

## Guideline consultation

---

The *Retail Payment Activities Act* (RPAA) and the *Retail Payment Activities Regulations* (RPAR) require payment service providers to meet specific risk management and notification requirements. The RPAA also provides the Bank of Canada with the authority to issue guidelines that set out the manner in which the Bank expects the Act to be applied.

The Bank's guidelines outline the standards and practices that payment service providers are expected to incorporate into their business operations to support their compliance with the RPAA and RPAR. The Bank may conduct consultations on its guidelines to gather input and feedback on these supervisory expectations.

The Bank is seeking your feedback to inform the final version of this guideline. We are specifically interested in obtaining feedback on aspects of the draft guideline that could be:

- clarified
- challenging to implement

We also welcome any additional comments related to the standards and practices outlined in the draft guideline. Please note, the Bank is *not* seeking feedback on regulatory concepts in the RPAA or RPAR, as both the legislation and the regulations have been finalized by the Government of Canada and the Department of Finance Canada.

The Bank expects to publish a final version of this guideline in the second half of 2024.

## Submitting your comments

**Please submit your comments to [RPSconsultationsSPD@bank-banque-canada.ca](mailto:RPSconsultationsSPD@bank-banque-canada.ca) by May 21, 2024. In order for the Bank to have sufficient time to review and analyze the feedback and finalize the guideline, any comments submitted after this date may not be considered.** An anonymized summary of comments will accompany the final published guidelines. During the consultation period, the Bank may engage directly with respondents to obtain more information.

**To provide comments on the other draft guidelines currently open for consultation, please visit the RPS Guideline Consultation page: <https://www.bankofcanada.ca/rps-consultation/>.**

*The Bank is subject to the Access to Information Act (AIA). The AIA provides that information that is shown to be confidential or could be shown to prejudice the competitive position of a third party must be protected. Should the Bank receive a request for information supplied by your organization, the Bank will maintain the confidentiality of the information to the extent possible, by law.*

# Safeguarding end-user funds

---

Type of publication: Draft supervisory guideline for consultation

## Contents

|  |    |
|--|----|
| Introduction   | 3  |
| 1. Application of the requirements for safeguarding end-user funds         | 5  |
| Place of business of payment service provider                              | 5  |
| Funds held for a short period  | 5  |
| Specific circumstances   | 5  |
| Liability for violations   | 6  |
| 2. Means of safeguarding end-user funds                                    | 7  |
| Safeguarding account   | 7  |
| Account provider   | 8  |
| No set-off or compensation   | 9  |
| Direct and indirect account access   | 9  |
| Funds held in trust in a trust account                                     | 9  |
| Holding end-user funds in trust  | 10 |
| Trust account  | 11 |
| Insurance or guarantee   | 11 |
| Conditions   | 11 |
| Insurance or guarantee provider  | 12 |
| Value of the insurance or guarantee  | 12 |
| Monitoring the coverage amount of the insurance or guarantee               | 13 |
| Cancellation or termination of the insurance or guarantee                  | 13 |
| 3. Safeguarding-of-funds framework   | 14 |
| Ledger of end-user funds   | 14 |
| Updating end-user contact information                                      | 15 |
| Agents or mandataries  | 15 |
| Liquidity arrangements   | 15 |
| Secure and liquid assets   | 16 |
| Procedures for returning end-user funds in the event of a PSP's insolvency | 17 |

|  |    |
|--|----|
| Legal and operational risk analysis  | 18 |
| The senior officer, board of directors, and framework approval                     | 19 |
| Review of the safeguarding-of-funds framework                                      | 19 |
| 4. Evaluation of insolvency protection   | 21 |
| 5. Independent review  | 22 |
| 6. Exception under subsection 20(2) of the<br><i>Retail Payment Activities Act</i> | 23 |
| Appendix A—Canadian financial institutions   | 24 |
| Appendix B—Glossary  | 25 |

## Introduction

This supervisory guideline is intended to help payment service providers (PSPs) that are subject to the [Retail Payment Activities Act](#) (RPAA) meet their obligations related to safeguarding end-user funds.

Under subsection 20(1) of the RPAA, a PSP that performs the payment function of “the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity” must safeguard those end-user funds. A PSP that does not hold funds is not subject to the requirements for safeguarding end-user funds.

A PSP holds funds on behalf of an end user when it keeps funds at rest and available for future withdrawal or transfer by a payer or payee (see also the supervisory policy [Criteria for registering payment service providers](#)).

- Holding funds begins when an end user places funds into a PSP’s account or when a PSP receives funds transferred for one of its end users from another PSP.
- Holding funds ends when a PSP receives an instruction to immediately transfer or withdraw the funds or, for pre-authorized transfers, when the set transfer date arrives.
- If a PSP receives end-user funds and an instruction to immediately transfer those funds concurrently, the PSP is not considered to be holding end-user funds. A PSP is only holding funds when the funds are at rest and the PSP is awaiting further instruction from the end user to immediately transfer or withdraw the funds. For pre-authorized transfers, the PSP is holding funds until the transfer date arrives.
- A PSP is not considered to be holding funds when it pre-funds a transaction or reserves funds to mitigate credit risk. Consequently, the requirements for safeguarding end-user funds do not apply to funds associated with these specific circumstances.

Safeguarding end-user funds is intended to achieve two objectives, set out in subsection 15(1) of the [Retail Payment Activities Regulations](#) (RPAR):

- to ensure that end users have reliable access without delay to their funds held by a PSP; and
- to protect end-user funds against financial loss in the event of a PSP’s insolvency.

To achieve these objectives, PSPs must comply with the requirements for safeguarding end-user funds established in section 20 of the RPAA and sections 13 to 17 of the RPAR and elaborated on in this guideline. A PSP must safeguard funds by holding them in trust in a trust account or using insurance or a guarantee. These means of safeguarding are set out in subsection 20(1) of the RPAA.

As part of this requirement, a PSP must segregate end-user funds from all other funds it holds—including its own funds—by placing the funds in a safeguarding account. The Bank expects a PSP to place end-user funds in a safeguarding account as soon as practical on receipt and no later than the end of the business day after the day of receipt. However, other safeguarding obligations (i.e., recording the funds on the PSP’s ledger, treating the funds as part of its framework) apply when the PSP begins holding funds.

A PSP must also establish, implement and maintain a framework that helps it meet the objectives of safeguarding end-user funds. Specifically, a PSP must:

- keep the name and contact information for each end user and a ledger of end-user funds held;
- set out its approach for meeting liquidity demands generated by end users’ requests for withdrawals and transfers;
- identify and mitigate the legal and operational risks that could hinder its ability to meet the safeguarding objectives;

Draft supervisory guideline for consultation

- document how end users would be reimbursed in the event of the PSP's insolvency;
- identify a senior officer who is responsible for overseeing the PSP's practices for safeguarding end-user funds and for ensuring the PSP's compliance with the end-user fund safeguarding requirements; and
- review its framework annually and after changes that could have a material impact on the way it safeguards end-user funds.

Finally, a PSP must:

- take measures to identify and investigate any instances where it is not safeguarding the correct amount of end-user funds; and
- conduct an independent review of its compliance with the requirements for safeguarding end-user funds at least every three years.

A PSP must be able to demonstrate, and retain documentation in support of, its compliance.

