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[Confidential]

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24th floor, 234 Laurier Avenue West
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The Department of Finance
90 Elgin Street
Ottawa, ON K1A 0G5

VIA EMAIL

Re: Regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

We are making this submission on behalf of the Canadian Prepaid Providers Organization (the “**CPPO**”). The CPPO is a not-for-profit organization and the collective voice of the open-loop prepaid payments industry in Canada. It is the only association solely focused on this growing industry and includes the major players in open-loop prepaid in Canada.

We would like to thank you for attending on our call to discuss the regulations (the “**Regulations**”) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “**PCMLTFA**”) and its application to prepaid payment products and prepaid payment product accounts. In that call, you had asked us to put forward the use cases discussed in our meeting and to suggest alternative wording for the Regulations.

The following is a summary of the Use Cases discussed:

Use Case One-Reward Programs

While the Regulations (in the definition of a “prepaid payment product”) contemplate an exemption for prepaid payment products issued in connection with a “retail rebate program” the carve out as drafted is quite limited.

Consider a rewards program offered by a hotel chain, ABC Hotels. ABC Hotels wishes to reward its frequent guests, for example, a guest who stays seven nights in any calendar year, by providing them with a \$50.00 prepaid Mastercard that can be used anywhere that Mastercard is accepted. The cardholder will have no ability to load or reload the card; only ABC Hotels will be able to do so. In order to facilitate such a program, ABC Hotels will enter into an agreement with a program manager for the distribution of the prepaid cards that are issued by a financial entity. To establish the program, ABC Hotels will be required to prefund an account to cover the value of cards expected to be issued under the rewards program. The amount loaded to this account will obviously exceed CAN. \$1,000. Accordingly, the account will constitute a prepaid payment product account as defined in the Regulations. In that regard, a “prepaid payment product account” is defined in the Regulations as an account...*that is connected to a prepaid payment product and that permits funds that total \$1,000 or more to be added to the account in a 24 hour period or a balance of funds of \$1,000 or more to be maintained.*

Accordingly, pursuant to the Regulations, when the account is established, the financial entity (through the program manager) will be required to perform full KYC on ABC Hotels as the account holder and obtain all requisite information under the PCMLTFA in respect of the establishment of a prepaid payment product account. However, as the Regulations are currently drafted, because each card issued for the reward program will enable the holder to obtain “electronic access” to the prepaid payment product account by use of the prepaid payment product, it will be considered a “prepaid payment product” under the Regulations. It follows then that each guest of ABC Hotels that is issued a prepaid payment product under the program would be considered an “authorized user” of the prepaid payment product. That is because an “authorized user” is defined in the Regulations to mean a person who is authorized by the holder of a prepaid payment product account to have electronic access to funds available by means of a prepaid payment product that is connected to it.

As a result, in order for the ABC Hotels’ guests to get the benefit of the prepaid card as a reward, the financial entity would be required to obtain (and keep records for five years) of the guest’s name, address, the nature of their principal business or occupation and their date of birth (the “**Personal Information**”). The financial entity would also be required to verify the authorized user’s identity in accordance with the Regulations. This would entail pulling a credit report, or requiring some type of online identity verification. Moreover, section 116(1)(a)(ii) of the Regulations would require the financial entity to undertake a PEP determination on the authorized user. In the event that the cardholder was a PEP or a family member or close associate of a PEP, additional requirements would apply.

We believe these requirements are completely inappropriate when considering the nature of the product. In this use case, the prepaid card cannot be used by the end user for money laundering as the end user has no ability to use their own funds to load onto the card. The card can only be loaded by ABC Hotels. As such, there is no money laundering risk. We note that the essence of money laundering is to disguise the source of money or assets derived from criminal activity. It is impossible to launder money where a person is not able to use their own money.

Accordingly, from a policy perspective, it makes no sense to have rewards programs of the kind of described above (where the end user has no ability to load funds and it is a pure corporate load program) subject to the Regulations. It creates onerous requirements that satisfy no underlying policy objective. Moreover, the requirement for financial entities to maintain records of sensitive personal information on authorized users where there is no underlying policy support not only gives rise to potential data breach issues, but is also contrary to the principles of privacy law.

