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new rules for financial institutions in the consumer credit business

On September 30, 2009 the Government of Canada published the final version of new regulations *(the Credit Business Practices Regulations)*, and regulations to amend the existing cost of borrowing regulations *(the Regulations Amending the Cost of Borrowing Regulations)*, which will require increased disclosure, changes to customer documentation and changes to business practices in the consumer credit business.

The changes are set out in two sets of regulations. First, the enactment of the *Credit Business Practice Regulations* adds new regulations to several Acts of Federal Parliament, including, but not limited to, the *Bank Act* and the I*nsurance Companies Act*. The *Credit Business Practice Regulations* will limit and prescribe certain business practices of financial institutions related to credit products, such as the length of interest grace periods and the application of automatic credit limit increases. Second, the *Regulations Amending the Cost of Borrowing Regulations* amends various regulations already in place, including regulations of the two above-mentioned statutes dealing with banks and insurance companies. The *Regulations Amending the Cost of Borrowing Regulations* amend existing Cost of Borrowing Regulations to improve disclosure and transparency for consumers in order to better manage the risk associated with using credit.

The credit and borrowing reforms are significant for several reasons. They will impose increased information requirements and in many cases, impose tight deadlines on financial institutions to put the new rules into practice. Financial institutions will also need to incur significant costs to implement the new requirements because they will need to make changes to systems, create new forms and train staff in connection with the changes. The *Credit Business Practice Regulations*, which apply to federal financial institutions including banks and foreign authorized banks under the *Bank Act* and companies and foreign companies under the *Insurance Companies Act,* will:

- prescribe a minimum 21-day interest-free grace period on all new credit card purchases when a customer pays the outstanding balance in full by the due date. Presently, federally regulated credit card issuers have the flexibility to set their own grace periods (which normally range from 15 to 26 days);
- where different interest rates apply to different amounts owing for a particular billing cycle (for example, because a consumer took a cash advance and made a purchase, which may be subject to different interest rates), require that consumer payments in excess of the required minimum payment be allocated using one of the following two methods: either to the outstanding balance with the highest interest rate first, or in proportion that each outstanding balance has to the total outstanding balance;
- prohibit over-the-limit fees or penalties from being charged in situations where the fee arises as a result of a hold on a credit card that is placed by a merchant (for example, gas stations and hotel frequently place holds on credit cards, which can remain on the account for several days and which can push consumers beyond their credit limit);
- require financial institutions to obtain express customer consent for credit limit increases; and
- prescribe certain debt collection practices that financial institutions can use to collect a debt.

The *Regulations Amending the Cost of Borrowing Regulations* are technical changes that amend regulations already in place under Federal statutes such as the *Bank Act* and the *Insurance Companies Act*. The Cost of Borrowing Regulations currently require federally regulated financial institutions to disclose certain information, terms and conditions at or prior to the time a credit product such as a credit card, fixed or variable rate loan or line of credit (any non-business loan) is issued. The *Regulations Amending the Cost of Borrowing Regulations* include schedules that prescribe the specific form and contents of information that must be disclosed. There are also certain requirements for disclosure in advertising (such as prominently disclosing interest rates), ongoing disclosures (such as providing an itemized monthly statement of account), and requirements about providing advance notice of changes in terms and conditions related to these products. The *Regulations Amending the Cost of Borrowing Regulations* enact identical amendments under both the *Bank Act* and the *Insurance Companies Act.* The specific changes:

- mandate the form and contents of an "information box" that must be included in credit contracts and application forms and which sets out key features of the credit product, the requirements of which will vary by product, but generally will include information about interest rates, grace periods, fees, payments and when interest accrues;
- require federally regulated financial institutions to disclose on every monthly statement information about the length of time it would take to fully repay the outstanding credit

balance if only the minimum required payment is made every month;
- mandate advance notice of interest rate increases prior to their taking effect, even though this information had been included in the credit contract; and
- require financial institutions to provide increased disclosure statements, in prescribed form, on a monthly, periodic and supplementary basis.

Most of the *Credit Business Practice Regulations* and the *Regulations Amending the Cost of Borrowing Regulations* will come into force on January 1, 2010, while the mandated minimum interest-free grace period and allocated payments provisions will take effect September 1, 2010. The delay is in response to concern expressed by the financial services industry about the difficulty that will be encountered implementing the changes.

Federally regulated financial institutions that are affected by either the new *Credit Business Practice Regulations* or the *Regulations Amending the Cost of Borrowing Regulations* should consult their professional advisors to ensure that they have fulfilled the requirements of this complex array of reforms.

Written by Stephanie Robinson and Gurpreet S. Badwal

For more information, contact any of the lawyers listed below:

Calgary	Michael A. Thackray, QC	403.531.4710	michael.thackray@mcmillan.ca
Toronto	Pat Forgione	416.865.7798	pat.forgione@mcmillan.ca
Montréal	Judie Jokinen	514.987.5026	judie.jokinen@mcmillan.ca