## 1. Application of the requirements for safeguarding end-user funds

- 1.1 The requirements for safeguarding end-user funds apply to any PSP that performs payment function (b) as defined in section 2 of the RPAA: that is, “the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity.” See also the supervisory policy [Criteria for registering payment service providers](#).
- 1.2 A PSP holds funds on behalf of an end user when it keeps funds at rest and available for future withdrawal or transfer by a payer or payee.
  - 1.2.1 Holding funds begins when an end user places funds into a PSP’s account or when a PSP receives funds transferred from another PSP for one of its end users.
  - 1.2.2 Holding funds ends when a PSP receives an instruction to immediately transfer or withdraw the funds or, for pre-authorized transfers, when the set transfer date arrives.

### Place of business of payment service provider

- 1.3 In accordance with section 4, the RPAA applies to any retail payment activity performed by a PSP that has a place of business in Canada. For a PSP that has a place of business in Canada, end-user funds that it holds are subject to the requirements for safeguarding end-user funds. This includes funds held on behalf of an end user that is located outside of Canada.
- 1.4 In accordance with section 5, the RPAA also applies to any retail payment activity performed by a PSP that does not have a place of business in Canada but performs retail payment activities for end users in Canada and directs retail payment activities at individuals or entities that are in Canada. For a PSP that does not have a place of business in Canada, funds it holds for end users in Canada are subject to the requirements for safeguarding end-user funds.

### Funds held for a short period

- 1.5 There could be instances when a PSP only holds funds for a short period before they are withdrawn or transferred by the end user (e.g., intraday). The Bank acknowledges that it may not be feasible for a PSP to place funds in a safeguarding account immediately on receipt. The Bank therefore expects a PSP to segregate all end-user funds it holds as soon as practical on receipt and no later than the end of the business day following the day of receipt. However, funds must be recorded by the PSP as end-user funds held on its ledger and treated as part of its framework. See paragraphs 2.6 to 2.10 of this guideline for further details.
- 1.6 If a PSP receives end-user funds and an instruction to immediately transfer those funds concurrently, the PSP is not considered to be holding end-user funds. A PSP is only holding funds when the funds are at rest and the PSP is awaiting further instruction from the end user to immediately transfer or withdraw the funds. For pre-authorized transfers, the PSP is holding funds until the transfer date arrives.

### Specific circumstances

- 1.7 A PSP does not need to safeguard funds for transactions that it pre-funds. A PSP is considered to have pre-funded a transaction when the PSP makes funds available to the payee of a transaction using the PSP’s own funds before receiving funds from the payer of that transaction.
- 1.8 In some instances, a PSP could embed credit-risk mitigation in its agreement with its end users. For example, an agreement between a PSP and an end user could permit the PSP to withhold funds to account for

Draft supervisory guideline for consultation

potential liabilities (e.g., for unauthorized payments) the end user has to the PSP. The Bank does not consider funds that have been reserved for mitigating credit risk to meet the interpretation of holding funds described in paragraph 1.2 of this guideline because these funds are not available for the end user to withdraw or transfer to another individual or entity. A PSP therefore does not need to safeguard funds reserved for mitigating credit risk.

- 1.9 In some instances, a PSP could provide a financial institution with a service where end-user funds are ultimately held as deposits at that financial institution and the end user is named as the depositor for those funds. If the PSP holds the end-user funds before they are transferred to the financial institution as a deposit, the PSP would be subject to the requirements for safeguarding end-user funds until they are transferred to the financial institution. If, however, the funds are transferred directly to the financial institution and the end user immediately becomes a depositor, the PSP would not be subject to the requirements for safeguarding those funds.

## Liability for violations

- 1.10 Section 87 of the RPAA provides that a PSP is responsible for any violation committed by any of its employees, third-party service providers, or agents and mandataries acting in the scope of their employment, contract or authority as agent or mandatary, whether or not the employee, third-party service provider or agent or mandatary that actually committed the violation is identified. A PSP must ensure that it complies with the requirements for safeguarding end-user funds when these parties carry out their activities, processes or operations.

## 2. Means of safeguarding end-user funds

- 2.1 Subsection 20(1) of the RPAA sets out the different ways a PSP can safeguard end-user funds:
- hold the end-user funds in trust in a trust account that is not used for any other purpose; or
  - hold the end-user funds in an account that is not used for any other purpose and hold insurance or a guarantee in respect of the funds that is in an amount equal to or greater than the amount held in the account.
- 2.2 A PSP may choose to use a combination of means to safeguard end-user funds. For example, a PSP could safeguard a portion of its end-user funds by holding them in trust in a trust account and protect the remainder of the funds using insurance or a guarantee.
- A PSP may choose to safeguard end-user funds with multiple account providers or insurance or guarantee providers.
- 2.3 Paragraph 20(1)(b) of the RPAA provides the authority for regulations to prescribe alternative approaches to safeguard end-user funds; however, the RPAA does not currently include any alternatives.

### Safeguarding account

- 2.4 Regardless of which means a PSP uses to safeguard end-user funds, the PSP must segregate the end-user funds from all its other funds in an account not used for any other purpose. The Bank refers to this account as a safeguarding account.
- 2.5 This requirement means that the PSP must:
- segregate end-user funds from any other funds, including those that the PSP handles for clients as part of business functions that are not related to a retail payment activity. For example, if a PSP handles client funds related to services such as securities trading or foreign exchange that are not in the scope of the RPAA, those client funds must be segregated from end-user funds; and
  - not use end-user funds for any other purpose, including to make corporate payments to fund the PSP's operations (e.g., salaries, operating expenses or legal expenses) or hold end-user funds in an account from which it pays these expenses.
- 2.6 In some instances, it may not be feasible for a PSP to place end-user funds in a safeguarding account immediately on receipt. For example, the payment systems used by a PSP, or the financial institution that the PSP relies on, may not operate 24 hours a day, which could delay the movement of funds from one account to another. For cross-border payments, multiple payment systems would be involved, and the differences in time zones may affect how long it takes to transfer funds into an account.
- 2.7 The Bank expects a PSP to segregate end-user funds from all other funds, including its own funds, by placing them in a safeguarding account as soon as practical on receipt and no later than the end of the business day following the day of receipt.
- 2.8 The Bank expects the PSP to have in place systems, policies, processes, procedures, controls or any other means necessary to keep track of three amounts of end-user funds:
- end-user funds held—the total amount of funds that a PSP holds on behalf of end users (i.e., the ledger balance)
  - end-user funds to be safeguarded—the total amount of end-user funds that must be placed in a safeguarding account (i.e., at a minimum, the amount of end-user funds held by the PSP by the end of the business day following the day of receipt)
  - end-user funds safeguarded—the total amount of end-user funds placed in a safeguarding account



Draft supervisory guideline for consultation

These amounts should be recorded as part of the PSP's ledger of end-user funds described in section 3 of this guideline.

2.9 The Bank expects a PSP to have in place systems, policies, processes, procedures, controls or any other means necessary to:

- reconcile its end-user funds to be safeguarded against the end-user funds safeguarded; and
- identify any errors or shortfalls.

As a best practice, a PSP should reconcile its accounts daily.

2.10 In some instances, the end user could withdraw or transfer its funds before the PSP can place them in a safeguarding account by the end of the business day following the day of receipt. These funds do not need to be safeguarded in trust in a trust account or with insurance or a guarantee (see section 3 of this guideline). However, the PSP must still record the funds as end-user funds held on its ledger and consider them within the scope of any requirements for safeguarding end-user funds related to funds held (i.e., by considering the funds as part of its safeguarding-of-funds framework objectives, evaluation of insolvency protection and independent review).

