



IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
RSBC 1996, CHAPTER 141

-AND-

ALL TRANS FINANCIAL SERVICES CREDIT UNION LIMITED

DECISION and ORDERS
[ss. 237, 241.1, and 244]

Appearances: Joni Worton for Staff Koker Christensen for All Trans Financial
Services Credit Union Limited

Introduction

1. AFTER reviewing the submissions of the Financial Institutions Commission staff (“Staff”) in this matter and meeting on June 16, 2016, Financial Institutions Commission (“Commission”) members Helen R. del Val, Stanley Hamilton, Lenard Boggio, Robert Garnett, Shannon Salter, and Joel Whittemore sent an Intended Cease Order with regard to All Trans Financial Services Credit Union Limited (“All Trans”) to cease from directly or indirectly carrying on unauthorized deposit business in British Columbia.
2. In a letter dated June 16, 2016 from the chair of the Commission, All Trans was advised of their right to a hearing regarding the Commission’s Intended Cease Order. In correspondence dated June 28, 2016 All Trans requested a hearing.
3. On August 23, 2016, Staff provided All Trans with a copy of the record, including Staff’s submissions considered at the June 16, 2016 meeting (“Commission Meeting Submissions”).
4. Staff and All Trans agreed that because the substantive facts were not at issue, the most efficient way to proceed with a hearing was by way of written submissions. The Commission received the following written submissions:
 - a. Initial Submissions from Staff (“Initial Staff Submission”);
 - b. A signed Agreed Statement of Facts (“ASF”) signed by the parties on September 16, 2016.
 - c. A copy of All Trans’ 2013 annual report.
 - d. All Trans’ Responding Submissions of dated September 30, 2016 (“Responding Submission”);
 - e. Staff’s Reply Submissions dated October 14, 2016 (“Staff Reply”);
 - f. All Trans’ Sur-Reply dated October 20, 2016 (“Sur-Reply”);

- g. All Trans' Book of Authorities; and
 - h. Staff's Book of Authorities
5. On February 16, 2017, the Commission's Chair established a panel of commission members to hear this matter pursuant to section 203 of the *Financial Institutions Act* ("FIA"). They were Lenard Boggio, Robert Garnett, Stanley Hamilton, Shannon Salter, and Joel Whittmore ("Hearing Panel"). The Hearing Panel met to review and analyze the submissions and render a decision. This is that decision.

Issues

6. All Trans is an Ontario Credit Union. (ASF-1).
7. All Trans is not authorized to conduct deposit business in British Columbia pursuant to section 81 of the FIA. (ASF-27).
8. All Trans advertises and issues "branded", prepaid, reloadable, Visa cards to consumers across Canada including British Columbia (the "Cards"). A number of these cards are available through retail outlets in British Columbia. A small number of "branded", prepaid, reloadable MasterCard cards are also available to residents of British Columbia. These MasterCard cards are structured and operate in the same manner as the Visa cards. (ASF)
9. Once purchased and loaded with funds, the Cards allow a cardholder to make purchases for goods and services at points of sale ("POS"). When the Cards are registered, a cardholder can use it to make automated teller machine ("ATM") withdrawals from ATMs that are part of the Visa (or MasterCard) Network, obtain higher card balances, and reload funds on the Cards. (ASF-3, 5).
10. The issue to be determined is whether All Trans is conducting unauthorized deposit business through the marketing and sale of the Cards in British Columbia. In addressing this issue, the Hearing Panel is required to consider whether:
- a. the funds loaded on the Cards constitutes a "deposit" within the meaning of Section 1 of the FIA;
 - b. All Trans is "receiving on deposit or soliciting for deposit money";
 - c. the funds loaded on the cards are repayable "(a) on demand, (b) after notice, (c) on the expiry of a specified term, or (d) at specified intervals for a specified term."; and
 - d. the card programs offered by All Trans constituted "carrying on a deposit business."

