

Pages 1 through 4 redacted for the following reasons:

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**Ministry of Public Safety and Solicitor General
Order in Council Briefing Note**

Legislation: *Business Practices and Consumer Protection Act*
Public Safety and Solicitor General (Gift Card Certainty) Statutes
Amendment Act, 2008

Issue:

This Order in Council (OIC):

- Brings into force amendments to the *Business Practices and Consumer Protection Act* respecting prepaid purchase cards, included in the *Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act, 2008*; and
- Establishes the Prepaid Purchase Cards Regulation (Regulation) respecting fees, expiry dates and disclosure.

Purpose:

- The Regulation establishes the limited circumstances under which prepaid purchase cards will be permitted to have expiry dates and charge fees, and the manner in which information must be disclosed. The details are as follows:

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Date: July 7, 2008

Contact Name: Susan Walker, Senior Policy and Legislation Analyst, PSSG, 387-3386

Alternate Contact Name: Toby Louie, Director, Corporate Policy and Planning Office,
PSSG, 356-6389

Prepared by: Susan Walker, 387-3386

SPEAKING NOTES
for Government Caucus Committee

Request for Legislation
Business Practices and Consumer Protection Act - gift card contracts

This RFL proposes amendments to the *Business Practices and Consumer Protection Act* to better protect consumers using gift cards and gift certificates.

As gift cards become a more popular form of commerce, consumer complaints are increasing - in particular, non-disclosure of key terms and conditions of use when the card is purchased, expiry of cards with unused balances, and unwarranted administrative fees.

With this legislation, BC follows the lead of Ontario and Manitoba in banning expiry dates and fees, except in limited circumstances, and requiring full disclosure of terms and conditions of use.

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Consumers expect, and deserve, full value for their spending dollar, but they also acknowledge that retailers have some costs associated with the use of gift cards and gift certificates. This legislation establishes a framework to balance the needs and responsibilities of consumers and retailers.

Q&A Gift Card RFL

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**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
CORPORATE POLICY AND PLANNING OFFICE
BRIEFING NOTE**

Prepared for the Honourable John van Dongen, Minister of Public Safety and Solicitor General

ISSUE

Prepaid Purchase Card Regulation

BACKGROUND ON SPECIAL ISSUES

Promotional cards

- The regulation allows expiry dates on cards issued for promotional purposes. These products are intended to attract new customers and provide incentives for existing customers to return. It is not expected that the goods and services will be available and at the same price indefinitely, and it is reasonable that these offers are time limited. Some examples of promotional cards are:
 - Loyalty and rewards cards issued to repeat customers or for points accumulated from previous purchases
 - Free or discount cards or vouchers included in membership fees
 - Free or discount cards or vouchers issued for specific promotional events – for example, a half price coupon for a new restaurant
 - Coupon books to promote certain businesses – for example Entertainment Books that are purchased and include discount coupons for restaurants and other businesses
- This exemption was requested by business organizations and consumers generally agree with expiry dates on these cards. Businesses will not be permitted to charge additional fees on promotional cards and they must provide full disclosure of terms and conditions, including expiry.
- Ontario exempts free and discounted promotional cards from the legislation entirely. Manitoba exempts cards issued for free from fee and expiry date provisions. Other provinces are expected to have similar exemptions as Ontario, Manitoba and BC.
- During second reading and debate of the prepaid purchase card Bill in the Legislature, it was noted that promotional cards might be exempted from expiry date provisions by regulation.
- Complaints about expiry dates on promotional cards will be monitored. If it appears that businesses are taking unfair advantage of the exemption, a change to regulations can be considered.

Mall cards (for use at multiple unaffiliated sellers)

- Cards that can be used at multiple unaffiliated sellers have special provisions that allow pre-purchase fees and post-purchase fees after 15 months, with full disclosure to consumers. Consumers have the option of postponing post-purchase fees for an additional three months on request.
- Fees are necessary to recover the additional costs of issuing and processing these cards through a credit card payment network. Unlike businesses issuing single-retailer cards, they do not have the benefit of use of the unredeemed balances and interest collected on the money. Without the fees, these mall cards would likely be discontinued, removing a popular product from the marketplace.
- Special disclosure provisions will ensure that consumers are aware of these fees, so they can make an informed decision when they decide to purchase the card. A notice on the card will remind them to use up the unredeemed balance before post-purchase fees take effect.
- Ontario allows the same fees and Manitoba allows post-purchase fees after a period of inactivity.
- Retail BC and the Multi-Store Gift Card Coalition support special fees for mall cards. Consumers may oppose these special fees. Communications materials will be developed around this issue.

Compliance

- If a business contravenes a provision of the Act or Regulations, for example by charging unauthorized fees on gift cards, the director could enter into an undertaking with the business or make an order to stop the business from charging fees. Failure to comply with an undertaking or compliance order could result in administrative penalties of up to \$50,000.

Prepared by: Susan Walker
Telephone: 250-387-3386
Date: July 18, 2008

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
CORPORATE POLICY AND PLANNING OFFICE**

**PREPAID PURCHASE CARD REGULATION
SPEAKING NOTES**

Prepared for Honourable John van Dongen, Minister of Public Safety and Solicitor General for Cabinet discussion.

- This OIC brings into force prepaid purchase card (gift card) provisions in Bill 17, *Public Safety and Solicitor General (Gift Card Certainty) Statutes Amendment Act, 2008*, and establishes the Prepaid Purchase Card Regulation under the *Business Practices and Consumer Protection Act*.
- The Bill prohibits expiry dates and fees on gift cards and gift certificates, except as authorized by regulations.

Prepaid Purchase Card Regulation Questions and Answers

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BY FAX: (250) 387-2631

December 20, 2007

Ministry of Public Safety and Solicitor General
Corporate Policy and Planning Office
P.O. Box 9283, Stn Prov. Govt.
Victoria, British Columbia
V8W 9J7

Dear Sir or Madam:

On behalf of MasterCard Canada and American Express, please excuse our tardiness in responding to the consultation on regulating gift cards and gift certificates. On initially reading the consultation paper, it appeared British Columbia was only interested in retail gift cards. However, our experiences in Ontario and Manitoba have since demonstrated that legislation or regulation in this area may have unforeseen consequences for other types of prepaid purchase cards.

We want to make sure that we fully highlight the differences between retail gift cards and the prepaid products we offer. Since British Columbia has not yet introduced gift card legislation or regulation, we hope that our comments will still be useful as you consider this important matter.

We did not complete the consultation questionnaire since it is focused almost exclusively on retail gift cards. Our responses would not be applicable to the questions raised. Therefore, please consider this letter as our formal response to the consultation.

Gift Cards Versus Prepaid Cards

First and foremost, we note that throughout the consultation document you refer to "gift cards and certificates" or "prepaid gift cards". There is also frequent reference to "retailers". Generally speaking, these products are seen as distinct from prepaid cards issued by American Express and MasterCard issuers, which are referred to as general-use prepaid cards and exhibit many differences from prepaid gift cards or gift certificates.

For the purposes of our submission, we refer to cards that are issued by a financial institution and are accepted at multiple, unaffiliated merchants or service providers, like MasterCard or American Express prepaid cards, as "general-use prepaid cards". Store gift cards are those which are offered by one specific retailer and can only be used to purchase goods and services at that retailer or, in some cases, a group of retailers (e.g. mall cards).

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We do not believe that general-use prepaid cards should be covered by any legislation that is intended to focus on gift cards. These products are very different, both in how they work and how they are marketed. Any proposed legislation or regulation intended to govern retail gift cards should explicitly exempt general-use prepaid cards.

General-Use Prepaid Cards

Before addressing some of the specific issues surrounding general-use prepaid cards, we would first like to provide a little more background information about these payment products. There are a number of general-use prepaid card programs in the Canadian marketplace, though their penetration is much lower than in the United States. A general-use prepaid card is very similar to a regular payment card, with one notable exception – consumers purchase cards of a set value or “load” a certain value on the card and then draw down that value as they use it.

For example, a consumer could obtain a MasterCard or American Express prepaid card with \$500 loaded onto it. From that point onwards, the card functions just like a regular payment card. Consumers can use it wherever a regular MasterCard or American Express card is accepted – until the \$500 on the card is spent.

The general-use prepaid card also comes with safety and anti-fraud features associated with a MasterCard or American Express credit card, including protection in the event that a card is lost or stolen. In some cases, general-use prepaid cards are re-loadable, meaning the consumer can purchase additional value on the card once the original value is spent.

General-use prepaid cards can be a useful tool for consumers and businesses. For example:

- For consumers without a regular credit card, having a general-use prepaid card allows them to shop on-line and opens up sales channels not otherwise available to individuals without a credit card.
- When traveling, carrying a prepaid card is safer than cash.
- Re-loadable prepaid cards give parents a convenient way to help students with their finances while attending university or college.
- Businesses can use these products for things like employee *per diems* when traveling.

General-Use Prepaid Cards are Not Store Gift Cards

It is our understanding that much of the concern about prepaid cards is actually directed at store gift cards. We would like to point out that there are significant differences between general-use prepaid cards and store gift cards. These differences are the primary reason we believe that any potential legislation or regulation of gift cards should not apply to general-use prepaid cards issued by financial institutions.

Store gift cards are generally only redeemed for goods or services sold at the accepting retail locations. In the case of general-use prepaid cards, consumers may have the option of redeeming for cash if they wish to do so, which is not the case with a store gift card. Another difference is

in a small number of locations, the marketing, advertising and distribution costs are minimal. In addition, because the cards are processed on the retailer's in-house "closed loop" store authorization systems, the cost to process transactions is minimal.

This is not the case with general-use prepaid cards which offer consumers more complex features and benefits than store gift cards. First, their broader functionality requires the issuer to incur expenses associated with maintaining extensive authorization platforms that ensure the cards can be widely accepted (i.e. everywhere a credit card is accepted). In addition, consumers are treated to other benefits that increase the investment required of issuers to distribute and sell general-use prepaid cards. For example:

- Issuers must design and produce cards that are uniform across provincial or international borders.
- General-use prepaid cards come with the same advanced security features as regular payments cards, to prevent their fraudulent use. These features are essential for issuers to be able to offer protection for lost or stolen cards.
- Issuers incur significant marketing and advertising costs to generate product awareness.
- Issuers may also incur additional costs related to data storage in order to provide enhanced security.
- General-use prepaid cards require a greater degree of customer service on the part of the issuer due to their enhanced features.

Banning or limiting fees fails to recognize the costs involved in getting general-use prepaid cards into the market. We believe that conspicuous and transparent disclosure of gift card terms and conditions is the key to ensuring that the consumer can make an informed choice as to the product that they purchase and as to the cost of that product. We also believe that well-informed consumers are the best arbiters of the value of general-use prepaid cards. They offer more flexibility than store gift cards, but may come with additional fees. It should be up to the consumer to decide if the card is a worthwhile purchase. We maintain that a competitive market will always drive fees downwards. If the fees are too high, consumers will simply avoid the product.

Regulated Versus Non-Regulated Entities

Another concern listed in the consultation paper involved complaints from consumers that store gift cards were sometimes not honoured when a retailer went bankrupt or changed ownership. For MasterCard and American Express general-use prepaid cards, the issuer of the card is a bank or similarly-regulated financial entity, which virtually eliminates the risk of the prepaid card not being honoured because of bankruptcy. In fact, we are not aware of a single case where a person who purchased a general-use prepaid card lost their money due to bankruptcy. Retailers, of course, are not regulated in the same manner as financial institutions that issue general-use prepaid cards and we believe that consumers may in fact be drawn to purchasing these products because of the robust regulation under which they are offered.

Jurisdiction

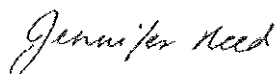
Our final concern relates to jurisdiction which has also been raised in Ontario and Manitoba. The vast majority of the financial institutions that issue general-use prepaid cards are federally regulated. Therefore, the question arises as to whether this legislation is even applicable to prepaid cards issued by federally regulated financial institutions. In fact, in Manitoba, the Government has specifically stated that its gift card regulation does not apply to bank-issued prepaid cards or prepaid telephone cards since the products fall under the jurisdiction of the Federal Government and disclosure requirements are under federal legislation. Likewise, the Ontario regulations do not currently apply to general-use prepaid cards, though the issue is being studied further. We hope that the Ontario Government reaches the same conclusion.

Conclusion

We do not believe that general-use prepaid cards require further regulation. Many of the concerns that were outlined in your consultation paper do not apply to general-use prepaid cards. To avoid some of the confusion that followed the Ontario and Manitoba legislation, we recommend that British Columbia exempt general-use prepaid cards from whatever legislative or regulatory measures are put in place to govern retail gift cards. These two products are clearly distinct. Regulating fees and/or expiry dates is simply not feasible for general-use prepaid cards, and in many cases may not be within the Provincial Government's jurisdiction.

Thank you again for the opportunity to provide comment. Please do not hesitate to contact us if you have any questions or concerns.

Sincerely,



Jennifer Reed
Vice President
Government Relations and Communications
MasterCard Canada Inc.



Wilf Gutzin
Vice President and Senior Counsel
Amex Bank of Canada



July 15, 2008

Ms. Susan Walker
Senior Policy and Legislation Analyst
Corporate Policy and Planning Office
Ministry of Public Safety and Solicitor General
Government of British Columbia
PO Box 9234, Stn. Prov. Gov't
Victoria, BC V8W 9J1

Dear Susan:

BC Legislation – Gift Cards

Further to our previous discussions, we thought it would be beneficial for us to present our comments with respect to the current B.C. legislation as the regulations are now under development.

Peoples Trust is the leading issuer of Universal Prepaid Cards in Canada through our association with MasterCard International. Our Prepaid Card programs span a wide variety of situations from cheque cashers, to employee incentive programs, rebate processing, payroll solutions, royalty and commission payments and also universal payment (gift) cards. These card programs are in reality financial products that provide our clients with an effective solution to their particular cash delivery problem. The fact that our cards are accepted throughout the world at any MasterCard location confirms our product line as a financial product/service similar in nature to credit card and other money service businesses.

Consequently, as a Federally licensed Financial Institution, providing a financial service, using a globally branded product, we are of the understanding that our prepaid card programs, including these programs that are being utilized as "Gift Card" solutions, are regulated at the Federal level and are consequently not within the domain of provincial legislation. This position appears to be consistent with our understanding of the interpretations of the Ontario and Manitoba Legislation.

For greater certainty, we respectfully request that the final regulations are specific with respect to this situation and include a direct reference to financial prepaid cards issued by Federally Regulated Institutions. We suggest the following wording may be appropriate;

"These regulations are not applicable to prepaid payment cards issued by Federally Regulated Financial Institutions."

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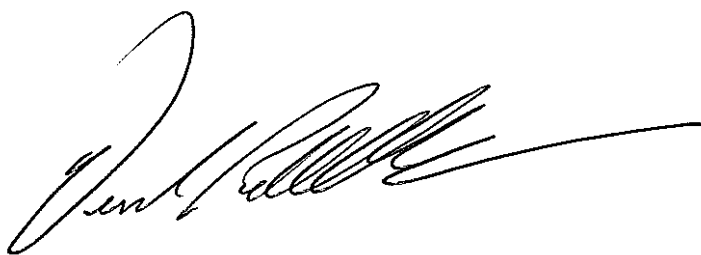
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I also enclose a recently prepared discussion paper illustrating some of the essential differences between Merchant Gift Card programs and our Financial Prepaid Card programs which you may find interesting. It has been prepared for submission at the Federal level should the possibility of legislation arise in the light of the recent Provincial initiatives.