2.11 A PSP must be able to demonstrate to the Bank that its safeguarding account is separate from the accounts it uses to hold all other funds by indicating the following:

- the safeguarding account has an account number distinct from the PSP's other accounts; and
- the PSP has established and implemented systems, policies, procedures, processes, controls or any other means necessary to properly segregate end-user funds into a safeguarding account.

2.12 A PSP must continue to safeguard end-user funds in a safeguarding account until it receives an instruction from the end user for immediate transfer or withdrawal or, for future-dated transfers, the transfer date arrives, as described in paragraph 1.2.2 of this guideline.

### *Account provider*

2.13 A safeguarding account must be provided by an entity described in section 13 of the RPAR; in other words, by an entity that is referred to in one of paragraphs 9(a) to (d) or (f) to (h) of the Act (i.e., a Canadian financial institution, defined in Appendix A of this guideline) or by a foreign financial institution that is regulated by a regulatory regime that imposes standards in respect of capital, liquidity, governance, supervision and risk management that are comparable to those that apply to those entities.

2.14 A foreign financial institution providing a safeguarding account must be prudentially regulated by a regulatory regime that imposes standards that are comparable to those that apply to entities regulated by the Office of the Superintendent of Financial Institutions or to the prudential provincial regulators identified in Appendix A.

2.15 The Bank expects a PSP to analyze, using publicly available information, whether the regulatory regime the foreign financial institution is subject to imposes prudential standards that are comparable to those that apply to entities regulated in Canada.

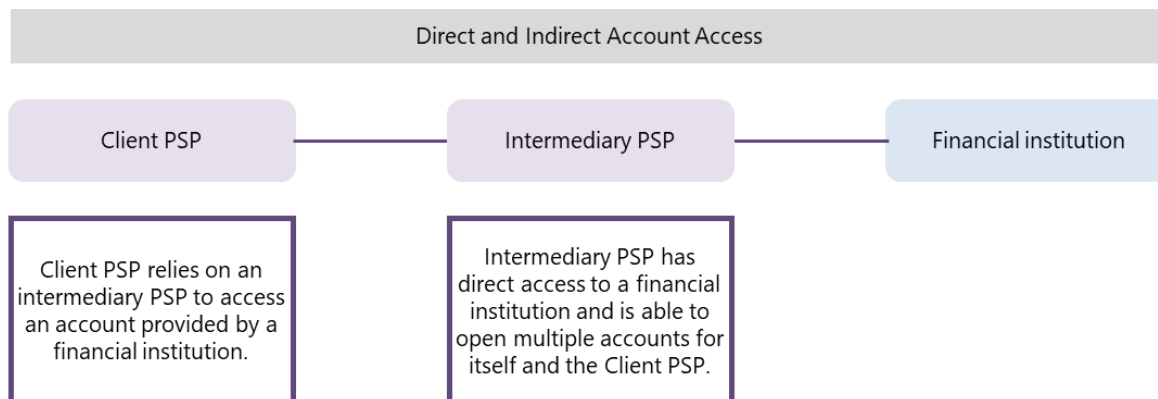
- A PSP's analysis could consider, for example, details of how the regulatory regime the foreign financial institution is subject to compares with the principles and standards that are set by the Basel Committee on Banking Supervision.

### *No set-off or compensation*

2.16 As set out in subsection 20(3) of the RPAA, no right of set-off or compensation may be asserted by the account provider “in respect of the funds held in that account.” The account provider must not have interest in, recourse to or right against funds in the safeguarding account for any sum owed to it or any other third party. The PSP should receive acknowledgement of this in writing from the account provider.

### *Direct and indirect account access*

2.17 When a PSP does not have a direct relationship with an account provider, the PSP could rely on another PSP to act as an intermediary to provide indirect access to an account.



2.18 The requirements for safeguarding end-user funds apply to any PSP that holds funds on behalf of an end user. When a PSP is in a direct and indirect account access arrangement, the PSP must identify who its end users are based the Bank’s [Criteria for registering payment service providers](#) to determine which funds are end-user funds.

2.19 A client PSP’s end-user funds must be segregated from all its other funds as well as the intermediary PSP’s end-user funds in a safeguarding account.

2.19.1 The safeguarding account used to hold the client PSP’s end-user funds must have an account number that is distinct from that of the other accounts that the client PSP has as well as from that of the intermediary PSP’s accounts.

2.19.2 Similarly, the safeguarding account used to hold the intermediary PSP’s end-user funds must also have an account number that is distinct from the other accounts that the intermediary PSP has as well as from the client PSP’s accounts.

2.19.3 If the intermediary PSP has several client PSPs, the end-user funds for each client PSP must have a distinct safeguarding account with its own account number.

2.19.4 The client PSP needs to ensure that systems, policies, procedures, processes, controls or any other means necessary are in place for proper segregation of its end-user funds as soon as practical on receipt and no later than the end of the business day following the day of receipt. This includes those that are established and implemented by the intermediary PSP.

### *Funds held in trust in a trust account*

2.20 Section 20(1)(a) of the RPAA stipulates that a PSP can safeguard end-user funds by holding the funds in trust in a trust account that is not used for any other purpose.

2.21 A PSP that safeguards end-user funds in trust in a trust account must comply with the relevant end-user fund safeguarding requirements, specifically those related to:

- safeguarding accounts (see paragraphs 2.4 to 2.19 of this guideline);
- holding end-user funds in trust (see paragraphs 2.23 to 2.31 of this guideline);
- safeguarding-of-funds framework (see section 3 of this guideline);
- evaluating the sufficiency of protection of end-user funds (see section 4 of this guideline); and
- independent reviews (see section 5 of this guideline).

2.22 Holding the funds in trust in a trust account not used for any other purpose is intended to achieve the two safeguarding objectives:

- to ensure that end users have reliable access without delay to their funds held by a PSP; and
- to protect end-user funds against financial loss in the event of a PSP's insolvency.

### *Holding end-user funds in trust*

2.23 To hold end-user funds in trust, a PSP must establish a trust arrangement with its end users that forms a valid express trust established under Canadian law.

2.24 To form a valid express trust, the trust arrangement between the PSP and its end users must satisfy the three certainties of trust:

- Certainty of intention—the person (the PSP) transferring the trust property (the end-user funds) does so with the intention that the property be in trust for a third party (its end users);
- Certainty of subject matter—the property that is subject to the trust (the end users' funds) is known and the amount of such property that each end user is entitled to is also known; and
- Certainty of objects—it is clear who the beneficiaries of the trust arrangement are (the PSP's end users).

2.25 The Bank expects a PSP to conduct the necessary due diligence to assess the legal validity of the trust arrangement and identify the specific provisions that satisfy the three certainties of trust.

2.26 In Quebec, the PSP must ensure that the trust arrangement:

- qualifies as a "trust," as defined in the *Civil Code of Québec*; or
- clearly establishes that the PSP holds and administers the end-user funds as administrator of the property of the end users.

2.27 For a PSP with more complex arrangements for holding and safeguarding end-user funds, the Bank expects the PSP to seek a formal legal opinion to assess the validity of the trust arrangement and how the arrangement satisfies the three certainties of trust.

- Examples of complex cases include but are not limited to:
  - a PSP without a place of business in Canada that holds funds on behalf of end users in Canada;
  - a PSP with a place of business in Canada that holds funds on behalf of end users in multiple countries; and
  - a PSP that safeguards end-user funds in multiple accounts across multiple countries.

2.28 As part of its due diligence, the PSP is expected to consider:

- the involvement of foreign courts, regulators, or financial institutions in:
  - any potential insolvency proceeding, and
  - the process for returning funds to end users; and
- any potential complications with foreign jurisdictions' recognition of the trust arrangement between the PSP and its end users.

