

**Agreement for Harmonization of
Cost of Credit Disclosure Laws in Canada**

Drafting Template

Consumer Measures Committee

June 1, 1998

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INTRODUCTION

At their September 12, 1996 meeting in Toronto, federal and provincial Consumer Affairs Ministers agreed in principle with the harmonization proposals of July, 1996.

Ministers have tasked the Consumer Measures Committee with developing a technical template expressing the harmonization proposals in sufficient detail to guide legal drafting, and to conduct technical consultations with stakeholders.

Legislation and regulations will be prepared in each jurisdiction to give effect to these proposals. The proposals are not intended to constitute legal drafting language. Jurisdictions are committed to adopting the intent of these proposals and will prepare their own legislation and regulations.

The Consumer Measures Committee would like to thank the Uniform Law Conference and the Alberta Law Reform Institute, which have invested considerable resources over a number of years in analysis of the issues surrounding harmonization of cost of credit disclosure laws. We also wish to thank the many individuals and organizations who provided the CMC with professional opinion as well as consumer and industry perspectives on the various drafts of this paper.

Format of this Paper

The following draft agreement reflects recommendations by Consumer Affairs Ministers and consultations by the Consumer Measures Committee with industry and consumer representatives on draft proposals issued in July of 1996. It provides the policy decisions made in the course of the negotiations and approved by Ministers, as well as a boxed technical template to assist individual jurisdictions in giving common legislative effect to these policy decisions.

Additional policy clarifications and items proposed by the Working Group as a result of stakeholder comments and deliberations subsequent to the September 1996 Ministers' Meeting are in bold text.

Objectives of Reform:

The objectives of the proposed reforms are to harmonize laws and develop uniform cost of credit disclosure requirements in order to reduce compliance costs and provide uniform consumer protection across Canada; to clarify and, where possible, simplify cost of credit disclosure rules; and to modernise laws to take account of developments in credit markets in recent years. It is intended that consumers will benefit from a consistently high standard of protection and that businesses will be able to use the same procedures, credit advertisements, disclosure statements and disclosure in contracts in all parts of the country.

It is also intended that businesses in each jurisdiction will benefit from fairer competition under a uniform set of rules governing all provincially and federally-regulated lenders and lessors.

The harmonization agreement is intended to cover a core subject matter of cost of credit and long

term leasing disclosure to consumers. Jurisdictions reserve the right to apply the harmonized standard more broadly, to otherwise engage in substantive regulation of credit and leasing practices, and to address enforcement and compliance issues individually in ways that do not reduce the practical level of harmonization on the core subject of consumer disclosure.

Application:

Harmonization will apply to all federal and provincial laws governing disclosure of the cost of consumer loans, which for this purpose are regarded as non-business loans to natural persons. At the federal level harmonization affects federal financial institutions laws and the *Interest Act*, while at the provincial level the affected statutes are predominantly consumer protection and financial institutions laws. Recognizing that consumer leasing arrangements close in nature to credit arrangements have become increasingly common, jurisdictions have agreed to include disclosure of long term leasing costs, including the implicit financing costs, in the harmonized legislation.

Compliance:

Individual jurisdictions will have the discretion to decide how they will enforce the harmonized provisions.

Drafting Template Proposal:

S.1

- (1) *In this section, “borrower”, “credit grantor” and “credit agreement” include a lessee, lessor and lease, respectively.*
- (2) *Subject to the following paragraphs, these harmonized provisions only applies to*
 - a) *a credit agreement made by a credit grantor in the course of carrying on a business, or*
 - b) *credit agreement arranged by a broker whether or not the credit grantor enters into the agreement in the course of carrying on a business.*
- (3) *The harmonized provisions do not apply if,*
 - a) *the credit agreement is a business credit agreement; or*
 - b) *the borrower is not a natural person.*
- (4) *The Regulation making authority may, by regulation, exclude any class of credit agreement or class of credit grantor or broker from the application of the harmonized*

provisions or modify the application of any the provisions with respect to any class of credit agreement or class of credit grantor or broker.

Purpose of Cost of Credit Disclosure Law:

The objectives of the harmonized laws are those which have guided development of cost of credit disclosure legislation in the past. They are to ensure that:

- consumers receive fair, accurate, timely and comparable information about the cost of credit in order to obtain the most economical credit for their needs;
- disclosure and disclosure requirements be as clear and simple as possible, given the inherent complexity of the subject matter;
- consumers be entitled to pay off loans (other than mortgages) at any time, and if they do so, incur only those finance charges earned up to the time at which the loan is paid off. Collateral mortgage loans are subject to the same prepayment rights as regular loans.

Plain Language

Given the complexity of the information to be conveyed in the disclosure of credit costs, it is important that the information contained in disclosure documents be clearly laid out and in plain language.

Disclosure statements should therefore express the required information clearly, concisely, in a logical order and in a manner that is likely to bring the information to the attention of the borrower.

Disclosure in electronic format, for example in an e-mail or Internet communication, will be acceptable so long as the borrower is offered the choice of receiving disclosure in a hard copy format. (This approach has already been proposed in the review of the federal Bank Act.)

Drafting Template Proposal:

S.2

Where a disclosure to a borrower is required by the harmonized provisions or the regulations to be made in a disclosure statement, the disclosure statement

- a) must be in writing or be in a form that can reasonably be expected to provide the borrower with continuing access to the information; and*
- b) must express the required information clearly, concisely, in a logical order and in a manner that is likely to bring the information to the borrower's attention.*

S.3

Regulation-making authority for harmonized provisions will be provided,

- a) respecting the form of disclosure statements or the form of disclosure in advertisements;*
- b) respecting additional information to be disclosed in a disclosure statement or advertisement.*

I. CONSUMER LOANS

1. Annual Percentage Rate or APR

1.1 Applicability

The following proposals specify which charges must be included and which must be excluded from the APR calculation. Generally, charges over which the lender has direct control and determines at the time of borrowing are to be included. In view of the increase in credit related insurance sales in recent years the Committee has paid particular attention to the types of insurance charges which will be included in the APR.

Drafting Template Proposal:

S.4

- (1) *The APR measures the cost of borrowing for a credit agreement as an annual percentage rate*
- (2) *The APR is used for disclosure purposes.*

Transitional Provisions

- (1) *Subject to subsections (2) and (3), these provisions will apply only to credit agreements entered into after [date of proclamation].*
- (2) *These proposals (S.15, S.16, S.17, S.18) apply after [date of proclamation] to all credit agreements for open credit, whether they are entered into before or after that date.*
- (3) *These proposals apply to credit agreements for fixed credit that are renewed or amended after [date of proclamation].*

1.2 APR Calculation

The Annual Percentage Rate will be calculated on the basis of the “nominal” rate formula contained in the Cost of Borrowing Regulations under the federal *Bank Act*. Where there are no applicable non-interest charges (see Sections 1.4 and 1.5 below) the APR will be the same as the interest rate specified in the loan contract.

The APR formula is as follows:

$$R = \frac{C}{T \times P_a}$$

Where:

- “**C**” is the total cost of borrowing over the term of the loan expressed as an amount. Interest charges and the non-interest charges specified below under Charges to Be Included in the APR will be included in the cost of borrowing for the purpose of this calculation;
- “**P_a**” is the average of the principal of the loan outstanding at the end of each of a series of equal interest calculation periods as provided for in the loan contract, before applying any payment due. The principal is the amount advanced, exclusive of any element of the cost of borrowing;
- “**R**” is the cost of borrowing over the term of the loan, expressed as a rate per annum on the principal (the APR);
- “**T**” is the term of the loan in years.