If you have any questions or concerns, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Derek Peddlesden', with a long horizontal flourish extending to the right.

Derek Peddlesden, C.A.
Executive Vice-President & COO

DP:ksm
Encl.

DISCUSSION PAPER

POSSIBLE FEDERAL REGULATION DIFFERENTIATING BETWEEN FINANCIAL PREPAID CARDS AND MERCHANT GIFT CARDS

INTRODUCTION

Peoples Trust is the leading issuer in Canada of universal tender replacement and payment cards through our association with MasterCard. The MasterCard Prepaid Card is fundamentally a cash card, which can be used in diverse circumstances, one of which is similar to Merchant Gift Cards but has the significant advantage of not being limited to a single merchant or group of Merchants. The success of the open loop type of financial gift card has been well documented in the US as a product that is in high demand with consumers. Peoples Trust will be expanding this product in Canada in the near future and wish to ensure that our product is fully understood prior to the introduction of any legislation that may impact our programs.

DEFINITIONS

There are two separate and distinct types of Prepaid Card currently in the Canadian Marketplace each with different characteristics. These are Merchandise Gift Cards and Financial Prepaid Cards.

1) Merchandise Prepaid Gift Cards

Merchandise issued Gift cards represent a prepayment for a specific dollar value for merchandise sold or services provided by that specific Merchant or group of Merchants. They are not able to be used outside the participating group and are consequently deemed "Closed Loop Card Programs".

2) Financial Prepaid Cards

Financial Prepaid Cards are issued by Financial Institutions with internationally branded and accepted payment providers, such as Mastercard and Visa. This is essentially a tender (cash) replacement card which can then be used at any merchant accepting the brand worldwide. These programs are denoted as "Open Loop Card Programs".

Financial Prepaid Cards have much wider applications than Merchandise Gift Cards, as they have a much broader functionality. Employee incentive plans, cheque replacement, rebate distribution, payroll, and gift are just some applications. Essentially anywhere cheques or cash is used as a payment mechanism, the Financial Prepaid Card is a potential solution.

FUNDAMENTAL DIFFERENCES OF THE OPEN LOOP CARD AND MERCHANT GIFT CARD PROGRAMS

The business objectives of an Open Loop Prepaid card and a Merchant based retail gift card are fundamentally different.

Merchants use gift cards to drive up sales volumes of the business overall, consequently they do not necessarily look to have the card program itself be profitable as a stand alone line of business. They introduce gift cards to generate new customers; drive overall sales revenues through "lift" (additional amounts that gift recipients spend when they use a gift card); and to reduce merchandise returns that occur from the normal gift giving process. Increased sales volume and "lift"; generates gross margin on the product sales and reduces costs from handling merchandise returns. Depending on the nature of the card program, the merchant will also make an additional revenue stream based on fees or breakage dollars (unspent value) on the cards.

The Open Loop Prepaid Programs are global payment solutions (primarily tender replacement) that have no "lift" factor for the issuing financial institution and as a prepaid **money product** generate no sales margin for the institution. Consequently, Prepaid Card Programs rely solely on various user fees and breakage to support the program financially. The business objectives are simply to extend the international brand to non-traditional customers and provide a revenue stream to the financial institution,

Open Loop Prepaid products used in a Gift Card type application, also address the shortcomings of merchant based programs that normally result in unspent dollars, (i.e. the universal acceptance, online acceptance, cross border acceptance); and therefore allow the consumer more opportunity to deplete the card to zero than exist in the traditional Merchant Gift Card Programs.

THE COST MODEL OF OPEN LOOP PREPAID PAYMENT SOLUTIONS IS VERY DIFFERENT TO THAT OF A MERCHANT BASED PRODUCT

Although the utility of Open Loop Prepaid cards to the consumer is significant; the Open Loop cost structure is considerably higher than merchant based programs. Noted below are the areas that represent higher costs of issuing a globally branded Prepaid product compared to a traditional merchant based card:

Global Acceptance

These Prepaid cards provide outstanding consumer value with global acceptance. They are accepted around the world and are also used extensively on-line or over the phone. The cost of maintaining this global acceptance network of the card product is borne solely by the issuing members of major brands (VISA, MasterCard, American Express, etc.)

Full Custom Service

Due to the universal acceptance of these cards it requires a **full customer** support model. Live agent support is provided with a toll free number that cardholders can call 24 hours a day, 7 days a week. Live agent support handles balance inquiries, transaction queries, usage concerns, and lost and stolen requests, etc. A full consumer website where consumers can view their balance, register their card, and view transaction history is often provided at no charge to the cardholder.

A nominal fee structure exists for the IVR and Live Agent usage to encourage consumers to use the lower cost web channel for balance inquiry and transaction history. Full Customer support must be maintained for every card that exists in the marketplace; expiry dates bring a discreet closure to support levels.

Merchant Branded

The Associations maintain compliance programs to ensure merchants accept all products. Due to Global acceptance of these prepaid cards, the Associations maintain a rigorous merchant compliance program to ensure merchants continue to honor the Prepaid card programs.

Negative Balances

Due to the global nature of these Networks and the number of systems and sub-systems in place, there are occasions when a consumer can spend more than the value on the card. This results in negative balances that are an expense of the issuing financial institution as the accepting merchants need to be paid and it is not possible to recover these expenditures from the Card holder.

Investments in Global Systems to Support Prepaid Card Programs

The Canadian Brand Associations, in conjunction with other International regions have invested in the programming necessary to have the Networks support worldwide connectivity and also partial authorizations. System investments support and improve the overall consumer experience with Prepaid Cards. These costs must also be borne by the card programs.

The Brand Promise to Consumers – Zero Liability.

Issuers indemnify cardholders from unauthorized transactions in the event of loss or theft. The major international brands promise ensures cardholders are only liable for authorized transactions. Any transactions on prepaid cards that are disputed by a cardholder are covered by the issuing financial institution subject to verification of the unauthorized transactions. This provides outstanding consumer protection that is not available on most Merchant (closed loop) gift card programs but obviously increases the costs associated with these prepaid card programs.

Physical Card Plastic

Due to the unique nature of the card products, they are significantly more expensive to manufacture than merchant based programs. Each card has all the security features of a standard credit card. This higher cost structure is again borne by the Issuing Financial Institution.

Disclosure Requirements

Financial Institutions are regulated by Acts of Parliament, regulatory bodies and existing consumer protection legislation. As a result they follow a vigorous disclosure policy to ensure consumers are fully aware of all fees when they make the purchase, in a similar fashion to other financial products.

OPEN LOOP PREPAID CARD USAGE

Open Loop Prepaid Card products are not limited to gift giving. In fact, gift giving is just one of the many uses of Open Loop Cards. The Open Loop Prepaid Card product is also an excellent promotional and incentive product used by businesses to drive business performance. Prepaid card products have been used extensively for promotional offers and rebate programs, they are widely used in the cheque cashing industry to replace cash dispensing; reloadable cards are also used where recurring payments are made to specific people e.g. royalty distributions, etc.

Consumers also purchase Prepaid cards as personal spending cards and not for gift giving. They may be unable to acquire a credit card or they are trying to minimize exposure of their credit cards when making online purchases. The Prepaid card makes an excellent payment product to address an underserved segment and to provide online security.

Any legislation should ensure it does not restrict the product for business and corporate use, while attempting to provide consumer protection. It must also be noted that for small and medium sized businesses the retail channel will represent the best way to acquire Prepaid cards for incentive purposes.

POTENTIAL IMPACTS OF LEGISLATION

We believe that Open Loop Prepaid Card Programs offer significant consumer value. However, unlike merchant programs, these programs are full service models that need to generate a positive return to an issuing member in order for the product to be provided. Our position is:

- We strongly support full fee disclosure to ensure consumers make informed decisions related to card purchase and usage;
- Eliminating expiry dates will significantly increase the costs of administering a Prepaid Card program due to support costs, IT processing costs, and security monitoring for maintaining active accounts;
- Eliminating the ability to charge fees to support the Prepaid Card program will result in excessive fees at issuance in order to recover ongoing program costs which will not be acceptable to consumers.

In summary, Open Loop programs rely on revenue streams that are generated from the programs themselves and not from the profit associated with the provision of a product or service. Consequently, removal of the revenue stream through elimination of both expiry dates and fees, will result in financial prepaid products becoming loss leaders. Inevitably, the issuers will not be able to justify the continued provision of universal or Open Loop, prepaid programs which will result in the withdrawal of these products from the marketplace. Given the widespread consumer acceptance and desire for the Open Loop globally branded Prepaid card products, this would seem to be contrary to good public policy.

We believe that Open Loop Globally Branded products are the most desirable of all prepaid products from a consumer perspective. They allow for the maximum flexibility for consumer spending, the widest possible choice of goods and services and significantly more support and dollar protection than Merchant programs.

In order to properly support these expensive programs and to encourage market participation to ensure such products are available, these financial product programs must be able to generate an adequate return to the issuer, bearing in mind that the issuer does not make the profit margin on the purchase of a good or service – that accrues to the merchant providing the service.

Consequently, the optimum method of regulating the Open Loop Branded Programs is to have strict guidelines with respect to disclosure of all terms and conditions and fees related to the product, rather than to specifically regulate specific program parameters.

August 28, 2007

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Horizon Plus
Financial

DISCUSSION PAPER

GIFT CARD MARKETPLACE and REGULATION

Introduction:

Peoples Trust is the leading financial institution in Canada with respect to the issue of unrestricted (open loop) tender replacement and payment solutions through our association with Mastercard and introduction to Canada of the Mastercard Prepaid Card. This card may also be used in a similar manner to Merchant Gift Cards but has the significant advantage of not being limited to a single merchant or group of Merchants. The success of the open loop financial type gift card has been well documented in the US as a product that is in high demand with consumers. Peoples Trust will be expanding this product in Canada in the near future and wish to ensure that our product is fully understood prior to the introduction of any legislation that may impact this launch.

Discussion:

There are two separate and distinct types of Gift Card currently in the Canadian Marketplace each with different characteristics. These are Merchandise Gift Cards and Financial Gift Cards.

1) Merchandise Gift Cards

Merchandise issued Gift cards represent a prepayment for a specific dollar value for merchandise sold or services provided by that specific Merchant or group of Merchants. They are not able to be used outside the participating group and are consequently deemed "Closed Loop Card Programs".

2) Financial Gift Cards

Financial Gift Cards are issued by Financial Institutions with internationally branded and accepted payment providers, such as Mastercard and Visa. This is essentially a tender replacement card which can be then be used at any merchant accepting the brand worldwide. These programs are denoted as "Open Loop Card Programs"

Merchandise Gift Cards are issued by retailers to secure sales of their products to customers at a future date. The principal revenue stream from the card use is derived from the gross profit margin built into the retail sale consummated (typically in excess of 25 %). Thus a Merchant has profitability built into the card program which is further enhanced by the fees and breakage that are earned from the administration of the program. Ideally, the card program should generate adequate profitability to at least cover the costs of the program introduction and administration; otherwise the merchant's margins will narrow on any retail sales made by a Merchandise gift card.

Financial Gift Cards are issued by third party institutions to provide universality in purchasing decisions and a proven safe payment solution to gift givers and recipients. The only revenue that accumulates to the issuer and administrator of these Financial Card Programs comes from the fees and breakage associated with the card program itself. All retailers continue to make full profit on the purchases made by the card, none of which are shared with the issuer. Consequently, without a revenue stream separate and distinct from the retail profit, there would be no business case to issue Financial Gift Card and these programs would not be viable. Profit incentive rests on the ability to earn fees for the sale and administration of the payment system (cards accessing established ubiquitous payment channels) and not from the ultimate sale of merchandise. Financial gift card issuers are providing an alternate payment mechanism, not selling merchandise.

Conclusion:

In summary, there are significant differences in the concept, profitability, distribution channels and payment acceptance processes between the Merchandise and Financial Gift Card programs. While the Merchant Gift Card is a mechanism for making retail sales, the Financial Card is essentially a financial product which should therefore be governed from a financial product perspective. In addition, the experience in the U.S. has clearly indicated that there is widespread and strong consumer demand for a Financial Gift Card and the public would not be well served if this product was not available here in Canada. As noted above, open loop card programs are essentially a financial product and, in our experience, regulation of Financial Products generally takes the form of insisting on clear and complete disclosure of what the product does, how the product is administered together with the associated fees and costs.

We understand and support the need to ensure that consumers are well protected and informed about the decisions they take, but believe that full and clear disclosure of all aspects of the product is the optimum way to ensure that the consumer can make an informed decision. As Regulated Financial Institutions are the issuers of the branded Financial Gift cards, it would seem appropriate that the primary regulator of each institution provides the regulation necessary for this product line.



Kim Chan Logan
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June 15, 2007

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Via email at: pssgwebfeedback@gov.bc.ca

Re: Regulating Gift Cards and Certificates

To Whom It May Concern:

I am writing in response to your consultation paper, *Regulating Gift Cards and Certificates*. Generally speaking, we do not believe the Province has jurisdiction to regulate pre-paid phone cards offered by federally-regulated telecommunications carriers, and it is on a without prejudice basis that we offer further information in this letter on the treatment of pre-paid phone cards. We would also like to take this opportunity to provide the Province with comments on the question of whether promotional gift cards should be regulated.

Treatment of pre-paid phone cards

We appreciate the Province's efforts to strive for a legislative framework that is consistent with those in other provinces. As pointed out in the consultation paper, Ontario and Manitoba have adopted legislation to provide a regulatory framework for gift cards.

TELUS has a significant corporate presence in Ontario and provided comments on the proposed legislation, Bill 152 (*Consumer Protection and Service Modernization Act, 2006*), along with our wireless competitors Rogers and Bell Mobility. The purpose of the comments was to ensure that the legislation did not capture a broader cross-section of prepaid cards than what may have been originally contemplated.

As a result of consultations with industry groups, the Ontario Government has exempted certain cards from the regulations. Specifically, it has exempted cards that are subject to federal jurisdiction such as prepaid phone cards.

Beyond the issue of jurisdiction, members of the telecommunications industry submitted that prepaid phone cards are not gift cards in the traditional retail definition. While gift cards are essentially cash equivalents, prepaid phone cards are essentially a billing mechanism that carriers use to charge customers for a distinct service. The terms and conditions for the use of prepaid phone cards are clearly disclosed.

In the case of prepaid phone cards for wireless services, customers have access to the network regardless of whether they are using minutes provided by their cards. This includes access to

911 emergency services. However, as network capacity is not infinite, it is crucial for wireless carriers to be able to predict and manage available capacity to ensure customers have access to 911 and can use their phones as needed. The time limitation associated with a wireless prepaid phone card is an essential network management tool. Whether or not a customer makes or receives calls, the wireless carriers incur costs to run the network, provide 911 service, and have IT management costs.

