

# Safeguarding end-user funds

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## Introduction

This supervisory guideline sets out the Bank's expectations for payment service providers (PSPs) that are subject to the [Retail Payment Activities Act](#) (RPAA) and have obligations to safeguard 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of the RPAA, a PSP that performs the payment function of "the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity" must safeguard those end-user funds.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 should review the holding funds section of the supervisory policy [Criteria for registering payment service providers](#) and the holding funds [case scenarios](#) to help it determine if it is performing the holding funds payment function.

Safeguarding end-user funds is intended to achieve two objectives:

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

To achieve these objectives, a PSP must comply with the requirements for safeguarding end-user funds established in section 20 of the RPAA and sections 13 to 17 of the [Retail Payment Activities Regulations](#) (RPAR), which are 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.
- 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 not used for any other purpose.
- A PSP must 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
  - 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
  - review its framework annually and after changes that could have a material impact on the way it safeguards end-user funds
- A PSP must take measures to identify and investigate any instance where it is not safeguarding the correct amount of end-user funds.
- A PSP must, at least once every three years, conduct an independent review of its compliance with the requirements for safeguarding end-user funds.

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

For terminology about retail payment supervision, refer to the [glossary](#).

## 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.”
- 1.2 A PSP that does not perform the payment function of holding funds is not subject to the requirements for safeguarding end-user funds. A PSP should review the holding funds section of the [criteria for registering payment service providers](#) to help it determine if it is performing the holding funds payment function. A PSP should also consult the holding funds [case scenarios](#) which provide examples of how the holding funds interpretation can be applied to specific scenarios.
- 1.3 For PSPs that perform the payment function of holding funds, the requirements for safeguarding end-user funds apply only to funds that are considered held.<sup>1</sup>
  - 1.3.1 A PSP is performing the payment function of holding funds on behalf of an end user if it keeps funds of a payer or payee at rest and available for future withdrawal or transfer, and the PSP is indebted to the end user in respect of those funds.
  - 1.3.2 Where a PSP receives end-user funds with concurrent instructions for the funds to be immediately transferred, those funds are not considered to be at rest, and, as such, are not held.
  - 1.3.3 Therefore, references to the holding of funds in this guideline refer to funds for which the PSP does not have instructions for their immediate transfer. Funds that are not held can be described as “in transit” from the point the PSP receives an instruction to immediately transfer or withdraw the funds until the transfer or withdrawal is complete. The instruction may, or may not, be received concurrently with the funds.
  - 1.3.4 A PSP should also consider the geographic scope of the safeguarding requirements and the specific circumstances set out in paragraphs 1.5 to 1.8 of this guideline.
- 1.4 For a PSP to properly identify and safeguard end-user funds, the PSP must keep accurate records of all funds it receives. This includes end-user funds that are held and subject to the end-user fund safeguarding requirement and those that are “in transit” and do not need to be safeguarded.
  - 1.4.1 A PSP should make clear to end users which funds will and will not be safeguarded. For example, if applicable, the PSP should advise end users that when funds are received with instructions for transfer, those funds are not safeguarded.

### Place of business of payment service provider

- 1.5 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.
- 1.6 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, only funds it holds for end users in Canada are subject to the requirements for safeguarding end-user funds.

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<sup>1</sup> Paragraph 1.3 provides a summary of key points related to holding funds. PSPs should read the holding funds section of the [criteria for registering payment service providers](#) and the [case scenarios](#) linked in paragraph 1.2 for full details.

## Specific circumstances

- 1.7 A PSP is not considered to hold funds before it is in receipt of the end users' funds. This applies even if the PSP makes funds available to the end user in advance of receiving the funds from the transaction. For example, in a scenario where a PSP has processed a card transaction for a merchant, the PSP could advance funds to the merchant, using the PSP's own funds, before the transaction has settled. The PSP's own funds do not need to be safeguarded. In such a scenario, the PSP would only be holding funds once settlement occurs, and the PSP is in receipt of the merchants' funds from the transaction.
- 1.8 In a merchant processing scenario, a PSP could reserve merchant funds specifically to mitigate chargeback or fraud-related risks for the merchant's transactions. The Bank does not consider funds that have been reserved specifically for mitigating chargeback or fraud-related risks to meet the interpretation of holding funds, as 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 specifically for mitigating chargeback or fraud-related risks.