For the purpose of calculating the APR:

- payments made on a loan will be applied first to the cost of borrowing and then to the principal; and,
- the cost of borrowing in respect of an interest calculation period, will be calculated by multiplying the portion of the annual percentage rate that the period is of one year by the amount of principal outstanding at the end of the period.

Drafting Template Proposal:

S.5

The APR for a credit agreement is the annual interest rate stated in the credit agreement if:

- (a) *there is no non-interest cost of borrowing, and,*
- (b) *interest is not calculated any more frequently than the normal frequency of scheduled payments.*

S.6

- (1) *This section applies only to non-mortgage credit agreements*
- (2) *The APR for a non-mortgage credit agreement (in which the APR is not the annual interest rate, as provided for above), is determined by the equation:*

$$R = \frac{C}{T \times P} \times 100$$

where:

- “R” is the annual percentage rate*
- “C” is the total cost of borrowing*
- “T” is the length of the term, in years*
- “P” is the average of the principal outstanding at the end of each interest calculation period before applying any payment due.*

- (3) *For the purpose of determining “P” the following rules and assumptions apply:*
- a) the principal is the amount of money borrowed and outstanding at any time, but does not include any portion of the cost of borrowing;*
 - b) the accumulated finance charge is never added to the outstanding principal balance;*
 - c) each payment is applied first against the accumulated cost of borrowing and then, to the extent that the payment exceeds the accumulated cost of borrowing, against outstanding principal;*

S.7 Assumptions

- (1) *A year shall be calculated as having 365 days.*
- (2) *Where a credit agreement calls for payments to be made at intervals measured by reference to weeks or months, the APR may be calculated on the assumption that each week is 1/52 of a year long or that each month is 1/12 of a year long.*
- (3) *If the APR or any other value that depends on the interest rate for a credit agreement must be calculated when the interest rate for any period during the term is unknown, the APR or other value must be calculated as if the interest rate for that period was to be*

determined on the basis of the circumstances existing at the time of the calculation.

- (4) *The APR for fixed credit that is not a scheduled-payments credit agreement is calculated on the assumption that the outstanding principal will be repaid in a single payment at the end of the term.*
- (5) *The APR for a renewal agreement is calculated as if the renewal creates a new credit agreement under which the borrower receives on the renewal date an advance equal to the outstanding balance of the original credit agreement.*
- (6) *A disclosed APR is considered to be accurate if it is within one eighth of one percent of the actual APR for the credit agreement, as calculated in accordance with the formula in S.6.*

1.3 Mortgage Loan APR Calculation Subject to the Interest Act

Reflecting current practice for non-mortgage loan interest rate disclosure, the APR formula required for non-mortgage loans is a “nominal” rate calculation, which assumes the absence of interest compounding. On the other hand, under Section 6 of the Interest Act, disclosure for mortgage loans does include an element of interest rate compounding. Current disclosure practices for mortgage loans with respect to compounding will be retained and mortgage APR calculation will be subject to the requirements of Section 6 of the Interest Act.

For the purpose of these proposals, any loan secured by real property is a mortgage loan.

Drafting Template Proposal:

S.8 *APR for certain mortgage loans*

Where an interest rate is disclosed in accordance with section 6 of the Interest Act, the APR must be calculated in a manner that is consistent with that section.

1.4 Charges Included in the APR

Except for those charges specifically exempted in Section 1.5 below, all charges will be included in the total cost of borrowing in the above formula.

The following are examples of these charges:

- interest;

- administrative charges, such as service, transaction and activity charges;
- charges for the services of a notary or lawyer hired by the lender **and payable by the borrower;**
- charges for loan insurance (note exemptions in 1.5 below);
- brokerage fees as specified in Section 7 “Brokered Loans”

1.5 Charges Exempted From the APR

Specific exemptions are made for charges which are beyond the control of the lender, or which would be difficult to determine at the time of borrowing. The majority of the exemptions apply in practice to mortgage loans where the size of the loan, the length of the amortization period, and the requirement for payments to third parties introduce complications not present in other forms of loans to individuals.

- i) Charges for credit/loan insurance not required [Quebec: “and not supplied”] by the lender. This will include charges for life and disability insurance offered to the borrower on an optional basis.
- ii) Insurance covering the security interest of the loan, but where the insured amount is tied to the value of the asset rather than the balance of the loan and the borrower is a beneficiary. The common forms of this type of insurance are automobile and home insurance.
- iii) Charges for overdrawing an account.
- iv) Fees paid to register documents or obtain information from public registries of interests in property.
- v) Prepayment penalties for mortgages. (The existing prohibition on prepayment penalties for other loans will be retained.)
- vi) Title insurance directly under the control of the borrower, as well as the services of lawyers and notaries hired and paid directly by the borrower.
- vii) The cost of professional services required for the purpose of confirming the value, condition, location or conformity to law of property that serves as security for a credit agreement where the borrower is given a report signed by the person providing the professional services, and is free to give the report to third persons.
- viii) High ratio mortgage default insurance.

- ix) Fees for the maintenance of a tax account required in relation to a high ratio mortgage, or fees for optional maintenance a tax account.
- x) Discharge payments. Recognising that it may be difficult for a lender to determine the amount of a discharge payment at the time a mortgage loan is advanced, such payments will not be factored into the APR.

However, notice of any discharge fee together with a statement of the current fee will be provided in the disclosure statement.

- xi) Permitted default charges.
- xii) Charges for shares in credit union (shares tied to loan)

It should be noted that individual jurisdictions will retain the right to restrict or prohibit the imposition of discharge fees.

1.6 The APR and Rebate\Low Interest Financing Options

In the case of promotional offers, involving either a cash rebate or low interest rate financing, the APR for the low-interest financing option will be calculated on the basis of the rebated price. In this case (*Pa*) in the APR formula above will be based on the rebated price amortized over the term of the actual loan.

Drafting Template Proposal:

S.9

Where a borrower must decline a rebate, or a portion of a rebate, in order to enter into a supplier credit agreement at a particular interest rate, the APR and the total cost of borrowing are calculated on the assumption that the cash price of the relevant product is its cash price, as determined without regard to the rebate, less the amount of the declined rebate.

2. Disclosure Statements

2.1 Content of Disclosure Statements

The disclosure statement should contain all the cost information which a borrower might reasonably require at the time the loan is made and for future reference.

NB Lenders may make reasonable estimates or assumptions regarding information that is unavailable or uncertain at the time it is to be included in a disclosure statement.

Drafting Template Proposal:

S.10

- (1) *A disclosure statement may be a separate document or part of another document.*
- (2) *A credit grantor may base a disclosure on an estimate or assumption where*
 - a) *the information is not ascertainable by the credit grantor at the time of disclosure, and*
 - b) *the estimate or assumption is reasonable and is clearly identified as an estimate or assumption.*

2.1.1 Disclosure statements for fixed credit will provide the following information:

- i) the principal of the loan and the timing and amount of advances where more than one advance is involved (and in the case of supplier credit, the cash price of the product);
- ii) the total amount of all payments and the total dollar cost of borrowing defined as *C* in the APR calculation formula
- iii) the term of the loan, and the amortisation period, if different than the term;
- iv) the annual interest rate and the circumstances under which it will be compounded;
- v) the APR when different from the interest rate;
- vi) the date that interest begins to accrue, and the details of any grace period;
- vii) the nature and dollar amount of each non-interest charge;

- viii) the amount and timing of all payments (including down payments, trade-ins, balloon payments, final payment etc.);
- ix) the method of applying each payment to the accumulated cost of borrowing and to the principal;
- x) optional services, charges for such services and rights to cancel the services when the charges are collected by the lender;
- xi) prepayment rights and charges;
- xii) default charges;
- xiii) the subject matter of any security interest in personal property given by the borrower to the lender;
- xiv) brokerage fees (when required. See Section 7 “Brokered Loans”).
- xv) where the lender requires the borrower to secure insurance as a condition of obtaining the loan, the lender will disclose prominently that the borrower has the right to obtain the insurance from any insurer authorised to provide it under the laws of the jurisdiction concerned.

