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The Canadian Prepaid Providers Organization (“**CPPO**”) welcomes the opportunity to respond to the invitation for submissions issued by the Department of Finance (the “**Department**”) in respect of the Regulations Amending Certain Regulations Made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “**Proposed Regulations**”) published in the Canada Gazette on June 9, 2018.

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.

The CPPO supports efforts by the Department to amend the Proposed Regulations by folding prepaid products into Canada’s AML regime, but is concerned with the unintended consequences of some of the requirements that apply to prepaid products.

We note that many of the provisions of the Proposed Regulations that apply to prepaid product accounts are similar to those that apply to traditional bank accounts. This is not surprising given that the Regulatory Impact Statement accompanying the Proposed Regulations states that prepaid access products are to be treated similar to bank accounts for the purposes of the Proposed Regulations.

However, while certain types of prepaid cards have similarities with traditional bank accounts, they are often very different financial products with different functionalities and uses. As such, applying a “one size fits all” regulatory approach to all prepaid card products is operationally unfeasible and will have a significant impact on the prepaid card market in Canada. In that respect we ask that the Department consider our submission very seriously as the Proposed Regulations will directly impact the ability of financial entities (“**FEs**”) and their service providers to continue to sell and distribute prepaid products in Canada.

1. Overview

The Proposed Regulations introduce new definitions for a “prepaid payment product” and a “prepaid payment product account”.

A “prepaid payment product” is defined as 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.

A “prepaid payment product account” (“**PPPA**”) is in turn defined as an account that is connected to a prepaid payment product and that permits:

- (a) one or more transactions that total \$1,000 or more to be conducted within a 24-hour period; or
- (b) a balance of funds or virtual currency available of \$1,000 or more to be maintained.

Based on these definitions, an account that meets either or both of these criteria would be considered a PPPA under the Proposed Regulations, regardless of whether or not the account ever actually reaches the \$1,000 threshold.

2. Prepaid Card Products

In order to gain a full understanding of our comments and concerns in respect of the Proposed Regulations, it is useful to provide more information on the types of pre-paid products that are available in Canada that we believe will be negatively impacted by the Proposed Regulations. Each of the following products have inherently different characteristics than bank accounts and therefore inherently different risk considerations from an anti-money laundering perspective:

- a) Corporate accounts used for sales incentive programs, consumer promotions, rebate programs, and expense reimbursement;
- b) Government accounts used for social assistance and other such programs; and
- c) Emergency relief accounts used by aid organizations to distribute emergency relief to vulnerable populations.

I. CORPORATE ACCOUNTS

Corporate PPPAs can be used in a variety of ways. In each of the programs described below (each a “**Corporate Program**”), a single account will have multiple prepaid cards being issued to many users.

- Sales incentive programs – Under these programs, PPPAs are used by retailers to incentivize sales. For example, manufacturers often use these types of programs to incentivize sales people to sell the manufacturer’s products. Under these programs, a salesperson may be provided a bonus for each manufacturer’s product that it sells and the proceeds of the bonuses are loaded onto prepaid cards on a regular recurring basis. Alternatively, a salesperson may earn recognition points that eventually can be redeemed for prepaid cards which may be in excess of \$1,000. The prepaid cards used with these types of incentive programs are reloadable on a periodic basis based upon sales volume targets. The individual salesperson has no ability to load or reload these types of cards; they can only be loaded by the entity offering the sales incentive.
- Consumer promotion programs – Under these programs, rebates or promotional gifts are provided to consumers by way of prepaid payment products. By way of example, a company may offer a rebate for purchasing a big-ticket item which would be provided to the consumer

in the form of a prepaid card (e.g., if the customer buys 4 tires, they receive a rebate of \$100 in the form of a prepaid card). Alternatively, a retailer may offer a prepaid card to a customer that spends a certain amount of money at their store (e.g., if the customer spends \$2,000, they receive a \$200 prepaid card). In some cases, for instance hardware store retailers and appliance manufacturers, the rebates offered to customers may be in excess of \$1,000. Under these types of programs, the cards are not reloadable and they are funded by the retailer offering the promotional program; consumers have no ability to load funds.

- Reimbursement programs – Under these programs, corporate employers use prepaid cards to reimburse employees for expenses. These types of programs are a substitute for issuing a cheque to reimburse employees for their business expenses; instead of issuing frequent cheques, all funds are loaded onto a prepaid card making the reimbursement process more streamlined. In these types of reimbursement programs, the individual cardholder has no ability to load or reload a card.