It is important to note that these customers do not necessarily lose unused airtime. The customer can roll the unused airtime over to the following time interval by activating a new prepaid card prior to their current card expiring. Customers can continue to access their unused minutes as long as they maintain their active status.

Promotional Gift Cards

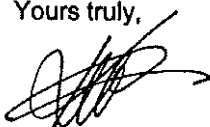
On the issue of promotional gift cards, we would recommend that the Province adopt the same approach as the Ontario Government and exclude these cards from regulation. From time to time, TELUS will embark on promotional campaigns that offer incentives, such as computers or digital cameras, in exchange for the purchase of TELUS services over a defined period of time. Occasionally, consumers will request an alternative to the incentive being offered, to which TELUS may offer the consumer a third-party gift card. We also, on occasion, provide third-party gift cards to our sales representatives as incentive or recognition tools.

There is no exchange of funds to obtain this type of promotional gift card, and the terms are clearly outlined to the recipient at the time it is provided. Therefore, we do not think it serves any practical purpose to regulate gift cards that are promotional in nature.

To conclude, we strongly recommend that, should it decide to regulate gift cards, the Province ensure its framework aligns with that of the Ontario Government, and ensure that it does not capture prepaid phone cards and does not include promotional gift cards under the definition of gift cards that it intends to regulate.

Thank you for the opportunity to provide you with this information. If you have any questions, please do not hesitate to contact me at 250-388-8343.

Yours truly,



Kim Logan
Director, Government Relations
TELUS Communications, Inc.

cc: Honourable John Les, Minister of Public Safety and Solicitor General

Visa Canada Corporation
40 King Street West, Suite 3710
Toronto, Ontario M5H 3Y2



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August 1, 2008

VIA EMAIL

Susan Walker
Senior Policy and Legislation Analyst
Corporate Policy and Planning Office
Ministry of Public Safety and Solicitor General, Government of British Columbia
PO Box 9282 STN PROV GO
Victoria, BC V8W 9J7

**RE: British Columbia Business Practices and Consumer Protection Act –
Amendments & Regulations Consultation Process re Prepaid Purchase Cards**

Dear Ms. Walker:

Thank you for the opportunity to contribute to the consultation process regarding the British Columbia **prepaid purchase card** legislation and regulations.

Visa Canada offers a General Purpose Payment Card Platform to Canadian financial institutions. From that platform, those financial institutions can offer a variety of products to their customers, some of which include prepaid products. Accordingly, Visa Canada is interested in BC's legislation and the regulations there under that are currently being developed.

For purposes of the BC regulations, we believe it is important to have a clear understanding of the definitions and features of the various types of prepaid products to ensure that the public policy objectives of the BC government can be met. We offer the following definitions for your consideration:

General Purpose Payment Product:

- is issued by regulated financial institutions;
- displays a global payment brand mark (e.g. Visa, MasterCard, and American Express) and;
- is used to effect financial transactions, worldwide, wherever the payment brand is accepted.

By contrast, we refer to retailer branded "prepaid Gift cards" as

- not issued by a financial institution;
- not displaying a global acceptance brand;
- not having utility as a ubiquitous payment device, i.e. not "general purpose payment";
- usually issued in place of traditional merchant gift certificates; and
- offered by retailers (one or sometimes a group of retailers).

Some jurisdictions have referred to the retailer branded Gift cards as *Closed-loop gift cards*. In general, such closed-loop prepaid cards are almost exclusively "gift cards" and can only be used at the retailer that sponsored the card.

There are also *Multi-retailer gift cards*: which are Closed loop gift cards that can be used at a limited number of retailers (e.g. a shopping mall gift card) with no global payment brand mark.

Within the Visa suite of General Purpose Payment Products Visa offers a variety of prepaid cards. They include: prepaid Travel cards; prepaid corporate incentive cards; prepaid remittance cards; prepaid government disbursement; prepaid gift cards; prepaid payroll cards, etc. All such prepaid cards nevertheless retain all the characteristics of the General Purpose Payment Product as defined above.

Unlike retailer Gift cards, the Visa General Purpose payment prepaid card has utility well beyond "gift". For instance, it is used to address underserved consumer segments such as consumers unable to, or averse to acquiring a Visa credit card, but who still want or need access to the utility provided by a Visa payment product. In this case, consumers are purchasing a Visa prepaid card as a personal spending card rather than as a gift card.

Other consumers acquire prepaid Visa General Purpose Payment cards for online use – functionality not ubiquitously afforded by Interac debit or retailer gift cards. These Visa cards are also used to assist with personal budgeting or foreign travel.

Prepaid Visa General Purpose payment products are not limited to consumer point-of-sale usage or targeted specifically to gift-giving. In Canada, such cards have been used extensively for promotional offers, employee incentive plans, and rebate programs.

Incentive offers include:

- Employee recognition programs (including one-time awards and ongoing sales incentive plans for commissioned salespeople);
- Rebate offers to consumers for purchase behaviour and loyalty; and,
- Volume rebate offers to dealers for product purchase.

It is worth noting that for small and medium-sized businesses, the retail channel represents the primary source for acquiring the prepaid Visa General Purpose Payment cards for incentive purposes. Accordingly, regulations should not inadvertently impair the product availability for such corporate use.

It is Visa's submission that it is an appropriate policy objective for the legislation to address the peculiar characteristics of the gift card, which are single or very limited purpose cards, but not cards which by design are ubiquitously accepted payment instruments, along the lines of a bill of exchange.

Visa submits that its prepaid platform supports cards which fall in the latter category and accordingly should be exempted by Regulation, from the application of the **prepaid purchase card** provisions of the Act.

Visa submits that not only are the utility and other characteristics (as more fully described in the paper that accompanies this letter) of the Visa prepaid cards sufficient to justify exempting them from the Act, we believe that failure to exempt will lead to unintended anti-competitive consequences for BC chartered financial institutions.

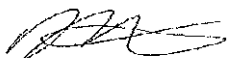
Namely, if not clearly exempted, provincially chartered Visa financial institutions (e.g. credit unions) would likely adopt a conservative interpretation of the Act, and conclude that any Visa prepaid cards propose to issue must comply with the limitations imposed by the Act. By contrast, federally chartered Visa issuers would (for constitutional reasons) not have to comply with such limitations. And their prepaid cards would be competitively advantaged in the market place. Indeed, it is reasonable to expect that provincial issuers may not compete in the prepaid card issuing business.

Visa submits that British Columbia financial institutions should be treated the same as the financial institutions that they compete against, including banks, with regard to their ability to offer general purpose prepaid cards to their customers in BC. To do otherwise would place credit unions and provincial trust companies at a significant competitive disadvantage and limit their ability to serve BC consumers.

We would welcome the opportunity to discuss our submissions with you, at your convenience, either via teleconference or face-to-face. Moreover, we would welcome the opportunity to review the draft regulations derived from the consultation process and provide you with our feedback.

Enclosed is a brief paper that provides an overview of Visa prepaid cards.

Regards,



Mitchell S. Wolfe
Regional Head of Legal
Visa Canada

copy to: Toby Louie, Director, Corporate Policy and Planning Office
copy to: Rahim Kassam, Visa Canada Corporation

Enclosure



Overview of Visa® Prepaid Cards

Visa operates the world's largest retail electronic payments network and manages the world's most recognized global financial services brand. Visa facilitates global commerce through the transfer of value and information among financial institutions, merchants, consumers, businesses and government entities.

Visa provides financial institutions, our primary customers, with product platforms encompassing consumer credit, debit, prepaid and commercial payments. In addition, VisaNet, our secure, centralized, global processing platform, enables Visa to provide financial institutions and merchants with a wide range of product platforms, transaction processing and related value-added services.

Visa Canada licenses 24 Canadian financial institutions to issue *Visa* cards domestically. While Visa develops product platforms from which the institutions design and distribute their own customized Visa branded payment products, Visa has no involvement in any pricing of products, a matter left solely to the issuing institution.

Virtually all Visa branded payment products issued by the licensees fall into the category of "*general purpose payment cards*" which, by design, facilitate a Visa cardholder's financial transaction with Visa card accepting merchants around the world.

Visa payment platforms accommodate a wide range of products issued by Visa licensees, including Visa branded credit cards; debit cards; reloadable and non-reloadable prepaid cards. The common theme of all these products are that they: display the Visa brand; are of global utility (i.e. accepted wherever Visa payment products are accepted) to effect financial transactions; and are authorized and processed through VisaNet.

Within the suite of Visa's payment products, Canadian financial institutions are able to develop a variety of their own products for their customers, including prepaid Visa cards. All such Visa branded prepaid products must however, retain the characteristics of *general purpose payment card* as described below.

Within the Visa suite of *General Purpose Payment Products* Visa offers a variety of prepaid cards. They include: prepaid Travel cards; prepaid corporate incentive cards; prepaid remittance cards; prepaid government disbursement; prepaid gift cards; prepaid payroll cards, etc. All such prepaid cards nevertheless retain all the characteristics of the *General Purpose Payment Product* as defined above.

General Purpose Payment Product:

- is issued by regulated financial institutions;
- displays a global payment brand mark (e.g. Visa, MasterCard, and American Express) and;
- is used to effect financial transactions, worldwide, wherever the payment brand is accepted.

As described more fully below, prepaid *General Purpose Payment Products* (which we will refer to as "*Visa Prepaid cards*") differ fundamentally from "*Gift cards*" offered by retailers (whether individually or collectively).

By contrast, retailer branded “prepaid Gift cards”:

- are not issued by a financial institution;
- do not display a global acceptance brand;
- do not have utility as a ubiquitous payment device, i.e. not “*general purpose payment*”;
- are usually issued in place of traditional merchant gift certificates; and
- are offered by retailers (one or sometimes a group of retailers).

Some jurisdictions have referred to the retailer branded Gift cards as *Closed-loop gift cards*. In general, such closed-loop prepaid cards are almost exclusively “Gift cards” and can only be used at the retailer that sponsored the card.

There are also *Multi-retailer gift cards*: which are *Closed-loop gift cards* that can be used at a limited number of retailers (e.g. a shopping mall Gift card) with no global payment brand mark.

We have used the defined terms above, throughout this document.

Within the Visa suite of prepaid cards, there are both reloadable and “non-reloadable” Visa prepaid cards. It is noted that even though some Visa non-reloadable cards may be given or sold as gift type cards (thus are Gift cards); they nevertheless retain their *General Purpose payment product* characteristics as defined above.

Fundamental Differences between the General Purpose Visa Prepaid Cards and Retailer Gift Cards

The business objectives, functionality and processing infrastructure of a Visa prepaid card and a retailer-based retail Gift card are fundamentally different.

It is our understanding that retailer branded Gift cards are used to drive performance of a retailer’s primary retail business. Gift cards are not intended, nor do they need to be, profitable as a stand-alone line of business. Retailers introduce Gift cards to generate new customers; drive overall sales revenues through “lift” (additional amounts that gift recipients spend at the merchant’s location when they receive a Gift card); and to reduce merchandise returns that occur from the normal gift-giving process. The retailer Gift card business model includes the profit from the margin on the product or service sold by the retailer. Depending on the terms and conditions of the card program, the retailer may also make an additional revenue stream based on breakage dollars (unspent value) on the cards.

In stark contrast to retailer Gift cards, which can only be used at one retailer or a co-op of retailers, a Visa prepaid card is a global payment product that can be used anywhere Visa cards are accepted. There is no “lift” factor for the issuing financial institution.

The ubiquitous acceptance (including online and cross-border acceptance) of Visa cards including Visa prepaid products address a number of the shortcomings of the kind of merchant-based programs that result in unspent dollars.

The Value Proposition of the General Purpose Visa Prepaid Cards

The value proposition of Visa prepaid cards to the consumer is significant. Below, we outline the areas that further distinguish the general purpose Visa prepaid cards and that demonstrate their value proposition to consumers:

Disclosure Requirements: Visa system and Visa-issuing financial institutions treat Visa prepaid cards in the same manner as any other financial product offered by the institution. Visa Financial institutions issuers are governed by provincial or federal financial services legislation including the

Bank Act, as well as regulatory bodies, existing consumer protection legislation and the Visa regulations. As a result, they follow a rigorous disclosure policy to ensure consumers are fully aware of all fees when they purchase a product. Many prepaid programs also provide a printed "user guide" at the time of purchase. This requirement improves the consumer's Visa prepaid card experience. In addition to the above, a full set of terms and conditions are either provided in each card carrier package and/or they are available on the dedicated consumer websites.

Global Acceptance: Visa prepaid cards deliver the same general purpose utility as all other General Purpose Visa payment products and provide outstanding consumer value with global acceptance:

The Visa Brand Promise to Consumers – Zero Liability: Visa issuers indemnify cardholders from unauthorized transactions in the event of loss or theft. The Visa brand promise extends to prepaid products and ensures that cardholders are only liable for transactions authorized by them.

Full Customer Service: Delivering universal acceptance of a Visa prepaid card requires a full customer support model. A full consumer website where consumers can view their balance, register their card and view transaction history is also provided by the issuing financial institution at no additional charge to the cardholder.

Live agent support handles balance inquiries, transaction queries, usage concerns and lost and stolen requests. Live agent support is provided through a toll-free North American phone number that cardholders can call 24 hours a day, seven days a week. A nominal fee structure may exist for the Interactive Voice Response service and live agent usage to encourage consumers to use the lower-cost web channel for balance inquiry and transaction history.

Fraud Prevention

Expiry dates are an essential feature of Visa prepaid cards, just as they are for all Visa branded payment products. They are a critical component of Visa's comprehensive fraud management program which helps to protect consumers.

Moreover, expiry dates are a system requirement if Visa is to deliver consumers full e-commerce and MOTO utility.

Each Visa prepaid card has all the security features of a standard Visa card. The global and multi-channel utility of Visa card products, including prepaid Visa General Purpose payment cards, has driven the development of a variety of security features such as the Dove hologram, ultraviolet markings and expiry dates are all required to help prevent fraud.

Unique Visa Prepaid Card Functionality Available to Consumers and Businesses

Visa Prepaid General Purpose payment products are vastly different from Merchant Gift cards both with respect to their utility and their underlying business models and should not be included within the same regulatory regime

Visa prepaid cards give the cardholder the choice to use the card anywhere Visa cards are accepted and do not limit them to one merchant or group of merchants at which they may or may not shop.

The ubiquitous acceptance of the Visa cards means that the funds on the cards are likely to be spent before any expiry, thus minimizing the risks that accompany the limited purpose Merchant Gift cards.

Visa Prepaid cards have both consumer and commercial utility. The significant commercial utility stands as another material differentiator from the retailer Gift card and is an additional compelling reason to ensure they are exempted from the legislation.

Visa Cards are issued by regulated financial institutions whose private and public regulatory regimes already provide for significant consumer protection as well as appropriate disclosure of relevant information.