Drafting Template Proposal:

S.11

- (1) *A borrower who is required by a credit grantor to purchase any insurance may purchase it from any insurer who may lawfully provide that type of insurance, except that the credit grantor may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower.*
- (2) *A credit grantor who offers to provide or to arrange insurance referred to in subsection (1) must at the same time clearly disclose to the borrower in writing that the borrower may purchase the required insurance through an agent and from an insurer of the borrower's choice.*

The requirement for disclosure of the right to obtain insurance from any authorised insurer will apply only where the lender offers a particular source of insurance. Given their interest in the soundness and reliability of an insurer, lenders will have the right to approve such insurers, but not to unreasonably withhold approval.

Where the interest rate is subject to change during the term of the loan, the lender will also be required to disclose:

- xvi) the initial rate of interest;
- xvii) the manner in which the interest rate will be determined at different times during the term;
- xviii) the amount and timing of all payments based on the current interest rate (including initial payments, trade-ins, balloon payments, etc.);
- xix) the total amount of all payments and the total dollar cost of borrowing (defined as **C** in the APR calculation formula) based on the current interest rate;
- xx) the interest rate at which the amount of the scheduled payments would fail to cover the interest generated between successive payments, based on the initial outstanding balance of the loan. (This would not apply if the amount of the payments is automatically adjusted to reflect changes in the interest rate.)

Since the triggering rate will vary over the term of agreement (being lowest at its outset), initial disclosure that negative amortization is possible will be made when applicable, with the initial (lowest rate).

- xxi) if the loan is not a scheduled payments loan either:**
 - a) a statement of the circumstances in which the outstanding balance, or any portion of it, must be paid, or**
 - b) a reference to the provisions of the credit agreement that set out those circumstances.**

It should be noted that individual jurisdictions reserve the option of imposing additional substantive (as opposed to disclosure) requirements regarding the schedule of payments for supplier loans, such as restrictions on “balloon payments”.

2.1.2 Initial disclosure statements for open credit will provide the following information:

- i) the initial credit limit (NB if the initial credit limit has not been established at the time of issue of the disclosure statement, it should be disclosed in the first statement of account);
- ii) the interest rate, or the manner of determining the rate if it is not fixed, and in the case of credit cards the manner in which interest is calculated;

- iii) the nature and dollar amount of non-interest charges;
- iv) the APR (except in the case of credit cards);
- v) the minimum periodic payment, or the method of calculating the minimum payment required for each period;
- vi) the term of each period for which a statement of account is furnished;
- vii) the date that interest begins to accrue, and the details of any grace period;
- viii) for credit cards - the maximum liability (prescribed in regulation) of the cardholder for unauthorized use of a lost or stolen card;
- ix) charges or penalties for failure to make payments as they come due;
- x) any security interest in personal property;
- xi) a local or toll-free number where account information can be obtained;
- xii) information about additional credit related services (eg. insurance costs).
Alternatively, this information could be provided in a separate statement delivered to the borrower before the services are provided;
- xiii) where the lender requires the borrower to secure insurance as a condition of obtaining the loan, the lender will disclose prominently that the borrower has the right to obtain the insurance from any insurer authorised to provide it under the laws of the jurisdiction concerned.
- xiv) brokerage fees (when required. See Section 7 “Brokered Loans”).

Drafting Template Proposal:

S.12

- (1) *A borrower who is required by a credit grantor to purchase any insurance may purchase it from any insurer who may lawfully provide that type of insurance, except that the credit grantor may reserve the right to disapprove, on reasonable grounds, an insurer selected by the borrower.*
- (2) *A credit grantor who offers to provide or to arrange insurance referred to in subsection (1) must at the same time clearly disclose to the borrower in writing that the borrower*

may purchase the required insurance through an agent and from an insurer of the borrower's choice.

(3) *Notwithstanding 2.1.1 i) through xxi) and 2.1.2 i) through xiv)*

- a) *the credit limit may be disclosed,*
 - i) *in the initial disclosure statement,*
 - ii) *in the first statement of account, or*
 - iii) *in a separate statement delivered to the borrower no later than when the borrower receives the first statement of account,*
- b) *information,*
 - i) *about optional services and charges for those services, or*
 - ii) *that is specific to a particular transaction under the credit agreement for open credit*

may be provided in the initial disclosure statement or a separate statement delivered to the borrower before the services are provided or the particular transaction is entered into.

2.2 Timing of Disclosure Statement

For a non-mortgage loan, the lender will be required to provide a disclosure statement to a prospective borrower before the borrower makes any payment or incurs any legal obligations regarding the loan, whichever comes first. The disclosure statement may form part of the loan agreement.

For a mortgage loan, the lender must deliver the disclosure statement at least 2 days before the first or only advance under the loan.

The 2 day/48 hour advance disclosure should be in advance of the borrower entering the agreement (being legally committed), not simply receiving an advance.

Changes in terms favourable to the consumer in that they reduced the cost of borrowing (i.e. drops in interest rate) are permitted.

Drafting Template Proposal:

S.13

(1) *Where the credit agreement is not a mortgage loan, the credit grantor must provide the initial disclosure statement to the borrower before the borrower enters into the credit*

agreement or makes any payment, excluding disbursement charges, whichever is earlier.

- (2) *The credit grantor must provide the initial disclosure statement for a mortgage loan to the borrower at least 2 business days before the borrower enters into the credit agreement or makes any payment, excluding disbursement charges, whichever is earlier.*
- (3) *The two day period for receiving the disclosure statement may be waived by the borrower if the borrower obtains independent legal advice.*

3. Subsequent Disclosure

3.1 Disclosure of Interest Rate Changes in Variable Rate Fixed Loans

In variable rate fixed loans, where the interest rate is linked to a publicly disclosed index rate (such as the lenders' prime rate), borrowers need not be given notice each time the interest rate changes. Under these circumstances, borrowers will be given an annual statement indicating the rate in effect at the beginning and end of the year and other information that has been affected by changes in the rate.

Where the interest rate is not linked to a publicly disclosed index rate, and where the interest rates increases by more than 1% from the rate disclosed in the contract or the last statement (whichever is the more recent) borrowers should be advised in writing of the change in the interest rate within 30 days. The notice should indicate other changes that will occur because of the change in the interest rate.