II. GOVERNMENT ACCOUNTS

In addition to Corporate Programs, governments also use PPPAs to distribute funds to vulnerable populations under social assistance programs. In this context, prepaid cards are a much more cost-effective means of disbursing government assistance payments than issuing cheques. The cards are reloadable but can only be loaded by the appropriate governmental body.

III. EMERGENCY RELIEF ACCOUNTS

Many aid organizations rely on prepaid cards connected to a PPPA to distribute emergency relief funds. In cases where emergency relief is provided (e.g., as a result of fire or flood), the prepaid payment helps affected individuals get immediate access to money, shelter and food. For these types of programs, only the organization providing the emergency relief is able to load funds onto the cards.

In respect of all of the programs noted above (collectively, the “**Programs**”) the underlying accounts used to fund these types of prepaid cards would fall within the definition of a “prepaid payment product account” as the accounts would be “accounts that are connected to a prepaid payment product that permits a balance of funds available of \$1,000 or more to be maintained”. Not only would the underlying funded accounts be “prepaid payment product accounts” but the prepaid cards issued under these Programs would also constitute “prepaid payment products”. It follows then that all of the individuals that are issued cards under these types of Programs would be “Authorized Users” (as defined by the Proposed Regulations) as they would have access to the funds available in the prepaid payment product account.

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As Authorized Users under these types of Programs, the issuing financial entity would be required to obtain detailed personal information in respect of each cardholder (including their name, address, date of birth, phone number and occupation). They would also be required to verify the cardholder’s identity and conduct ongoing monitoring on the Authorized Users as prescribed (collectively, the “**AU Requirements**”).

In our view and in the view of our members, applying the AU Requirements to Authorized Users of these types of Programs is not in keeping with a risk based approach, and the regulatory burden imposed on a financial entity and their service providers is completely disproportionate to the

money laundering risks underlying these cards. Moreover, the requirement to obtain extensive and detailed personal information on cardholders under these types of programs and the requirement to engage in ongoing monitoring is not only incredibly burdensome but, given the circumstances, there is no appreciable intelligence value to justify the regulatory burden.

Given the foregoing, the CPPO and its members strongly believe that the Proposed Regulations should be amended so that the Authorized User provisions do not apply to prepaid cards issued under corporate, government and emergency relief programs where the Authorized User cannot load or reload funds onto the prepaid cards.

Our reasoning for this view is as follows:

As is evident from the description of the Programs, because these programs are not distributed through the consumer retail channel, from an Authorized User perspective, they pose very minimal money laundering risks. Authorized Users do not control the funds that are loaded onto the cards and have no ability to load any personal funds onto these cards. In our view, the AML risk, if any, lies with the corporate or government entity that is funding the Program. As such, the due diligence and record keeping requirements fall more properly on the corporate or government entity funding the Program and not on Authorized Users.

Moreover, the AML risk presented by prepaid cards issued under these types of Programs, does not warrant the collection of detailed personal information from Authorized Users in the manner that is being proposed. The requirement to collect detailed and sensitive personal information from cardholders, to verify each cardholder's identity and to conduct ongoing monitoring of a cardholder's activity is burdensome, and given that cards issued under these programs have obvious limitations for money laundering, such requirements are unwarranted and not in keeping with a risk based approach.

In addition, and equally important, the requirement to amass vast amounts of personal information from individuals receiving cards in these types of circumstances is not justified from a privacy perspective, and in our view and the view of the members, is an overcollection of personal data.

In this regard, we note the views of the Privacy Commissioner of Canada in his appearance before the House of Commons in February of this year wherein he stated that the AML regime should adopt a risk based approach in order to minimize the risk of over-collecting personal information of law abiding individuals. In our view, collecting detailed personal information on Authorized Users under these types of Programs in the manner contemplated, and conducting ongoing monitoring of Authorized Users violates this important privacy principle and is disproportionate to the underlying AML risk of Authorized Users.

There are a few other matters that the CPPO wishes to bring to the Department's attention in respect of the Programs.

Specifically, with respect to incentive and reimbursement prepaid card programs, it should be noted that in these programs prepaid cards are utilized as an alternative method to payment by way of cheque. Cheques are time consuming and expensive; they are required to be deposited into bank accounts, they take time to clear and they have attendant costs related to clearing, administration, reconciliation and storage. Moreover, paying by cheque may have additional postage costs as the distribution of cheques is often reliant on snail-mail. Given the foregoing, prepaid cards are used as a more cost effective and convenient alternative to issuing cheques, especially for recurring payments.

Moreover, we note that one of the key recommendations of the Competition Bureau in its report *Technology-led innovation in the Canadian Financial Services Sector* (December 2017), is that “regulators and policymakers should ensure regulation is proportional to the risks that the regulation aims to mitigate”. We believe that requiring extensive due diligence of Authorized Users under these types of programs is not in keeping with these principles.