## Liability for violations

- 1.9 A PSP is responsible for any violation committed by any of its employees, third-party service providers, agents or mandataries acting in the scope of their employment, contract or authority as agent or mandatary, whether or not the employee, third-party service provider, agent or mandatary that actually committed the violation is identified, as set out in section 87 of the RPAA. 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 prescribes how a PSP can safeguard end-user funds. The PSP can:
- 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 While paragraph 20(1)(b) of the RPAA provides the authority for regulations to prescribe alternative approaches to safeguard end-user funds, no alternative approaches are prescribed.

### Safeguarding account

- 2.4 Regardless of which means a PSP uses to safeguard end-user funds (i.e., in trust or using insurance or guarantee), 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 To ensure the safeguarding account is not used for any other purpose, a 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 The Bank expects a PSP to have in place systems, policies, processes, procedures, controls or any other means necessary to segregate end-user funds from all other funds, including its own funds, by placing them in a safeguarding account on receipt.
- 2.7 Where a PSP faces processing constraints that cannot be avoided despite the PSP's best efforts, and it is not feasible for the PSP to place end-user funds in a safeguarding account on receipt, the PSP must:
- 2.7.1 not use the funds that are yet to be placed in the safeguarding account for any other purpose, and must otherwise treat them in accordance with this guideline
  - 2.7.2 be able to demonstrate to the Bank the reason why the end-user funds are not placed into the safeguarding account on receipt
  - 2.7.3 adequately describe and disclose to the end users all situations where the funds may not be immediately transferred to (and protected in) the safeguarding account on receipt
  - 2.7.4 record the funds in its ledger, and record that the funds are yet to be placed in the safeguarding account as described in paragraph 3.7 of this guideline

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- 2.7.5 identify the funds that have not yet been placed in the safeguarding account as a shortfall as described in paragraph 4.3 of this guideline, and report them as part of its annual report, as described in paragraph 4.7 of this guideline
- 2.8 In such situations where processing constraints cannot be avoided despite the PSP's best efforts, the Bank expects the placement of end-user funds into a safeguarding account to occur, at the latest, on the business day following the day of receipt.
- For the purpose of this guideline, "business day" means a business day of the Bank of Canada.<sup>2</sup>
- 2.9 Where an end user expects that its funds will be held in trust in a trust account, a delay that results in funds being held outside of the trust account may be a breach of the PSP's duties as trustee or administrator (as applicable). The PSP should demonstrate that it has limited the risk of a breach to the extent possible.
- 2.10 A PSP's safeguarding account must be separate from the accounts it uses to hold all other funds, and it must have an account number distinct from the PSP's other accounts.
- 2.11 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.

### *Account provider*

- 2.12 A safeguarding account must be provided by an entity described in section 13 of the RPAR, which includes:
- a Canadian financial institution referred to in one of paragraphs 9(a) to (d) or (f) to (h) of the RPAA; or
  - a foreign financial institution that is prudentially regulated under a regulatory regime that imposes standards in respect of capital, liquidity, governance, supervision and risk management that are comparable to those that apply to Canadian financial institutions
- 2.13 A Canadian financial institution that is an account provider must be one of the following:
- a bank, trust company or loan company that is prudentially regulated by the Office of the Superintendent of Financial Institutions (OSFI) under the category of "Banks," "Trust Companies" or "Loan Companies"
  - a credit union, caisse populaire, trust or loan company that is prudentially regulated by a provincial act or an association regulated by the Cooperative Credit Associations Act and any other entity referred to in paragraph 9(c) of the RPAA
  - a financial institution that is wholly owned by a Canadian provincial government.
- 2.14 A foreign financial institution providing a safeguarding account must be regulated under a prudential regime that imposes standards comparable to standards that apply to entities regulated by OSFI or by the provincial regulators.
- 2.15 If using a foreign financial institution, the Bank expects a PSP to be able to demonstrate, using publicly available information, whether the foreign financial institution is subject to prudential standards that are comparable to the standards applied 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.

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<sup>2</sup> A list of public holidays recognized by the Bank can be found here: <https://www.bankofcanada.ca/press/upcoming-events/bank-of-canada-holiday-schedule/>.

### *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 PSP’s safeguarding account for any sum owed to it by the PSP or any other third party. The PSP should receive acknowledgement of this in writing from the account provider. Subsection 20(3) of the RPAA does not impact a PSP’s ability to assert the right of set-off against its end users.

### Funds held in trust in a trust account

2.17 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.