Drafting Template Proposal:

S.14

- (1) *Where the interest rate on a fixed loan is a floating rate, the credit grantor must, at least once every twelve months, deliver to the borrower a disclosure statement containing the following information for the period covered by the statement:*
- a) *the annual interest rate at the beginning and end of the period;*
 - b) *the outstanding balance at the beginning and end of the period;*
 - c) *for a scheduled-payments credit agreement, the amount and timing of all remaining payments, based on the annual interest rate at the end of the period covered by the statement.*

- (2) *Where the interest rate may be changed but the interest rate is not a floating rate, a credit grantor must, within 30 days after increasing the annual interest rate to a rate that is at least 1% higher than the rate most recently disclosed to the borrower, deliver to the borrower a disclosure statement containing*
- a) *the new annual interest rate,*
 - b) *the date the new rate takes effect, and*
 - c) *how the amount or timing of any payment will be affected by the change in the interest rate.*
- (3) *Where as a result of an increase in the principal due to default charges or missed payment(s) under a fixed credit agreement the amount of the borrower's scheduled payments does not cover accrued interest, the credit grantor must give the borrower notice in writing to that effect within 30 days.*

For open credit other than credit cards the lender will notify the borrower of a change in interest rate in the next monthly statement.

Drafting Template Proposal:

S.15

For open credit that is not associated with a credit card, the credit grantor must disclose any change in the interest rate in the next statement of account.

For credit card loans, borrowers will be given 30 days advance notice of any interest rate change, unless the interest rate is linked to a public index.

3.2 Disclosure of Amendments to Loan Agreement

When parties agree to an amendment of an existing loan agreement, the lender will advise the borrower in writing within 30 days of any information that has changed from the original disclosure statement.

If, where permitted, a lender offers to waive one or more payments without waiving corresponding interest charges, the lender will state prominently in its offer that the interest will accrue.

Where the schedule of payments is changed by an amendment, the lender should be required to give notice of the new schedule of payments, and any increase in the total payments or dollar cost of borrowing.

It was agreed to amend the third paragraph of this section to require that when schedules of payment are changed by an amendment, the notice of a new schedule of payments would include notice of *any increase* in the total dollar cost of borrowing (not any change).

For credit card loans, lenders should be required to give at least 30 days advance notice of any material changes to the information required to be disclosed under 2.1.2 except changes in the credit limit¹ or increases in grace period or decreases in loan or other charges. Lenders should be required to disclose any other changes to the information in the initial disclosure statement by the next periodic statement.

3.3 Periodic Statements of Account for Open Credit

Periodic statements should be provided to the borrower at least monthly, except where there has been no account activity.

The statement of account should include:

- i) the opening and closing balances and itemized statement of advances and purchases, credit charges and payments posted to the account during the period;
- ii) the interest rate(s) during the period;
- iii) the credit limit (if any);
- iv) the minimum payment, due date, and amount that must be paid to take advantage of a grace period;
- v) the borrower's rights and obligations regarding the correction of billing errors;
- vi) a telephone number where the borrower can get information about the account without incurring any charges for the call (includes collect calls).

Drafting Template Proposal:

S.16

- (1) *Subject to the following paragraph, the credit grantor must deliver a statement of account to the borrower at least monthly.*
- (2) *A credit grantor is not required to send a statement of account to a borrower at the end*

¹N.B. In Quebec, unsolicited increases in credit limits will continue to be prohibited.

of any period during which there have been no advances or payments and

- (a) the outstanding balance is zero, or*
- (b) the borrower is in default and has been notified that the privilege to obtain advances under the agreement has been cancelled or suspended and the credit grantor has demanded payment of the outstanding balance.*

S.17

The credit grantor must provide a telephone number, so that the borrower can make enquiries, at no charge for the call, about the borrower's account during the credit grantor's ordinary business hours.

S.18

- (1) A statement of account for open credit must disclose as much of the following information as is applicable:*
 - i) the period it covers;*
 - ii) the outstanding balance at the beginning of the period;*
 - iii) the amount, description and posting date of each transaction added to the outstanding balance during the period;*
 - iv) the amount and posting date of each payment or credit subtracted from the outstanding balance during the period;*
 - v) the annual interest rate or rates in effect during the period or any part of the period;*
 - vi) the amount of interest charged to the borrower during the period;*
 - vii) the total amount of all advances, purchases and charges, including interest, during the period;*
 - viii) the total amount of all payments during the period;*
 - ix) the outstanding balance at the end of the period;*
 - x) the credit limit;*
 - xi) the minimum payment;*
 - xii) the due date for payment;*
 - xiii) the amount that the borrower must pay on or before the due date in order to take advantage of a grace period;*
 - xiv) the borrower's rights and obligations regarding the correction of billing errors;*
 - xv) telephone number in accordance with subsection 3.3(vi) [above]*

- (2) *A transaction is sufficiently described for the purposes of item (iii) if the description in the statement of account, along with any transaction record included with the statement of account or made available to the borrower at the time of the transaction, can reasonably be expected to enable the borrower to verify the transaction.*

If at the time of the statement the lender indicates that the borrower may omit the subsequent loan payment, the statement will clearly and prominently indicate whether interest will be charged for the affected period.²

3.4 Renewal Statement for Mortgage Loans

A renewal statement for a mortgage loan will provide the same categories of cost information as the disclosure statement for the loan. If the lender intends not to renew a mortgage loan where the loan agreement provided for renewal, notice should be provided to the borrower at least 21 days before the expiry of the term of the loan.

Changes in terms forwarded to the consumer in that they reduced the cost of borrowing (i.e. drops in interest rate) are permitted.

Drafting Template Proposal:

S.19

- (1) *For the purpose of renewing a mortgage loan the credit grantor will provide the borrower with a disclosure statement 21 days before the effective date of the renewal agreement.*
- (2) *Where a credit grantor fails to provide the borrower with a renewal statement for a mortgage loan 21 days before the effective date of the renewal agreement, the borrower's rights under the original loan agreement will continue to apply until 21 days after the renewal statement is provided to the borrower.*
- (3) *A renewal statement for a mortgage loan will provide the same categories of cost information as the disclosure statement for the loan.*
- (4) *A credit grantor who does not intend to renew the mortgage loan shall notify the borrower of his intention at least 21 days before the expiry of the term of the loan.*

²Quebec will to retain the right to ban this practice or restrict it to situations when the borrower specifically requests waiver of a payment.

4. Prepayment of Loans

These proposals do not address prepayment of a mortgage loan, which will continue to be dealt with in the *Interest Act*.

Subject to reasonable limitations regarding the minimum amount or the frequency of prepayments, consumers will continue to have a right to prepay the outstanding balance, or a portion of the outstanding balance, on a non-mortgage loan at any time. A consumer who makes a prepayment will not be liable for any charge or penalty in respect of the prepayment. Use of the “Rule of 78s” for calculating prepayment balances will not be permitted in any jurisdiction.

When a non-mortgage fixed loan is prepaid in full, the consumer will be rebated a portion of non-interest charges other than disbursement charges. The amount rebated under these circumstances will be proportionate to the length of time remaining on the loan.

Drafting Template Proposal:

S.20

- (1) *This section does not apply to mortgage loans.*
- (2) *A borrower is entitled to pay the full outstanding balance of a credit agreement at any time without any prepayment charge or penalty.*
- (3) *A borrower who prepays the full outstanding balance of a credit agreement for fixed credit must be refunded or credited with a portion of any non-interest charge (excluding disbursement charges) that was paid by the borrower or was added to the outstanding balance of the credit agreement.*
- (4) *The portion of each non-interest charge that must be credited to the borrower under subsection (3) is determined under 4.1 below.*
- (5) *A borrower is entitled to prepay a portion of the outstanding balance of a credit agreement for fixed credit on any scheduled payment date or at least monthly without any prepayment charge or penalty, but is not thereby entitled to a credit for any non-interest charges.*

4.1 Refund of non interest Charges on Prepayment

The amount of non-interest charges refunded to the borrower on prepayment of a non-mortgage loan will be determined by the following formula:

$$R = C \times \frac{n - m}{n}$$

where:

- “**R**” is the refundable portion of the charge
- “**C**” is the amount of the charge
- “**n**” is the length of the period between the time the charge was imposed and the scheduled end of the loan term
- “**m**” is the period between the time the charge was imposed and the time of the prepayment

5. Default Charges

The only non-interest charges permitted when a borrower defaults on a loan should be:

- reasonable charges for dishonoured payments, (e.g. cheques);
- reasonable charges regarding legal costs incurred in collecting or attempting to collect a payment on a loan;
- reasonable charges regarding costs incurred in realising the security on a loan or protecting the security on a loan after seizure by the lender;

The precise nature of these charges will be defined in regulation by each jurisdiction.