Aside from policy considerations, from a practical perspective, a requirement to verify the identity of each and every Authorized User connected to a PPPA in respect of the Programs would be burdensome for employers and retailers, as well as for customers. Employers and retailers that rely on PPPAs to distribute funds under these programs would need to develop extensive security protocols to protect the personal information they gather, as well as train their staff on how to implement such protocols. Additionally, because employers and retailers are not generally used to collecting large amounts of personal information (as compared to financial entities), the verification requirement under the Proposed Regulations could lead to an increased risk of privacy and security breaches. Since, in many cases there could be hundreds or thousands of prepaid cards issued under a single PPPA, the Proposed Regulations would significantly increase costs to employers and retailers in order to complete identity verification for each individual Authorized User. In the view of the CPPO and its members, these regulatory hurdles and compliance burdens would seriously impact the ability of financial entities to offer these types of corporate programs to Canadians. It is critical that regulatory burdens do not prevent persons from obtaining the benefits of new technologies where there are no incremental AML risks. The CPPO is very concerned that the Proposed Regulations will do exactly that to these types of Programs.

IV. GOVERNMENT PROGRAMS

Prepaid cards play an important role in the federal government’s initiative to phase out printed cheques in favour of faster, safer and more convenient payments. As such, there are many government programs that use cheques that are in the process of being replaced by different solutions, including prepaid cards. In the event that government programs were to be subject to the Proposed Regulations, there would be a number of significant issues for social assistance programs. In that regard, the government would not be able to effectively enroll benefit recipients into the social assistance programs since in many cases the recipients may not have a fixed address or the required documentation to meet the identity verification requirements.

Pursuant to section 157(2)(m) of the Proposed Regulations, we note that the identity verification and record keeping requirements of the Proposed Regulations do not apply in respect of accounts opened by public bodies. On this basis, we would assume that for government funded programs neither the PPPA provisions nor the Authorized User requirements will apply for these types of prepaid accounts. The CPPO believes that it would be useful if this was clarified in the accompanying regulatory guidance.

V. EMERGENCY RELIEF PROGRAMS

In respect of emergency relief programs, under the Proposed Regulations, the identity of each individual that is issued a prepaid payment product under such an emergency relief PPPA would have to be verified. This will greatly impact the ability of aid organizations to provide relief in a timely fashion to those in need, and in some cases, restrict organizations from distributing funds altogether where individuals have lost their identification documents as a result of the emergency.

Accordingly, the CPPO and its members believe that the AU Requirements for emergency relief PPPA accounts should also be exempt from the Proposed Regulations.

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As discussed above, the CPPO believes that the AU Requirements applicable to Authorized Users under the Proposed Regulations will create significant logistical and cost barriers to using prepaid in the context of corporate accounts, social assistance accounts and emergency relief accounts – all accounts that heavily rely on distributing prepaid cards to multiple users.

The CPPO does not believe that the benefit of verifying the identity of these Authorized Users outweighs the disproportionate burden and privacy concerns that these requirements create, especially because in each case, the Authorized User poses a low risk since they: a) do not control the underlying PPPA; b) do not have unrestricted access to the funds, and c) cannot top-up the prepaid payment products themselves. Given these restrictions, it would be very difficult for such users to utilize the prepaid products for money laundering or terrorist financing activities.

Given the foregoing issues, the CPPO submits that the AU Requirements under the Proposed Regulations should not apply in respect of Authorized Users for these types of Programs but instead should focus on verifying the identity of the entity that opens and controls the corporate, social assistance, or emergency relief account since it is that person or entity that is ultimately responsible for controlling the flow of funds.

3. Record-Keeping Requirements for Prepaid Payment Product Slips

The Proposed Regulations introduce a new record keeping requirement for prepaid product accounts, that being a requirement to maintain a prepaid payment product slip (“PPPS”). A PPPS is required to be kept for every payment that is made to the PPPA. In this regard, a PPPS is defined as follows:

prepaid payment product slip means a record that sets out:

- (a) the date of a payment to a prepaid payment product account;
- (b) the name of the person or entity that makes the payment;
- (c) the type and amount of each of the funds or virtual currencies involved in the payment;
- (d) the method by which the payment is made;
- (e) the name of each holder of the prepaid payment product account;
- (f) the account number and, if it is different, the number that identifies the prepaid payment product that is connected to the account; and
- (g) every other known detail that identifies the payment.