2.18 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 2.16 of this guideline)
- holding end-user funds in trust (see paragraphs 2.20 to 2.30 of this guideline)
- safeguarding-of-funds framework (see section 3 of this guideline)
- evaluation of insolvency protection (see section 4 of this guideline); and
- independent reviews (see section 5 of this guideline).

2.19 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*

2.20 To hold end-user funds in trust, a PSP must establish a trust arrangement that forms a valid express trust established under Canadian law. A PSP may choose to be the trustee or use a third party to act as the trustee.

2.21 The Bank expects a PSP to seek legal advice to ensure that a valid express trust arrangement has been established. This guideline does not provide legal advice on how to set up a valid express trust, but it does set out the Bank’s expectations for certain characteristics these trust arrangements must have.

2.22 To form a valid express trust in jurisdictions other than Quebec, the trust arrangement must satisfy the three certainties of trust:

- Certainty of intention—the person transferring property to the trustee does so with the intention that the property be held in trust. When initially establishing the trust, the PSP must have the intent to create a trust; after the trust is established, end users should have the intent that their funds be held in trust.<sup>3</sup>
- Certainty of subject matter—the property that is subject to the trust (the end users’ funds) is known.

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<sup>3</sup> A PSP may consider a range of methods to demonstrate end users’ intent, such as signed agreements or clear acknowledgements by end users; however, the Bank expects the PSP seek legal advice to determine how best to demonstrate end users’ intent for the trust arrangement it has established.



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- Certainty of objects—the beneficiaries of the trust arrangement (the PSP's end users) and their interest in the trust are clear.

2.23 If the trust instrument is established in the province of Quebec and therefore governed by the laws of Quebec, a PSP must ensure that the trust arrangement:

- qualifies as a "trust" as defined in the *Civil Code of Québec*, and constitutes a formal contract formed between a settlor, who transfers the funds to the trust, and a trustee (who should not be the same person as the settlor unless there is another trustee), who agrees to hold and administer such funds, or
- clearly establishes that the PSP holds and administers the end-user funds as administrator of the property of the end users. This is referred to as the simple administration regime, where the administrator must be appointed by the beneficiary

2.24 For a PSP with more complex arrangements for holding and safeguarding end-user funds, the Bank expects the PSP to seek legal advice to assess the validity of the trust arrangement and how the arrangement satisfies applicable law.

- 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
  - a PSP that safeguards end-user funds in multiple accounts across multiple countries

2.25 The PSP is expected to consider, as part of the advice it receives:

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

## Trust account

2.26 A trust account is any safeguarding account provided by an account provider described in paragraph 2.12 of this guideline that is held by the trustee of the trust and where the use of that account does not compromise the trust arrangement.

2.27 To maintain the integrity of its trust arrangement, as a best practice a PSP should not pay expenses (other than trust expenses) from the trust account. For example, the PSP should settle the PSP's obligations to a financial institution or payment network from a separate account.

2.28 If the PSP intends to pay any administrative expenses from the trust account, the Bank recommends that the PSP seek legal advice on what qualifies as an administrative expense that can be paid. Further, the trust arrangement should clearly describe how these expenses will be allocated among end users.

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

2.30 The legal agreement between a PSP and its account provider must clearly identify that the funds in the account are in trust for (or in the context of a simple administration under Quebec laws, for the benefit of) the PSP's end users.

## Insurance or guarantee

- 2.31 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.
- 2.32 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 2.16 of this guideline)
  - insurance and guarantees (see paragraphs 2.34 to 2.49 of this guideline)
  - safeguarding-of-funds framework (see section 3 of this guideline)
  - evaluation of insolvency protection (see section 4 of this guideline); and
  - independent reviews (see section 5 of this guideline)
- 2.33 Holding funds in a safeguarding account and having insurance or a guarantee 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.

## Conditions

- 2.34 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 the insurance or the guarantee satisfies the conditions set out in paragraphs 14(2)(a) to (d) of the RPAR. These conditions are as follows:
- the proceeds from the insurance or guarantee will not form part of the PSP's estate
  - 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 2.35 of this guideline
  - the insurance or guarantee will survive the PSP's insolvency as well as any compromise or arrangement with the PSP's creditors and any extinguishment of the PSP's obligations to end users, including those resulting from restructuring
  - the PSP will be notified at least 30 days before the insurance or guarantee contract is cancelled or terminated
- 2.35 Subsection 14(3) of the RPAR defines the event after which the proceeds of the insurance or guarantee will be payable for the benefit of end users:
- 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
- 2.36 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*

