

Consumer Payments in 2017: Regulatory Developments and Prospects for Consumer Gift Cards, Prepaid Cards, and Other Consumer Electronic Payment Methods

Kilpatrick Townsend Partner **Christina Gattuso** and Counsel **Eamonn Moran** recently provided an overview of recent regulatory developments affecting consumer payment products and their impact on retailers and other providers of consumer goods. They highlighted the Consumer Financial Protection Bureau's (CFPB) Prepaid Rule and its sweeping impact on the prepaid market, including mobile wallets, peer-to-peer payment products/person-to-person (P2P) transfers, and other electronic prepaid accounts that can store funds. In addition, they discussed prospects for further developments in the consumer payment product market.

Top takeaways from the event include:

1

Payment instruments for retail purchases of goods and services have expanded beyond traditional vehicles (i.e., cash, checks, and credit and debit cards) to prepaid cards, electronic gift cards, and mobile apps. Retail payment systems continue to evolve with advances in technology.

2

On October 5, 2016, the CFPB issued its final rule (Prepaid Rule) to extend certain federal consumer protections to the prepaid market. The most significant aspect of the rule is that it would apply a number of specific federal consumer protections to broad parts of the prepaid market for the first time. Specifically, the rule extends Regulation E (Electronic Fund Transfers) coverage to prepaid accounts and adopts provisions specific to such accounts, and generally expands coverage of Regulation Z (Truth in Lending) to overdraft credit features that may be offered in conjunction with prepaid accounts. Traditional plastic prepaid cards, many of which are general purpose reloadable cards (GPR cards), and mobile wallets, peer-to-peer payment products/person-to-person (P2P) transfers, and other electronic prepaid accounts that can store funds are among those products covered by the rule.

3

While the Prepaid Rule imposes certain requirements on financial institutions, as defined in Regulation E, its impact will also be felt by retailers and other providers of consumer good and products given the evolving nature of the payments system and the increasing interest of companies in expanding their digital and mobile platforms.

4

Ms. Gattuso discussed how credit card rewards programs have rapidly increased in prevalence over the past decade. For many consumers, rewards have become central to the decision of which credit cards to acquire and how to use them. Since marketing campaigns and other issuer disclosures are the primary way that credit card providers communicate the terms and conditions of rewards programs, she highlighted areas of potential concern the CFPB has identified in this marketplace. These include: the availability, timing, and multiplicity of key disclosures; the blurring of marketing and disclosures; non-specificity of terms; expiration and forfeiture; and third-party involvement.

5

Mr. Moran noted how some retailers seeking to extend their payment platform have formed partnerships with financial institutions to offer prepaid products to customers as part of their in-store shopping experience. Depending on product design and program features, these types of products may fall within the "prepaid account" definition under the CFPB's Prepaid Rule.

6

Mr. Moran discussed how companies should evaluate their goals for offering payment/credit products. Whether a particular payment product would be deemed a gift card or a prepaid account is in large part dependent upon product functionality and purpose. There are many overlapping features between different payment products, so it is important for companies to tailor their consumer payment card programs and offerings appropriately. Additionally, while rewards programs can be associated with credit cards and prepaid cards (including prepaid debit cards), consumer rewards and loyalty programs do not need to be linked to any payment medium or credit account.

Ms. Gattuso focuses her practice on corporate and securities matters, financial institution regulatory matters and mergers and acquisitions. Her securities practice includes serving as counsel for both issuers and underwriters in public and private offerings of debt and equity securities and counseling clients on disclosure and other requirements under the federal securities laws. **Mr. Moran** has extensive experience handling matters in the financial services industry including those pertaining to consumer financial services, consumer protection, fair lending, TARP, the Dodd-Frank Act, and the Consumer Financial Protection Bureau (CFPB) where he previously served as counsel in the Office of Regulations.

For more information, please contact **Christina Gattuso** at 1 202.508.5884 or cgattuso@kilpatricktownsend.com
For more information, please contact **Eamonn Moran** at 1 202.508.5867 or emoran@kilpatricktownsend.com