



**ASIC**  
Australian Securities &  
Investments Commission

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Mr Jason Lange  
Executive Director  
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13 April 2022

Dear Mr Lange,

**Certification of independent review: ePayments Code review**

I am writing to the Office of Best Practice Regulation (OBPR) regarding the review by the Australian Securities and Investments Commission (ASIC) of the ePayments Code (Code). Our review will lead to us making recommendations, based on identified problems, to an ASIC delegate. With that information, the ASIC delegate will make a decision on whether to publish, on or around 22 April 2022, an updated Code.

On 2 March 2022, ASIC informed OBPR of our planned publication of a feedback report detailing our intended updates to the Code. I confirm that [Report 718 Response to submissions on CP 341 Review of the ePayments Code: Further consultation \(REP 718\)](#) was published on 7 March 2022. ASIC has subsequently, between 7 March and 5 April 2022, undertaken a targeted consultation with key stakeholders (including subscribers, consumer and small business advocates and industry bodies representing participants in the banking and payments systems) on the technical wording needed in the Code to reflect ASIC's positions in REP 718.

We have now prepared recommendations for the ASIC decision-maker and are preparing steps towards subsequent publication of the updated Code.

**Certification**

As a delegate of ASIC, I certify the following:

- (1) ASIC's review of the Code followed a process and involved analysis equivalent to that ordinarily required for a Regulatory Impact

Statement (RIS) and that it adequately addressed the 'seven RIS questions'.

- (2) The scope of the problem (i.e. that the Code was out of date and needed updating to ensure relevance and efficiency), the options examined and the proposals identified to update the Code (to address the above problem) during our Code review are relevant to and substantially the same as the identified problem and recommendations being presented to ASIC's decision maker.
- (3) ASIC's review was consistent with the *Australian Government Guide to Regulatory Impact Analysis*.
- (4) During the review, ASIC broadly examined three policy options – those being to:
  - make *minor* updates to the Code as an interim position ahead of the Code being mandated by Government;
  - make *significant* updates to the Code; or
  - make *no* updates to the Code.

We also considered a range of policy options in relation to each sub-topic within the review (for example, whether to extend the Code to small business and whether to amend the compliance reporting settings). In a number of instances, ASIC examined three or more policy options for each sub-topic and, for a small number of remaining sub-topics, no fewer than two policy options. The details of these options are set out in REP 718.

The attached documents demonstrate that ASIC has adequately addressed all seven RIS questions. I also confirm that, in assessing the options, ASIC has borne in mind the six principles of good practice in the *Australian Government Guide to Regulatory Impact Analysis* and that our review has been conducted consistently with those principles.

Our 'RIS-like' process is detailed in this letter and its attachments. I submit the attached documents to OBPR for the purposes of an upcoming major decision point in the development of our review – namely, publication of an updated Code.

I am satisfied that the attached review is consistent with the *Australian Government Guide to Regulatory Impact Analysis*.

### Regulatory burden

I note that the implementation of ASIC's proposal (i.e. publication of an updated Code, as foreshadowed in REP 718) may, in relation to some proposals, increase the regulatory burden.

### *Offset measures*

No specific offset measure has generally been identified, but ASIC has attempted to reach positions that take into account – to the extent possible and appropriate – a significantly diverse range of stakeholder views (resulting in some compromise positions) and by consulting with subscribers on an appropriate transition period for commencement of the updates, and the outcome is that we are proposing a 12-month transition period.

### *Regulatory burden estimates*

As detailed in REP 718, ASIC's intended positions for an updated Code vary in their likely impact on subscribers to the Code and other stakeholder groups.

While subscription to the Code is voluntary and there is no formal mechanism at this stage to require subscription, in practice most authorised deposit-taking institutions (ADIs) – plus a small number of other payment services providers – subscribe to the Code. Subscription binds subscribers contractually to honour their Code commitments to their customers.

While our proposed updates are generally modest, ASIC considers that at least some of the proposed updates involve regulatory impacts that are more than minor or machinery.

**Attachment A** contains our Regulatory Burden Estimate table, which, to the extent that it has been possible, and as applicable, quantifies the regulatory costs to individuals, businesses and community organisations associated with the proposals. In Attachment A we also detail stakeholder consultations undertaken in attempts to assist in producing the regulatory burden estimates.

### *Details of ASIC's review*

ASIC's positions in REP 718 have been informed by significant consultation, both publicly and with a targeted set of key stakeholders, from 19 September 2018, when we sent initial letters to key stakeholders to discuss options for the scope of the review, to today's date.

During our consultations throughout the review, we have sought feedback from the general public (in response to Consultation Paper 310 *Review of the ePayments Code: Scope of the review* ([CP 310](#)) and Consultation Paper 341 *Review of the ePayments Code: Further consultation* ([CP 341](#))), and from a wide range of stakeholder groups. Those stakeholders included all Code subscribers, members of the banking and payments industries, industry associations (including those representing the banking, payments, financial technology, retailer, small business and non-bank lending industries), consumer and small business representatives, the Australian Financial Complaints Authority and relevant government agencies (including Treasury,

the Australian Prudential Regulation Authority, the Australian Taxation Office, the Australian Competition and Consumer Commission and the Reserve Bank of Australia).

Key consultation activities have included the following:

Date	Consultation activity
October 2018	Discussions with key stakeholders about the possible scope of our review
March 2019	Publication of CP 310
August – September 2019	Stakeholder roundtables with consumer representatives, financial technology industry and banking industries (large banks, mid-tier banks and mutual ADIs)
March 2020	Consultation letter to key stakeholders on options for updates to the Code
December 2020	Consultation letter to key stakeholders on revised options for updates to the Code (two separate letters sent)
February 2021	Stakeholder roundtables with consumer and small business representatives, financial technology industry, payment system operators and ADI industries
May 2021	Publication of CP 341
October/November 2021	Consultation letter to key stakeholders on revised options for updates to the Code
March 2022	Publication of REP 718
March 2022	Targeted consultation with key stakeholder groups on the technical wording and format of a draft updated Code
Throughout the review	Separate engagement with specific entities or industries as needed/requested

Feedback from stakeholder groups was diverse on a number of topics within the scope of our review. The positions we have arrived at are the result of a cost benefit analysis, weighing up the benefits to consumers who receive the Code's protections against what we understand to be the regulatory costs and burdens on subscribers in making certain changes.

In assessing the benefit to consumers of particular positions, our considerations focused also on the value in reducing ambiguity and enhancing clarity of intention in the Code so that the Code can operate with certainty of its scope in terms of both what subscribers have to do to meet Code commitments and what consumers can expect of their financial institutions. Consequently, the positions arrived at are a product of compromise.

While we acknowledge that some subscribers may prefer alternative approaches on some issues, we have observed that the positions we have arrived at are feasible and, overall, palatable for subscribers.

I acknowledge that OBPR will publish this letter and its attachments for transparency purposes.

If you have any queries about this certification, please contact Jennifer Lyons by email at [Jennifer.Lyons@asic.gov.au](mailto:Jennifer.Lyons@asic.gov.au).

Yours sincerely,



Tim Gough  
Senior Executive Leader, Credit and Banking  
Financial Services and Wealth  
Australian Securities and Investments Commission

Attachments:

- **Attachment A:** Regulatory Costs Estimates Table
- **Attachment B:** CP 310
- **Attachment C:** CP 341
- **Attachment D:** REP 718