2.37 A insurance or guarantee must be provided by an entity described in subsection 14(1) of the RPAA, which includes:

- a Canadian financial institution referred to in one of paragraphs 9(a) to (h) of the RPAA (i.e., an entity described in paragraph 2.13 of this guideline or a company to which the *Insurance Companies Act* applies or an insurance company regulated by a provincial act), or
- a foreign financial institution that is prudentially regulated under a regulatory regime that imposes standards in respect of capital, liquidity, governance, supervision and risk management comparable to those that apply to Canadian financial institutions, and
- is not affiliated with the payment service provider within the meaning of section 3 of the RPAA

2.38 An insurance or guarantee provider that is a foreign financial institution must be prudentially regulated by a regime that imposes standards in respect of capital, liquidity, governance, supervision and risk management that are comparable to standards that apply to entities regulated by the OSFI or provincial prudential regulators.

2.39 If using a foreign financial institution, the Bank expects a PSP to be able to demonstrate, using publicly available information, whether the foreign financial institution is subject to prudential standards that are comparable to the standards applied 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 for capital, liquidity, governance, supervision and risk management that are set by the Basel Committee on Banking Supervision or by the International Association of Insurance Supervisors.

### *Value of the insurance or guarantee*

2.40 Paragraph 20(1)(c) of the RPAA stipulates that the value of the insurance or guarantee—in other words, the agreed-upon amount 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.”

2.41 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 the PSP has chosen to safeguard using the insurance or guarantee.

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

2.43 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
- growth projections for the PSP's retail payment activities

2.44 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 3.39 to 3.43 of this

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guideline. The reason for this review is to ensure that the amount of insurance or guarantee coverage remains appropriate based on the PSP's:

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

2.45 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*

2.46 A PSP must have in place systems, policies, procedures, processes, controls or 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 as safeguarded through that insurance or guarantee.

2.47 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
- safeguard the unprotected amount of end-user funds in trust in a trust account

2.48 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, if required 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 and obtain a trust account in which to place a portion of its end-user funds

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

2.49 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
  - 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 3.38 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 the PSP holds on behalf of each of its end users. As described in paragraph 15(2)(b) of the RPAR, the ledger must set out:
- the name and contact information of each end user whose funds are held by the payment service provider
  - the amount of funds belonging to each of those end users that is held by the PSP at the end of each day
- 3.6 A ledger should be comprised of a system of internally consistent records and reports that accurately tracks and records the amount of funds received and held on behalf of end users, and whether such funds are held in the safeguarding account or in another account (to the extent permitted under this guideline).
- 3.7 The Bank expects the PSP to have in place systems, policies, procedures, processes, controls or any other means necessary to record, for each end user, the following on the ledger:
- the amount of the end-user’s funds held in a safeguarding account—if the PSP safeguards funds in trust in a trust account, it should be clear on the ledger that the end-user’s funds are in trust
  - the amount of the end-user’s funds that the PSP holds and has yet to place in a safeguarding account—this applies only to funds that the PSP has just received and is currently in the process of segregating, as set out in paragraphs 2.7 and 2.8 of this guideline
- 3.7.1 The ledger must record the total amounts of:
- *end-user funds held*, i.e., the total amount of funds that a PSP holds on behalf of end users (i.e., the ledger balance, which comprises funds that have been placed in the safeguarding account and funds that the PSP holds, on behalf of an end user, that have yet to be placed in the safeguarding account)
  - *end-user funds safeguarded*, i.e., the total amount of end-user funds placed in a safeguarding account

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- *end-user funds to be safeguarded*, i.e., the total amount of funds that a PSP holds that have yet to be placed in a safeguarding account
- 3.8 To ensure the ledger is accurate, a PSP must also keep an accurate record of funds it has received on behalf of each end user, which includes end-user funds received “in transit” as described in sub-paragraph 1.3.3 of this guideline.
- 3.9 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 to record the time and date when the PSP
- receives end-user funds and the accounts where such funds are deposited (safeguarding accounts or other accounts, to the extent permitted under this guideline)
  - transfers funds from a non-safeguarding account into a safeguarding account, or transfers or withdraws such funds at the direction of the end user
  - no longer holds the funds because the funds are transferred or withdrawn by the end user
- 3.10 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 [operational risk and incident response](#) supervisory guideline for further details.