### *Trust account*

2.29 A trust account is any safeguarding account granted by an account provider described in paragraph 2.13 of this guideline where the use of that account does not compromise the trust arrangement established between the PSP and its end users.

2.30 A PSP must inform its account provider that it is holding end-user funds in trust.

2.31 The legal agreement between the PSP and its account provider must clearly identify that the funds in the account are for the benefit of, or in trust for, the PSP's end users.

### Insurance or guarantee

2.32 As noted in paragraph 2.1 of this guideline, a PSP can safeguard end-user funds with insurance or a guarantee in respect of end-user funds held in an account not used for any other purpose.

2.33 A PSP that uses insurance or a guarantee must comply with the relevant requirements for safeguarding end-user funds, specifically those related to:

- safeguarding accounts (see paragraphs 2.4 to 2.19 of this guideline);
- insurance and guarantees (see paragraphs 2.35 to 2.50 of this guideline);
- safeguarding-of-funds framework (see section 3 of this guideline);
- evaluation of the sufficiency of protection of end-user funds (see section 4 of this guideline); and
- independent reviews (see section 5 of this guideline).

2.34 Using insurance or a guarantee and holding funds in an account not used for any other purpose are intended to achieve the two safeguarding objectives:

- to ensure that end users have reliable access without delay to their funds held by a PSP; and
- to protect end-user funds against financial loss in the event of a PSP's insolvency.

### *Conditions*

2.35 The insurance or guarantee must be a legal agreement between the PSP and the provider of the insurance or guarantee. The Bank expects the legal agreement to include terms that demonstrate that the insurance or the guarantee satisfies the conditions set out in paragraphs 14(2)(a) to (c) of the RPAR. These conditions are as follows:

- the proceeds from the insurance or guarantee will not form part of the payment service provider's estate;

Draft supervisory guideline for consultation

- the proceeds from the insurance or guarantee will be payable for the benefit of end users as soon as feasible in the event of the PSP's insolvency, as defined in subsection 14(3) of the RPAR and paragraph 2.36 of this guideline;
- the insurance or guarantee will survive the payment service provider's insolvency as well as any compromise or arrangement with the payment service provider's creditors and any extinguishment of the payment service provider's obligations to end users, including those resulting from restructuring.

2.36 Subsection 14(3) of the RPAR defines the event of a PSP's insolvency as:

- the bringing by the payment service provider of an insolvency proceeding in respect of itself;
- the consent by the payment service provider to the bringing of an insolvency proceeding in respect of it;
- the passage of 30 days after the day on which an insolvency proceeding is brought in respect of the payment service provider by another individual or entity, unless that insolvency proceeding is discontinued or dismissed in that time.

2.37 Subsection 14(4) of the RPAR defines an insolvency proceeding as any proceeding, action, application, case or legal process relating to bankruptcy, insolvency, liquidation, dissolution or winding-up that is commenced in respect of a payment service provider, under the law of any jurisdiction.

### *Insurance or guarantee provider*

2.38 Subsection 14(1) of the RPAR stipulates that a PSP must obtain an insurance or guarantee from an entity that:

- is referred to in one of paragraphs 9(a) to (h) of the Act (i.e., a Canadian financial institution, defined in Appendix A of this guideline) or is a foreign financial institution that is regulated by a regulatory regime that imposes standards in respect of capital, liquidity, governance, supervision and risk management comparable to those that apply to those entities; and
- is not affiliated with the payment service provider within the meaning of section 3 of the Act.

2.39 A foreign financial institution must be prudentially regulated by a regulatory regime that imposes standards that are comparable to those that apply to entities regulated by the Office of the Superintendent of Financial Institutions or to the prudential provincial regulators identified in Appendix A of this guideline.

2.40 The Bank expects a PSP to analyze, using publicly available information, whether the regulatory regime the foreign financial institution is subject to imposes standards that are comparable to those that apply to those entities regulated in Canada.

- A PSP's analysis could consider, for example, details of how the regulatory regime the foreign financial institution is subject to compares with the principles and standards that are set by the Basel Committee on Banking Supervision or the International Association of Insurance Supervisors.

### *Value of the insurance or guarantee*

2.41 Paragraph 20(1)(c) of the RPAA stipulates that the value of the insurance or guarantee—in other words, the amount agreed to be paid out in the insurance or guarantee contract after an event triggers such a payout—must be “an amount equal to or greater than the amount held in the account.”

2.42 When a PSP uses more than one means of safeguarding its end-user funds, the value of the insurance policy or guarantee must be equal to or greater than the amount of end-user funds to be safeguarded using the insurance or guarantee.

2.43 The Bank recognizes that the amount of end-user funds to be safeguarded by the PSP's insurance or guarantee will fluctuate daily. When determining the value of the insurance or guarantee, a PSP is expected to account for this volatility so the value of the insurance or guarantee is always equal to or greater than the end-user funds to be safeguarded. The Bank expects a PSP to develop a methodology for determining the value of the insurance or guarantee.

2.44 A PSP could consider the following when developing this methodology:

- daily end-user funds safeguarded from previous year(s);
- any trends or peaks in the amount of end-user funds safeguarded at certain points during a year or in correlation to specific events in the market the PSP operates in; and
- growth projections for the PSP's retail payment activities.

2.45 A PSP is expected to document the methodology used for determining the amount covered by an insurance or guarantee and review this methodology as part of its review discussed in paragraphs 3.33 to 3.37 of this guideline. The reason for this review is to ensure that the amount of insurance coverage remains appropriate based on the PSP's:

- current level of retail payment activities; and
- trajectory for growth and changes in the retail payments ecosystem that could affect the PSP's retail payment activities.

2.46 When a PSP safeguards funds using insurance or a guarantee and holds end-user funds in the form of secure and liquid assets, the value of the insurance or guarantee must be equal to or greater than the book value of the funds that the PSP holds for the end user.

### *Monitoring the coverage amount of the insurance or guarantee*

2.47 A PSP must have in place systems, policies, procedures, processes, controls or any other means necessary to detect when the amount covered by an insurance or guarantee falls below the amount of end-user funds that are designated to be safeguarded through that insurance or guarantee.

2.48 If a PSP becomes aware that its insurance or guarantee covers less than the amount of end-user funds that are designated to be safeguarded by that insurance or guarantee, the PSP must act in a timely manner to rectify this shortfall. The Bank expects the PSP to:

- increase the amount covered by the insurance or guarantee;
- obtain another insurance or guarantee to safeguard the unprotected amount; or
- safeguard the unprotected amount of end-user funds in trust in a trust account.

2.49 As a best practice, a PSP is encouraged to identify in advance what actions it would take if the coverage amount of its insurance or guarantee became insufficient. For example, a PSP could consider whether and how to achieve the following, on short notice, to remain in compliance with the RPAA:

- increase the amount covered by the existing insurance or guarantee through pre-established agreements with the insurance or guarantee provider;
- obtain insurance or a guarantee from a different provider;
- establish trust arrangements between the PSP and its end users and obtain a trust account in which to place a portion of its end-user funds.

### *Cancellation or termination of the insurance or guarantee*

2.50 Paragraph 14(2)(d) of the RPAR stipulates that a PSP must notify the Bank 30 days before any insurance or guarantee is cancelled or terminated. PSPs should notify the Bank through PSP Connect.