We note that the definition of a PPPS leverages off of the definition of a deposit slip for regular accounts. However, as noted above, while prepaid cards have some similarities with bank accounts, they have very different distribution models. While certain elements of a PPPS can be obtained from financial entities and their processors own internal records, others cannot.

Because, unlike bank deposits, prepaid cards can be loaded through a variety of channels, including retail outlets and big box retailers, the requirements to obtain a “deposit slip” for a traditional deposit account does not translate well to a prepaid product that can be loaded at a retail location. Moreover, the requirement to verify identity for transactions over \$1,000 is also very difficult at a retail location.

Most retailers are not equipped to deal with the record-keeping requirements for a PPS. They do not have the systems in place to capture or adequately maintain sensitive personal information. Moreover, some retailers do not have the ability to complete face-to-face interaction with the consumer as a result of automated check-outs. These barriers will make it very difficult for a retailer to obtain the necessary information required for PPS.

Additionally, in order for retailers to manage the information requirements for a PPS, significant training would be required to ensure employees working the check-out counter understand their responsibilities with respect to obtaining the information and maintaining the confidentiality of such information. Such training would be very costly and especially difficult in the retail space given the turn-over of employees and reliance on part-time and seasonal employees.

Retailers also rely on moving customers through lines quickly in order to maintain their profitability. The requirement to obtain the detailed information for the PPS (including the broad requirement to keep "every known detail that identifies the payment") would inevitably slow down the check-out process and discourage retailers from offering reloading ability and consumers from loading prepaid products.

From a retailer perspective, the requirement to obtain the information in respect of a PPS will require significant systems upgrades, staff training and development of enhanced security controls, which may prove cumbersome and costly for many retailers, thereby deterring them from offering prepaid payment products at their stores. From a consumer perspective, the heightened fear of a security or privacy breach may outweigh the desire to purchase a prepaid payment product. The CPPO believes that, together, these issues will cripple the growth of prepaid in Canada.

Additionally, the CPPO believes that the requirement to keep a PPS for each payment made to the PPPA (even low value payments) is duplicative of other requirements already applicable to the underlying PPPA. For instance, a financial entity is already required to keep detailed information on transactions of \$1,000 or more associated with the PPPA, and the PPPA is already subject to ongoing suspicious transaction monitoring by the financial entity. The CPPO believes that the burden that will fall on retailers to obtain information in respect of every payment made to the PPPA outweighs the benefit of any such requirement given this additional oversight that already exists in respect of PPPAs. As a result, the CPPO believes there will be a reduction in the number of retailers that are willing to offer prepaid products.

Based on the foregoing, the CPPO submits that the requirements for keeping a PPS for every payment that is made to a PPPA should be modified so that the only record keeping requirement imposed are those that a financial entity can aggregate without the assistance of a retailer, based on their back office processing systems. As such, the requirement to obtain all data elements of a PPS need to be revised to remove the following provisions, unless the information is otherwise available in the financial entity's records:

- i. the name of the person or entity making the payment;
- ii. the type and amount of funds involved in the payment;
- iii. the method of payment;
- iv. "every other known detail that identifies the payment".

4. Other Comments

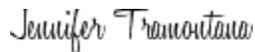
In addition to the foregoing comments, we also have the following general comments in respect of the Proposed Regulations:

1. In respect of the \$1,000 triggering threshold for prepaid payment products, we would ask that the language be revised to apply to transactions for “over \$1,000” as opposed to “\$1,000 and over” as programming systems to deal with thresholds of \$999.99 is unduly burdensome. We do not believe that this will have a material effect on the policy behind the Proposed Regulations but it would be of great benefit to financial entities that issue prepaid cards.
2. There may be some unintended consequences with respect to the \$1,000 threshold. For example, if a card is restricted to a balance of less than \$1,000 for any 24-hour period but a cardholder returns an item and obtains a credit for that item on their prepaid card, it may take the balance above \$1,000. We would not anticipate that this type of activity is meant to be caught within the scope of the Proposed Regulations. Similarly, for a prepaid card that is programmed so its balance cannot exceed \$1,000 in a 24-hour period, if a customer loads that prepaid card with \$700 and the person then proceeds to spend \$400 on the prepaid card on the same day, these transactions would constitute ‘one or more transactions that total \$1,000 or more’ bringing the card within the scope of the Proposed Regulations. We also do not believe this type of activity is intended to be caught within the scope of the Proposed Regulations. We would appreciate if the Guidelines clarified that these types of cards and transaction patterns are not intended to be captured by the Proposed Regulations.

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The CPPO thanks the Department for its consideration. If the Department would like to meet with the CPPO and its members to discuss the Proposed Regulations and the prepaid market, we would be happy to do so.

Sincerely,



Jennifer Tramontana
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