New measures to protect consumers of prepaid credit cards: The follow-up

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In November 2012, Lavery published a newsletter concerning the announcement made by the Harper government on October 24, 2012 of the adoption of new regulations to protect consumers who use prepaid credit cards so that they are better able to choose the forms of payment best suited to their needs. At that time, on October 27, 2012, the draft *Prepaid Payment Products Regulations* (the "**Federal Regulations**") were published for comment in *Part I* of the *Canada Gazette*.

On December 3, 2013, the Department of Finance Canada announced that comments on these draft Federal Regulations had been received from numerous stakeholders representing financial institutions, payment network operators, consumer groups and industry associations. These comments were considered in the drafting of the final version of the Federal Regulations published on December 4, 2013 in *Part II* of the *Canada Gazette*. In its Regulatory Impact Analysis Statement ('**RIAS**'), the federal government indicated that technical amendments had been made to improve certain aspects of the draft Federal Regulations. The purpose of these amendments was to eliminate certain duplicative disclosure requirements when both the initial and additional disclosure documents are received simultaneously, and to clarify the type of product restrictions which must be disclosed, namely, restrictions which can be reasonably expected to have an impact on a consumer's decision to purchase a card.

The RIAS indicates that other broader issues falling outside the scope of the Federal Regulations were also raised during the consultations, for example, the applicability of Canada Deposit Insurance Corporation insurance and the applicability of the unclaimed balances provisions to prepaid products issued by federally-regulated financial institutions. Since prepaid products are increasingly penetrating the Canadian market, the federal government indicated that these issues must be studied in greater depth in the future to ensure the soundest protection for consumers.

We reiterate that the Federal Regulations will apply to all federally-regulated financial institutions, such as banks, trust and loan companies, insurance companies and cooperative retail associations having the power to issue prepaid payment products.

Stakeholders in the federal financial sector commented that some time would be needed to change their systems in order to implement the new requirements. Accordingly, May 1, 2014 was set as the date for the coming into force of the Federal Regulations.

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The unveiling of the Federal Regulations was contemporaneous with the publication, on November 8, 2013, of consultation documents (in French only) by the Office de la protection du consommateur (the '**Office**') in Quebec. These consultation documents contain suggestions by the Office for prepaid cards and reward cards, particularly where there is an interaction between these two payment instruments. More specifically, these suggestions relate to cases in which prepaid cards are offered to consumers for the purpose of awarding 'points' in the context of the application of loyalty programs associated with the issuance of rewards cards.

Would this be a 'promotional product' within the meaning of the Federal Regulations? According to the Office, it seems not since numerous consumers participate in loyalty plans in consideration for the payment of membership fees and the value of the accumulated privileges can be considerable, sometimes as much as several thousand dollars.

We note that the two levels of government have similar concerns regarding the protection of consumers' rights. Provincially, no draft bill has been made public, but the Office has invited stakeholders to submit their comments by December 20, 2013. It is to be hoped that there will be some harmonization between the legislative texts on the subject to ensure the fair treatment of all the stakeholders, whether they are governed by the federal or provincial statutory provisions.

At the present time, the definition of 'prepaid card' set out in the *Consumer Protection Act* includes any medium of exchange that is paid in advance and allows the consumer to acquire goods or services from one or more merchants.

Whether they are subjet to the laws on the distribution of financial products and services or consumer protection law, Lavery's clients have access to the legal advisers they need to answer their questions on the regulations applicable to prepaid credit cards, and to advise them on the issues that are likely to have repercussions for their business.

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