Drafting Template Proposal:

S.21

“default charge” means a charge imposed on a borrower who fails to make a payment as it comes due under a credit agreement or who fails to comply with any other obligation under a credit agreement, but does not include interest on an overdue payment.

S.22

- (1) *The only default charges that may be provided for by a credit agreement are*
- a) *reasonable charges in respect of legal costs incurred in collecting or attempting to collect a payment on a credit agreement,*
 - b) *reasonable charges in respect of costs, including legal costs, incurred in realizing a security interest or protecting the subject matter of a security interest after default, and*
 - c) *reasonable charges that reflect costs incurred by the credit grantor because a cheque or other payment instrument given by the borrower to the credit grantor was dishonoured.*
- (2) *Regulation-making authority for harmonized provisions will be provided respecting the definition of what constitutes a “reasonable default charge”.*

6. Credit Cards

Disclosure requirements for credit cards will continue to differ somewhat from those for other forms of open credit.

6.1 Disclosure on Application for a Credit Card

Credit card applications or the accompanying information will disclose prominently either:

- the date of the information, the interest rate, grace period and other charges in effect as of that date, or
- a local or toll-free number where that information can be obtained.

Where credit card applications are taken in person, by telephone or by other electronic means, the interest rate and other charges in effect will be disclosed at the time of the application³.

³Unsolicited credit cards can not be issued in Quebec.

Drafting Template Proposal:**S.23**

- (1) *A credit card issuer must disclose in an application form for a credit card or document accompanying this form*
- a) *either*
 - i) *the annual interest rate, if the interest rate is not a floating rate, or*
 - ii) *the index and the relationship between the index and the annual interest rate, if the interest rate is a floating rate,*
 - b) *the grace period, if any,*
 - c) *the amount of any non-interest cost of borrowing, and*
 - d) *the date as of which the information referred to in paragraphs (a), (b) and (c) is current*

Or provide a telephone number where the information mentioned in paragraphs (a), (b) and (c) can be obtained, at no charge for the call during the credit grantor's ordinary business hours.

- (2) *Where a borrower applies for a credit card by telephone or any other electronic means the card issuer must disclose the information referred to in paragraphs (1)(a), and (c) when the borrower makes the application.*
- (3) *When individual consumers are directly solicited, either in person, by mail or by electronic means, to apply for a credit card, the interest rate and other fees in effect at the time of solicitation will be prominently disclosed.*

S.24

If the card holder is required by the credit agreement to pay the outstanding balance in full on receiving each statement of account, the card issuer must also disclose in the initial disclosure statement,

- a) *that the outstanding balance is payable in full on receipt of each statement of account;*
- b) *the period after receipt of a statement of account within which the card holder must pay the outstanding balance in order to avoid being in default under the agreement; and,*
- c) *the annual interest rate that is charged on any amount that is not paid when due.*

6.2 Cardholder Liability

The initial disclosure statement for a credit card agreement will disclose the cardholder's maximum liability for unauthorized use of the card.

The proposals as written apply to the use of credit cards except where they are used in conjunction with a PIN (personal identification number) at an ATM, when such use would be governed by the Canadian Code of Practice for Consumer Debit Card Services.

Drafting Template Proposal:

S.25

In addition to the applicable information mentioned in section 3.3 [S.18], a card issuer must disclose in the initial disclosure statement for open credit associated with a credit card the card holder's maximum liability for unauthorized use of the credit card if it is lost or stolen.

A cardholder's liability for a lost or stolen credit card will be limited to \$50.00 in conformity with existing provincial laws.

Drafting Template Proposal:

S.26

- (1) *The maximum total liability of a card holder arising from unauthorized use of a lost or stolen credit card before the issuer receives notice under subsection (3), is the lesser of

 - a) \$50, and
 - b) the amount fixed or agreed to by the card issuer as the maximum amount for which the card holder is liable in the event of the unauthorized use of the card after its loss or theft.*
- (2) *A card holder is not liable for a debt incurred through the unauthorized use of a lost or stolen credit card after the card issuer receives notice of the loss or theft.*
- (3) *A notice to the card issuer may be oral or in writing.*
- (4) *The maximum total liability [Subsection (1)] does not apply to a transaction at an*

automatic teller machine that can be effected only by using a personal identification number that the card holder has agreed to keep secret.

A cardholder will be deemed to have entered into a credit card contract either on signing an agreement or on first use of a credit card.⁴

7. Brokered Loans

All requirements in harmonized cost of credit disclosure legislation will apply to brokered loans. However the responsibilities of the broker and lender with regard to disclosure will vary somewhat, depending on the precise roles played by each vis-a vis the borrower.

It is the responsibility of the lender to provide a disclosure statement for a brokered loan where the broker's service is limited to that of referring the borrower to the lender and the lender is regulated under federal or provincial statute as a lending institution.

In these cases the lender must disclose the brokerage fee only where the fee is deducted by the lender from the amount advanced to the borrower and is paid directly by the lender to the broker. Otherwise the broker will disclose the brokerage fee.

It is the responsibility of the broker to provide the borrower with a disclosure statement where:

- the broker takes a loan application (It should be noted that the lender will not be relieved of the responsibility in these circumstances for ensuring that the borrower receives an accurate disclosure statement);
- the broker obtains a loan from a lender not regulated as such under federal or provincial statute; or
- the broker acts as a lender.

The APR in the disclosure statement provided by the broker will incorporate the brokerage fee.

Individual jurisdictions may apply additional requirements to loan brokers to meet legitimate consumer protection objectives beyond those of cost of credit disclosure.

⁴Jurisdictions may reserve the right to limit the issuing of unsolicited credit cards.

Drafting Template Proposal:**S.27**

- (1) *This section applies only where a broker arranges a credit agreement involving a credit grantor who does not enter into the credit agreement in the course of carrying on a business.*
- (2) *Any provision of the harmonized provisions or the regulations that imposes a duty on a credit grantor is to be read as imposing the duty on the broker.*
- (3) *Where the borrower pays or is liable to pay a brokerage fee, the initial disclosure statement for the credit agreement must*
 - (a) *disclose the amount of the brokerage fee, and*
 - (b) *account for the brokerage fee in the APR and total finance charge.*

S.28

- (1) *This section applies where a broker arranges a credit agreement involving a credit grantor who enters into the credit agreement in the course of carrying on a business.*
- (2) *Where the credit grantor deducts a brokerage fee from an advance, the credit grantor's initial disclosure statement must*
 - (a) *disclose the amount of the brokerage fee, and*
 - (b) *account for the brokerage fee in the APR and total finance charge.*
- (3) *A broker who takes a loan application from a borrower and forwards it to a credit grantor must give the borrower a disclosure statement containing the information referred to in subsection (2) and any other information required by the harmonized provisions to be disclosed in an initial disclosure statement.*
- (4) *Where a credit grantor authorizes a broker to provide a disclosure statement on its behalf, the credit grantor is responsible for ensuring the accuracy of the disclosure statement.*

8. Cancellation of Optional Services

A borrower should have the following rights regarding cancellation of an optional service provided by the lender in connection with a loan⁵:

- to cancel an optional service of a continuing nature at any time by giving a month's notice;
- to receive a refund of any unearned optional service charges when the service is cancelled.