### 3. Safeguarding-of-funds framework

- 3.1 As set out in subsection 15(1) of the RPAR, “a payment service provider that holds end-user funds must establish, implement and maintain a written safeguarding-of-funds framework” for the purpose of ensuring that:
- end users have reliable access without delay to the end-user funds that are being held by the payment service provider; and
  - end-user funds, or proceeds of the insurance or guarantee referred to in paragraph 20(1)(c) of the Act, are paid to end users as soon as feasible in the event of the PSP’s insolvency.
- 3.2 The safeguarding-of-funds framework must comprehensively explain the systems, policies, procedures, processes, controls or any other means the PSP has in place to meet the objectives above. The framework must include, at a minimum, all the elements set out in subsections 15(2) to (4) of the RPAR and described in paragraphs 3.5 to 3.32 of this guideline.
- 3.3 A PSP’s safeguarding-of-funds framework should be suitable for those who will use it (e.g., the PSP’s employees or other human resources). In other words, it should convey all necessary information and be readily understood in an accessible format.
- 3.4 A PSP’s safeguarding-of-funds framework must also support the PSP’s broader compliance with the record-keeping requirements set out in section 40 of the RPAR.

#### Ledger of end-user funds

- 3.5 A PSP must keep a ledger that serves as an accurate record of the amount of funds a PSP holds on behalf of each of its end users. As set out in paragraph 15(2)(b) of the RPAR, the ledger must contain at a minimum:
- the name and contact information of each end user whose funds are held by the payment service provider, and
  - the amount of funds belonging to each of those end users that is held by the payment service provider at the end of each day.
- 3.6 A PSP must accurately update its ledger each day with the amount of end-user funds it is holding.
- As best practice, the ledger should be updated in real time as the PSP receives end-user funds and requests from end users to transfer or withdraw funds.
  - The Bank expects the PSP to record the time and date it last updated the amount of end-user funds belonging to each end user on its ledger.
- 3.7 The Bank expects the PSP to document in its safeguarding-of-funds framework how its systems, policies, procedures, processes, controls or any other means it uses are designed to meet the requirements explained in paragraphs 3.5 to 3.11 of this guideline.
- 3.8 Paragraph 15(2)(b) of the RPAR stipulates that a PSP’s ledger must be identified and classified as an asset in accordance with paragraph 5(1)(e) of the RPAR. A PSP must ensure that it complies with the operational risk and incident management requirements that apply to such assets. See the “Identify” section of the supervisory guideline [Operational risk and incident response](#) for further details.

### *Updating end-user contact information*

- 3.9 A PSP must ensure that the name and contact information of each end user in its ledger is updated regularly so that funds can be accurately returned to end users in the event of a PSP's insolvency. Contact information of each end user could include an email address, phone number or mailing address.
- 3.10 A PSP must establish, implement and maintain processes to confirm and update the contact information of its end users.
- If an end user does not respond to a PSP's request to confirm or update its contact information, the Bank expects the PSP to make reasonable efforts to obtain up-to-date contact information from the end user.

### *Agents or mandataries*

- 3.11 The PSP is responsible for ensuring that its agents and mandataries adhere to the requirements for any role they have in keeping a ledger of end-user funds.

## Liquidity arrangements

- 3.12 One of the objectives of the safeguarding-of-funds framework is to ensure that end users have reliable access without delay to funds that a PSP holds on their behalf. In practice, this means end users should be able to use the funds placed with the PSP, on demand, to make purchases from a merchant, withdraw funds, or to transfer funds to other individuals or entities.
- 3.13 To achieve this, a PSP must set out in its safeguarding-of-funds framework its approach for meeting liquidity demands generated by end users' requests for withdrawals and transfers. Paragraph 15(2)(a) of the RPAR requires that a PSP describe, within its framework, its means for meeting the framework's objectives, including "those in relation to the payment service provider's use of liquidity arrangements and its holding of end-user funds in the form of secure and liquid assets".
- 3.14 A PSP's liquidity approach is expected to describe the following:
- the amount or proportion of end-user funds the PSP intends to hold in the form of cash at all times;
  - the PSP's policies and procedures for converting assets to cash if a PSP holds some or all its end-user funds in the form of secure and liquid assets other than cash; and
  - the PSP's use of a liquidity arrangement, such as a line of credit, a liquidity facility, or similar contractual arrangement for borrowing liquid funds from a third party for the purposes of providing end users with access to their funds, if applicable.
- 3.15 A PSP's liquidity approach does not need to include:
- service standards on executing and settling payment requests from end users; or
  - arrangements to generate liquidity for purposes not related to meeting end-user requests for withdrawals or transfers.
- 3.16 If a PSP holds all its end-user funds in the form of cash and cash equivalents, the description of its liquidity approach does not need to be extensive given the highly liquid and accessible nature of those assets.



- 3.17 If a PSP holds end-user funds in the form of secure and liquid assets other than cash, the Bank expects the PSP to document its approach to forecasting its future liquidity needs to meet end-user requests for withdrawal or transfer. A PSP could consider the following when developing this forecasting methodology:
- an appropriate forecasting time frame (e.g., upcoming month, quarter or year);
  - key variables that would increase demand in the volume and value of transfers and withdrawals initiated by end users at different points in the month, quarter or year;
  - use of historic data of the amount of end-user funds that are withdrawn or transferred; and
  - growth projections of the PSP's retail payment activities and how this projection could affect the PSP's future liquidity needs initiated by requests from end users for transfers or withdrawals.

### *Secure and liquid assets*

3.18 As provided for in paragraph 15(2)(a) of the RPAR, a PSP may hold end-user funds in cash or in the form of secure and liquid assets other than cash, which are assets that can easily and immediately be converted into cash with little or no loss of value.

- 3.19 If a PSP decides to hold end-user funds in the form of secure and liquid assets other than cash and it has chosen to safeguard these funds by holding them in trust in a trust account, the PSP must:
- demonstrate that the trust arrangement between the PSP and its end users is not compromised by the end-user funds being held in these assets—legal due diligence is necessary to show that the three certainties of trust, explained in section 2 of this guideline, continue to be met; and
  - ensure that the market value of those assets is equal to or greater than the amount of end-user funds to be safeguarded.

3.20 For the purposes of safeguarding end-user funds, the Bank considers the following assets denominated in the Canadian dollar or the currency of another country to be secure and liquid:

- cash and cash equivalents;<sup>1</sup>
- guaranteed investment certificates;
- securities issued or guaranteed by the Government of Canada or another sovereign with a risk rating of at least A-;
- securities issued or guaranteed by a provincial, municipal or state government and with a rating of at least A-;
- promissory notes with a rating of at least A-;
- commercial paper with a rating of at least AA-;
- corporate bonds with a rating of at least AA-;
- funds comprised of assets listed above.

3.21 The Bank does not consider the following assets to be secure and liquid for the purposes of safeguarding end-user funds given the risk of loss of value when being converted into cash or the longer time frame that may be required to convert into cash:

- residential mortgage-backed securities;
- corporate bonds or commercial paper with a credit risk rating of A+ or below; or
- common equity shares.

---

<sup>1</sup> See the International Financial Reporting Standards IAS 7—Statement of Cash Flows for a definition.

3.22 The Bank recognizes that a PSP could be regulated in more than one jurisdiction and that other regulatory regimes applicable to that PSP could also dictate the types of assets PSPs could use to hold end-user funds. To align with these regimes when possible, assets permitted by foreign regulators who are mandated to supervise PSPs for end-user fund safeguarding requirements similar to those in the RPAA will generally be considered acceptable.