Background and Evidence

The Card Programs

11. In April 2013, Staff received a complaint from a consumer about All Trans' possible misuse of the personal information it collects for the reloadable Visa cards. On May 28, 2013, Staff asked All Trans some questions about the cards it issues in British Columbia. Staff and All Trans had a number of communications, summarized in the ASF. The following agreed statement of facts are reproduced below for ease of reference:
- a. All Trans has contracts with various program managing entities ("PME"), which design the programs through which the Cards are offered to the public ("Card Programs"). One PME used by All Trans with cards available in British Columbia is Paymobile. Paymobile designed the "PIVOT" branded Card program, which is offered to the public by Petro-Canada. Another PME used by All Trans with Cards available in British Columbia is Blackhawk (Blackhawk Network (Canada) Inc.). (Blackhawk) designed the "PayPower" branded Card program which is available at various distributors including Safeway, Home Depot and Esso. (ASF-8);
 - b. Each Card Program has its own terms and conditions, which constitute the cardholder agreement between the consumers that participate in the Card program ("Cardholders") and All Trans (ASF-9);
 - c. All Trans issues the Cards pursuant to a licence from Visa International Inc. and is the Card Program owner (ASF-7);
 - d. Consumers enter into a contract with All Trans (ASF-9);
 - e. At purchase, the Cards, referred to as non-registered cards ("Non-Registered") can carry up to a maximum value. The exact value limits on the cards vary depending on the Card Program. Once the Non-Registered Cards are loaded with funds, they can be used at POS terminals on the Visa network to purchase goods and services The Non-Registered Cards cannot be re-loaded. (ASF 3-4, ASF-6);
 - f. Individuals who have Non-Registered Cards can choose to register their cards to activate additional features (these Cards are referred to as "Registered Cards"). Registered Cards can generally carry a higher Card value than Non-Registered Cards and can also be reloaded up to a certain amount each day. Some Registered Cards may have a limit on the total value that can be loaded over a one-year period. Registered Cards can also be used to withdraw cash from ATMs that are part of the Visa network, subject to certain withdrawal limits. (ASF-5);
 - g. Corporations (which are referred to as "Program Clients") contract with a PME to offer Cards to consumers. (ASF-10)
 - h. A processor is responsible for processing the transactions related to the Cards. All Trans states that the processor the PMEs work currently with is [REDACTED] (" [REDACTED] "). (ASF-11);

- i. Program Clients pre-fund a corporate account maintained by the PME (“PME Corporate Account”) to cover the amount authorized for the Cards under its Card program plus a reserve. The PME Corporate Account is with a Schedule I Canadian Bank- it is not a deposit account with All Trans and is separate from the [REDACTED] Trust Account defined below. All Trans states that it does not have access to the PME Corporate Account. (ASF-12);
- j. PMEs, in turn, pre-fund the loads onto the Cards by remitting the load funds to an All Trans trust account at [REDACTED] (the “[REDACTED] Trust Account”). All Trans maintains separate [REDACTED] Trust Accounts for each PME. PMEs are required to maintain funds in the respective [REDACTED] Trust Accounts equal to the total sum of funds authorized for all Cards under their respective Card program plus a reserve. (ASF-13);
- k. All Trans is the trustee of the funds in the [REDACTED] Trust Accounts, and states that it has no right to use the funds other than for the express purposes set out in All Trans’ agreement with Cardholders and PMEs. All Trans states that the funds held in the [REDACTED] Trust Accounts are therefore not exposed to All Trans credit risk and are not currently listed on All Trans’ balance sheet (ASF-14);
- l. When a Cardholder makes a transaction for a purchase or withdrawal, the transaction is then routed to the processor [REDACTED] through the merchant acquirer for authorization. [REDACTED] ascertains whether there is sufficient value on the Card to cover the purchase or withdrawal amount. A Cardholder is only able to access up to the value loaded onto the Card, regardless of whether the Card is used at a POS or at an ATM. As such, if there are insufficient funds on the Card, the purchase or withdrawal is denied. (ASF-15);
- m. Consumers may purchase load vouchers to re-load the Registered Cards. Load vouchers can only be redeemed through a proprietary secure website managed by the Program Client or by the PME. All Trans states it is not part of this transaction- the transaction is strictly between the Cardholder and the Program Client or the PME. (ASF-16);
- n. PMEs remit funds from the PME Corporate Account to the [REDACTED] Trust Account on a daily basis to cover the Card loads from new and existing Cardholders. These funds are sent electronically from the PME Corporate Account to the [REDACTED] Trust Account. (ASF-17);
- o. On a daily basis, All Trans settles the amount owed to Payments Canada through the Visa clearing system, for transactions performed by the Cardholders. Settlement with Visa can only be done by financial institution that is a member of Payments Canada. The funds are taken from each PMEs [REDACTED] Trust Account to cover the settlement amount owed to Payments Canada. (ASF-18);
- p. Cardholder records are maintained by the PME. Records of individual Cardholder balances and transactions are recorded by [REDACTED] All Trans has access to individual balance records through [REDACTED] (ASF-19);

