants are prohibited from charging customers a fee for accepting payment by credit card and are prohibited from displaying the cost associated with accepting credit cards. Merchants are therefore prohibited from recovering the cost of credit card payments from individual customers except through an increase in menu prices. This means that those who have the ultra premium credit cards receive benefits while all consumers must absorb the cost of those benefits through higher prices.
- It should be noted that current contracts usually allow restaurant operators to provide a discount for cash payments, if menu prices are listed at the normal price. However, because credit card fees are so varied and unpredictable, it is extremely difficult for a restaurant to set a discount rate at an appropriate level.
- As a result, in addition to discounting, merchants should be permitted to reject, or charge a premium for “premium” cards and at minimum, be permitted to “steer” customers by recommending that they pay with a lower cost card.

6. Merchants can decide whether they will accept multiple forms of debit card payment. In such a case, merchants can choose the lowest-cost option on transactions involving co-badged debit cards.

When a consumer uses a co-badged debit card with a merchant who accepts both debit products on the card, the merchant will decide which debit payment option is used for the transaction.

CRFA RESPONSE

- This element of the Code addresses a key industry concern and is critical because it means that payment companies will have to compete on price. CRFA believes restaurant operators should be able to choose the order in which payment networks are offered to their customers without being charged additional fees for exercising this right.
- CRFA is hearing that credit card companies intend to use priority routing so their products are the default option when customers have co-branded cards. This is accomplished by encoding customer cards and programming point-of-sale equipment.
- Alternatively, Visa is programming equipment and cards to prompt customers to select between their debit product and Interac. This is problematic because customers will not know to select the lowest cost option for merchants; they may also be incented to choose the MasterCard or Visa debit option for benefits such as reward programs.
- Because the rollout of new debit products is occurring at the same time new equipment upgrades are introduced to safeguard systems, credit card companies may program priority routing without the merchant's knowledge.
- This element of the Code should specify that priority routing, already programmed into the processing system by credit card companies, must be removed, at no cost to merchants.
- CRFA agrees that merchants must be able to exercise this freedom of choice on a per transaction basis as specified in this section of the Code, which means the technology must include a "switch" mechanism.
- With regard to the amount of time required to implement this proposal, CRFA recommends that roll-out of new debit card products be suspended until technology is available to all merchants, at no extra charge, enabling them to switch the order payment network options are presented.

7. Co-badged debit cards shall be fairly branded

Issuers of co-badged debit cards should clearly indicate which payment options are available on that card and not give preferential branding to one network over another.

CRFA RESPONSE

- CRFA agrees that it is necessary to specify in the Code that co-badged debit cards are fairly branded. One suggestion to ensure against preferential branding is to establish a standardized size, colour and placement of network name/logo on cards.

8. Debit and credit card functions shall not co-reside on the same payment card.

Debit and credit cards have very distinct characteristics, such as providing access to a deposit account or a credit card account. These accounts have specific provisions and fees attached to them. Given the specific features associated with debit and credit cards, and their corresponding accounts, such cards shall be issued as separate payments cards.

CRFA RESPONSE

- CRFA supports this element of the Code.
- In addition, CRFA is concerned that new Visa and MasterCard debit agreements use the same rules for debit that are used for credit without recognizing the fundamental difference between the two methods of payments. For example, processors have told CRFA members that the same funding and charge-back rules will apply to debit even though, debit transactions, like cash, are final and irrevocable. Interac treats debit as cash without charge-backs to merchants or requirements for reserve accounts. This should be a consistent policy for all entrants to the debit card market.

9. Premium credit cards may only be given to consumers who apply for or consent to such cards. In addition, premium cards shall only be given to a well-defined group of cardholders.

Premium cards were created with the intention of appealing to a specific clientele who meet specific spending and income thresholds. This intention shall be fulfilled by the credit card issuers.

CRFA RESPONSE

- This element of the Code partially addresses industry concerns about the use of “negative option” techniques and misinformation to switch cardholders over to new premium cards.
- Issuing banks have been automatically cancelling old cards and issuing new premium cards to some customers. This happened to a number of CRFA Directors, members and staff. Many people reported that when they requested to have their old cards back, the banks refused, saying it was already cancelled and that they were required to use the new cards.

- Disconcertingly, when a number of cardholders inquired about the higher interchange fees, they were assured that merchants would not be charged a higher fee for accepting the new premium cards. Only after their complaints were elevated within the banks did they receive the facts.
- Banks are aggressively advertising that cardholders get additional benefits when using a premium card and that they don't have to pay for them. They should also be required to disclose that there are higher fees for merchants associated with these cards and, consistent with CRFA response to #4 above, that these cards are not accepted by all Visa or MasterCard merchants.
- This section of the Code should also specify that existing premium cardholders that wish to switch to a card with a lower merchant discount rate and higher acceptance rate should be able to do so without charge to the cardholder.

ADDITIONAL CRFA ISSUES

CRFA members have also expressed concern about operational issues associated with the conversion to chip-card technology that don't consider the specific needs of the hospitality industry. The following are three examples:

- In a table service environment patrons, who are accustomed to having their bills brought to them, must go to a central terminal to pay their bill or have their server hover over them as they allocate costs and/or calculate tips. This is irritating to customers, takes up more server time, and impacts overall service levels. It is necessary for restaurants to rent or lease multiple cordless terminals, with higher monthly charges and higher replacement costs due to higher likelihood of loss or theft.
- The size of the paper rolls for the new terminals is ¼ the size of the existing rolls – 2¼' x 61' compared to 3' x 200'. The cost per roll is much higher and it has to be changed more frequently, impacting costs and productivity.
- The type size on the receipts has been reduced by 50%. CRFA has had many complaints from operators that the print size is too small for customers to read, particularly in restaurant or nightclub environments where the lighting is low.

Restaurant merchants have no recourse when these operational issues arise.

Another concern is the looming implementation date for PCI compliance. Most restaurant operators have no idea what this entails, what it will cost, and the consequences of non-compliance. The rules and timelines are being developed by the credit card companies, without input from merchants. Compliance will be assessed and enforced by the credit card companies, and the rules can be changed by the credit card companies at any time.

Because of the dominant market position of Visa and MasterCard, merchants have no options when the processes dictated by the credit card companies and their processors cause disruptions to service and add to their business costs.