- The Bank expects the PSP to demonstrate that the assets in which it holds end-user funds are in line with what is required under these foreign supervisory regimes for the PSP.

## Procedures for returning end-user funds in the event of a PSP's insolvency

3.23 In accordance with paragraph 15(2)(c) of the RPAR, a PSP's safeguarding-of-funds framework must document how end-user funds held would be returned to each end user in the event of a PSP's insolvency, as described in paragraph 2.35 of this guideline.

3.24 Paragraph 15(2)(c) of the RPAR stipulates that PSPs must consider the following in its documentation of the procedures for returning funds to end users:

- How an insolvency or bankruptcy administrator, trustee or any person appointed to carry out the insolvency proceeding, or the insurance or guarantee provider, if applicable, would be able to:
  - access all relevant records or documentation in relation to end-user funds;
  - contact end users as soon as feasible; and
  - identify any errors or deficiencies in the payment service provider's ledger of end-user funds and address any shortfall in the funds to be returned to each end user.
- What procedures would be followed to return funds to end users.
- The role of any agents, mandataries or third-party service providers of the payment service provider in facilitating the execution of the tasks referred to in the bullets above.

3.25 The Bank expects that an insolvency or bankruptcy administrator, trustee or other person is able to access any relevant records, including:

- the ledger of end-user funds and any other records related to end-user funds that are critical to determining the amount of funds that should be returned to each end user; and
- legal agreements or contracts that relate to end-user fund safeguarding, such as:
  - the trust agreement between the PSP and its end users (if applicable)
  - the account agreements between the PSP and its account providers
  - the insurance or guarantee policy (if applicable)

3.26 The procedures to be followed for returning funds to end users are expected to account for:

- if a PSP uses insurance or a guarantee, how the provider of the insurance or guarantee will be informed that the event triggering the payout of the insurance or guarantee has occurred;
- how the PSP's end users will be contacted in the event of a PSP's insolvency and who will execute this task;
- what information or instructions will be provided to the PSP's end users to receive the funds belonging to them;
- what payment methods the PSP's end users will have as options for receiving their funds;

- how the funds will operationally be returned: for example, how an insolvency or bankruptcy administrator, trustee or other person is able to access end-user funds that are deposited at a financial institution;
- how to complete a final reconciliation between end-user funds to be safeguarded and the end-user funds safeguarded and who would complete this reconciliation;
- what options would be available for an insolvency or bankruptcy administrator, trustee or any other person appointed to address any shortfall;
- if a PSP relies on another PSP to provide indirect access to an account as described in paragraphs 2.17 to 2.19 of this guideline, how this operational structure could affect the return of funds to end users.

3.27 If a PSP uses agents and mandataries or third-party service providers to receive funds belonging to end users and take end-user requests to transfer or withdraw their funds, the procedures should document the role of agents or mandataries in returning funds to end users. For example, a PSP is expected to explain:

- how the agents and mandataries or third-party service providers will be directed to stop performing retail payment activities, especially receiving funds belonging to end users and taking end-user requests to transfer or withdraw their funds;
- whether the agents and mandataries or third-party service providers have documents that must be accessible to the insolvency or bankruptcy administrator, trustee or any person appointed to carry out the insolvency proceeding;
- whether the agents and mandataries or third-party service providers will be leveraged to operationally return funds to end users.

## Legal and operational risk analysis

3.28 As required by subsection 15(3) of the RPAR, a PSP's framework must identify:

- legal and operational risks that could hinder its ability to meet the frameworks' objectives; and
- an approach for mitigating legal and operational risks.

3.29 In meeting this requirement, the PSP must consider the following factors, which are provided in subsection 15(3) of the RPAR:

- the jurisdictions in which the payment service provider, its end users, the providers of the accounts in which it holds end-user funds and, if applicable, its insurance or guarantee providers are located;
- the identity of the payment service provider's account providers and, if applicable, its insurance or guarantee providers;
- the terms of the payment service provider's trust arrangements with end users, if applicable; and
- the terms of the payment service provider's insurance policies or guarantees, if applicable.

3.30 Circumstances listed below provide examples to elaborate on what a PSP could consider when conducting its legal and operational risk analysis. These examples are not exhaustive; rather, they are provided as guiding points for PSPs:

- A PSP that has multiple accounts in several jurisdictions could assess existing barriers and potential scenarios where the funds placed in those accounts could become inaccessible by any person responsible for executing the return of end-user funds in the event of the PSP's insolvency.
- A PSP that has end users outside Canada and is safeguarding end-user funds in trust could assess existing barriers and potential scenarios where the trust arrangement between the PSP and its end users is not respected in those foreign jurisdictions.

- A PSP that is safeguarding end-user funds with insurance or a guarantee could assess existing barriers and potential scenarios where the insurance or guarantee is not honoured by the provider of the insurance or guarantee and the amount covered by the insurance or guarantee may not be payable to end users.
- A PSP could identify any structural barriers in the payments ecosystem that could hinder its ability to provide reliable access to end-user funds without delay, such as any limitations the account provider places on the amount of funds that could be withdrawn or transferred from the account and could decide how to manage this limitation to the extent it is practical to do so.
- A PSP could identify any required consent or documentation before making end-user funds in trust available to end users.
- If applicable, a PSP could identify situations where the liquidity arrangement referred to in paragraph 3.13 of this guideline is not available.

## The senior officer, board of directors, and framework approval

3.31 Subsection 15(4) of the RPAR stipulates that “the safeguarding-of-funds framework must, unless the payment service provider is an individual, identify a senior officer who is responsible for overseeing the payment service provider’s practices for safeguarding end-user funds and for ensuring the payment service provider’s compliance” with the end-user fund safeguarding requirements.

- Regardless of where they are located, the senior officer should be an employee of the PSP, occupy a specific position within the PSP or report directly to certain persons within the PSP as defined in section 1 of the RPAR.

3.32 Subsection 15(5) of the RPAR stipulates that a PSP’s safeguarding-of-funds framework must be approved:

- by the senior officer, if any, and the PSP’s board of directors, if any, at least once a year; and
- by the senior officer, if any, after each material change that is made to the framework.

## Review of the safeguarding-of-funds framework

3.33 Under subsection 15(6) of the RPAR, a PSP must review the safeguarding-of-funds framework to ensure that the framework:

- conforms with the requirements in subsections 15(2) to (5) of the RPAR; and
- meets the objectives in subsection 15(1) of the RPAR effectively.

3.34 A review must be conducted at the following times:

- at least once a year;
- after any change to the PSP’s means of safeguarding, as set out in subsection 20(1) of the RPAA and described in paragraph 2.1 of this guideline;
- after any of the following changes, if they could reasonably be expected to have a material impact on the manner in which end-user funds are safeguarded:
  - the opening or closure of a safeguarding account
  - a change in the entity that provides any safeguarding account
  - a change to the terms of the account agreement for any safeguarding account
  - a change in the PSP’s insurance or guarantee provider
  - a change to the terms of the PSP’s insurance policy or guarantee

3.35 Administrative changes would generally not be considered to have a material impact on the manner in which end-user funds are safeguarded.

- For example, changes to the fee structure in the terms of the agreement for a safeguarding account would not have a material impact on the manner in which end-user funds are safeguarded and would not require a review of the safeguarding-of-funds-framework.

3.36 In accordance with subsection 15(7) of the RPAR, a PSP must, for each review, keep a record of the date on which the review was conducted and its scope, methodology and findings.

3.37 In accordance with subsection 15(8) of the RPAR, a PSP must ensure that the findings of each review are reported to the senior officer, if any, for their approval.