Visa General Purpose Payment Product Overview

Mitchell Wolfe

Rahim Kassam

Meeting with Ministry of Public Safety
& Solicitor General, Government of
British Columbia

Victoria, British Columbia

6 August, 2008

Agenda



- Overview
- British Columbia Legislation: Prepaid Purchase Card
- Visa General Purpose Payment Product overview
- General Purpose Visa Prepaid Payment Products
- General Purpose Visa Prepaid Payment Products vs. retailer gift cards
- General Purpose Visa Prepaid Payment Products: Value Proposition
- Next steps

Overview



- There are various types of prepaid purchase cards in market today
- The public policy objective is to protect BC consumers against certain peculiar characteristics of single or very-limited purpose gift cards
- In stark contrast to limited purpose gift cards are the General Purpose Prepaid Cards whose global acceptance as a cash substitute justify exempting them from the Act
- Failure to specifically exempt General Purpose Prepaid Cards may lead to:
 - Possible consumer confusion
 - Unintended anticompetitive consequences for BC chartered financial institutions
 - Less choice for BC consumers of financial products

British Columbia legislation

Prepaid Purchase Card



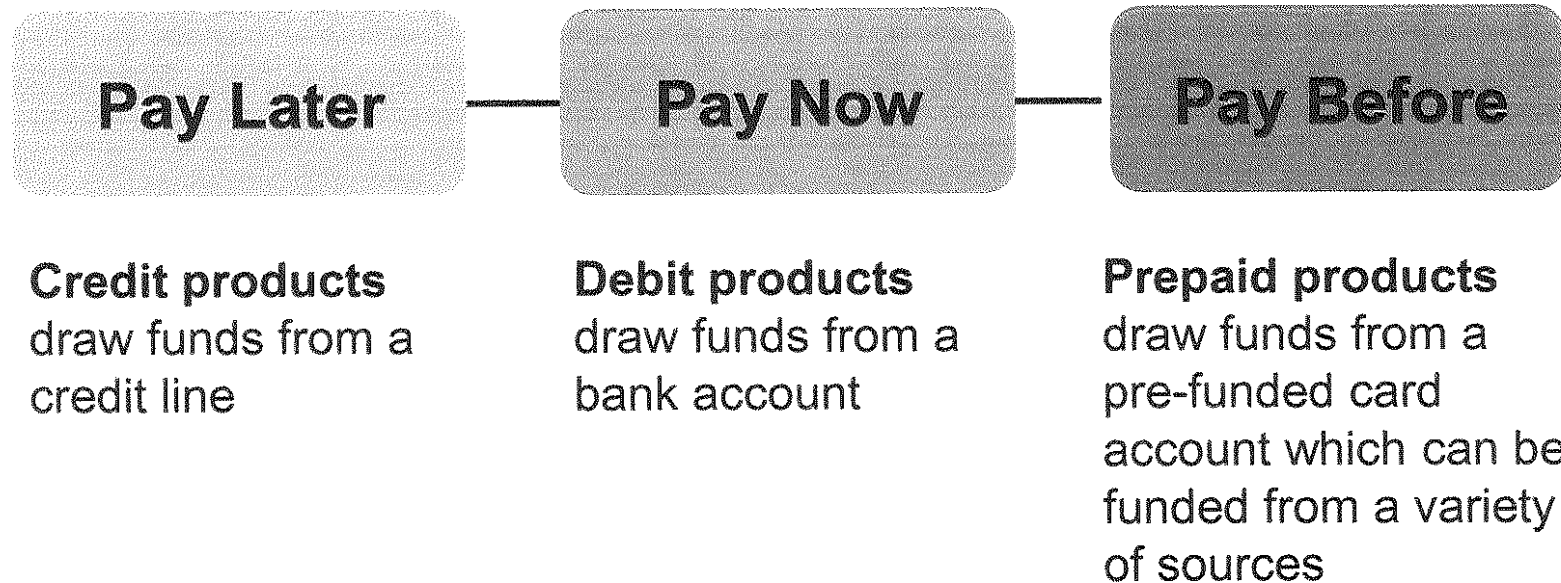
Definition (Section 56.1):

- *Means a card, written certificate or other voucher or device with a monetary value that is issued or sold to a person in exchange for the future supply of goods or services to a consumer, and includes a gift card and gift certificate, but does not include a cash card as defined in Part 6.1*
- Definition of “*Prepaid Purchase card*” as currently written in legislation could capture a wide range of card products
 - Including General Purpose Visa Prepaid Payment products issued by provincially chartered Visa financial institutions
 - And could be interpreted to include all General Purpose Visa Prepaid Payment Products

Visa offers a variety of General Purpose Payment products



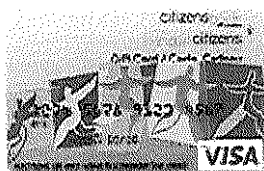
All Visa General Purpose Payment products are issued by regulated financial institutions



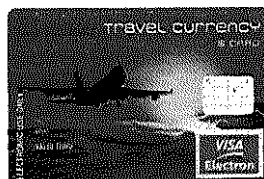
Visa's General Purpose Prepaid platform can be used in various applications



Consumer



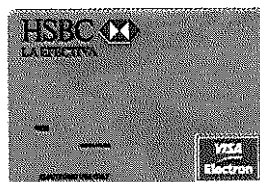
Gift



Travel



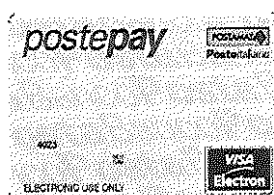
Youth



Remittance

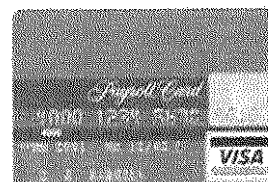


Virtual

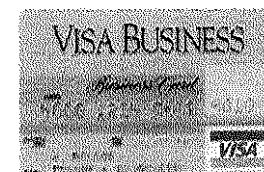


General Purpose

Commercial



Payroll



Per Diem



Corporate Incentives



Corporate Voucher



Government Disbursements

Visa Prepaid cards differ from retailer gift cards



Visa Prepaid Cards

- Issued by regulated financial institutions
- Display a global payment brand mark (e.g. Visa)
- Used to effect financial transactions, worldwide, wherever the payment brand is accepted
- Consumer protection through federal legislation and network Operating Regulations

Retailer Gift Cards

- Not issued by a regulated financial institution
- Do not display a global payment brand mark
- Do not have utility as a ubiquitous payment device (*i.e. not general-purpose payment*)
- Issued in place of traditional merchant gift certificates



Value Proposition

General Purpose Visa Prepaid Payment Products

- Full disclosure requirements to consumers
- Global acceptance, similar to other general purpose payment products offered by Visa
 - Includes e-commerce and MOTO utility
- Security features (e.g. expiry date, dove hologram, CVV2 etc.)
- The Visa Brand Promise to consumers: Zero liability cardholder protection
- Full customer service support

Submission



- That regulation eliminate possible consumer confusion by:
 - clearly defining the different types of cards and associated exemptions
 - ensuring provincial FIs are not competitively disadvantaged
 - specifically exempting General Purpose Visa Prepaid Payment Products from the regulations

Next Steps

- Welcome the opportunity to review draft regulations derived from the consultation process and provide feedback

PSSG Gift Card Consultation - 2007

Summary of responses

1. Individual consumers

Views on regulation

- 87% of said government should regulate prepaid gift cards.
- 55% said government should regulate promotional cards.

Expiry dates

- 84% said government should regulate expiry dates.
- 74% said expiry dates should be prohibited.
- Those who said government should allow expiry dates said there should be a minimum active period before expiry, ranging from 6 months to 10 years.
- 29% said cards issued for promotional, seasonal, travel, special sales, limited offers, and specific items of events should be allowed to have expiry dates.

Fees

- 77% said government should regulate fees.
- 84% said that all fees should be prohibited.
- The remainder said that activation, replacement, administrative, dormancy and reactivation fees should be allowed.
- 45% wanted maximum fees and suggested maximums ranged from 0.5% to 10%, and many suggested a one time flat fee regardless of the value of the card.

Refunds

- 87% wanted refunds of unused amounts at the consumer's request.
- 42% said there should be limits on the amount of refund, most often \$5 or less but ranging from \$2 to the total card value.

Disclosure

All respondents said there should be requirements for written disclosure to the consumer and said fees, expiry dates, refund terms, store locations, where to get information such as terms and remaining balance. Most said this information should be given at the time of purchase or activation.

Other

Several consumers said that money should be held in trust accounts; a few were concerned about extra packaging. Others said that regulation should be the same across the country.

2. Consumer organizations

The Consumers Council of Canada said that government should regulate prepaid gift cards, but not promotional gift cards. Expiry dates should not be allowed,

except on promotional cards. Fees should be regulated, with a maximum standard amount, not based on the card's value. Retailers should be required to refund unused amounts, with no maximum. Full disclosure of all terms should be required.

3. Business and business organizations

Retail Council of Canada

- Supports the regulation of prepaid gift cards but not promotional cards.
- Supports elimination of expiry dates, except on promotional cards etc.
- Refunds should not be required.
- Full disclosure should be required.
- Take the same approach as Ontario in all matters.

Canadian Council of Grocery Distributors

- Does not support regulation of gift cards.
- Government should not regulate expiry dates, fees or refunds.
- Support for disclosure requirements – focusing on criteria, not limitations.

British Columbia and Yukon Hotels Association (also 4 individual hotels responded)

- Supports regulation of prepaid cards but not promotional cards.
- Support regulation of expiry dates – suggests card active for three years before expiry.
- Maximum fees of 10% should be permitted for administration.
- Refunds of unused amounts of \$100 should be required.
- Disclosure should be required, but each retailer should decide what to disclose.

Retail BC

- Does not support a regulatory approach. Retailers should be allowed to set their own policy.
- Expiry dates should be allowed.
- Activation fees and fees for lost or stolen cards should be allowed.
- Refunds should not be required.
- Full disclosure should be required on purchase.

Better Business Bureau of Mainland BC

- Supports best practices and consumer education rather than a regulatory approach.

Telus

- Maintains that the province does not have jurisdiction to regulate phone cards. Do not regulate promotional cards. Align regulation with Ontario.

Multi-store Gift Card Coalition, Ivanhoe Cambridge and Cadillac Fairview

- Supports two classes of regulation, one for single retailer, one for multi-retailer.
- As all of these cards use a banking network, caution about jurisdiction of regulating bank products.
- Support regulation that prohibits expiry of card account.
- Support no fees for 12 months after purchase, then maximum \$2.50 per month. Need fees to recover costs as revenue must stay in trust account until paid out.
- No refunds for anonymous or reloadable cards; reloadable cards have cash access through ATM's.
- Full disclosure should be required.

Pages 50 through 51 redacted for the following reasons:

s. 16

Open-Loop Gift Cards

BACKGROUND:

Context on Open-Loop Model

The open-loop business model is substantially different from the closed-loop model. Open-loop gift cards utilize the global payment system of MasterCard, VISA, or Amex. Only financial institutions can be members of the global payment system because of MasterCard, VISA, and Amex rules.

The service provider role (e.g., Store Financial) is largely that of intermediary between the mall and the financial institution. It is the service provider's financial institution where pre-paid funds are deposited – not that of the issuing mall. The service provider issues cards that can be loaded with funds at the mall, creates accounts for purchasers of gift cards on their database, tracks usage of the card and outstanding balances, and verifies with the financial institution that the card has sufficient funds to execute a consumer purchase using the card. In some cases, holders of gift cards can call the service provider to determine outstanding balances remaining on the card. Some service providers charge a fee for this service while others do not.

The service provider's financial institution holds the pre-paid funds in trust and in an account in the name of the financial institution until redemption. The bank is responsible for all disbursements to retailers when cards are redeemed. The bank assumes the liability for the funds.

There are five potential revenue sources for open-loop cards that currently amount to approximately 9.8% per card sold. These revenues are shared with all players in the supply-chain. This includes the retailers' bank where the card is redeemed, the issuing bank that disburses the funds, the service provider, and in some circumstances the mall that issues the card. The revenue sources are:

1. Activation fees.
2. Interchange fees – transaction fees paid by retailers to use the global payment card system.
3. Float – interest earned on funds held by the financial institution.
4. Dormancy fee – fee charged against the card's balance after a certain number of months.
5. Add-on customer service fees, such as for balance inquiries or card replacement.

Treatment of Unused Balances – Closed-Loop

Proceeds from the sale of cards are held at the corporation's financial institution (e.g., The Gap). The bank account is in the name of the corporation (not the bank). Decisions about when and what percentage of liability to transfer to revenue is made by the corporation. The financial institution is not a party to the transaction and disbursements are simply accounting entries to various outlets.

Treatment of Unused Balances – Open-Loop

The financial institution account, where pre-paid funds are deposited for disbursement, accrues revenue from interest and any unspent balance of a gift card. The financial institution assumes the liability of guaranteeing the funds held in deposit. Contractual arrangements between the service provider and the financial institution determine what percentage of unspent balances flow back to the service provider.

Application of Federal Banking Laws to Dormant Accounts

Contrary to initial industry claims, pre-paid funds collected on the sale of anonymous gift cards are not forms of "bank deposits" and are not subject to federal banking laws governing unclaimed bank balances (the *Bank Act* requires that banks take steps to notify bank account owners after two years of inactivity and that unclaimed balances be transferred to the Bank of Canada after 10 years of inactivity).

According to the federal Office of the Superintendent of Financial Institutions (OSFI), "nothing in the *Bank Act* would prevent the financial institution who holds the funds in an account in their name from withdrawing money from the pooled deposit account. Any funds that are not drawn down by the cardholders belong to the financial institution." The determination of when to transfer and distribute unredeemed balances is that of the financial institution.

Application of Federal Banking Laws to Card Expiry

Industry stakeholders also asserted that federal law requires payment cards such as gift cards to expire after a certain time period. However, OSFI has confirmed that the *Bank Act* does not regulate the expiry of payment cards, whether credit cards or otherwise. OSFI is not aware of any federal laws that require such cards to expire.

Stakeholders have noted that payment card industry standards provide that payment cards must expire three years after issuance. This is a consumer security and anti-fraud feature.

Consultation with Multi-Store Gift Card Coalition – March 8, 2007

DISCUSSION TOPICS: Noted that a key difference between a closed-loop, merchant card and an open-loop card is how unused balances are disbursed. Since funds on a closed-loop card are in the retailer's bank account, retailers have the discretion to take the unredeemed funds into revenue. Once taken into revenue, retailers assume the risk of honouring the card and covering the liability.

According to MasterCard rules, banks that issue open-loop cards using the MasterCard payment system are liable for the card and must ensure that pooled funds are secure (i.e., cards are 100 percent "cash-backed"). Should a mall or retailer become insolvent and the card unusable by the cardholder, the card can be liquidated and redeemed for cash.

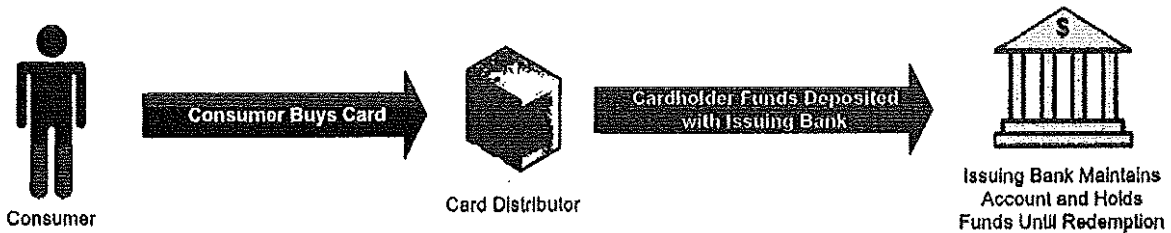
Drawing down or "scooping" the balance at a given breakage point without expiring the card changes the issuing bank's risk. Banks are unlikely to support scooping and may refuse to issue or sponsor an open-loop card without security of funds.

