

Prepaid Cards: Deposit Accounts? Or Something Else? Answer: It depends.

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As new FinTech companies and traditional financial service providers look for new ways to provide financial services, the limits of our existing regulatory regimes have found themselves pressed. One development has been the use of prepaid cards and related personal financial management tools to provide services that look and function in many ways like a deposit account.

Recently, B.C.'s Financial Institutions Commission ("FICOM") reviewed the structure of certain prepaid cards issued by All Trans Financial Services Credit Union Limited ("All Trans") and said that those cards were in effect a 'deposit account' and therefore All Trans was supposedly carrying on unauthorized deposit business in B.C.

In an effort to preserve its card issuing business, All Trans sought review of FICOM's decision through application to the British Columbia Supreme Court (2017 BCSC 1979). The Court found that FICOM's decision was not reasonable and could not stand. All Trans argued that the "deposit" business under the Financial Institutions Act ("FIA") is limited to "monies that a customer places in a specific account with a bank or financial institution giving rise to a relationship, of debtor and creditor, between the institution and the person who "deposits" the funds". The Court agreed and found that the specific prepaid card program operated by All Trans was not a "deposit account". For that program, All Trans does not accept loads of the cards, the monies on the cards are not on All Trans books, the person who loaded funds on the cards did not have an account with All Trans, nor were they members of the credit union. The persons who loaded the cards did not receive statements from All Trans, the funds loaded were not covered by deposit insurance, nor did the funds receive interest. In addition, All Trans was not free to use the funds loaded on the card as All Trans could have done if they were with deposits. The funds were held in trust for settlement of card transactions; they were held in pooled settlement accounts at TD bank and not with All Trans. For these reasons the Court found that the hallmarks of a deposit were not present and that All Trans did not need to be licensed as a deposit taking institution to sell its pre-paid cards in B.C. The Court was unwilling to permit FICOM to expand the meaning of a deposit account to cover prepaid cards having these attributes, despite having similar functionality to an account.

The decision is presently under appeal. The decision on appeal may have a significant impact on financial institutions seeking to use creative FinTech approaches to expand their reach and service offerings, as well as FinTech start-ups. Careful consideration to program design is critical to ensure that issuers and program managers structure their card products to meet the regulatory needs for their specific goals. Not all programs work the same way and careful planning is required to meet both consumer facing expectations of function and marketing and the full array of regulatory scrutiny.

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