## 4. Evaluation of insolvency protection

- 4.1 Subsection 16(1) of the RPAR stipulates that a PSP must take measures to ensure the identification of any instance, as soon as feasible after it occurs, in which the end-user funds held by the payment service provider—or equivalent proceeds from any insurance or guarantee—would not have been payable to end users in the event of the PSP's insolvency.
- 4.2 The purpose of this requirement is to conduct a quantitative analysis to:
- evaluate whether the correct amount of end-user funds are safeguarded by the PSP; and
  - identify any instances of shortfalls.
- 4.3 A PSP is expected to develop a methodology that incorporates the PSP's systems, policies, procedures, processes, controls or any other means for:
- calculating and documenting the amount of end-user funds to be safeguarded;
  - placing the funds in a safeguarding account; and
  - identifying the shortfall if:
    - the amount of end-user funds safeguarded is less than the end-user funds to be safeguarded by a PSP that is holding funds in trust in a trust account (see paragraph 2.8 of this guideline for a description of these amounts); or
    - the amount covered by insurance or a guarantee is less than the end-user funds to be safeguarded by the PSP that is using insurance or a guarantee.
- 4.4 As a best practice, a PSP should take daily measures to identify instances of shortfalls.
- 4.5 As set out in subsection 16(2) of the RPAR, a PSP must, after identifying an instance of a shortfall,
- immediately investigate its root cause; and
  - as soon as feasible, take the necessary measures to prevent similar instances from recurring.
- 4.6 A PSP must report any instances of shortfalls that it identifies to the Bank in the annual report as set out in paragraph 19(3)(c) of the RPAR. For each instance that occurred during the prior year, reporting includes:
- the duration of the instance (e.g., number of days);
  - the amount of the shortfall;
  - the root cause of the instance; and
  - details of any measures taken to prevent similar instances of shortfalls from recurring.

## 5. Independent review

- 5.1 Subsection 17(1) of the RPAR requires PSPs to ensure that an independent review of its compliance with subsection 20(1) of the Act and sections 13 to 16 of the RPAR is conducted at least every three years.
- 5.2 The independent review must assess the extent to which a PSP complies with the end-user fund safeguarding requirements.
- 5.3 As set out in subsection 17(1) of the RPAR, the independent review must be carried out by a sufficiently skilled individual who has had no role in:
  - establishing, implementing or maintaining the safeguarding-of-funds framework;
  - taking measures to identify shortfalls; or
  - identifying instances of shortfalls referred to in subsection 16(1) of the RPAR (and as described in section 4 of this guideline).
- 5.4 Subsection 17(2) of the RPAR requires a PSP to obtain a record of the independent review that sets out:
  - the independent reviewer's name, or—if the independent review was carried out on behalf of an entity (other than the PSP)—that entity's name;
  - the date of the independent review;
  - the scope of the independent review;
  - the methodology used by the independent reviewer; and
  - the independent reviewer's findings.
- 5.5 A PSP should assess whether the findings of the independent review indicate that additions or modifications to its means of safeguarding end-user funds or its safeguarding-of-funds framework are required. A PSP must take any measures needed to ensure that it can continue to meet the requirements established in subsection 20(1) of the RPAR and sections 13 to 16 of the RPAR.
- 5.6 Under subsection 17(3) of the RPAR, if a PSP has a senior officer, it must report any gaps and vulnerabilities that are identified by the independent review, and any measures being taken to address them, to the senior officer.

## 6. Exception under subsection 20(2) of the *Retail Payment Activities Act*

- 6.1 Under subsection 20(2) of the Act, a PSP holding end-user funds is not required to meet the requirements under subsection 20(1) of the Act “in respect of end-user funds it holds in a province if the payment service provider accepts deposits that are insured or guaranteed under an Act of that province and those end-user funds are deposits that are guaranteed or insured under that Act.”
- 6.2 A PSP qualifies for this exception if the following two conditions are satisfied:
- the PSP is a member of a provincial deposit insurance program; and
  - the PSP holds end-user funds as deposits that are insured or guaranteed under that provincial deposit insurance program.
- 6.3 If a PSP accepts deposits that are not insured or guaranteed under a provincial deposit insurance program, for example because they exceed the insurance limit of that program, a PSP must safeguard those funds in trust in a trust account or with insurance or a guarantee and must comply with the requirements for safeguarding end-user funds.
- 6.4 When relying on this exception, a PSP will have to provide the following information to the Bank:
- documentation that establishes that the PSP accepts deposits as defined in a relevant statute established in the province where the PSP is a member of that provincial deposit insurance program;
  - documentation from the provincial deposit insurer that confirms that the deposits accepted by the PSP are insured or guaranteed by that provincial deposit insurer; and
  - documentation that establishes the PSP as a member of a provincial deposit insurance program and therefore that in the event of the PSP’s insolvency, payout of the deposit insurance from the provincial deposit insurer will be made to the depositors.
- 6.5 The exception under subsection 20(2) of the Act does not apply to a PSP that holds end-user funds in an account at an entity that is a member of a provincial deposit insurance program, even if those end-user funds are recognized as insured deposits. This is because the entity providing the account is a member of the deposit insurance program rather than the PSP. The exception under subsection 20(2) of the Act is intended to prevent unnecessary duplicative protection of funds when funds are already protected by provincial legislation in the event of the PSP’s insolvency. It is not intended to provide an exception when funds are protected from an account provider’s insolvency but not protected in the event of the PSP’s insolvency.
- 6.6 Below is a list of provincial deposit insurers that administer a provincial deposit insurance program:
- Credit Union Deposit Insurance Corporation of British Columbia
  - Credit Union Deposit Guarantee Corporation (Alberta)
  - Credit Union Deposit Guarantee Corporation (Saskatchewan)
  - Deposit Guarantee Corporation of Manitoba
  - Financial Services Regulatory Authority of Ontario
  - Autorité des marchés financiers (Quebec)
  - Prince Edward Island Credit Union Deposit Insurance Corporation
  - Nova Scotia Credit Union Deposit Insurance Corporation
  - New Brunswick Credit Union Deposit Insurance Corporation
  - Newfoundland and Labrador Credit Union Deposit Guarantee Corporation
- 6.7 A PSP whose funds no longer qualify for the exception under subsection 20(2) of the RPA must take immediate action to comply with the end-user fund safeguarding requirements.



## Appendix A—Canadian financial institutions

As described in section 13 of the RPAR, an account provider could be a Canadian financial institution “referred to in one of paragraphs 9(a) to (d) or (f) to (h) of Act.” A Canadian financial institution that is an account provider must be either of the following:

- a bank, trust company or loan company that is prudentially regulated by the Office of the Superintendent of Financial Institution (OSFI) under the category of “Banks,” “Trust Companies” or “Loan Companies”;
- a credit union or caisse populaire that is prudentially regulated by a provincial regulator identified below:
  - BC Financial Services Authority
  - Financial Services Regulatory Authority of Ontario
  - Autorité des marchés financiers (Quebec)
  - New Brunswick Credit Union Deposit Insurance Corporation
  - Credit Union Deposit Guarantee Corporation (Alberta)
  - Credit Union Deposit Guarantee Corporation (Saskatchewan)
  - Nova Scotia Credit Union Deposit Insurance Corporation
  - Deposit Guarantee Corporation of Manitoba
  - Prince Edward Island Credit Union Deposit Insurance Corporation
  - Newfoundland and Labrador Credit Union Deposit Guarantee Corporation
  - Alberta Superintendent of Financial Institutions
  - Financial and Consumer Services Commission (New Brunswick)
  - Financial and Consumer Affairs Authority of Saskatchewan
- a financial institution that is wholly owned by a Canadian provincial government

Similarly, as described in subsection 14(1) of the RPAR, an insurance or guarantee provider could be a Canadian financial institution referred to in one of paragraphs 9(a) to (h) of the RPAA. An insurance or guarantee provider that is a Canadian financial institution must be one of the following:

- an entity that meets the requirements provided above for an account provider;
- an insurance company that is prudentially regulated by the Office of the Superintendent of Financial Institutions (OSFI) as either a “life insurance company” or a “property and casualty insurance company”;
- an insurance company that is prudentially regulated by a provincial regulator for governance, capital and enterprise-wide risks, including but not limited to credit risk, liquidity risk and operational risk.