Drafting Template Proposal:

S.29

- (1) *A borrower may cancel an optional service of a continuing nature provided by the credit grantor on giving one month's notice, or such shorter period of notice as is provided for by the terms of the agreement under which the service is provided.*
- (2) *A borrower who cancels an optional service*
 - a) *is not liable for, and*
 - b) *is entitled to a refund of any amount already paid for charges relating to any portion of the service that has not been provided at the time of cancellation.*
- (3) *The Regulation making authority may by regulation determine the manner in which a refund referred to in paragraph (2)(b) is to be determined in accordance with the formula in section 4.1 unless otherwise specified in other applicable laws (i.e. insurance).*

9. Informal Credit Arrangements

A number of commentators noted difficulties with the July 95 proposals regarding informal credit arrangements, arising from arrangements specific to different types of supplier. Given these difficulties and an apparent absence of consumer problems with such arrangements they will be exempted from coverage by harmonized legislation. The exemption will apply to the common informal arrangement where suppliers of goods and services allow customers to defer payment for

⁵Individual jurisdiction reserve the right to determine when these rights are extended to services provided by associates of the lender or transferred to assignees.

a short period under the following circumstances:

- i) the balance is to be paid in full in a single payment within a certain period (usually 30 days) after the customer receives a statement of account;
- ii) the arrangement is unsecured, apart from any statutory lien that may arise;
- iii) there are no non-interest charges;
- iv) the loan is interest-free until the payment due date;
- v) the merchant does not assign the customer's obligations in the ordinary course of business other than as security.

Drafting Template Proposal:

S.30

These proposals do not apply to a credit agreement that is for supplier credit that

- a) anticipates payment in full for the product in a single payment within a certain period after a written invoice or statement of account is delivered to the buyer;*
- b) is unsecured, apart from any lien on the product that may arise by operation of law;*
- c) is not assigned in the ordinary course of the credit grantor's business otherwise than as security;*
- d) does not provide for any non-interest charges; and*
- e) is unconditionally interest-free during the period for payment referred to in subparagraph a).*

10. Advertisements

The complexity of the advertisement will depend to an extent on the complexity of the loan arrangement presented. The APR remains a key disclosure element.

Disclosure in all advertisements should be based on representative examples of typical loans. The proposals are based on the premise that consumers require certain combinations of information on costs in order to make informed choices. For this reason, advertisement of certain elements of cost information will trigger a requirement to disclose additional elements. **It should be noted that the requirement in the July 1996 proposals to include *number of payments or term of***

loan as triggering disclosure items has now been dropped. Where disclosure with equal prominence is required, the same size of print will be used and, in television advertisements, the print will be displayed for the same length of time.

Where an advertisement refers to a “prime” interest rate it must specify which “prime” rate applies.

10.1 Requirements For Advertisements on Fixed Credit

The following requirements apply only to advertisements that volunteer any specific information about the cost of borrowing such as:

- i) amount of any payment (i.e. monthly, down);
- ii) any non-interest charge;
- iii) the interest rate; or
- iv) any other element of the cost of borrowing.

Advertisements will disclose:

- i) the APR;
- ii) the term of the loan; and
- iii) in supplier loans, the price of the goods and the total cost of borrowing.

Drafting Template Proposal:

S.31

- (1) *This section applies only to advertisements that offer fixed credit and state the interest rate or amount of any payment.*
- (2) *Every advertisement to which this section applies must disclose*
 - a) *the APR, and*
 - b) *the term of the loan.*
- (3) *An advertisement for supplier credit in relation to a specifically identified product must*

disclose the cash price.

(4) *An advertisement for supplier credit in connection with which any non-interest charge would be payable must disclose*

- a) the cash price, and*
- b) the total cost of borrowing charge,*

except that an advertisement broadcast on radio, television, billboard, busboard or other media with similar time and/or space limitations is not required to disclose the total cost of borrowing.

S.32

Where an advertisement contains information that requires disclosure of the APR or other information in the advertisement, the APR must be as prominent as any of the information that required the APR to be disclosed.

S.33

Where any of the information required to be disclosed would not be the same for all credit agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.

All required disclosures must be conspicuous and the APR as prominent as the most prominently disclosed element of the cost of borrowing.

Harmonized regulations stipulating minimum print sizes or proportional sizes will be put in place and will apply to broadcast as well as print advertisements.

[request examples from stakeholders to justify size]

10.1.1 Exceptions:

Broadcast Advertisements:

Radio and Television advertisements may omit “total cost of borrowing”.

Supplier Credit:

Supplier credit advertisements may omit “cash price” and “total cost of borrowing” if they are advertising credit terms applicable to a range of transactions. They may not omit cash price if they are advertising a particular product nor if they are using an example to disclose the APR.

10.2 Requirements For Advertisements on Open Credit

An advertisement for open credit other than credit cards that discloses any element of cost of borrowing should also disclose the APR.

Credit card advertisements that disclose any element of cost of borrowing should disclose the current interest rate and any initial or periodic non-interest charges.

10.3 Advertisements Regarding Interest Free Loans

Where an advertisement states or implies that no interest is payable in respect of a certain period, the advertisement will indicate prominently whether or not the loan is actually interest-free during the period, or whether interest accrues during the period but will be forgiven under certain conditions.

Drafting Template Proposal:***S.34***

- (1) *An advertisement that states or implies that no interest is payable in respect of a transaction for a certain period must disclose prominently whether*
- a) the transaction is unconditionally interest-free during the period, or*
 - b) interest accrues during the period but will be forgiven under certain conditions.*
- (2) *If interest accrues during the period but will be forgiven under certain conditions, the advertisement must also disclose*
- a) the conditions, and*
 - b) the APR for the period (or annual interest rate for credit cards), assuming the conditions for forgiveness of the interest are not met.*

II. LEASES

Drafting Template Proposal:

“lease” means any agreement for the hire of goods, except an agreement for the hire of goods in connection with a residential tenancy agreement;

S.35

(1) *In this Part,*

“assumed residual payment” means

- (a) *for a lease that is neither an option lease nor a residual obligation lease, the estimated residual value,*
- (b) *for an option lease, the lesser of the estimated residual value and the option price, assuming the option is exercised at the end of the lease term, and*
- (c) *for a residual obligation lease, the estimated residual cash payment plus the estimated residual value;*

“capitalized amount” means the lease value of the leased goods plus the amount of any advances made to the lessee before the beginning of the term of the lease less the amounts of any payments made by the lessee before the beginning of the term of the lease (excluding any payments made by the lessee to the lessor and expressly held by the lessor as security for any or all of the obligations of the lessee to the lessor, and any periodic lease payments that are paid at or before the beginning of the term);

“lease value” of leased goods means

- (a) *for a lease by a lessor who, in the ordinary course of business, sells the product to cash customers, the price for which the lessor sells the product to cash customers, unless the parties have agreed to a lower price;*
- (b) *for a lease by a lessor to whom paragraph (a) does not apply, a reasonable estimate of the cash value; and*
- (c) *for an advertisement, the price for which the advertiser currently offers to sell the product to cash customers or, if the advertiser does not currently offer the product to cash customers, the price stated in the advertisement;*