- q. A Cardholder does not have an individual named account of any sort with the Program Client, the PME or All Trans with respect to the Card. (ASF-20);
- r. In addition to the PIVOT Card program, Paymobile also offers Cards under other Card programs that are available on-line and can be purchased by British Columbia residents. (ASF-25);
- s. There are also a number of other Card programs that are being offered or were previously offered Cards issued by All Trans in British Columbia:
 - (a) Selectcore supplies a small number of Cards on British Columbia;
 - (b) Mogo previously announced it would offer Cards issued by All Trans in British Columbia. However, the business has since been transferred to Home Trust Company.; and
 - (c) Blackhawk previously offered Cards issued by All Trans pursuant to a program with PayPal. However, the PayPal program is currently being wound down. In January 2017, any outstanding value on the Cards in the PayPal program were to be reimbursed to the Cardholders by cheque. (ASF-26).

PayPower Visa Cardholder Agreement

12. Staff received a second consumer complaint in December 2014, concerning changes made to a PayPower Cardholder Agreement. The complainant received an email sent by “PayPower Canada”, advising that new limits were placed on:
- a. The maximum daily reloads that could be made on the PayPower card;
 - b. The maximum daily withdrawals that could be made from ATMs with the PayPower card; and
 - c. The amounts which may be transferred between one PayPower Card to another.

The following notations were at the bottom of the email, “Visa Int./All Trans Financial Services Credit Union Ltd. Licensed user; and © 2013 Blackhawk Network (Canada) Ltd.”

13. The complaint included a partial excerpt of the PayPower Cardholder Agreement. This agreement clearly set out that:
- a. The agreement is between All Trans and the cardholder;
 - b. Cardholders may not exceed the available balance and that All Trans may bill a cardholder for a negative balance, may cancel the Card, and may close the cardholder’s account should a cardholder create a negative balance; and

- c. ATM accessibility is only available for cards that are registered, and once a cardholder has registered the Card, and provided identity verification, the Card may be used to obtain cash from an ATM that bears the Visa® acceptance mark.

Pivot Visa Pre-Paid Cardholder Agreement

14. A review of the Pivot Visa Pre-Paid Cardholder Agreement provided by All Trans, dated April 10, 2015 indicates the following:
 - a. The agreement is between All Trans and the cardholder;
 - b. The Card is issued by All Trans, pursuant to a license granted by Visa Inc.;
 - c. Cardholders are not permitted to exceed the available balance associated with their Card for any POS or ATM transaction. Cardholders are required to pay All Trans immediately, on demand, if the Card does not have a sufficient balance;
 - d. Cards must be registered, and the cardholder's identity must be verified to obtain funds from an ATM that displays the Visa or PLUS logo; and
 - e. Cards may be used to pay for purchases at places that have agreed to accept the Card, withdraw cash, value load and reload, and transfer funds between Cards.
15. The Agreement further states that cardholders are not making a withdrawal from a deposit account when they use the Card, and that the funds associated with the Card are not considered deposits and do not establish an individual deposit account for the cardholder.

The Blackhawk Card Program Management Agreement

16. A review of the Card Program Management Agreement with Blackhawk, a PME, confirms the following:
 - a. The Agreement is between All Trans and Blackhawk;
 - b. The Cards are described as an alternative to credit cards, cash or cheques;
 - c. Cardholder funds are defined as the cash balance associated with Activated Cards that are held in one or more pooled accounts by All Trans for the benefit of the cardholders;
 - d. All Trans maintains and owns a settlement account for Settlement of all Transactions initiated by the use of a Card by or on behalf of a cardholder;
 - e. All Trans is responsible for ensuring that all Cards and Cardholder Agreements comply with all Applicable Laws and Rules;
 - f. Both All Trans and Blackhawk have access to all information and documents from each other with regard to any activity contemplated by the Agreement;

- g. All Trans is required to create and maintain Cardholder Information Records and issue Cards in accordance with the Agreement;
- h. All Trans is required to provide for Settlement for all Cards issued by All Trans and name such Settlement Account so as to indicate that the funds are being held for the benefit of the cardholders;
- i. At all times, All Trans is responsible for supervision and overseeing the Program Manager's performance of services; and
- j. A sample PayPower Cardholder Agreement is attached as schedule C to the agreement, and contains terms similar to that referred to in the PayPower and Pivot agreements described above.