Stakeholders noted that there are significant costs to run an open-loop system, particularly given the multiple partners (e.g., two banks involved in processing each transaction – retailer's bank, and card issuing bank).

It was discussed whether pooled funds held by the issuing bank are in a trust account. Stakeholders clarified that funds are not actually held in a denominated trust account, but that the account has the same characteristics as a trust account given security of funds.

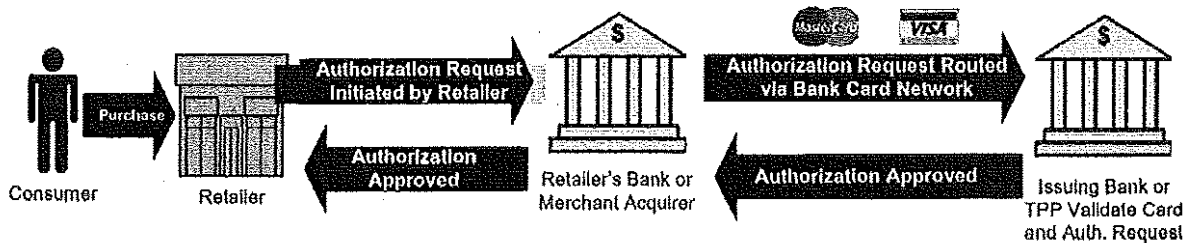
Pre-Paid Card Purchase and Redemption – Using the Bankcard Networks

Prepaid Card Purchase



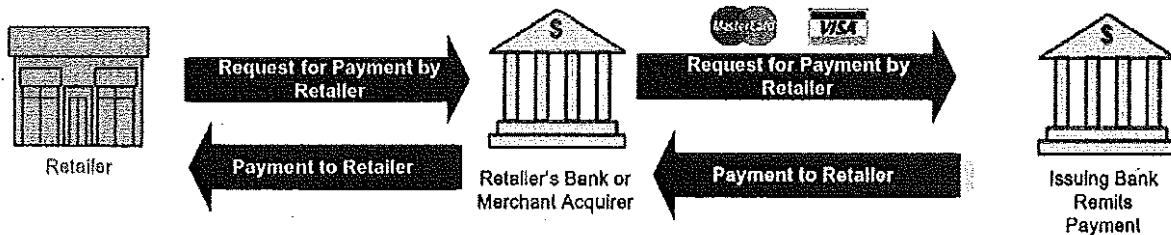
When a consumer buys a prepaid multi store card, the cardholder funds are transferred to a trust account at a bank. The issuing bank maintains the account and holds the cardholder funds until the consumer is ready to make a purchase.

Authorization of a Bank Card Network Transaction



As the consumer makes a purchase at the retailer of their choice within the payment network, the retailer sends a request through their bank or merchant acquirer via the network to the issuing bank for authentication and authorization. The issuing bank or Third Party Processor (TPP) must respond to the authorization request with an approval or decline. Assuming the sale is approved, the retailer holds the authorization within their register system until the close of their business day, at which time, the retailer sends a settlement request to their bank or merchant acquirer.

Settlement of a Bank Card Network Transaction



At the close of each business day, the retailer makes a request for funds aggregating all authorized sales made during the day with their bank or merchant acquirer. The bank or merchant acquirer then requests the payment on behalf of their retailer to the network. The network combines the various retailer requests and informs the issuing bank of the settlement amount due. The amount is authenticated and the funds are transferred from the issuing bank to the payment network, which in turn, transfers the funds to the merchant acquirer. The merchant acquirer transfers the funds to the retailer.

Ministry of Government and Consumer Services

Study of the Open Loop Gift Card Model

January 15, 2007

Outline

1. Background and Executive Summary

2. Open Loop Gift Card Economic Model

3. Legislative Review

4. Assessment of Applicable Accounting Standards

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Appendices

Background and Executive Summary

Background

- The Ministry of Government and Consumer Affairs (the Ministry) needs to decide whether to impose the same regulatory regime currently in place on “closed loop” gift cards to the “open loop” system
- To that end the Ministry is seeking to understand the economics of the “open loop” system
- In addition the Ministry would like to know how other jurisdictions have handled the regulation of gift cards and also to understand how revenue recognition is handled under various accounting standards in an “open loop” environment

Approach

- Interviewed industry participants and Deloitte experts to obtain a good understanding of the economic model for “open loop” gift cards
- Reviewed the gift card regulations of other jurisdictions including major US states in the US and Australia
- Reviewed relevant CGAAP, USGAAP, IFRS standards to examine revenue recognition guidelines that might relate to the “open loop” gift card model

Summary Findings

- There are a number of players involved in the open loop chain from the consumer, the card issuing bank, the program manager, the card distributor, participating merchants, the third party processor, the acquiring bank and the card network association, making it more complex than the “closed loop” model. Thus the flexibility that it offers customers through broader retail acceptance requires coordination and creates additional costs.
- Accounting principles would suggest that dormant balances could be taken into income over time, where the possibility of redemption is remote. Under the “open loop” environment the issuer is not a retailer, but a financial institution that may be subject to regulations or legislation preventing it from recognizing dormant balances into income. Maintenance or dormancy fees may be a mechanism to allow “open loop” card issuers to accomplish the same accounting result as “closed loop” issuers with regards to bringing dormant balances into income.
- Legislation in other jurisdictions varies widely. For example, U.S. legislation amongst the various states differs significantly. Some states ban fees and expiry dates, others lack legislation with respect to gifts cards (and therefore by default allow fees). Still others explicitly allow fees. The model that predominates is the latter with specific provisions that specify when cards can expire, the amount of fees that can be charged and the manner in which all terms and conditions must be disclosed.

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Economic model – Section summary

- Prepaid gift cards generally come in two forms, single retailer card programs (“closed loop”) and multi retailer card programs (“open loop”). “Open loop” models continue to see more innovation and accelerated growth in Canada and the U.S.
- Currently the “open loop” model is a small portion of the total market, likely accounting for less than 10% market share. Looking forward, the “open-loop” model is estimated to grow much more rapidly than the “closed loop” model and may reach 50% market share (\$2-\$3 billion) in 2010.
- The “open loop” model has similar characteristics to the models defined by familiar banking products such as credit cards. In such a model, the card is issued by a sponsoring or “issuing” financial institution (this is usually a bank but can be another type of financial institution such as GE Money) that must be a member of a bankcard network such as Visa or MasterCard. It is the card issuer that holds the balances on the customer’s behalf and earns interest on those balances while they remain unredeemed.
- Many other players are involved in an “open loop” environment. Each player in the “open loop” environment will incur costs and therefore will need to earn revenues to recover these costs.
- The “closed loop” model is fairly simple because the retailer that the card is to be redeemed at is also the card issuer and distributor. As the model is simpler, the costs of providing the payment facility are lower.

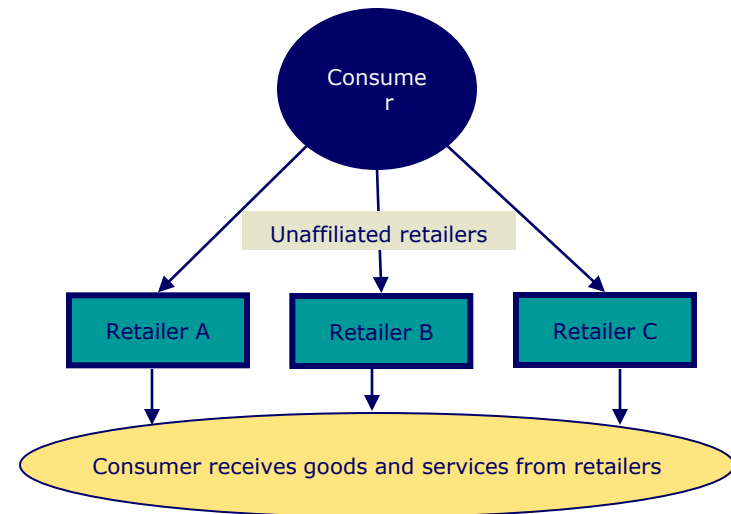
Prepaid Gift Card Overview

Prepaid gift card programs typically come in two forms. A single retailer card program (“closed loop”) sells cards that are redeemed at the retailers selling the gift card (e.g. a gift card purchased and redeemable at the Bay), while a multiple retailer card program (“open loop”), sells cards that are redeemed at multiple unaffiliated retailers/sellers (e.g. a gift card purchased from Cadillac Fairview and redeemable at merchants operating in malls managed by Cadillac Fairview). Consumers simply pre-load money onto the cards and use the cards at authorized retailer locations.

Most open loop card programs share the following common characteristics:

- Programs are designed to be redeemed at multiple unaffiliated retailers by leveraging a third party bankcard payment network.
- Cards will bear the brand of the network they leverage (i.e. Visa, American Express, Discover and Master Card), allowing consumers to pre-load funds onto the card and redeem for products and services wherever the card network is accepted;
- “Open loop” cards use can be restricted to a limited number of retailers in the network, which can be referred to as “partially open loop” card programs.
- Open loop cards can also be defined as single-load cards or multi-load cards. Multi-load cards allow consumers to re-load money and continue use of the card, while single-load cards can no longer be used once the balance on the card is depleted.

High level card usage scenario



Consumers pre-load funds onto an open loop card and can use the card at unaffiliated retail locations to purchase goods and services from retailers / merchants. Card balances are maintained in real time and drawn down as funds are used until the funds on the card are drawn down to zero. Once the funds are drawn down to zero the consumer can choose to load more funds onto the card (if applicable) or the card is no longer usable.

Open Loop Gift Card Stakeholders

In a typical “open loop” system there are a number of parties involved that aid with the product delivery and transaction execution. The table below lists the participants and outlines the role they play, along with how they participate in the system economics.

	Roles & Common Responsibilities	Economic Model Implications
Merchant or Retailer (e.g. The Bay)	<ul style="list-style-type: none"> ▪ Acceptance of open loop gift card. 	<ul style="list-style-type: none"> ▪ Profit earned from product sales. ▪ Fee paid per transaction in the form a discount to the transaction value and split amongst merchant acquirers, the payment network, and the issuing bank. ▪ Typical merchant discount rate range is 2-3%
Merchant Acquirer or Acquiring Bank (e.g. Moneris)	<ul style="list-style-type: none"> ▪ Collects gift card amounts that require payment from the issuing bank on behalf of the merchant. 	<ul style="list-style-type: none"> ▪ Earns a set fee / percentage per transaction from interchange to cover overhead and administration of transaction processing. ▪ Share of interchange fees ranges from 0.5% - 1.5%
Payment Network or Bankcard Network (e.g. MasterCard)	<ul style="list-style-type: none"> ▪ Interfaces with, issuing bank, merchant acquirer, third party program management company and provides necessary protocol to process transaction flows of the program. 	<ul style="list-style-type: none"> ▪ Earns a set fee / percentage per transaction from interchange to cover overhead and administration of transaction processing.
Issuing Financial Institution or Issuer (e.g. LaSalle Bank)	<ul style="list-style-type: none"> ▪ Gift card sponsor and issuer for the purpose of settling transactions ▪ Maintains a pooled funds account on behalf of the program; guarantees and assumes all program liability for gift card funds ▪ Works with program management company to maintain updated account records ▪ Settles and remits funds for payment to merchant acquirer banks for remittance to redeeming retailers 	<ul style="list-style-type: none"> ▪ Earns a set fee / percentage per transaction from interchange to cover overhead and administration of transaction processing. ▪ Share of interchange fees will range between 0.5% - 1.5% based on the agreement with third party program management company / card provider

Open Loop Gift Card Stakeholders continued...

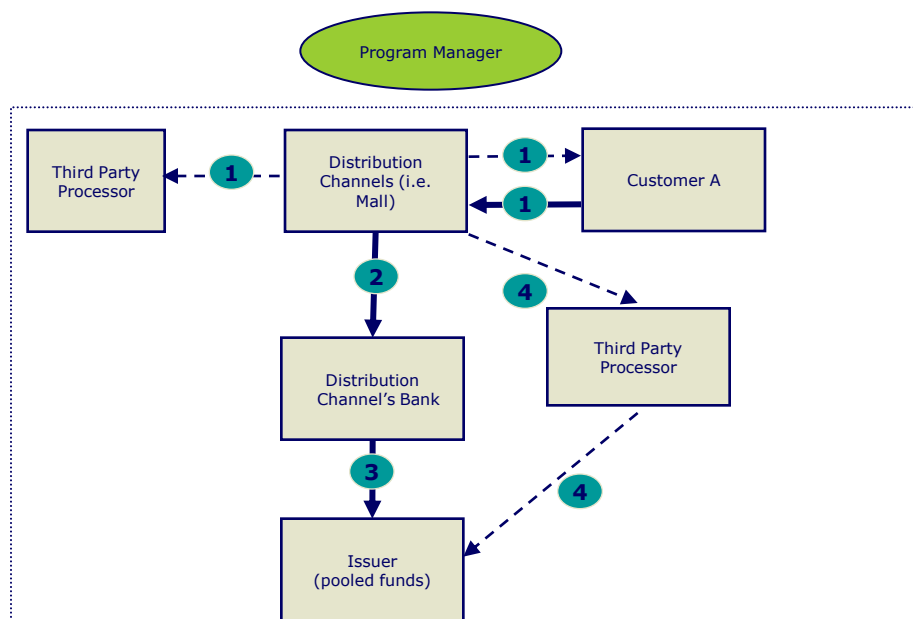
The table below list the remaining participants in an open loop gift card system and outlines the role they play in the system along with how they participate in its economics.

	Roles & Common Responsibilities	Economic Model Implications
Third Party Management Company or Program Manager (e.g. Store Financial Services)	<ul style="list-style-type: none"> Required to manage and operate open loop card offering, which includes providing 3rd party technology and supporting services (ex. card creative, design, manufacturing and delivery) Program management includes creating the structure for maintaining, processing and reconciling gift card accounts. It also includes activation of the card (in real time), loading of funds onto the card and account for each transaction using the card. In some instances the program management company may also act as the third party transaction processor 	<ul style="list-style-type: none"> Generate revenues from customer fees: <ol style="list-style-type: none"> Issuance fees can range from \$0 - \$39.95 based on the type of card; reloadable cards typically have higher issuance Transaction fees are paid in multi-load open loop card models and will vary based on individual program parameters Account maintenance fees vary based on program type: <ul style="list-style-type: none"> Multi-load cards typically charge a set fee of \$1.95 - \$5.95 / month Single-load cards typically charge fees of \$1-\$2.50 upon card expiry; on a per transaction basis it can range from 3 - 4.5% based on breakage Revenues are also earned from interest on funds secured in pooled deposit account with the issuing bank. According to the Multi-Store Gift Card Coalition average card amounts range between \$50-\$60 and funds are typically used within 90 days of card activation
Transaction Processor or Third Party Processor (e.g. Store Financial Services)	<ul style="list-style-type: none"> Provides computer processing of the sale of cards, activation of cards for use, authorization of card transactions, settlement of transactions and payment of card transactions 	<ul style="list-style-type: none"> Each provider has a variety of fees and charges for services rendered based on independent agreements and explicit role in the transaction processing
Brand Partner/ Distribution Channel (e.g. Cadillac Fairview)	<ul style="list-style-type: none"> Provides the distribution channels for open loop gift cards to be sold and pays for card production Provides program marketing, promotion, card sales and sales execution at the point of sale 	<ul style="list-style-type: none"> Individual arrangements for fees may be negotiated with the program management company based upon a program by program basis. Distribution partners benefit from increased traffic to their shopping centres / locations In the case of the typical partially closed loop model, the distribution partner will also benefit from a share of revenues from merchants located in their shopping centres.