“estimated residual cash payment” means an amount that the lessee will be required to

pay to the lessor at the end of the term of a residual obligation lease if the realizable value of the leased goods at the end of the term equals their estimated residual value;

“estimated residual value” means the lessor’s reasonable estimate of the wholesale value of the leased goods at the end of the lease term;

“implicit finance charge” for a lease means the total of the periodic payments plus the assumed residual payment less the capitalized amount;

“option lease” means a lease that gives the lessee the right to acquire title to or retain permanent possession of the leased goods by making a payment in addition to the payments required under the lease or by satisfying other specified conditions;

“option price” means the amount of the additional payment that the lessee must make in order to exercise the option under an option lease;

“period” means a period, such as a month, into which the term of a lease is divided for the purpose of determining the timing and amount of payments under the lease;

“residual obligation lease” means a lease under which the lessee may be required at the end of the lease term to pay the lessor an amount based wholly or partly on the difference, if any, between the estimated residual value and the realizable value of the leased goods;

“term of the lease” means the time during which the lessee is entitled to retain possession of the leased goods;

“total lease cost” means the total of the payments that are unconditionally required to be made by the lessee (excluding any payments made by the lessee to the lessor and expressly held by the lessor as security for any or all of the obligations of the lessee to the lessor).

- (2) *A reference in this Part to payments made before the beginning of the lease term does not include the initial periodic payment.*

11. Applicability

Drafting Template Proposal:

S.36

This Part applies to a lease only if the lease,

- a) is for a fixed term of 4 months or more,*
- b) is for an indefinite term or is renewed automatically until one of the parties takes positive steps to terminate it, or*

(Jurisdictions will define for themselves the scope of application of their law to automatically renewable and indefinite term leases.)

- c) is a residual obligation lease.*

12. Disclosure Statement

12.1 Content

Drafting Template Proposal:

S.37

(1) The disclosure statement must disclose as much of the following information as is applicable to the lease

- a) that the transaction is a lease;*
- b) a description of the leased goods;*
- c) the term of the lease;*
- d) the lease value;*
- e) the nature and amount of any other advances received or charges incurred by the lessee before the beginning of the term;*
- f) the amount and purpose of each payment made by the lessee before the beginning of the term;*
- g) the capitalized amount;*
- h) the amount, timing and number of the periodic payments;*
- i) the estimated residual value of the leased goods;*

- j) *for an option lease,*
 - i) *how and when the option may be exercised,*
 - ii) *the option price if the option is exercised at the end of the term, and*
 - iii) *the method for determining the option price if the option is exercised before the end of the term;*
 - k) *for a residual obligation lease,*
 - i) *the estimated residual cash payment, and*
 - ii) *statement to the effect that the lessee's maximum liability at end of the lease term, is the sum of the estimated residual cash payment plus the difference, if any, between the estimated residual value and the realizable value of the leased goods;*
 - l) *the circumstances, if any, under which the lessee or the lessor may terminate the lease before the end of the term and the amount, or method of determining the amount, of any payment that the lessee will be required to make on early termination of the lease;*
 - m) *if there are circumstances in which the lessee will be required to make a payment that is not disclosed under paragraphs (a) to (l),*
 - i) *the circumstances, and*
 - ii) *the amount of the payment or the method of determining its amount;*
 - n) *the implicit finance charge;*
 - o) *the Lease APR;*
 - p) *the total lease cost.*
- (2) *The circumstances referred to in paragraph (m) include, without limitation, unreasonable wear or excess use.*

12.2 Lease APR

The lease APR provided in the disclosure statement will be calculated on the basis of the loan APR formula described in Section 1.2 above, with the term “lease” substituted for that of “loan” and the term “capital cost” substituted for that of “principal”. The formula will be calculated on the basis of:

- i) the capital cost of the leased goods;
- ii) the implicit dollar finance charge for the leased goods calculated as total payments minus capital cost;
- iii) the residual value, treated for this purpose as a payment;
- iv) acquisition, administration or other fees (to be included in the implicit dollar

finance charge and not in the capital cost);

Drafting Template Proposal:

S.38

(1) Formula

The APR for a lease is $m \times i$ (expressed as a percentage), where “m” is the number of periods per year, “i” is the periodic rate and the value of “i” is the value that satisfies the equation:

$$PMT = \frac{PV - FV(1+i)^{-N}}{\frac{1 - (1+i)^{-(N-A)}}{i} + A}$$

where:

the initial periodic payment is paid in advance and included in the down payment and the remaining payments are calculated as end of month payments;

“PMT” is the amount of each periodic payment;

“A” is the number of periodic lease payments that are paid at or before the beginning of the term;

“PV” is the capitalized amount;

“FV” is the amount of the assumed residual payment;

“N” is the number of periods in the lease;

“i” is the periodic interest rate.

(2) In determining the capitalized amount for calculating the APR for an advertisement, the amount of the lease value is to be assumed based on an amount that is reasonable in the context of the lease.

(3) For the purposes of calculating the APR and implicit finance charge for a lease, taxes payable by the lessee in connection with the lease are regarded as payments payable at the time the lease is made.

S.39 *Assumptions in the calculation of Lease APR*

- (1) *A year shall be calculated as having 365 days.*
- (2) *Where a lease agreement calls for payments to be made at intervals measured by reference to weeks or months, the Lease APR may be calculated on the assumption that each week is 1/52 of a year long or that each month is 1/12 of a year long.*
- (3) *If the Lease APR or any other value that depends on the interest rate for a credit agreement must be calculated when the interest rate for any period during the term is unknown, the Lease APR or other value must be calculated as if the interest rate for that period was to be determined on the basis of the circumstances existing at the time of the calculation.*
- (4) *A disclosed Lease APR is considered to be accurate if it is within one eighth of one percent of the actual Lease APR for the lease agreement, as calculated in accordance with the formula in S.38.*

12.3 Timing of Disclosure Statement

The lessor should provide a disclosure statement to a prospective lessee before the lessee makes any payment or incurs any legal obligations regarding the lease.

Drafting Template Proposal:**S.40**

The lessor must deliver the initial disclosure statement to the lessee before the lessee enters into the lease or makes a payment.

13. Disclosure in Lease Advertisements***Drafting Template Proposal:*****S.41**

- (1) *A written advertisement that gives any specific information about the cost of a lease must disclose,*

- a) *that the transaction is a lease;*
 - b) *the term of the lease;*
 - c) *the amount of any payment that will be required before the beginning of the lease term;*
 - d) *other required payments;*
 - e) *the amount and timing of the periodic payments;*
 - f) *the Lease APR;*
 - g) *if the lessee may be required to pay an extra charge based on usage of the goods above an amount to be determined by the regulations, the manner of determining that charge.*
- (2) *Where any of the information required to be disclosed by subsection (1) would not be the same for all lease agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.*

All required disclosures must be conspicuous with the lease APR as prominent as the most prominently disclosed element of the cost of leasing. Leases which use an example to disclose a APR (due to fixed costs) must base their disclosure on a sample representative transaction, which must be disclosed as an example or particular case.

Harmonized regulations stipulating minimum print sizes or proportional sizes will be put in place and will apply to broadcast as well as print advertisements.