17. A review of various agreements between All Trans and Cardholders clearly shows that All Trans issues the Cards, is the controlling entity with respect to the Card program, and confirms that up to the balances associated with a particular All-Trans Card may be redeemed, on demand, at any ATM bearing the Visa® or MasterCard symbol (depending on the card), or anywhere the Card is accepted, subject to the contractual limits on daily or weekly withdrawals.

Status of All Trans

18. All Trans advised the Commission of its intention to conclude an asset sale (purchase) agreement between All Trans and a separate Ontario credit union and that the transaction has received the necessary regulatory approval. The Hearing Panel was not provided with details of this Agreement and has therefore not considered this in our deliberations.

Position of the Parties

Staff's submissions

- 19. Staff argues that the evidence demonstrates that All Trans is conducting deposit business in British Columbia without authorization.
- 20. Staff submits that the funds pre-loaded on the Cards are "on deposit" and, in support of this position, Staff cites the Oxford English Dictionary which defines "deposit" as "store or entrust with someone for safekeeping" and "Pay (A sum of money) into a bank account." (Initial Submission, para 51).
- 21. PME's pre-fund the value loaded onto the Cards in their Card Program, plus a reserve, by transferring funds to the applicable [REDACTED] Trust Account. All Trans maintains separate [REDACTED] Trust Accounts for each PME. The [REDACTED] Trust Accounts are deposit accounts with [REDACTED]. The accounts are all in the name of All Trans, which acts as "nominee" for the Cardholders. (Responding Submissions, para 17). Staff submits this is sufficient to meet the definition of "deposit" as set out on section 1 of the FIA.

22. Staff cites *Payzilla Technologies Inc., Virtu-Pay.com S.A., et al*, an October 9, 2007 Order of the Superintendent of Financial Institutions relating to pre-loaded, reloadable, debt MasterCard offered in British Columbia (“*Payzilla*”) as support for the argument that soliciting the sale of and/or selling debit cards in British Columbia is conducting deposit business under the FIA. (Staff’s Book of Authorities, Tab 1, *Payzilla*, para 24).
23. Staff cites three other previous Orders (or Undertakings) with the Superintendent of Financial Institutions that found soliciting the sale of and/or selling debit cards in British Columbia is conducting deposit business under the Act.: In the matter of *A-1 Exchangers Inc. et al*, September 6, 2006 Order; In the matter of *Uniclear Payment Systems Inc. and North York Community Credit Union et al*, March 24, 2006 Order; and the Undertaking with *Money Mart Canada Inc., Nextwave Card Corp. and Pace Savings and Credit Union*, dated January 23, 2006. (Staff’s Book of Authorities, Tabs 2-4).
24. According to Staff, it is clear from a review of the Blackhawk and Paymobile Agreements that funds associated with a Card are received on deposit. In support of this submission, Staff cite the All Trans agreement with Blackhawk (ASF-Tab E) that states: “The parties acknowledge and agree that all Cardholder Funds will be held in a custodial account controlled solely by the Issuer (All Trans) but on behalf of Cardholders.” (ASF, Tab E, section 7.5, Staff Book of Authorities) and Staff Submission, para 26-f).
25. Staff argues that All Trans is soliciting for deposit money and cites as evidence the fact that All Trans advertises and issues “branded”, prepaid, reloadable Visa Cards (the “Cards”) to customers across Canada. A number of these Cards are available through retail outlets in British Columbia. (Staff Submission, para 36 and ASF-2).
26. Staff submits that, although there are limits on the amount that a Cardholder with a Registered Card may access at an ATM in a day or week, a Cardholder may ultimately access all of their funds by way of an ATM, rendering the funds “repayable on demand”. (Staff Reply, para 9).
27. According to Staff, All Trans is “carrying on a deposit business” and supports this by noting that All Trans does more than provide access to a payment system or provide merely administrative functions. All Trans is the owner and issuer of the Cards, it has a direct relationship with the Cardholders and the PMEs, it has access to cardholder information, and it holds and controls Cardholder funds. (Staff Reply, para 22).
28. Staff argues that it is irrelevant whether the fees All Trans earns are derived from the funds that are pre-loaded onto the cards, or from fees charged when the cards are purchased and used. The revenue is generated through the card program. (Staff Reply, para 21).

All Trans’ Submissions

29. All Trans argues that the Card Programs do not constitute a “deposit business” within the meaning of the FIA. All Trans notes that the funds pre-loaded on the Cards are not “on deposit” and that the Cardholder Agreements state the pre-loaded funds are not deposits (Responding Submission, para 7, 8).