Moreover, from a policy perspective, it is difficult to see why a rewards program that provides a purchaser with a \$50 prepaid card for buying a fridge at Home Depot would be exempt from the provision of the Regulations (as the card would be issued under a retail rebate program) while a card issued for hotel stays as a reward would not be. There is no explanation for the differential treatment of the prepaid product. The same policy arguments that support the exclusion of retail rebate cards would similarly support to exclusion of cards issued under a rewards program where the card is not reloadable and the end user has no ability to put their own funds on the card.

Use Case 2- Reimbursement Programs

Another use case we had discussed was in respect of employee reimbursement programs. Consider a company with a sales force that travels on a frequent basis. In order to fund the employees’ travel (hotel/transportation/food), many employers provide their employees with a

prepaid card funded with a fixed amount of funds. We note that the use of prepaid cards for reimbursement expenses allow employers to manage expenses and to control and track spending in real time. When the employee returns from their travels, the employer can retrieve the funds from the card. The employee would not have the ability to load or place any funds on these reimbursement cards.

As an alternative use-case, the employee may also pay for all of their expenses on an out of pocket basis when they travel. When they return from their trip, they provide the employer with receipts and the employer refunds the employees expenses by providing the employee with a prepaid card loaded with an amount that reimburses the employee for their out of pocket payments.

In both of these scenarios, the employer would be required to provide the financial entity (either directly or through a program manager) with funds to load the card accounts thereby creating a "prepaid payment product account" as defined in the Regulations. In addition, the cards issued to employees, would be prepaid payment products, and the employees would be "authorized users" as defined in the Regulations. Accordingly, in addition to performing KYC on the company (which is appropriate) the Regulations, as currently drafted, would require the financial entity to obtain Personal Information on the employees as well as to verify their identity and undertake a PEP determination.

Like the structure for the rewards program, for reimbursement programs, the employee would have no ability to load any funds on the cards; all cards would be loaded by the employer funding the prepaid payment product account at the financial entity. Accordingly, because the employee cannot load any of their own funds onto the card, they are unable to use the card for money laundering purposes. As such, making cards that are used for corporate reimbursement programs that can only be corporate loaded subject to the PCMLTFA is not in keeping with the policy objectives of the PCMLTFA and there is no money laundering rationale to support such regulation.

It is a basic Financial Action Task Force ("**FATF**") principle that regulations should apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. According to FATF, "This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime". With respect, we believe that requiring the collection of Personal Information, verification of identity and undertaking a PEP determination in these circumstances runs counter to this basic FATF principle.

Use Case 3- Incentive Programs

Another use case involves the use of prepaid cards for incentive programs. Consider by way of example, a Mazda car dealership. Each month, the manager of the dealership wants to incentivize its top sales performers by giving them a bonus in the form of a prepaid card. Using this use case, the top salesperson would get a \$500 prepaid card, the second place salesperson would get a \$250 prepaid card and the third place salesperson would get a \$100 prepaid card.

To offer the program, the dealership would need to establish a prepaid payment product account at the financial entity issuer. As such, full KYC would be performed on the dealership, as is appropriate. However, all employees receiving cards would qualify under the Regulations as "authorized users". Therefore, before any cards could be issued to them, the financial entity would be required to obtain the Personal Information, verify identity and make a PEP inquiry.

We believe this is unreasonable. As in the case of the previous use cases discussed, the prepaid cards cannot be used by the employees for money laundering as the recipients are unable to load any personal funds onto the cards. Instead, the cards can only be used to receive the incentive payouts and the cards can only be loaded by the dealership.

It should be noted that with these types of programs (and with the reimbursement programs noted in Use Case 2 above) the card itself may not be a one-time use card but rather may be a reloadable card so that a new card is not required every time that a salesperson qualifies for more than one incentive bonus. Instead, for ease of administration, the amount of funds awarded to employees can be reloaded directly onto the cards and they can receive available funds almost immediately. This also saves the financial entity (and the dealership) the cost and expense of having to issue and activate new PIN enabled cards each month which carries a significant cost. The important thing to note, is that while these cards can be reloaded, they can only be reloaded by the dealership that is the corporate sponsor of the program. As such, the nature of the money laundering risk does not change; there is no ability for a salesperson to use the cards to launder funds as they do not have the ability to load funds onto the cards.

Use Case 4- Class Action Settlements

The fourth use case discussed in our meeting was using prepaid cards to pay out plaintiffs under class action settlements. To provide some context, when a class action is settled (or a court order is made directing the defendants to pay members of the class damages) there is a very large administrative element to the payout of the settlement. Class members may be located all over the globe and sending cheques or making distributions to a bank account (which would require the bank account details of every class member) is not a practical or cost-efficient solutions.