### *End-user contact information*

- 3.11 A PSP must ensure that the name and contact information of each end user in its ledger is up to date so that funds can be accurately returned to end users in the event of the PSP’s insolvency. Contact information of each end user could include an email address, phone number or mailing address.
- 3.12 A PSP must establish, implement and maintain processes to confirm and update the contact information of its end users. Examples of processes to ensure contact information is up to date include, but are not limited to:
- a process for end users to advise the PSP of changes to their contact information
  - a process for periodically prompting end users to confirm or update their contact information. Where 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*

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

## Liquidity arrangements

- 3.14 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.
- 3.15 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 the PSP describe, within its framework, its means for meeting the framework’s objectives,

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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.”

3.16 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 and cash equivalents at all times<sup>4</sup>
- 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
- 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

3.17 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.

3.18 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.

3.19 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*

3.20 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.

3.21 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 both:

- demonstrate that the trust arrangement is not compromised by the end-user funds being held in these assets; legal due diligence is necessary to show that the validity of the trust arrangement, explained in section 2 of this guideline, continues to be met
- ensure that the market value of those assets is always equal to or greater than the equivalent amount of end-user funds that the PSP is required to safeguard

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<sup>4</sup> See the International Financial Reporting Standards’ International Accounting Standard 7 Statement of Cash Flows (IAS 7) for a definition of cash and cash equivalents.

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3.22 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
- 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

3.23 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
- common equity shares

3.24 The Bank recognizes that a PSP could be regulated in more than one jurisdiction, and that other regulatory regimes applicable to the PSP could also dictate the types of assets the PSP 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

3.25 In accordance with paragraph 15(2)(c) of the RPAA, 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 the PSP's insolvency, as described in paragraph 2.35 of this guideline.

3.26 In addition, if a PSP is subject to an insolvency proceeding event, it must notify the Bank as per Section 18 of the RPAA. See [guideline on incident notification](#).

3.27 Paragraph 15(2)(c) of the RPAA stipulates that a PSP 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
  - 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



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- 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

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

3.28.1 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. The ledger or other records should keep records of:

- end-user funds that are not in a safeguarding account because the PSP has received instructions for the funds to be immediately transferred or withdrawn, but are not yet transferred or withdrawn
- end-user funds that are to be safeguarded but have not yet been transferred into the safeguarding account (to the extent permitted in the guideline)
- end-user funds that are in the safeguarding account

3.28.2 legal agreements or contracts that relate to end-user fund safeguarding, such as:

- the agreement between the PSP and its end users
- the trust agreement (if applicable and separate from the above agreement)
- the account agreements between the PSP and its account providers
- the insurance or guarantee policy (if applicable)

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

- how the provider of the insurance or guarantee, if one is used by the PSP, 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 or, in instances where funds were not safeguarded, advising end users that the funds were not safeguarded and informing end users of the process by which they may advance claims to recover their funds
- what payment methods the PSP's end users will have as options for receiving their funds
- how the funds will be returned; for example, how an insolvency or bankruptcy administrator, trustee or other person is able to access and distribute end-user funds that are deposited at a financial institution

3.30 The procedures should include processes for a final reconciliation of the PSP's accounts and identify who would complete this reconciliation. These processes should provide for the following:

- for all the funds a PSP has received at the time of insolvency, a final breakdown of:
  - *end-user funds held*, i.e., the total amount of funds that a PSP holds on behalf of end users
  - *funds in transit*, i.e., funds for which the PSP had received instructions to immediately transfer or withdraw, but which have not yet been transferred or withdrawn
- a final reconciliation between the end-user funds held and the end-user funds safeguarded. The reconciliation should provide final amounts for:
  - *end-user funds held*, i.e., the total amount of funds that a PSP holds on behalf of end users
  - *end-user funds safeguarded*, i.e., the total amount of end-user funds placed in a safeguarding account

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- *shortfall*, i.e., any funds that were to be safeguarded but which had not yet been transferred into the safeguarding account
  - what options would be available for an insolvency or bankruptcy administrator, trustee or any other person appointed to address any shortfall
- 3.31 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

3.32 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 framework's objectives; and
- an approach for mitigating legal and operational risks.

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

3.34 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.

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- 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 consent or documentation that is required before making end-user funds in trust available to end users.
- If applicable, a PSP could identify situations where the liquidity arrangements referred to in paragraph 3.15 of this guideline are not available.
- A PSP could assess potential situations in which there could be a delay in placing end-user funds into a safeguarding account because of processing constraints, and identify how to minimize the risk of delays.

