



12 April 2019

Jennifer Lyons
Australian Securities and Investments Commission

By Email: ePaymentsCode@asic.gov.au

Dear Jennifer,

ASIC Consultation Paper 310 – Review of the ePayments Code: Scope of the review

National Australia Bank (NAB) welcomes the opportunity to respond to the consultation paper by the Australian Securities and Investments Commission (ASIC) on the scope for the review of the ePayments Code (the Code).

The last comprehensive review of the Code was undertaken in 2010. Accordingly, NAB supports the proposal to assess the Code's adaption to payments innovation over the last decade and to also assess how the Code can be kept effective as a best practice guide in a fast evolving payments landscape.

NAB agrees that the Code review should also be used to provide further clarity in certain areas of the Code to benefit customers, merchants and payment providers.

NAB would welcome further discussions with ASIC on any of the matters raised. NAB also looks forward to participation in ASIC's roundtable stakeholder discussions regarding informal feedback on ASIC's proposed amendments to the Code.

Yours sincerely,

Paul Franklin

General Manager Payments

National Australia Bank

ASIC Proposal B1 - Future Proofing the Code

NAB supports ASIC's proposal to assess the adaption of the Code to emerging and future payments innovation as well as changing customer behaviours (such as the adoption of digital capabilities to send, receive and store value).

The emergence of payment service providers, digital payment services, open banking, and embedded, integrated and invisible payment flows presents a challenge for the Code in terms of applicability and reach. Subscribers to the Code cannot in all cases be assumed to be the primary providers of payment services applicable under the Code.

Payment methods based on physical and legacy electronic instruments hamper the uplift in fraud prevention, monitoring, sanctions screening and general customer experience due to their inability to carry sufficient information regarding parties or the underlying transaction. Shifts to digital payment methods address some of these challenges but effectiveness is limited until additional controls such as digital identity and new messaging standards (for example ISO20022) are implemented.

NAB believes it is important that the Code goes beyond pass code security requirements and addresses consumer protection needs that result from innovation. This should include where consumers voluntarily disclose their access credentials when availing of new and emerging payment methods to share data with third parties, in addition to when they involuntarily disclose them by virtue of being the victim of a scam.

The scope should also contemplate the 'permissions' concept of open banking where no credentials are disclosed in order to share data with third parties.

ASIC Proposal B2 - Complaints handling

NAB supports assessing the clarity and appropriateness of current policy positions in the Code's complaints handling provisions to reduce complexity and improve consistency. A single complaints handling regime aligned to RG165 would assist scalability and better cater for different types of customers and varying levels of volume, sophistication and use of services.

ASIC Proposal B3 - Unauthorised transactions

NAB considers that clarification of liability, timeframes in which to bring a claim and options available for the recovery of funds from unauthorised transactions should be a priority for the review.

Challenges in the current settings include distinguishing between transactions authorised by customers, unauthorised transactions occurring in error and scam fraud variants; lack of a clearly articulated process for customers and subscribers such as exists for mistaken internet payments; and the extent to which institutions can act to recover funds from perpetrators where a fraud or scam has occurred.

NAB notes that the existing definition of 'voluntarily' in terms of pass code disclosure is currently subject to a large degree of interpretation and should be reviewed as part of the Code review.

ASIC Proposal B4 – Data reporting

NAB is supportive of the proposal to review the Code's data reporting requirements, including unauthorised transactions and card not present fraud.

ASIC Proposal B5 - Mistaken internet payments

NAB agrees that it is important to have an effective process in place for customers to seek recovery of mistaken internet payments.

The regime for mistaken internet payments has improved recovery times for a specific category and method of payment. In order to drive further consistency, ASIC should consider including in the regime other payment methods, such as NPP that have the same underlying premise (i.e. performing at an account-to-account level by the payer in a verified session with a financial institution).

If real time payment systems are included in the Code, the current timeframe settings may need to be revisited.

NAB notes that there are factors that could complicate the customer's recovery process of a mistaken internet payment. This could be, for instance, the presence of an intended account in the claim; scam and identity theft activity; attempts to use the service to avoid payment for goods or services; and lack of clarity on actions that need to be taken when funds are not recoverable in the first instance.

Including additional provisions in the Code for subscribers, aimed at reducing the risk of or preventing mistaken payments, could have limited effectiveness and unintended consequences, e.g. the introduction of friction into the payment process.

Services that advise the payee customer name to the payer prior to transfer (e.g. payments to an account proxy such as PayID) should not be included in the mistaken internet payments regime.

ASIC Proposal B6 - Small business access to Code provisions

NAB believes it would require detailed analysis to assess whether the Code should be extended, either in full or in parts, to small businesses.

If the Code were to be extended to small business, it would be important to consider the various small business definitions that, for instance, the ATO or the Banking Code of Practice apply (the latter is currently under review by the Australian Banking Association). For the question of whether to apply the Code in full or only in parts, the differences in benefits that consumers and small businesses get from the Code would need to be taken into consideration. For instance, a consumer is not eligible to use specific business focused services for which a small business might receive additional benefit under a provision of the Code. NAB would welcome discussing this further with ASIC.

ASIC Proposal B7 – Other Aspects of the Code that may need updating

ASIC should consider clarifying further how Code subscribers should interact with customers that are dealing in financial instruments (e.g. binary options) with entities that do not hold an Australian Financial Services License. This would make it easier for Code subscribers to assist customers who are victims of scams related to these transactions.

ASIC should also look at the clarity of the Code and its consistent application for customers, merchants and payment providers.