As such, it is common to use prepaid cards to provide the settlement proceeds to class members. In these circumstances, plaintiff's counsel will usually appoint an administrator to arrange for the distribution of class action proceeds. Alternatively, the court may appoint an administrator (often an accounting firm) to assist in the distribution of the settlement proceeds in accordance with agreed and court approved terms. The use of prepaid cards to distribute class action funds is an efficient and effective way to distribute settlement proceeds. Cards can be distributed digitally which eliminates the need to mail cards to plaintiffs.

As is the case in the previous examples, in the current context, the pool of funds that is deposited with the financial entity and used to settle the claim would be viewed as a prepaid payment product account under the Regulations thus requiring the claims administer to collect Personal Information and verify the identity of every class member before they can be issued their payout. Sometimes class action payments can be for very small amounts. Again, as in the previous cases, prepaid cards used for these purposes have no money laundering risk. All amounts paid to plaintiffs by use of the prepaid cards are done pursuant to a court order and recipients of the prepaid cards will have no ability to load funds onto the prepaid cards. As such, from a policy perspective, there is no reason for these cards to be subject to the regime.

The essence of these use cases revolves around the fact that in order for there to be the ability to launder funds, individuals would be required to be able to load funds on the cards. For these programs, only the sponsoring corporate entity has the ability to load or reload the cards. Cardholders have no ability to do so and have no control over how much is loaded on their card

and when the funds are so loaded. From an AML perspective, as these cards have a very low risk of money laundering, it seems that there is limited underlying policy benefit to regulate these types of cards. As the introductory language in the PCMLTFA provides, the object of the PCMLTFA is to detect and deter money laundering and terrorist financing. In these cases, we believe that the costs of regulating the cards—which include not only operational costs but also the invasiveness of collecting significant levels of personal data for very low-risk products—is not commensurate with the benefits. In addition, the AML risks of these cards are decidedly lower than an anonymous individual purchasing gift cards up to \$999 in a retail setting because for these programs, the sponsoring corporate entity is known and has completed a full KYC process. As we had discussed, the provisions of the PCMLTFA are drafted to deal with general purpose reloadable cards, that mimic the features of a bank account. The same underlying policy rationale does not apply for corporate loaded prepaid cards.

As such, we would recommend that the definition of a “prepaid payment product” in the Regulations, be revised to read as follows:

“prepaid payment product” means a product that is issued by a financial entity and that enables a person or entity to engage in a transaction by giving them electronic access to funds or virtual currency paid to a prepaid payment product account held with the financial entity in advance of the transaction. It excludes a product that:

- (a) Enables a person or entity to access a credit or debit account or one that is issued for use only with particular merchants; or*
- (b) Is a restricted prepaid payment product.*

A “restricted prepaid payment product” is a product that is issued by a financial entity and that enables a person or entity to engage in a transaction by giving them electronic access to funds or virtual currency paid to a prepaid payment product account held with the financial entity in advance of the transaction where (i) the holder or user of the product has not contributed or provided value for the product; (ii) the holder or user of the product has no ability to contribute or add funds or virtual currency to the product or to the prepaid payment product account; (iii) the product does not permit funds or virtual currency of \$1,000 or more to be added to the product within a 24 hour period or permit a balance of funds or virtual currency of \$1,000 or more to be maintained on the product; and (iv) the account holder of the prepaid payment product account is a corporation or other entity and only the account holder can add funds or virtual currency to the prepaid payment product account.

Because of the way the definition of a prepaid payment product account is drafted, in order to ensure that the underlying account is subject to the Regulations, the following change is required to the definition of a prepaid payment product account:

“prepaid payment product account” means an account — other than an account to which only a public body or, if doing so for the purposes of humanitarian aid, a registered charity as defined in subsection 248(1) of the Income Tax Act, can add funds or virtual currency — that is connected to a restricted prepaid payment product or that is connected to a prepaid payment product that permits:

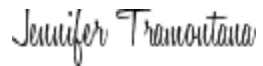
(a) funds or virtual currency that total \$1,000 or more to be added to the account within a 24-hour period; or

(b) a balance of funds or virtual currency of \$1,000 or more to be maintained.

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If you have any questions or require anything additional, please do not hesitate to contact us.

Yours sincerely,



Jennifer Tramontana
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