3.35 A PSP that holds end-user funds as a trustee should identify the internal controls it has in place to ensure trust funds are available in the event of insolvency. These may include

- signing authority protocols
- periodic verification procedures
- internal reporting to a PSP's senior management or board of directors
- other measures that protect a trust account from unauthorized withdrawals or transfers, or any other misconduct

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

3.36 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.

3.37 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.

- The senior officer does not necessarily have to be located in Canada, provided they meet the definition in section 1 of the RPAR.

3.38 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
- by the senior officer, if any, after each material change that is made to the framework

## Review of the safeguarding-of-funds framework

3.39 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.

3.40 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;

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- 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

3.41 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.

3.42 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.

3.43 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 is safeguarded by the PSP
  - identify any instances of shortfall
- 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:
  - identifying the shortfall if:
    - the amount of end-user funds safeguarded is less than the end-user funds held by a PSP that is holding funds in trust in a trust account (see subparagraph 3.7.1 of this guideline for a description of these amounts)
    - the amount covered by insurance or a guarantee is less than the end-user funds held 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 A PSP must act in a timely manner to rectify any shortfall.
- 4.6 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
  - as soon as feasible, take the necessary measures to prevent similar instances from recurring
- 4.7 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. Reporting includes:
  - the amount of the shortfall
  - the root cause of the instance
  - details of any measures taken to prevent similar instances of shortfalls from recurring
- 4.8 End-user funds that are not safeguarded on receipt due to processing constraints (see paragraphs 2.7 and 2.8 of this guideline) are considered to be shortfalls. A PSP should keep a record of these shortfalls and report them in the annual report. The nature of the processing constraint should be explained as the root cause, and if these instances of shortfalls are not remediated at the end of the business day following the day of receipt, the PSP should provide details of any measures taken to prevent similar instances 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, internal or external to the PSP, who has had no role in:
  - establishing, implementing or maintaining the safeguarding-of-funds framework
  - taking measures to identify shortfalls
  - 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
  - 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. Indirect arrangements

- 6.1 The Bank expects a PSP holding funds to obtain a direct relationship with a safeguarding account provider that is an entity described in section 13 of the RPAR.
- 6.2 The Bank considers a PSP (client PSP) that relies on an unaffiliated PSP to act as an intermediary providing access to an account at a financial institution to be engaged in an indirect arrangement.
- 6.3 Using indirect arrangements for safeguarding purposes may not comply with the RPAA or other applicable laws due to significant regulatory barriers and operational challenges. These barriers and challenges include:
- The intermediary PSP is not a registered trust corporation and may not have obtained the appropriate authorizations or exemptions to undertake activities as a trustee and comply with applicable trust laws.
  - The delegation of safeguarding functions to an intermediary PSP may violate certain provisions under the Civil Code of Québec applicable to the relevant trust arrangement.
  - The return of funds to end users, should either the client PSP or intermediary PSP become insolvent, would be complex and operationally challenging because multiple PSPs are involved. It would also create a greater risk that end users' access to their funds would be impeded.
- 6.4 The Bank will not accept indirect arrangements as compliant with the RPAA's requirements for safeguarding unless, at a minimum, the PSP can demonstrate to the Bank that the regulatory barriers and operational challenges in paragraph 6.3 are addressed.
- To demonstrate this to the Bank, the Bank expects that any PSP involved in indirect arrangements, whether as a client PSP or intermediary PSP, must obtain legal advice to ensure the safeguarding objectives and requirements under the RPAA and RPAR are met. This expectation includes the requirements for segregation and keeping a ledger of the end-user funds that are held.

## 7. Exception under subsection 20(2) of the RPAA

- 7.1 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.”
- This refers to PSPs that are subject to the safeguarding requirements, and not entities that are exempt under section 9 of the RPAA.
- 7.2 A PSP qualifies for this exception if the following two conditions are satisfied:
- the PSP is a member of a provincial deposit insurance program
  - the PSP holds end-user funds as deposits that are insured or guaranteed under that provincial deposit insurance program
- 7.3 If a PSP qualifies for this exception, but holds funds that do not qualify for or exceed the insurance limit of a provincial deposit insurance program, the 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.
- 7.4 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
  - 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
- 7.5 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 insolvency of a PSP that is a member of a provincial deposit insurance program.
- 7.6 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 (Québec)
  - 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
- 7.7 A PSP whose funds no longer qualify for the exception under subsection 20(2) of the RPAA must take immediate action to comply with the end-user fund safeguarding requirements.