30. All Trans submits that the funds pre-loaded on the Cards do not constitute deposits at common law. All Trans cites *Re Alberta Legislation*, [1938] S.C.R. 100, aff'd [1938] 4 D.L.R. 433 for a definition of "deposit". This case quotes, with approval, the following passage from a banking text published in 1890: "when a customer pays in money to his account in the usual way of business, he sells it to the banker. In exchange for the money the banker makes an entry of an equal sum in credit in favour of his customer. And it is the entry to the credit of the customer which, in the technical language of modern banking, is termed as a deposit." (Responding Submission, para 29. This submission is supported by a legal opinion by Fasken Martineau DuMoulin LLP dated July 8, 2013 (ASF, Appendix H)).
31. All Trans cites a legal opinion, dated May 21, 2015, from Gowling Lafleur Henderson LLP (now Gowling WLG) ("Gowling") provided on behalf of Blackwater. Gowling supports the Fasken's opinion above stating that the pre-loaded funds are not deposits in common law.
32. Gowling further submits that financial institutions take deposits to provide a service to their customers, and to gain access to the use of the deposited money for purposes of making loans and investments to the benefit and profit of the financial institution. Money "on deposit" belongs to the financial institution, and its use is unrestricted, thereby permitting the financial institution to engage in financial intermediation. In relation to the pre-loaded funds for the Cards, there is no financial intermediation. Since the money received from card loads is maintained in a segregated pooled custodial account and can only be used to settle liabilities within the PayPower Card program, in their view, the credit union does not receive these funds as deposits. (ASF, Appendix K).
33. All Trans argues that "a deposit is a self-standing liability that arises from the simple act of making a deposit. No particular contract or agreement is necessary in order to establish the liability. Instead, the deposit arises when, in exchange for the receipt of money paid into a customer's account, the banker or deposit-taker makes an entry of credit in the customer's favour." (Responding Submission, para 29-30).
34. All Trans submits that, as that term is used elsewhere in the FIA, the funds pre-loaded on the Cards do not constitute deposits. All Trans cites section 260(1) of the FIA which defines deposits for the purpose of Part 9 of the FIA, but notes that section 260(1) is not directly relevant to the provisions at issue in this hearing. (Responding Submission, para 36-41).
35. According to All Trans, the Cards are distinguishable from the debit cards cited in the Initial Submission in part because debit cards, by their very nature, link to a deposit account opened in the name of the holder of the debit card and in part because debit cards and the All Trans Cards route through different network. (Responding Submission para 52-53).
36. All Trans argues the funds are not repayable on demand. All Trans cites the Cardholder Agreement which strictly limits the amounts that can be withdrawn from an ATM at any given time: "As mentioned earlier, PIVOT-branded Cards are limited to ATM withdrawals of up to \$250 to \$500 per week, depending on the Cardholder's fee plan. This means that it could take a PIVOT Cardholder up to 10 to 20 weeks to access the full

value of his or her card through an ATM.” All Trans submits such limited ATM functionality cannot be considered sufficient to render the funds on the card truly “repayable on demand.” (Responding Submission, para 44.)

37. All Trans submits the receipt of funds does not amount to “carrying on a deposit business” as it is an ancillary administrative function to All Trans true business of selling payment Cards and earning fees from the use of those Cards.
38. According to All Trans, the ability to access the funds loaded onto the Card at an ATM is not a primary feature of the Card. Rather, this feature exists for user convenience in that it provides an alternative means for Cardholders to access the value loaded onto the Cards. (Responding Submission, para 10).
39. All Trans observes that the Cardholders are also charged an additional fee for ATM withdrawals and given the fees associated with the ATM withdrawals, as well as the fees charged for re-loading the Cards, it is not efficient for cardholders to use the Cards as a cash dispensing mechanism. And the PME that operates the PayPower- branded Card program has advised that only around five percent of the value loaded onto its Cards is accessed at ATMs. All Trans submits that the ATM feature can therefore be considered an ancillary feature of the Cards, provided for Cardholder convenience but not as a primary feature. (Responding Submission, para 13-14).
40. All Trans argues that the Cards it issues are not debit cards and can best be characterized as a plastic version of a traveller’s cheque. (Responding Submission, para 34-35).
41. All Trans further submits that the United States FDIC 5500-General Counsel’s Opinion No. 8 which is referred to in the Staff Reply at paragraphs 6 and 7 is not instructive on the issue before the Commission as, they say, it arises in an entirely different context. (Sur-Reply, para 4-5).