## Appendix B—Glossary

### **agent or mandatary**

An individual or entity that performs retail payment activities within the scope of its authority as the representative of a PSP. This relationship is arranged by the principal of a PSP. Agents and mandataries are, for all intents and purposes, considered the same under the *Retail Payment Activities Act*.

### **account provider**

In accordance with section 13 of the *Retail Payment Activity Regulations*, an account provider must be “an entity that is referred to in one of paragraphs 9(a) to (d) or (f) to (h) of the Act or by a foreign financial institution that is regulated by a regulatory regime that imposes standards in respect of capital, liquidity, governance, supervision and risk management that are comparable to those that apply to those entities.”

### **client PSP**

A payment service provider (PSP) that does not have a direct relationship with an account provider and therefore relies on another PSP as an intermediary to provide indirect access to an account.

### **end user**

Section 2 of the *Retail Payment Activities Act* defines an end user as “an individual or entity that uses a payment service as a payer or payee.”

### **end-user funds**

Funds that a payment service provider holds on behalf of an end user.

### **end-user funds held**

The total amount of funds that a payment service provider holds on behalf of end users (i.e., the ledger balance).

### **end-user funds safeguarded**

The total amount of end-user funds placed in a safeguarding account.

### **end-user fund safeguarding requirements**

The regulatory obligations of a payment service provider set out in section 20 of the *Retail Payment Activities Act*, sections 13 to 17 of the *Retail Payment Activities Regulations* and in this guideline.

### **end-user funds to be safeguarded**

The total amount of end-user funds that must be placed in a safeguarding account (i.e., at a minimum, the amount of end-user funds held by the payment service provider by the end of the business day following the day of receipt).

### **in trust in a trust account**

A means of safeguarding set out in paragraph 20(1)(a) of the *Retail Payment Activities Act* to “hold end-user funds in trust in a trust account that is not used for any other purpose.”

### **insolvency event**

Subsection 14(3) of the *Retail Payment Activities Regulations* defines an insolvency event as:

- “(a) the bringing by the payment service provider of an insolvency proceeding in respect of itself;
- (b) the consent by the payment service provider to the bringing of an insolvency proceeding in respect of it; and

- (c) the passage of 30 days after the day on which an insolvency proceeding is brought in respect of the payment service provider by another individual or entity, unless that insolvency proceeding is discontinued or dismissed in that time.”

### **insolvency proceeding**

Subsection 14(4) of the *Retail Payment Activity Regulations* defines an insolvency proceeding as:

“any proceeding, action, application, case or legal process commenced in respect of a payment service provider, under the law of any jurisdiction, relating to bankruptcy, insolvency, liquidation, dissolution or winding-up.”

### **insurance or guarantee**

A means of safeguarding set out in paragraph 20(1)(c) of the *Retail Payment Activities Act* to “hold end-user funds in an account that is not used for any other purpose and hold insurance or a guarantee in respect of the funds that is in an amount equal to or greater than the amount held in the account.”

### **insurance or guarantee provider**

Subsection 14(1) of the *Retail Payment Activities Regulations* states that a provider of insurance or guarantee must be an entity that:

is referred to in one of paragraphs 9(a) to (h) of the Act, or is a foreign financial institution that is regulated by a regulatory regime that imposes standards in respect of capital, liquidity, governance, supervision and risk management comparable to those that apply to those entities; and

is not affiliated with the payment service provider within the meaning of section 3 of the Act.

### **intermediary PSP**

A payment service provider (PSP) that provides another PSP (client PSP) with indirect access to an account.

### **ledger**

Paragraph 15(2)(b) of the *Retail Payment Activities Regulations* states that a ledger should set out:

- “(i) the name and contact information of each end user whose funds are held by the payment service provider, and
- (ii) the amount of funds belonging to each of those end users that is held by the payment service provider at the end of each day”.

### **mandatory**

See agent or mandatory

### **payment function**

Section 2 of the *Retail Payment Activities Act* defines a payment function as:

“(a) the provision or maintenance of an account that, in relation to an electronic funds transfer, is held on behalf of one or more end users;

(b) the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity;

(c) the initiation of an electronic funds transfer at the request of an end user;

(d) the authorization of an electronic funds transfer or the transmission, reception or facilitation of an instruction in relation to an electronic funds transfer; or

(e) the provision of clearing or settlement services.”

### **payment service provider**

Section 2 of the *Retail Payment Activities Act* defines a payment service provider as:

“an individual or entity that performs payment functions as a service or business activity that is not incidental to another service or business activity.”

### **retail payment activity**

Section 2 of the *Retail Payment Activities Act* defines a retail payment activity as:

“payment function that is performed in relation to an electronic funds transfer that is made in the currency of Canada or another country or using a unit that meets prescribed criteria.”

### **RPAA**

*Retail Payment Activities Act*

### **RPAR**

*Retail Payment Activities Regulations*

### **safeguarding account**

An account that is not used for any other purpose than the safeguarding of end-user funds, as referred to in subsection 20(1) of the *Retail Payment Activities Act*.

### **safeguarding-of-funds framework**

A written framework that must be established, implemented and maintained by payment service providers (PSPs) to achieve the following objectives, set out in subsection 15(1) of the *Retail Payment Activities Regulations*:

- end users have reliable access without delay to the end-user funds that are being held by the PSP; and
- end-user funds, or proceeds of the PSP’s insurance or guarantee, are paid to end users as soon as feasible in the event of the PSP’s insolvency.

### **secure and liquid assets**

Assets that can be easily and immediately converted into cash at little or no loss of value.

### **senior officer**

Section 1 of the *Retail Payment Activities Regulations* defines a senior officer, in respect of an entity, as:

“(a) a member of its board of directors who is also one of its full-time employees;

(b) its chief executive officer, chief operating officer, president, chief risk officer, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary, or any person who performs functions similar to those normally performed by someone occupying one of those positions; or

(c) any other officer who reports directly to its board of directors, chief executive officer or chief operating officer.”

### **three certainties of trust**

Certainty of intention: the person (the payment service provider) transferring the trust property (the end-user funds) does so with the intention that the property be held in trust for a third party (its end users);

Certainty of subject matter: the property that is subject to the trust (the end-users’ funds) is known, and the amount of such property that each end user is entitled to is also known; and

Certainty of objects: it is clear who the beneficiaries of the trust arrangement are (the payment service provider’s end users).

### **trust account**

Any safeguarding account where the use of that account does not compromise the trust arrangement established between the payment service provider and its end users.

**trust arrangement**

An arrangement between a payment service provider and its end users that establishes and documents in writing a valid express trust, established under Canadian law.

**valid express trust**

A trust arrangement that satisfies the three certainties of trust.