Drafting Template Proposal:

S.42

- (1) *An advertisement broadcast on radio, television, billboard, busboard or other media with similar time and/or space limitations that gives any specific information about the cost of a lease must disclose,*
- a) *that the transaction is a lease;*
 - b) *the amount of any payment that will be required before the beginning of the lease term;*
 - c) *the amount and timing of the periodic payments;*
- and either*
- d) *the term of the lease;*
 - e) *the Lease APR.*

or

- f) a telephone number where information on these cost elements can be obtained without incurring any charges for the call*

or

- g) reference to an advertisement in a publication of general distribution covering the area of the broadcast.*

- (2) Where any of the information required to be disclosed by subsection (1) would not be the same for all lease agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.*

14. Early Termination

The lessor will disclose the terms, conditions and costs to the lessee of early termination of the lease for any reason.

Legislation will provide enabling authority to make regulations specifying “reasonable termination fees” for early termination of a lease.

Drafting Template Proposal:

S.43

- (1) In a lease which gives the lessee the right to exercise a purchase option on payment of an option price, whether at lease-end or at any time during the lease, the lease must disclose the option price or the method by which the price will be determined.*
- (2) The lease will disclose either the financial terms or the method used to determine any financial terms applicable to early termination of the lease.*
- (3) The Regulation making authority may make regulations limiting compensation for early termination.*

15. Determination of Residual Value

The estimated residual value at the end of the lease term should represent a reasonable approximation of the anticipated wholesale market value of the goods at the end of the term.

Where the estimated residual value differs from fair market value at the end of the lease, the lessee's liability should be limited to the lesser of:

- the amount by which the residual value exceeds the value the merchant obtains from the alienation of the goods;
- 20% of the residual value; or
- three average months' payments.

Drafting Template Proposal:

S.44

- (1) *The lessee's maximum liability at end of the term of a residual obligation lease after returning the leased goods to the lessor is to be calculated in accordance with the following:*

$$P - (V - R)$$

where:

- “P” *is the estimated residual cash payment*
 “V” *is the estimated residual value*
 “R” *is the realizable value, as determined by subsections (2) and (3).*

- (2) *Subject to subsection (3), the realizable value of leased goods at the end of the lease term is the greater of*

- (a) *the price for which the lessor disposes of the goods;*
- (b) *80% of the estimated residual value; and*
- (c) *the estimated residual value minus three times the average monthly payment.*

- (3) *Where the amount determined under paragraph (2)(a) is less than the amount determined under paragraph (2)(b) or (2)(c), the realizable value is reduced to the extent that the*

difference in the amounts is attributable to unreasonable or excessive wear or use, or to damage to the goods for which the lessee is responsible under the terms of the lease.

Glossary

A number of key terms, whose precise meaning may not be apparent to the reader, are used in this paper. Working definitions for these terms are provided below.

Annual Percentage Rate

The total amount of interest and non-interest charges for a loan, expressed as an annual percentage of the amount of the outstanding principal of the loan.

Drafting Template Proposal:

S.45

In the harmonized provisions,

“APR” means the annual percentage rate determined in accordance with S.4 to S.9.

“Lease APR” means the annual percentage rate determined in accordance with S.38.

Disbursement Charges

Charges (other than interest charges) which cover a specific expense incurred by a lender in order to arrange, document or secure a loan agreement, or to discharge its security for a loan agreement. Charges made to cover property appraisal and legal costs, when arranging a mortgage loan, are examples of disbursement charges.

Drafting Template Proposal:

S.46

“disbursement charge” is an expense referred to in paragraphs (a) to (d) that is incurred by a credit grantor for the purpose of arranging, documenting, insuring or securing a credit agreement and is charged by the credit grantor to the borrower:

- a) a fee paid to register a document or information in, or to obtain a document or information from, a public registry of interests in real or personal property;*
- b) the cost of professional services required for the purpose of confirming the value, condition, location or conformity to law of property that serves as security for a*

- credit agreement,*
- i) if the borrower is given a report signed by the person providing the professional services, and*
 - ii) the borrower is free to give the report to third persons*
 - c) for a high-ratio mortgage as defined in the regulations,*
 - i) a premium for insurance that protects the credit grantor against the risk of default by the borrower, and*
 - ii) a fee for maintenance of a tax account;*
 - d) an expense designated by the regulations as a disbursement charge.*

Fixed Credit/Fixed Loans

Credit other than open credit such as an instalment loan or a conditional sales contract. Interest may be charged at either a fixed or a variable rate depending on the terms of the loan agreement.

Drafting Template Proposal:

S.47

“fixed credit” means credit under a credit agreement that is not for open credit.

Non-interest Charges

Charges, other than interest, paid by the borrower as a condition of obtaining the loan.

Drafting Template Proposal:

S.48

“non-interest charge” means any element of the cost of borrowing, other than interest, such as an administration fee, service charge, application fee, annual fee or transaction charge;

“cost of borrowing” means any amount that a borrower is required to pay under or as a condition of entering into a credit agreement other than:

- (a) a payment or repayment of any portion of the principal; or*
- (b) charges specified in Section 1.5 “Charges exempted from the APR”.*

Open Credit

Credit in which the borrower is able to receive multiple advances for amounts which are not specified in the loan agreement (though the loan agreement may place a limit on the total amount to be advanced.)

Drafting Template Proposal:

S.49

“open credit” means credit under a credit agreement that

- (a) anticipates multiple advances to be made as requested by the borrower in accordance with the agreement, and*
- (b) does not define the total amount to be advanced to the borrower under the agreement, although it may impose a credit limit;*

Supplier Credit/Supplier Loans

Fixed loans made by a vendor, or an associate of the vendor, to enable the borrower to buy a product sold by the vendor.

Drafting Template Proposal:

S.50

“supplier credit” means fixed credit extended to a borrower for the purchase of a product sold or manufactured by the credit grantor or an associate of the credit grantor.

Other Definitions:

Drafting Template Proposal:

S.51

Definitions

“borrower” means the party to a credit agreement or prospective credit agreement who receives or will receive credit from the other party, but does not include a guarantor;

“broker” means a person who, for remuneration, matches potential borrowers with potential credit grantors;

“brokerage fee” means an amount that a borrower pays or agrees to pay to a broker in consideration of the broker’s services in arranging or attempting to arrange a credit agreement, and includes an amount deducted from an advance and paid to the broker by the credit grantor;

“business day” means a day, other than Saturday, Sunday or a holiday, on which the credit grantor is open for business;

“credit agreement” means an agreement under which one of the parties extends credit in any form to the other party, but except where otherwise expressly provided does not include a lease;

“credit card” means a card or device that can be used to obtain advances under a credit agreement for open credit;

“credit grantor” means

- (a) the party to a credit agreement or prospective credit agreement who extends or will extend credit to the other party, or*
- (b) when the rights of a credit grantor referred to in paragraph (a) have been assigned to another person, that other person;*

“credit limit” means

- (a) the maximum outstanding balance as provided under a credit agreement, or*
- (b) the maximum outstanding balance, excluding unpaid finance charges as provided under a credit agreement;*

“floating rate” means an interest rate that is tied to a public index;

“grace period” means a period for which certain finance charges that accrue during the period will be forgiven if the borrower satisfies conditions specified in the credit agreement;

“public index” to qualify as a public index, the basis of a floating rate must be made public at least weekly in a publication of general circulation, but harmonized regulations may define what constitutes a public index more specifically;

“interest-free period” means a period following the making of an advance during which interest does not accrue on the advance;

“mortgage loan” means a loan secured by real property;

“outstanding balance” means the total amount owing at a particular time under a credit agreement;

“security interest” means any interest in property that is retained by or given to a credit grantor for the purpose of securing the borrower's obligations under a credit agreement.