Open Loop Gift Card System

Given the number of stakeholder involved in fulfilling an “open loop” program it is important to review a typical transaction scenario. The diagrams below present a typical transaction. Diagram A. presents the card purchase and account set-up portion of the transaction whereas diagram B. presents a merchandise purchase made with the card.

A. Sample Account Set-Up Process

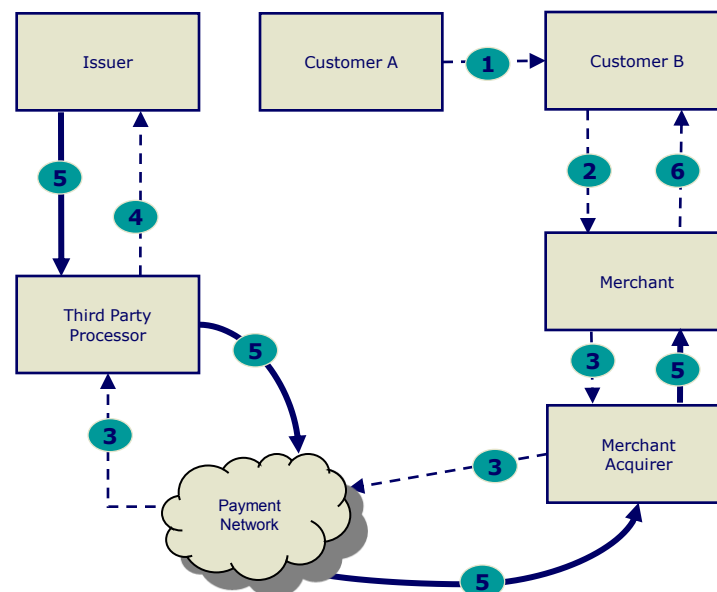


-----> Flow of information & products
 —————> Flow of funds

Description of steps

- 1) Customer A buys and receives the open loop gift card, account is set up in real time
- 2) Mall deposits money into their bank
- 3) Mall bank deposits money with the issuing bank into a pooled funds account
- 4) Third party processor sets up account for that particular card and reconciles account information with Issuing bank

B. Sample Card Use Scenario



-----> Flow of information & products
 —————> Flow of funds

Description of steps

- 1) Customer A gives gift card to Customer B
- 2) Customer B uses gift card at eligible merchant; authorized in real time
- 3) Payment and authorization and confirmation
- 4) Payment processing by processing company
- 5) Payment settlement with the merchant
- 6) Customer B receives merchandise from the merchant

Prepaid Gift Card Comparison: “Open vs. Closed loop”

Although the “closed and open loop” systems serve similar purposes from the customer perspective, when reviewing the business models there are four areas that reveal key differences. The table below contrasts who issues the card, card redemption options, how card funds are managed and the typical revenue opportunities available within each model.

	'Open Loop' Multiple retailer model	'Closed Loop' Single retailer model	Comments
1. Card Issuance	<ul style="list-style-type: none"> ▪ Cards must be issued by a sponsoring bank / financial institution ▪ Cards can be uniquely branded for different programs and will include the logo of the bankcard network on the back of the card ▪ The sale of cards, receipt and management of card funds is controlled and set up by the third party program management company ▪ Card agreement is between third party management company / issuer and the card holder 	<ul style="list-style-type: none"> ▪ Cards are issued by a retailer and branded for the retailer ▪ The retailer controls card sales, receipt of card funds and management of gift card funds through its own store network ▪ Card agreement is between the retailer and the card holder 	<ul style="list-style-type: none"> ▪ In an open loop system third party technology interfaces with the bankcard network to manage / account for program activities. Unlike closed loop models, open loop programs could not exist without the partnership of a bank or other financial institution allowing them access to the bankcard networks to process transactions
2. Card Redemption	<ul style="list-style-type: none"> ▪ Cards can be redeemed at any merchant that utilizes the underlying bankcard network (i.e. AMEX, MC, VISA or Discover) or restricted to a limited number of participating merchants that utilize the underlying bankcard network ▪ Card authorization, settlement, and remittance is typically managed by multiple parties on the bankcard network 	<ul style="list-style-type: none"> ▪ The cards are redeemable at issuing retailer locations ▪ Card authorization, settlement, and remittance is typically managed by the retailer using the retailers internal systems 	<ul style="list-style-type: none"> ▪ Open loop models leverage the bankcard network and infrastructure to afford consumers the choice to shop at several non-affiliated retail locations. As a result of this option, more business partners are required to be involved to process and maintain consumer accounts when cards are being redeemed for goods and services

Prepaid gift card comparison: “Open vs. Closed loop” continued...

	“Open Loop” Multiple retailer model	“Closed Loop” Single retailer model	Comments
3. Fund Management	<ul style="list-style-type: none"> Cardholder funds are held / guaranteed by the issuing / sponsoring bank or financial institution and must adhere to: <ul style="list-style-type: none"> Bankcard network rules and regulations Operating rules / guidelines of banking industry (i.e. security, fraud, etc.) Cards must be processed by certified bankcard network processors Card amounts are viewed as being a stored value card representing a funded liability backed by cash and/or a bank 	<ul style="list-style-type: none"> Retailers collect and manage cardholder funds based upon internal controls and processes developed for their retail network Card amounts are viewed as representing a payable, which can become an unfunded liability at the discretion of the retailer subject to the observance of accounting rules 	<ul style="list-style-type: none"> The third party program management company for the open loop cards have no liability for card funds accumulated. Funds are guaranteed by the issuing / sponsoring bank upon sale (including fraudulent transactions), which results in the issuing / sponsor bank assuming the program liability Due to the nature of the funded liability consumers may see added security against bankruptcies and defaults
4. Typical Revenue Opportunities	<ul style="list-style-type: none"> Interest on cardholder funds awaiting redemption Fee revenues are earned from customers and may vary from one card program to the next: <ul style="list-style-type: none"> Activation fees Transactions fees (for multi-load cards) Account maintenance fees Unredeemable /unused gift card funds (includes lost and stolen cards) 	<ul style="list-style-type: none"> Gross margin on the sale of goods / services, which varies by retailer and industry Interest on gift card funds awaiting redemption Unredeemable /unused gift card funds (includes lost and stolen cards) 	<ul style="list-style-type: none"> Approaches to revenue recognition differ as a result of the treatment of gift card funds. <ul style="list-style-type: none"> The treatment of funds in an open loop model limits and restricts amounts eligible for revenue to customer fees, account maintenance fees and interest earned on pooled funds In a closed loop system actual gift card funds can be recognized as revenue based on adopted accounting principles by the retailer

Economic Model* - Sample Transaction Breakdown

The economic drivers of the “closed” vs. “open” loop models are quite different. In the “closed loop” model revenues are higher and driven by the sale of goods. In the “open loop” model there are many more players each of which bears costs and shares in the overall revenue stream.

Item	“Closed Loop” -Single Retailer Program	“Open Loop” - Multiple Retailer Program			
	Issuer	Issuer	Distrib’t’n Channel	Program Manager	Acquirer
Cost of card to issuer (1)	(\$1.00)	(\$1.00)		Negotiates revenue sharing agreement with issuer and distribution channel	
Issuing fee charged to cardholder (2)	\$ -		\$-		
Interest earned on float by card issuer (3)	\$1.00	\$1.00			
Account maintenance fee (4)	\$-	\$-			
Bottom line profit from sale of goods (5)	\$20.00				
Interchange fee (6)	\$ -	\$1.25			\$.50-\$1.00
Profit or loss	\$20.00	\$1.25			

Assumptions

- 1) Cost to produce the card and deliver it to point-of-sale and varies with the complexity of card design. It is incurred by the distributor or program manager
- 2) Issuance fee the distributor can choose to charge the card purchaser (ranges from \$0 for single load cards to \$39.95 for re-loadable cards)
- 3) Interest earned on prepaid balances between the time that the card is purchased and subsequently redeemed
- 4) Fee that may be levied on the cardholder by the card issuer after a certain period of time that the card has not been used. Under current regulatory environment
- 5) Profit on the merchandise sold by the retailer
- 6) Interchange fee charged by acquirer and split between the acquirer and issuer

*Open loop fee structures differ based on the program in question, however, the table above presents the typical economics of a \$100 face value gift card purchased using cash and redeemed in full within one year, for which the customer does not need to pay an up-front fee.

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Legislative Review – Section Summary

- U.S. state legislation varies from state to state but can be broken out in the following 3 categories
 - States that ban fees on all gift cards
 - States that allow fees and expiry dates on open loop cards but not on closed
 - States that have no laws on gift cards
- Many states have recognized the difference between the closed loop and open loop systems and thus ban the expiration and diminution of value for closed loop gift cards while allowing the same for open loop cards
- Most states that have consumer protection legislation which allows fees and expiration dates on open loop gift cards emphasize disclosure of said fees and expiration dates and are prescriptive on when the cards can expire as well as the when fees can be levied and the maximums that can be charged (See below for an example from New Jersey.)
- A number of states have introduced legislation governing gift cards in 2007. A summary of some of this legislation is presented in the slides that follow with a full listing for all states presented in the appendix.

NJ Legislation Example

- 1) prohibits the expiration of prepaid bank cards within 24 months immediately following the date of sale by the original purchaser of the card;
- 2) prohibits the charging of a dormancy fee against a prepaid bank card within 24 months immediately following the date of sale, and within 24 months immediately following the most recent activity or transaction in which the card is used;
- 3) limits the dormancy fee, when applicable, charged against a prepaid bank card to no more than \$2.00 per month; and
- 4) requires appropriate disclosure of the above card expiration and dormancy fee provisions to prepaid bank card consumers

US State Legislation on Gift Card Fees

Most states allow fees on open loop cards. In many cases the states put conditions on when these fees can be levied and also set a maximum value that can be charged.

States With No Legislation	States Allowing Fees	States Banning Fees*
<ul style="list-style-type: none"> Alabama Alaska Colorado Delaware Idaho Indiana Mississippi Missouri North Carolina Pennsylvania South Dakota West Virginia Wisconsin Wyoming 	<ul style="list-style-type: none"> Arizona Arkansas California Florida Georgia Illinois Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Montana Nebraska Nevada New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon South Carolina Tennessee Texas Utah Virginia Washington 	<ul style="list-style-type: none"> Connecticut Hawaii Rhode Island New Hampshire Vermont

***Note:** In states where fees are banned, the laws as they affect gift cards issued by federally regulated banks have been challenged on the basis of lack of jurisdiction (pre-emption).

Major US States Updates to Legislation in 2007

The table below provides a summary of the proposed legislation in some of the major U.S. states. (2007 proposed or enacted legislation for all 50 states is presented in the appendix.)

State	Legislation Code	Legislation Description	Status
California	SB 250	Any gift certificate with cash value of <\$10 can be redeemed in cash (except donated gift certificates)	Passed
Connecticut	SB 560 SB 1233	Prohibits retailers from charging a consumer a fee if the consumer does not use/cash in a gift card within a specified time period	Proposed
Illinois	HB 369	No person shall sell gift certificate that is subject to expiration date earlier than 5 years after issuance or a post-purchase fee and face value of gift certificate may not be reduced in value	Passed (effective 01/01/08)
Indiana	HB 1124	Gift card issuer may not charge a fee relative to gift card, including a service, maintenance, or administrative fee, a dormancy charge, or an inactivity charge that reduces gift card amount (may be subject to initial fee at time of gift card issue)	Passed (effective 01/07/07)
Massachusetts	HB 347	Eliminates surcharges on purchases of gift certificates and cards	Enacted
Michigan	SB 387	Unlawful trade practice to issue consumer a gift certificate or card that expired in <5 yrs, fail to properly disclose expiration date, fail to honor gift card before its expiration date, charge inactivity fee or service fee if consumer did not use gift card. Open loop cards are exempted from fee ban.	Passed
New Jersey	SB 1249	Prohibits expiration of prepaid cards within 24 month of date of sale, prohibits charging dormancy fee against prepaid card within 24 months of date of sale, limits dormancy fee on prepaid card to <\$2/month, and requires disclosure of card expiration & dormancy fee	Passed
New York	SB 5362	Prohibits expiration of gift cards before 5 years from date of purchase and prohibits decreasing value of cards for anything other than purchases	Passed (effective 01/01/09)
Pennsylvania	SB 928	Prohibits sale or issuance of certain gift certificates with expiration dates and imposition of transaction, service or convenience fees	Introduced

Significant US State Statutes

The below table provides a sample of some of the U.S. state legislation currently on the books with respect to gift cards

State	Expiry Date Provision	Fee Provision	Escheat Provision
California	Prohibited	Dormancy fee allowed; all other fees prohibited	Escheat law does not apply
Connecticut	Prohibited	Service fees prohibited	Gift cards do not escheat to state
Illinois	No expiration date earlier than 5 yrs after issue date	No post-purchase fee and face value of gift card may not be reduced in value and holder may not be penalized for non-use or untimely redemption	Gift cards issued before 2004 are reverted back to state
Maine	Prohibited	Fees or charges on gift cards prohibited, except transaction fee for initial issuance and each occurrence of adding value	2 yrs after 12/31 of yr of most recent transaction, amount unclaimed is 60% of value
Massachusetts	Gift card expiration date must be at least seven yrs after issuance	Surcharges prohibited	Escheats after 7 years
Michigan	No expiration date earlier than 5 yrs after issue date	Inactivity and service fees prohibited	Gift card that remains unclaimed by owner for >5 yrs is presumed abandoned
New Hampshire	Expiration date prohibited for gift cards <\$100	Service fees prohibited	Gift cards for >\$100 shall expire when escheated to state when unclaimed for 5 yrs
New Jersey	Expiration date not less than 2 yrs after sale	Dormancy fee of <\$2/mo after expiry date	Gift cards not specifically included
New York	No expiration date earlier than 5 yrs after issue date	Decreasing value of cards for anything other than purchases prohibited	Any unclaimed gift card amount deemed abandoned & owing in this state after 5 yrs

US Border State Statutes (continued)

State	Expiry Date Provision	Fee Provision	Escheat Provision
Ohio	Expiration date less than 2 yrs after issuance prohibited	Any fees charged less than two years after issuance prohibited	Gift cards exempted from unclaimed property fund
Pennsylvania	Sale or issuance of certain gift certificates with expiration dates prohibited	Imposition of transaction, service or convenience fees prohibited	Gift card which has remained unredeemed for 2 yrs or more after redemption period has expired or 5 yrs or more from date of issuance if no redemption period is specified
Vermont	Gift card valid for not less than 3 yrs after issuance and if not clearly marked with expiration date, shall be deemed to have no expiration date	Dormancy, latency, issuance, redemption, or any other administrative fees or service charges prohibited	Gift cards are not specifically included
Washington	Expiration date prohibited unless no money was paid for gift card	Dormancy or inactivity charge enforced if disclosed, remaining value of gift card is <\$5 each time charge assessed, charge is <\$1/mo, charge only when no activity on gift card for 2 yrs, and after dormancy or inactivity charge assessed, remaining value of gift card redeemable in cash	Gift card which remains unclaimed by owner for >3 yrs is presumed abandoned

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Assessment of Applicable Accounting Standards – Section Summary

- Accounting principles would suggest dormant balances could be taken into income where the possibility of redemption is remote. This has been done in the U.S. by merchants offering gift cards in a single merchant “closed loop” model.
- In an “open loop” environment the balances are held by the issuing bank and in theory the bank could take into income dormant balances where the possibility of redemptions is remote based on historical patterns. This cannot be done immediately at the time of the sale of the card but would have to be done over time, in effect amortized over the life of the card.
- In practice however this is unlikely to happen as network bylaws and in many cases banking legislation will not allow banks to do this.
- Dormancy fees may be a mechanism to allow open loop card issuers to accomplish the same accounting result as closed loop with regards to bringing dormant balances into income.

