

# Financial Services Flash

AIRD & BERLIS LLP  
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## Recent Amendments to the Payday Loans Act: Impact on Lenders

By Aaron Baer

On December 11, 2013, the Ontario Ministry of Consumer Services (the “Ministry”) released *Ontario Regulation 351/13* (the “Regulation”) made under the *Payday Loans Act, 2008* (the “Act”). The Regulation clarifies that the Act will not apply to most loans made by banks, loan corporations, insurance companies and credit unions.

Earlier in 2013, the Ministry issued proposed regulatory amendments (the “Proposed Amendments”) to the Act. Lenders who make loans to borrowers for an aggregate amount of \$5,000 or less would have been subjected to the Act and to the onerous disclosure requirements, inspections and penalties associated therewith.

The Ministry accepted comments regarding the Proposed Amendments until September 30, 2013. The recently-issued Regulation appears to have taken into account the concerns of lenders who would have been affected had the Proposed Amendments come into force.

Though the Regulation prescribes two categories of loans to which the Act will now apply, the Regulation carves out a number of exemptions to ensure that certain lenders and certain types of loans are not subjected to the Act’s application.

### Exempted lenders include:

- i. banks;
- ii. authorized foreign banks or federal credit unions within the meaning of section 2 of the *Bank Act* (Canada);

- iii. trusts or loan corporations authorized under the *Trust and Loan Companies Act* (Canada);
- iv. credit unions to which the *Credit Unions and Caisses Populaires Act, 1994* or comparable legislation of another province or territory applies;
- v. registrants under the *Securities Act*, the *Commodity Futures Act*, or comparable legislation of another province or territory;
- vi. associations to which the *Cooperative Credit Associations Act* (Canada) applies; and
- vii. insurance companies incorporated or formed under the *Insurance Companies Act* (Canada), and insurers licensed under the *Insurance Act* or comparable legislation of another province or territory.

### Exempted loans include:

- i. loans for a lease of real property;
- ii. loans secured against real property;
- iii. if the lender does not have any other such loans outstanding with the consumer borrower, a consumer loan with only one advance (where such advance is for a fixed amount that is equal to the credit granted), a fixed maturity date that is no

earlier than six months after the making of the loan, and with no requirements for the consumer borrower to pay at least 20% of the principal amount of the loan in any 30-day period, save for the last such period; and

- iv. agreements under which a consumer borrower acquires goods or services by way of sale, lease or otherwise (where such goods or services are not an extension of credit or a loan of money) and pays for such goods or services by installments or lease payments, either directly to the provider of the goods or services or to a third party.

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