Legislation

42. Section 1 of the *FIA* defines “deposit business” as:

"deposit business" means the business of receiving on deposit or soliciting for deposit money that is repayable

(a) on demand,

(b) after notice,

(c) on the expiry of a specified term, or

(d) at specified intervals for a specified term,

whether or not the person undertaking an activity or activities set out in paragraphs (a) to (d) can or does distribute any gain, profit or dividend, or otherwise disposes of the

person's assets, to a member or shareholder of the person other than during winding up or on dissolution;

43. Section 81 of the *FIA* prohibits unauthorized deposit business:

- 81 (1) A person must not carry on deposit business in British Columbia unless the person is*
- (a) an extraprovincial trust corporation that has a business authorization to carry on deposit business,*
 - (b) a credit union or extraprovincial credit union that has a business authorization to carry on deposit business,*
 - (c) a bank, or*
 - (d) a corporation that is a subsidiary of a bank and is a loan company to which the Trust and Loan Companies Act (Canada) applies.*
- (2) Subsection (1) does not prohibit an insurance company or extraprovincial insurance company from carrying on life insurance business in accordance with a business authorization issued to it.*

44. Section 244 (2)(a) of the *FIA* grants the Commission the authority to order compliance if, in the opinion of the Commission, a person is committing an act or pursuing a course of conduct that does not comply with this Act or the regulations.

45. When the Commission issues an order under section 244(2)(a) of the *FIA*, then the Commission may

- (f) order the person to*
 - (i) cease doing the act,*
 - (ii) cease pursuing the course of conduct, or*
 - (iii) do anything that the commission considers to be necessary to remedy the situation, ...*

46. Section 235 (1)(a) of the *FIA* requires orders to be made in writing.

Analysis

Meaning of “Deposit” as it relates to Section 1 of the FIA

47. We agree with Staff’s position on the method of interpreting the terms “deposit” and “deposit business” in the *FIA* (Staff Submission, para 47). We need to follow the principles of modern statutory interpretation as articulated by Driedger:

Today there is only one principle or approach, namely the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Elmer A. Driedger, *Construction of Statutes*, 2d ed. Toronto, Butterwoths, 1983, 87, as cited in the *Canadian Encyclopedic Digest Statutes III.3.b*

48. While not binding on us, the Hearing Panel notes that previous orders and an undertaking issued pursuant to the *FIA* submitted by Staff as noted above have concluded that soliciting the sale of and/or the selling of pre-paid, reloadable debit cards and a MasterCard stored value card in British Columbia meets the definition of conducting deposit business under the *FIA*.
49. The Oxford English Dictionary definition of “deposit” is “store or entrust with someone for safekeeping” and “pay (a sum of money) into a bank account”. (Staff Initial Submission, para 51). The Hearing Panel notes that this definition of “deposit” does not specifically state the funds must be in an account in the name of the individual making the deposit.
50. The Hearing Panel agrees with Staff that the narrow definition of “deposit” found in *Re Alberta Legislation* [1938] S.C.R. 100, while perhaps reflecting the technical language of banking as it existed in 1938, applied similarly today would create opportunities for businesses to avoid the deposit business authorization and other regulatory requirements (which we note may include anti money laundering legislation) through the use of complex corporate relationships and contractual agreements.
51. As Staff points out, the narrow definition proposed by All Trans, based on the banking world of 1938, would lead to impractical and poor consumer protection policies and outcomes. *Re Alberta* is distinguishable on its facts and on the differing regulatory schemes in place today. The *FIA* protects consumers by imposing prudential and market conduct requirements on deposit taking institutions, and protects depositors against loss in event of a failure of an authorized institution. The narrow interpretation proposed by All Trans would frustrate consumer protection objectives and outcomes.
52. All Trans submits that its cards are not debit cards, and are distinguishable from the debit cards referenced in previous orders. All Trans argues that the cardholder does not deposit the funds paid to purchase or reload one of the Cards into an account held by All Trans, ██████████ or any other financial institution. They state that the financial institution does not receive funds from or on behalf of a Cardholder and therefore the money loaded onto a Card is not a “deposit.” All Trans states that the customer is not a depositor, and is not paying money “into his account” at a financial institution.
53. The Hearing Panel notes that Staff cites All Tran’s own financial statement and CEO report which refer to its card program as a “pre-paid debit card” program. (All Trans 2013 Annual Report, CEO Report -2013).
54. Staff further submits that there is no requirement in the definition of “deposit business” found in section 1 of the *FIA* that the account where funds are held on deposit must be held by the Cardholder. The only requirement is that the funds are on deposit. (Initial Submission, para 32).
55. Staff cites *Payzilla* as support for the argument that funds on deposit need not be in an account held by the Cardholder. The Order states that the cards allow a client to link the card to funds on deposit, but does not state that the funds are on deposit in a cardholder

account and in fact, states “which funds may or may not be administered or held by PT (*Payzilla Technologies*) or VP (*Virtu-Pay*) ...” (Staff’s Book of Authorities, Tab 1, *Payzilla*, para 20).