Revenue Recognition

Revenues related to gift cards may be recognized in two ways

- **Value of the Card**

- The value of the card represents unearned revenue until redeemed
- This revenue cannot be recognized until either:
 - 1) The contractual obligations have been fulfilled (CICA Handbook S. 3400.06)**OR**
 - 2) the risks and rewards have been transferred to the buyer (CICA Handbook S. 3400.06)
- Once redeemed, the merchant would recognize the revenue into income
- Unredeemed cards are addressed in the next section under Breakage

- **Card Fees**

- Revenue associated with fees can be recognized immediately upon the party's completion of their contractual obligation
- This revenue represents amounts that can be reasonably estimated and collected, and are therefore recognizable under GAAP (CICA Handbook S. 3400.06, 3400.7)

Breakage

Breakage is defined as that portion of the card balance (liability from the card issuers perspective) that will not be redeemed. The points below outline the suggested accounting principles related to “breakage”.

- Even if the amount can be reasonably estimated using historical data, revenue from breakage may not be recognized immediately upon the sale of the card
- Breakage revenue may be recorded when:

1) The likelihood that the issuer will be required to fulfill their obligation becomes remote

OR

2) The issuing company is legally released from their obligation

- Given that one of the two above conditions is met **and** the amount can be estimated based on historical redemption patterns, it may be recorded into income over time.
- FASB 140 has two suggested methods to account for breakage income:

1) Specific Identification

- Income is recognized on a card-by-card basis (Individually) as the possibility of redemption becomes remote

2) Homogeneous Pool

- Income is recognized for a similar group of cards based on historical trends, as cards are redeemed

- The accounting treatment attempts to capture the economic reality of the underlying situation. While the accounting treatment may recognize the revenue as earned, from a legal standpoint the issuer is still responsible.

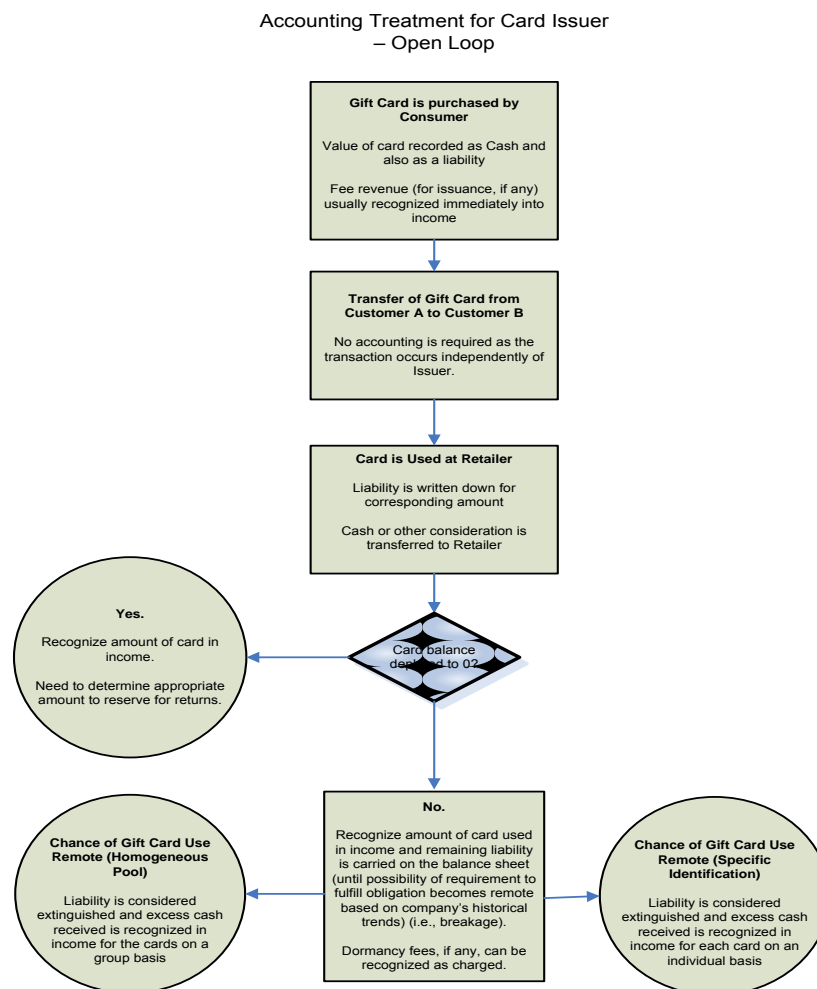
Returns and Allowances

For a single retailer “closed loop” environment the following accounting considerations are also relevant

- Normal reserve accounting treatment is appropriate in this situation as outlined in CICA Handbook S. 3400.18
- When a gift card is used, a portion of the revenue should be placed into a reserve account with the expectation that the goods will be returned.
- The portion placed into the reserve account is based on historical trends.

Accounting for Revenues - Schematic

The diagram below presents a schematic view of the accounting for gift card revenues



DRAFT – For discussion purposes only. This document represents a work in progress and may contain preliminary results or conclusions, incomplete information or information which is subject to change.

The above chart is based on information provided by you and through various interviews, as well as preliminary research into Canadian and US GAAP and IFRS.

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Conclusion

- The “open loop” gift card is basically a prepaid bankcard (a card issued by a sponsoring financial institution belonging to a bankcard network such as Visa or MasterCard) and operates in the same manner. As the issuer in this case is not the retailer where the card will be redeemed, as is the case with a “closed loop” system, it is unable to realize a profit margin on the sale of the goods associated with a redemption of the gift card and must depend more heavily on other sources of revenue such as fees.
- In such a scheme there are a number of players such as the issuing bank, merchant acquirer, the distribution channel, transaction processor and the program manager. This structure tends to be more complex and therefore more costly to administer than the single retailer “closed loop” model, but is more convenient for consumers as the issued gift card is accepted at multiple retailers.
- The prepaid balances in an “open loop” environment (i.e. bankcard system) are held by the card issuing bank or financial institution and not the program manager or card distribution company. In theory under certain US GAAP provisions* the issuing bank could take into income over a period of time that portion that with a significant amount of certainty will not be redeemed (based on past history for example and approved by their auditors). It is unlikely, however that that the card network (e.g. MasterCard/Visa) would allow such a practice not to mention the banking regulators.
- Some states in the US have enacted differing legislation for “open loop” versus “closed loop” gift cards, allowing fees and expiry dates on the former but not the latter. Most larger states that have enacted consumer protection legislation around gift cards allow fees.
- In Australia whose financial services marketplace is similar to that of Canada the government has taken a fairly permissive stance on regulation of “open loop” gift cards (i.e. allowing fees and expiry dates) as long as all terms are clearly disclosed to the consumer, in order to foster competition.

* Financial Accounting Standards Board (FASB) Statement 140.

Outline

1. Background and Executive Summary
2. Open Loop Gift Card Economic Model
3. Legislative Review
4. Assessment of Applicable Accounting Standards
5. Conclusion

Appendices

2007 U.S. State Legislation Relating to Gift Cards

- **Alaska**
[H.B. 49](#)
Relates to credit memos, gift certificates, and gift cards, and to unclaimed property; and makes a violation of certain gift card prohibitions an unlawful trade practice.
- [S.B. 115](#)
Relates to gift certificates and gift cards, and to unclaimed property; makes it a violation of certain gift card prohibitions an unlawful trade practice.
- **Arkansas**
[H.B. 1455](#)
Signed by governor 3/16/07, Act 304
Regulates unfair and deceptive acts and practices in connection with gift cards; creates the Fair Gift Card Act.
- [S.B. 818](#)
Requires certain disclosures on gift cards and gift certificates; provides penalties for failure to make required disclosures; provides for a miscellaneous fund for unclaimed gift cards and gift certificates.
- **California**
[S.B. 250](#)
Sent to governor 9/14/07
Allows any gift certificate with a cash value of less than \$10 to be redeemed in cash, as defined, for its cash value, and excepts donated gift certificates from the described prohibitions. The bill also deletes the exception described for food product gift certificates, thereby prohibiting those gift certificates from containing an expiration date or service fee, unless issued for perishable food products.
- **Connecticut**
[H.B. 5739](#)
Failed Joint Favorable deadline 3/26/07
Limits the sale of gift certificates redeemable for plastic or cosmetic surgery services to individuals who have an established patient relationship with the medical facility or entity providing the gift certificate.
- [S.B. 560](#)
Failed Joint Favorable deadline 3/13/07
Prohibits retailers from charging a consumer a fee if the consumer does not cash in a gift card within a specified time period.
- [S.B. 1233](#)
Failed Joint Favorable deadline 3/13/07
Prohibits retailers from charging a consumer a fee if the consumer does not use a gift card within a specified time period.
- **Delaware**
[H.B. 52](#)
Substituted 6/13/07
Defines gift cards and gift certificates, prohibits fees against the value of the card or certificate for inactivity; exempts those certificates or cards which are given at no cost from application under this Act.
- [H.S. 1 for H.B. 52](#)
Defines gift cards and gift certificates, requires that an expiration date appear on the front of the cards and prohibits fees against the value of the card or certificate for inactivity without a signed agreement by the merchant and purchaser. Certain certificates or cards including but not limited to those which are given at no cost are exempt from the provisions of this Act.

2007 U.S. State Legislation Relating to Gift Cards

- **Florida**

[H.B. 1259](#)

[S.B. 1638](#)

Signed by governor 6/28/07, Chapter 256

Defines terms "credit memo" and "gift certificate"; provides that a holder of an unredeemed gift certificate or credit memo is not required to report said certificate or memo as unclaimed property to DFS; provides that consideration paid for said certificate or memo is property of issuer, subject only to any rights of purchaser or owner and is not subject to claim made by any state acting on behalf of purchaser or owner.

- **Hawaii**

[H.B. 936](#)

To conference committee 4/16/07

Prohibits a gift certificate issuer from charging service fees for dormancy or inactivity within 24 months after date of issuance of the certificate. Requires disclosure of fees on electronic card or certificate.

- [S.B. 687](#)

Prohibits a certificate issuer from charging service fees for dormancy or inactivity within six months after the date of issuance of the certificate. Requires disclosure of fees on an electronic card or certificate.

- **Illinois**

[H.B. 369](#)

Signed by governor 8/28/07, Public Act 95-0525

Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that no person shall sell a gift certificate that is subject to an expiration date or a fee. Provides that, on or after January 1, 2008, no person shall sell a gift certificate that is subject to (i) an expiration date earlier than five years after the date of issuance or (ii) a post-purchase fee. Provides that the face value of a gift certificate, issued on or after January 1, 2008, may not be reduced in value and the holder of a gift certificate may not be penalized in any way for non-use or untimely redemption of the gift certificate.

- [H.B. 3522](#)

Amends the Consumer Fraud and Deceptive Business Practices Act. Applies to gift cards that meet these criteria: the card is purchased at a retail establishment on a prepaid basis in a certain dollar value; a unique account or code number is printed on the card; the account or code number printed on the card is not hidden by a coating that is removed after the card is purchased; the card is honored by one or more retail establishments and also by one or more online merchants for goods or services, and the amount of the purchase is deducted from the value of the card; and purchases may be made with the card through an online merchant by entering the account or code number printed on the card without any requirement that the card itself be presented. Provides that if a consumer who purchased a gift card from a retail establishment presents to the retail establishment the gift card and the purchase receipt indicating the original value of the gift card and informs the retail establishment that part or all of the dollar value of the gift card has been deducted but was not used by the purchaser or the intended recipient of the gift card, the retail establishment shall refund to the consumer the amount so deducted. Makes violation an unlawful practice within the meaning of the Act.

- **Indiana**

[H.B. 1124](#)

Provides that a person that issues certain gift cards may not charge fees that reduce the value of the gift cards.

- **Iowa**

[H.S.B. 201](#)

A study bill for an act relating to the issuance of gift cards and gift certificates, including providing for abandonment, establishing restrictions on fees and charges, prohibiting expiration dates and other restrictive terms, and making penalties applicable.

- [S.S.B. 1230](#)

A study bill for an act relating to the issuance of gift cards and gift certificates, including providing for abandonment, establishing restrictions on fees and charges, prohibiting expiration dates and other restrictive terms, and making penalties applicable.

2007 U.S. State Legislation Relating to Gift Cards

- **Kansas**

- [H.B. 2179](#)

- Expands the Kansas Consumer Protection Act. Current law requires certain gift cards and gift certificates, issued on or after January 1, 2007, to have an expiration date of no less than five years. HB 2179 allows gift certificates and gift cards that are sold or distributed by non-profit organizations to be issued for less than five years as long as the expiration date appears on the front of the certificate or card. These types of certificates and cards must be used to promote civic improvements, including economic development.

- **Kentucky**

- [H.B. 254](#)

- Amends KRS 367.890, relating to gift cards, to provide for record of issuance; prohibits various use restrictions; makes violation of this statute an unfair trade practice; provides for enforcement by county attorneys and the attorney general; amends KRS 393.020, relating to property subject to escheat, to include gift cards.

- **Maryland**

- [H.B. 1080](#)

- Establishes the Maryland Education Fund; provides that after a specified time, the balance remaining on a gift certificate shall be presumed abandoned; requires a person that sells or issues a gift certificate in the state to remit to the Comptroller the remaining balance on certain gift certificates on or before a specified date each year.

- **Massachusetts**

- [H.B. 326](#)

- Relates to credit backed or bank issued gift cards.

- [H.B. 347](#)

- Eliminates surcharges on purchases of gift certificates.

