

3rd April 2019

By email: ePaymentsCode@asic.gov.au

Dear Sir/Madam

Re: Comments on the proposals in Consultation Paper 310

- 1 Thank you for the opportunity to make this submission in response to Consultation Paper 310: *Review of the ePayments Code: Scope of the review (CP 310)*.
- 2 This submission focuses on *Proposal B3 – Unauthorised transactions* and, more specifically, on:
 - a) the Code's current approach to unauthorised transactions;
 - b) the way in which banks use the Code's approach to unauthorised transactions to discourage customers from engaging with FinTechs; and
 - c) proposed amendments to the Code to address these issues.

Raiz's background and quantitative data

- 3 Some background on Raiz and its business is needed to better understand our submission, and the reasons behind it.
- 4 Raiz Invest Australia Limited (**Raiz**) is a FinTech that aims to make saving and investing easier and more accessible for Australian consumers via a mobile investment platform.¹
- 5 Raiz is renowned for its accessible, inexpensive service helping Australians to automatically save and, simultaneously, improve their financial literacy with hands-on experience and daily 'lessons'.
- 6 Amongst other things, Raiz provides:
 - a) "round-ups" – where we round up a consumer's transactions to the nearest dollar and invest the change into a diversified portfolio (**Round-Ups**);
 - b) identification of saving opportunities – consumers can monitor their spending through our app's personal financial management feature, helping them to better manage their expenditure and identify savings opportunities (**MyFinance**).
- 7 In order to provide Round-Ups and MyFinance, Raiz needs information or 'read-only' access to customers' bank accounts. This is currently achieved through 'screen scraping' and is a process that is done by Yodlee as our service provider. (We note that once the initiatives recommended in the Review of Open Banking Report are implemented, Raiz will be able to collect this information also through APIs. However, at present, this is not a commercially viable option given the delay in implementing Open Banking, the requirement to negotiate lengthy bilateral agreements with the banks, and the fact that such open APIs will still need to be actually built by many banks).

¹ Instreet Investment Limited (ABN 44 128 813 016, AFSL 434776) (**Instreet**) is the responsible entity of the Raiz Invest Australia Fund, a registered managed investment scheme (ARSN 607 533 022). Instreet has appointed Raiz to manage the investments of the Fund and as an authorised representative of its Australian financial services licence.



- 8 Yodlee is a third party account aggregator, and we note that some Australian banks use Yodlee and have approved / authorised Yodlee as a third party account aggregator (including for the use of screen scraping).
- 9 Raiz currently has approximately 295,000 customers (over 1% of the Australian population). Of these:
- a) 90% provided Raiz with their bank log-on credentials (**Pass Code**); and
 - b) 80% are using both Round-Ups and My Finance services regularly.
- 10 However, Raiz's data also shows that 50% of all potential customers of Raiz do not complete the sign-up process. This is because these customers are concerned that if they provide their Pass Code to Raiz (or any other FinTech), then they will lose their protection against loss incurred from unauthorised transactions. That is, these customers are concerned that the terms and conditions they have with their incumbent bank will be void because they voluntarily shared their Pass Code with a third party, in breach of the ePayments Code.
- 11 In our view, if these potential customers had certainty that they would **not** lose their protections against loss by providing their Pass Code, they would have completed the sign-up process with Raiz and Raiz would now have over 450,000 customers (or over 2% of the Australian population), significantly increasing the financial literacy benefits, and inexpensive financial services provided by Raiz to more Australians.
- 12 These numbers indicate the significant impact on our business that is created by the way in which some of the banks are currently using the language in the ePayments Code.