56. The Hearing Panel does not find any requirement in section 1 of the FIA, or any of the previous orders, including *Payzilla* and the definition of “deposit” from the Oxford English Dictionary cited above to require that the funds associated with the Card must be directly linked to a separately acknowledged or tracked cardholder’s account, in order for the funds to be considered deposit money. *Payzilla* specifically states that the funds held on deposit may or may not be administered or held by the card issuer. It is the linking of the depositor’s card with a balance on account after a customer makes a money deposit to the account, which balance can then be accessed or repaid through a demand made by way of cash withdrawal at an ATM, which was considered to be deposit business.
57. All Trans has compared the Cards to traveller’s cheques in that a person can purchase a traveller’s cheque and then may endorse it to be payable by the issuer to a third party. The holder of a traveller’s cheque may also present the cheque to the issuer and seek the value of that cheque from the issuer in cash. All Trans states that the Cards have the same functionality. According to All Trans, issuers of the Traveller’s cheques do not need to be deposit taking institutions and a traveller’s cheque is not a deposit even if the issuer is a financial institution.
58. The Hearing Panel does not find the comparison of the Cards to traveller’s cheques persuasive. Even if they are comparable, the Hearing Panel has considered the Canadian Deposit Insurance Corporation bulletin, dated December 4, 2014 which states that “CDIC insures deposits in money orders, certified cheques, travellers’ cheques and bank drafts held in Canadian dollars and that are issued by a CDIC member.” The federal deposit insurer considers traveller’s cheques as evidence of insured deposits. This is the same for a traveller’s cheque issued by a British Columbia credit union and the insurance coverage provided by the Credit Union Deposit Insurance Corporation.
59. As well, as Staff notes that ultimately, the funds associated with the consumers’ cards are held in an account controlled by All Trans.
60. The Hearing Panel finds that, read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the FIA, the object of the FIA, and the intention of the Legislature, the customer funds linked to the Cards are “deposits” and “deposit money” pursuant to section 1 of the FIA.

Is All Trans “receiving on deposit or soliciting for deposit money?”

61. It is necessary to determine next whether All Trans is “receiving... or soliciting” as set out in section 1 of the FIA.
62. Staff has provided evidence that the Cards are advertised through websites and print material circulated and available to residents of British Columbia. As noted in the ASF-2, All Trans advertises and issues Cards to consumers across Canada. A number of these

Cards are available through retail outlets in British Columbia. And a small number of similar Cards (MasterCard cards) are also available to British Columbia residents.

63. Both PIVOT and PayPower Cards issued by All Trans are currently advertised and sold in British Columbia. On both of the websites, All Trans is identified as the owner and issuer of the Cards. Moreover, the agreements relating to these two Card programs provided All Trans with considerable control over the nature and content of the advertising.
64. The Hearing Panel finds that this evidence is sufficient to conclude All Trans is “soliciting” for deposit business as set out in section 1 of the FIA.

Are the pre-loaded funds repayable on demand, ... or at specified intervals for a specified term?

65. Next, the Hearing Panel must determine whether the deposit money is repayable:
- (a) on demand,
 - (b) after notice,
 - (c) on the expiry of a specified term, or
 - (d) at specified intervals for a specified term. (Section 1 of the FIA)
66. It is clear that the registered Cardholders have a right to access ATMs and withdraw a limited amount of their linked funds or deposit money either daily or weekly, the limits being dependent on the specific contractual arrangements. This is not in dispute. Staff submits that the pre-loaded funds are deposits “on demand” because the registered Cardholders may withdraw all of their unused funds from an ATM, and the fact that there are daily or weekly limits on the withdrawals, does not negate the fact these withdrawals are “on demand” or “after notice” or “at specified intervals for a specified term”.
67. All Trans submits that the limits on ATM withdrawals are such that limited ATM functionality cannot be considered sufficient to render funds on the Card to be truly repayable on demand.
68. All Trans submits that the combination of the limits placed on daily withdrawals from ATMs, the fact extra fees are charged to the Cardholder for using ATMs and that apparently only around five percent of the value loaded onto its Cards is accessed at ATMs, implies the ATM feature can therefore be considered an ancillary feature of the Card, but not as a primary feature.
69. The Hearing Panel notes that while it may be true that only around five percent of the aggregate funds loaded onto the PayPower branded Card Program Cards is currently accessed at ATMs, this ignores the fact that all qualified Registered Cardholders have a right to utilize this feature and ultimately withdraw all available funds from their account linked to the Cards.