- [S.B. 176](#)

- Relates to returning purchases made with a gift card.

- [S.B. 211](#)

- Relates to providing updates to the gift certificate law.

- **Michigan**

- [H.B. 4050](#)

- Regulates and requires disclosures for gift cards and gift certificates.

- [H.B. 4317](#)

- Prohibits expiration dates and other certain fees on gift cards and gift certificates.

- [H.B. 4680](#)

- Prohibits fees and expiration dates on gift certificates.

- [S.B. 274](#)

- Prohibits expiration dates or fees on gift certificates and retail gift cards.

- [S.B. 387](#)

- Passed Senate 6/13/07*

- Amends the Michigan Consumer Protection Act to make it an unlawful trade practice for a person engaged in the retail sale of goods or services to do any of the following in connection with a gift certificate or gift card for retail goods or services: 1) Issue to a consumer a gift certificate or card that expired in less than five years. 2) Fail to disclose the expiration date by conspicuously printing it on the gift certificate or card, if the certificate or card had an expiration date. 3) Fail to honor a gift certificate or card after it was issued and before its expiration date, if any. 4) Charge an inactivity fee or other similar service fee if the consumer did not use a gift certificate or card. "Gift certificate or gift card" would not include a certificate or card issued or sponsored by a financial institution or usable at multiple sellers of goods or services. (Separate subsidiaries of the same parent entity or separate franchisees of the same franchisor would not be considered multiple sellers.)

- [S.B. 388](#)

- Passed Senate 6/13/07*

- Amends the Uniform Unclaimed Property Act to specify that a gift certificate, gift card, or credit memo would be presumed abandoned if it were not claimed or used five years after becoming payable or distributable, or if it were partially used or claimed but subsequently not claimed or used for five years.

2007 U.S. State Legislation Relating to Gift Cards

- **Minnesota**

[H.F. 512](#)

[S.F. 69](#)

Signed by governor 5/21/07, Chapter 93

Prohibits expiration dates and service fees on gift certificates and gift cards.

- [H.F. 1136](#)

[S.F. 935](#)

Requests Congress to limit fees and expiration dates associated with gift cards issued by federal banks.

- **Mississippi**

[H.B. 260](#)

Died in committee 2/27/07

Prohibits the sales of gift certificates with expiration dates, service fees or dormancy fees; allows cash redemption or replacement of gift certificates; provides exceptions.

- [S.B. 2040](#)

Died in committee 1/30/07

Makes unlawful the sale of a gift certificate that contains an expiration date or a service fee, with certain exceptions; provides for application of this law; amends §75-24-5, Mississippi Code of 1972, to provide that violations of this act are subject to civil and criminal penalties under the consumer protection statutes.

- **Missouri**

[H.B. 299](#)

Prohibits the use of expiration dates or service fees on gift certificates. Violations of the provisions of the bill will be considered unfair merchandising practices and be subject to penalties.

- [S.B. 76](#)

Prohibits the use of expiration dates or service fees on gift certificates. Consumers are entitled to receive the remaining balance of a gift certificate in cash, provided they have used at least 50 percent of the original value of the certificate. Violations of the act shall be considered unfair marketing practices subject to certain unlawful merchandising practice penalties.

- **Montana**

[H.B. 430](#)

Missed deadline for general bill transmittal 4/3/07

Establishes state equity in the value of abandoned gift certificates and stored value cards; revises and clarifies certain provisions of the consumer protection act related to gift certificates in order to provide conformity between that act and the uniform unclaimed property act; requires issuers of gift certificates and issuers of stored value cards to obtain the name and the address of the person entitled to the property; provides that the Department of Revenue, as administrator of the uniform unclaimed property act, is presumed the owner of a gift certificate or stored value card under certain conditions; requires that the amount of value of abandoned gift certificates and stored value cards acquired by the state be deposited in the affordable housing revolving loan account.

- [H.B. 755](#)

Signed by governor 4/30/07, Chapter 331

Provides the Uniform Unclaimed Property Act does not apply to gift certificates.

- [S.B. 135](#)

Missed deadline for general bill transmittal 2/28/07

Establishes state equity in the value of abandoned gift certificates and stored value cards; revises and clarifies certain provisions of the consumer protection act related to gift certificates in order to provide conformity between that act and the Uniform Unclaimed Property Act; requires issuers of gift certificates and issuers of stored value cards to obtain the name and the address of the person entitled to the property; provides that the Department of Revenue, as administrator of the Uniform Unclaimed Property Act, is presumed the owner of a gift certificate or stored value card under certain conditions.

2007 U.S. State Legislation Relating to Gift Cards

- **Nebraska**

[L.B. 668](#)

Eliminates provisions relating to gift cards and gift certificates as prescribed.

- **Nevada**

[A.B. 279](#)

Signed by governor 5/23/07, Chapter 107

Prohibits an issuer from charging a service fee on the basis of inactivity if the inactivity is for less than three continuous years; requires a certain portion of the unused value of certain gift certificates to escheat to the state; provides for the use of the proceeds from abandoned gift certificates for educational purposes.

- **New Jersey**

[A.B. 720](#)

Under the provisions of P.L.2002, c.14 (C.56:8-110) a gift certificate issued by a retail merchandise establishment remains valid until the certificate is redeemed, unless conditions and limitations on redemption are disclosed to the purchaser and are conspicuously printed on the certificate. This bill provides that such gift certificates shall be valid and redeemable at full face value until redeemed.

- [A.B. 2258](#)

[S.B. 1249](#)

Incorporates prepaid bank cards, defined in the bill as a form of gift card, into the existing statutory provisions which regulate the expiration dates and dormancy fees for gift cards and gift certificates generally. These prepaid bank cards include mall gift cards issued by third party banks or other financial institutions which are usable at multiple, unaffiliated merchants within a particular shopping mall. By incorporating prepaid bank cards into the existing gift card and gift certificate statutory requirements, the bill: 1) prohibits the expiration of prepaid bank cards within 24 months immediately following the date of sale by the original purchaser of the card; 2) prohibits the charging of a dormancy fee against a prepaid bank card within 24 months immediately following the date of sale, and within 24 months immediately following the most recent activity or transaction in which the card is used; 3) limits the dormancy fee, when applicable, charged against a prepaid bank card to no more than \$2.00 per month; and 4) requires appropriate disclosure of the above card expiration and dormancy fee provisions to prepaid bank card consumers.

- [A.B. 3866](#)

Makes it an unlawful practice under the Consumer Fraud Act to sell certain products via an Internet auction. The bill targets those products typically stolen from retailers by shoplifting gangs and resold over the Internet. The bill makes it an unlawful practice for a person to sell a value loaded card via Internet auction unless the seller provides to the auctioneer, as well as the company's general counsel, a written or electronic record of the purchase or acquisition of the value loaded card, including the serial number and amount of the value loaded card; the date of purchase of the value loaded card; and the name, address and phone number of the person from whom that value loaded card was purchased or acquired. If a person sells an aggregate of five or more value loaded cards in contemporaneous Internet auctions conducted by an Internet auctioneer, the Internet auctioneer has 24 hours to notify the retailer of the sale in writing or electronically. The auctioneer must give the retailer relevant information about the seller, including the sales history and all aliases and accounts used by the person. The bill requires Internet auctioneers to immediately terminate an Internet auction if they receive information providing a reasonable basis to conclude that the auction violates the bill's provisions or that the merchandise is stolen. Internet auctioneers who affirmatively demonstrate that they have received the information required by the bill will not be deemed liable.

- [A.B. 3979](#)

Passed Assembly 6/21/07

[S.B. 2732](#)

Makes it an unlawful practice to sell gift cards unless they are packaged or displayed in a manner that would prevent a person from viewing the gift card account number prior to purchasing the gift card.

2007 U.S. State Legislation Relating to Gift Cards

- **New Mexico**

H.B. 127

Signed by governor 4/2/07, Chapter 125

Regulates the sale and redemption of gift certificates, establishes penalties and amends a section of the unclaimed property act.

- **S.B. 1030**

Passed Senate 3/8/07

Regulates the sale and redemption of gift certificates, establishes penalties and amends a section of the unclaimed property act. Gift certificate, in this section, means writing identified as a gift certificate that is not redeemable in cash and is usable in its face amount in lieu of cash in exchange for goods or services supplied by a seller, but does not include a gift certificate useable with multiple unaffiliated sellers or goods or services. "Gift certificate" includes an electronic card with a banked dollar value, a merchandise credit, a certificate where the issuer has received payment for the full face value for the future purchase or delivery of goods or services and any other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card or other medium for goods or services of at least an equal value.

- **New York**

A.B. 41

Prohibits the sale of gift certificates and gift cards that diminish in value due to dormancy; and prohibits surcharges and fees on gift certificates and gift cards.

- **A.B. 3751**

Relates to the sale and use of gift certificates; requires that gift certificates last for at least seven years; requires that the date of issuance and the date of expiration of a gift certificate be either printed on the gift certificate, printed on a customer's receipt, or available through an Internet and toll-free telephone service.

- **A.B. 5002**

Requires that gift certificates, gift cards, or store credits have no expiration or diminution in value over time.

- **A.B. 5878**

S.B. 4026

Provides that gift certificates and store credits shall not contain expiration dates, except in limited circumstances where they are issued for promotional purposes without value being given by the consumer; makes certificates or credit with an expiration date redeemable in cash or replaceable by a certificate or credit without an expiration date.

- **A.B. 8652**

S.B. 5362

Prohibits the expiration of gift cards before five years from the date of purchase and prohibits decreasing the value of such cards for anything other than purchases.

- **North Carolina**

S.B. 1517

Signed by governor 8/17/07, Chapter 363

Requires the conspicuous disclosure of any maintenance fees charged for gift cards and prohibits issuers of gift cards from charging maintenance fees for one year after the date of purchase.

- **North Dakota**

S.B. 2355

Failed to pass Senate 2/7/07

Relates to the redemption of gift certificates.

- **Oklahoma**

S.B. 1034

Passed Senate 3/6/07

Clarifies language in the Gift Certificate and Gift Card Disclosure Act.

2007 U.S. State Legislation Relating to Gift Cards

- **Oregon**
[H.B. 2513](#)
Signed by governor 7/16/07, Chapter 772
Prohibits a person from selling a gift card that expires or has face value that declines over time or with lack of use. Prohibits person from charging fee related to gift card. Creates exceptions. Makes violation of prohibition unlawful trade practice.
- [S.B. 460](#)
Passed Senate 5/24/07
Provides that unused gift cards become abandoned property. Provides that if issuer of gift card does not have address for owner of gift card, value of gift card presumed abandoned is subject to custody of this state if purchase, issuance or last transaction by owner of gift card occurred in this state. Prohibits expiration dates for gift cards and certain fees related to gift cards. Provides that violation of prohibitions is unlawful trade practice.
- **Pennsylvania**
[H.B. 124](#)
Further defines "unfair methods of competition" and "unfair or deceptive acts or practices" to include selling gift certificate with an expiration date or fees.
- [S.B. 928](#)
Prohibits the sale or issuance of certain gift certificates with expiration dates and the imposition of transaction, service or convenience fees. Provides the attorney general certain powers and duties. Makes a repeal.
- **Rhode Island**
[H.B. 5105](#)
Passed House 6/19/07
Prohibits any person, firm or corporation from charging a surcharge of any kind relating to gift certificates and or gift cards.
- [S.B. 125](#)
Prohibits any person, firm or corporation from charging a surcharge of any kind relating to gift certificates and or gift cards.
- **Tennessee**
[H.B. 55](#)
[S.B. 249](#)
Requires any retailer issuing a gift certificate to permit the recipient of the gift certificate to redeem 50 percent of the face value of the certificate in cash.
- [H.B. 1840](#)
[S.B. 1693](#)
Concerns Consumer Protection; expands certain requirements for gift certificates by removing exemption for gift certificates usable with multiple, unaffiliated sellers of goods or services.
- **Utah**
[H.B. 261](#)
Signed by governor 2/27/07, Chapter 19
Makes it a violation of Title 13, Chapter 11, Utah Consumer Sales Practices Act, to issue a gift certificate that has an expiration date or deducts a fee without disclosing the expiration date or fee on the gift certificate or its packaging; provides that a gift certificate that does not disclose an expiration date or fee neither expires nor is subject to a fee; and makes technical changes.

2007 U.S. State Legislation Relating to Gift Cards

- **Virginia**

- [H.B. 2552](#)

- Expands the existing provisions regarding gift certificate disclosures to prohibit the issuer of a gift certificate from charging a maintenance fee, service fee, inactivity fee, or other fee on the gift certificate. Gift certificate issuers are also prohibited from placing an expiration date or otherwise limiting the time for the redemption of a gift certificate and from issuing a gift certificate that diminishes in value over time unless the gift certificate was issued pursuant to an awards or loyalty program where no money or thing of value exchanged or was donated to a charitable organization. The definition of a gift certificate is expanded to include any record that contains a microprocessor chip, magnetic strip, or other storage medium that is prefunded and for which the value is adjusted upon each use. The definition also includes card-activated prepaid long distance telephone service. The measures apply to all issuers of gift certificates in the Commonwealth; currently, the gift certificate disclosure requirements apply only to merchants.

- **Wisconsin**

- [A.B. 360](#)

- Regulates the sale of gift certificates, gift cards, or similar items (gift obligations). Under the bill, a seller of a gift obligation must provide to a purchaser at the point of sale a conspicuous disclosure of any expiration date that applies to the gift obligation and the terms and amount of any service charge that apply to the gift obligation. The disclosure requirements under the bill do not apply to a document that evidences a transaction in which the obligation to provide goods or services extends to more than one seller of goods or services or to a gift obligation sold by a charitable organization or educational institution. The bill specifies that the bill's disclosure requirements are not satisfied by a disclosure made available by telephone, at a physical address, by mail, or on an Internet Web site, unless the gift obligation is purchased on the Internet. Under the bill, if the Department of Agriculture, Trade and Consumer Protection (DATCP) has reasonable cause to believe a person has violated the provisions of the bill, and the person has not committed a previous violation, DATCP must send the person a warning letter. If a person has already received a warning letter relating to a separate violation, DATCP may seek injunctive relief or a fine up to \$250 per violation.

- [S.B. 191](#)

- Regulates the sale of gift certificates, gift cards, or similar items (gift obligations). Under the bill, a seller of a gift obligation must provide to a purchaser at the point of sale a conspicuous disclosure of any expiration date that applies to the gift obligation and the terms and amount of any service charge that apply to the gift obligation. The disclosure requirements under the bill do not apply to a document that evidences a transaction in which the obligation to provide goods or services extends to more than one seller of goods or services or to a gift obligation sold by a charitable organization or educational institution. The bill specifies that the bill's disclosure requirements are not satisfied by a disclosure made available by telephone, at a physical address, by mail, or on an Internet Web site, unless the gift obligation is purchased on the Internet. Under the bill, if the Department of Agriculture, Trade and Consumer Protection (DATCP) has reasonable cause to believe a person has violated the provisions of the bill, and the person has not committed a previous violation, DATCP must send the person a warning letter. If a person has already received a warning letter relating to a separate violation, DATCP may seek injunctive relief or a fine up to \$250 per violation.

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