ePayments Code's (the Code) current policy and approach

- 13 As you are aware, unauthorised transactions and the sharing of Pass Codes is dealt with under the Code by clauses 10 to 15. These clauses provide, in summary:
- a) A customer is not liable for loss arising from an unauthorised transaction, including as a result of the fraud or negligence of a bank's employee or agent, or a third party involved in networking arrangement (such as Yodlee) (we also note, as above, that consumers actually *authorise* Raiz (and Yodlee) to screen scrape, and no debit transaction occurs using the customer's Pass Code – this is done through direct debit authority only using the bulk electronic clearing system (BECS));
 - b) A customer is not liable for loss arising from an unauthorised transaction where it is clear the customer has not contributed to the loss;
 - c) A customer is not liable for the use of a Pass Code that is provided so as to use a service that is "implicitly" promoted, endorsed or authorised by the bank (we note that the banks 'implicitly' endorse or authorise screen scraping (provided by Yodlee and other third party providers) as the banks are notified of the IP address of the screenscraper and do not block their access, and the banks are also themselves users of screen scraping services (eg. for banking transactional data, responsible lending compliance, credit ratings))
 - d) Whilst the banks can have guidelines (ie terms and conditions) with their customers about the security of Pass Codes, these T&Cs must not be inconsistent with the Code, and liability for losses resulting from unauthorised transactions are determined in accordance with the Code (not the T&Cs).
- 14 In our view, the ePayments Code (particularly clauses 10 to 15) supports the way in which Raiz and Yodlee use customers Pass Codes for screen scraping only, and customers providing such Pass Codes to Raiz (as part of their sign on process) do not breach either the Code, nor the T&Cs that customers have with their incumbent banks. (Please let us know if it would be helpful to provide you with our detailed analysis in this regard).



- 15 Notwithstanding that the provision of a Pass Code by customers to Raiz (and Yodlee) is not a breach of the Code, a number of Australian banks engage in tactics that claim it is, and that are inconsistent with the Code.

The practical ramifications of this for FinTechs and their potential customers

- 16 A number of Australian banks have claimed that if a customer provides its Pass Code to a FinTech (such as Raiz) for screen scraping, then:
- a) That customer breaches the Pass Code requirements of the Code; and
 - b) as a result, is liable in full for any actual losses incurred from unauthorised transactions (ie the customer loses the protection from the bank because the customer's T&Cs with the bank are voided and the customer is liable for the loss under the Code, whether the unauthorised transactions are caused by Raiz, the bank or some third party).
- 17 In our view, such claims are false and incorrect – for the reasons summarised above, and because, as mentioned already, screen scraping is a service that is clearly implicitly authorised by the banks themselves (see clause 12.9) (it is only Yodlee which stores and uses the customer's Pass Code. Raiz deletes it after the customer's sign on).
- 18 We have communicated this view to the banks, to the market and to our customers and potential customers. However, a number of the large Australian banks continue to actively engage in scare tactics with their customers to protect their market share and discourage their customers from using FinTechs.
- 19 These scare tactics have been reported on by the Sydney Morning Herald and Australian Financial Review. Copies of articles are enclosed with this submission.
- 20 These scare tactics have resulted in customers being reluctant to provide their Pass Codes to FinTechs and being more reluctant to engage with FinTechs. As a result, banks have maintained an unfair competitive advantage and a much greater market share of Australian consumers, even in circumstances where the bank either has no competing product, or the bank's product is more expensive or inferior to that of a FinTech competitor.
- 21 The effects of these scare tactics are further compounded when banks:
- a) treat unauthorised persons using a customer's BSB and account numbers on Raiz's platform as fraud under the Code, rather than as an unauthorised transaction; and
 - b) impute liability for any loss incurred to the customer.

Proposed amendments to the Code

- 22 We suggest that the Code should embed concepts of competition, fairness and innovation in the banking and financial sectors within its clauses. Competition, fairness and innovation benefit all consumers and the broader economy.²
- 23 In our view, the existence, and increased levels of competition provided by the presence of FinTechs enhances consumer outcomes because it provides:
- a) reduced fees, maintenance and transaction costs;
 - b) more innovative, straight-forward and convenient products for consumers; and
 - c) cheaper banking services.

² See Treasury, Review of Open Banking: Giving customers choice, convenience and confidence (final report), December 2017, pp. 2, 8 and 14.



- 24 These outcomes are clearly in the interests of all consumers.
- 25 Accordingly, we propose that the Code be amended to recognise that if a customer (or potential customer) provides its Pass Code to a FinTech, then that customer:
- a) is not in breach of the Pass Code requirements in the Code;
 - b) is not in breach of its T&Cs with its incumbent bank; and
 - c) remains protected by that incumbent bank against unauthorised transactions, including those that conducted using the customer's Pass Code fraudulently or negligently.

Conclusion

Amending the Code in this way will contribute to significantly supporting the FinTech industry, driving stronger competition in the banking and finance sector, and improving the outcomes, efficiency, innovation and fees / costs of the average Australian consumer.

Yours sincerely,

George Lucas
CEO
Raiz Invest Australia Limited