70. The Hearing Panel also notes that section 1 of the FIA provides that deposit business includes deposit money that is repayable at specified intervals for a specified term. So, the FIA contemplates circumstances where, for whatever reason, repayment in full is not necessarily immediate.
71. The Hearing Panel concludes that the access to ATMs to allow Cardholders withdraw funds linked to the Cards, even with the limits per day or per week, satisfies “repayable on demand” as set out in section 1 of the FIA.

Is All Trans “Carrying on a deposit business”?

72. All Trans submits that receiving pre-loaded funds does not amount to “Carrying on a deposit business”. All Trans states that there is a distinction between “engaging in an activity” and “carrying on an activity”. All Trans further submits that All Trans’ true business as it relates to the Card program is selling payment cards and earning fees when the cards are purchased and used and does not earn a profit from the amounts that are pre-loaded onto the Cards. All Trans concludes that the receipt of these funds is merely ancillary to its true business of selling payment cards. (Responding Submission, para 51-56).
73. Staff submits that All Trans is “carrying on a business” and that it is irrelevant whether fees All Trans earns are derived from the funds that are pre-loaded onto the cards, or from fees charged when the cards are purchased and used. The revenue is generated through the Card program. (Reply Submission, para 21).
74. Staff further submits that All Trans does more than simply collect a fee for the sale and use of the Cards. All Trans is the owner and issuer of the Cards, it has a direct relationship with the Cardholders and the PME’s, it has access to Cardholder information and it holds and controls the Cardholder funds. (Reply Submission, para 22).
75. The Hearing Panel is not persuaded that the fact All Trans is selling payment cards, earning fees when the cards are purchased and used, and is not earning a profit from the amounts that are pre-loaded onto the Cards diminishes its role in carrying on a deposit business. The sharing of the collective revenues from the Card program is a contractual arrangement between All Trans and the PMEs and were it not for the fact the Cards are being issued, and deposits being linked to them, there would be no revenue to share. Issuing the Cards is a necessary element to the Card program (Gowling, page 7).
76. We also note that the definition of “deposit business” does not require a profit-making motive in that the activity is deposit business “whether or not the person undertaking an activity or activities set out in paragraphs (a) to (d) of section 1 of the FIA can or does distribute any gain, profit or dividend, or otherwise disposes of the person’s assets, to a member or shareholder of the person other than during winding up or on dissolution.”
77. The Hearing Panel agrees with Staff that All Trans is doing more than merely “engaging in an activity” and that All Trans’ ownership and involvement in key aspects of the Card program does constitute “carrying on a deposit business” in British Columbia as set out in Section 1 of the FIA.

Conclusion

78. For the above noted reasons, the Hearing Panel finds that All Trans is conducting unauthorized deposit business in British Columbia through the solicitation for sale and sale of the Cards in British Columbia.

Orders

79. The Commission orders, pursuant to sections 244(2)(a) and (f) (i) and 237 of the *FIA* that All Trans cease carrying on unauthorized deposit business in British Columbia within 30 days of the date of this decision. With regard to Registered Cards issued to British Columbia consumers prior to 30 days after the date of this order, All Trans must cease permitting funds to be reloaded on those Registered Cards within 30 days of the date of this decision.
80. The Commission Further orders All Trans to provide a copy of these findings and Order to all of its existing Program Managing Entities and Program Clients within 30 days of the date of this decision.
81. The Commission Further Orders All Trans to pay the costs of the investigation and hearing pursuant to section 241.1 of the *FIA*. Such costs are to be determined by agreement of the parties or on application to the Commission if agreement cannot be reached.

Each of the Hearing Panel members agrees with these findings and Orders and agrees that the Commission Chair may sign this Decision and Orders.

Dated at Vancouver,

British Columbia, this 8th, day of March, 2017.



Stanley W. Hamilton, Chair
Financial Institutions Commission