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Australia's payment service providers

FIRST PIECE OF DRAFT LEGISLATION
RELEASED FOR CONSULTATION



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Setting the scene - reforming Australia's payments licensing regime

In June 2023, the Federal Government released its Strategic Plan for the future of Australia's payments system. Shortly following the release of the Strategic Plan, the Government consulted on proposals to significantly reform the licensing framework for payment service providers. However, since the Second Consultation Paper connected with these proposals, released in December 2023, we have largely been waiting to see what action follow.

On 9 October 2025 there was major movement to re-enliven the reforms:

- draft legislation was released for consultation (**Draft PSP Legislation**); and
- accompanying this, materials demonstrating a clearer picture of the broader reform approach were released (**Explanatory Materials**).

These materials are part of Treasury's two tranches to reform Australia's payments licensing framework. Within tranche 1 are two sub-tranches - the Draft PSP Legislation is referred to as "sub-tranche 1a".

The Tranche 1a consultation is focused on defining the core concepts that will form the framework for the new licensing regime impacting payment service providers (**PSPs**). This includes proposals to clarify the application of the Australian financial services (**AFS**) licensing regime and APRA powers in respect of certain PSPs.

In this article we have described the key takeaways from this significant announcement in the evolution of Australia's payments regulatory framework.



The overview – how do the proposals reform Australia's current licensing regime?

Payment service providers to be regulated under Chapter 7 of the Corporations Act

The Draft PSP Legislation proposes to bring PSPs into the scope of Chapter 7 of the *Corporations Act 2001* (Cth) (**Corporations Act**).

Chapter 7 of the Corporations Act regulates the financial services industry, and sets out the licensing regime and general, conduct and disclosure obligations that apply to providers of financial services.

While there are a range of financial products and services currently regulated under the Corporations Act, the financial product that is often the cause of focus for PSPs determining whether they require an AFSL is whether a non-cash payment facility (**NCPF**) is involved in the services being provided. This requires an

assessment of whether there is a facility through which, or through the acquisition of which, a person makes non-cash payments.

The Draft PSP Legislation would repeal the definition of "makes non-cash payments" and introduce:

- (a) two new things that are specified as being **financial products**:
 - (1) a 'stored value facility' (**SVF**); and
 - (2) a 'payment instrument'; and
- (b) a new **financial service** of providing a **payment service**, which includes the provision of:
 - (1) a payment initiation services;
 - (2) a payment facilitation services; and
 - (3) payment technology and enablement services.

What it means to be a regulated PSP under the reforms

As a result of the Draft PSP Legislation, a PSP may be captured under Chapter 7 of the Corporations Act if it:

- (a) provides a financial service in relation to a SVF or a payment instrument; or
- (b) provides any of the new payment services (themselves being a financial service).

This would require the provider of the service to hold an AFSL or otherwise be appropriately licensed under the Corporations Act.

However, the reforms include some adjustments to the existing AFSL framework to adjust to PSPs:



Retail vs Wholesale:

The definition of retail client will be adjusted so that a payment service will not be provided to a retail client if the value exceeds a certain amount in the regulations.



Sophisticated investor:

The existing exemption for sophisticated investors will not apply to the provision of SVFs, payment instruments or payment services.



Intermediaries:

where an AFSL holder operates as an intermediary for other PSPs, the intermediary licensee must comply with new general licence obligations in connection with cooperation in the disputes process (both internal and external) involving other PSP licensees.

The specifics - how are concepts defined?

Overview of key new concepts

The Draft PSP Legislation defines the following three key terms, which are key elements of the core concepts provided in the Tranche 1a reforms.

'transfer'

of funds includes any act or thing, or any series or combination of acts or things, that may reasonably be seen as the economic equivalent of a transfer of funds (for example, debiting an amount from a person's account and crediting an equivalent amount to another person's account).

'funds'

when used in connection with a transfer of funds, means:

- money;
- another medium of exchange prescribed by the regulations; or
- a right to redeem either of those things.

'non-cash funds transfer'

a person (the *payer*) makes a *non-cash funds transfer* if:

- funds standing to the credit of the payer under a facility are transferred:
 - to another person (the *payee*); or
 - from the credit of that facility to the credit of the payer under a different facility (in which case the payer is also the *payee* for the transfer); and
- the funds are transferred to the payee on the instruction of the payer or the payee; and
- the transfer does not involve the physical delivery of Australian or foreign currency in the form of notes and/or coins.



The specifics – how are concepts defined?

The new financial products – SVFs and payment instruments

The Draft PSP Legislation introduces two new financial products which replace the concept of NCPF.

SVF

Overview of definition

A facility under which funds are transferred to a person without any instruction as to the further transfer of the funds. Another person has the right to redeem that value by making a non-cash funds transfer.



Key features

- Rights to redeem can be exercised to initial holders of the facility or other persons that subsequently possess the right.
- SVFs may involve multiple people. The person the funds will be redeemed from may be different from the person that the funds are transferred to.
- Additional obligations exist for providers of 'tokenised SVFs', which is described further below.
- The Draft PSP Legislation proposes a new sub-class of SVF – being a Major SVF. While not prescribed in the Draft PSP Legislation, the supporting materials indicate that the threshold for triggering the definition of a Major SVF would be set at \$200 million of credit. These issuers would be regulated by APRA and the regime is proposed to replace the current purchased payment facility regime.

Examples provided by Treasury

- Prepaid cards
- Digital wallets that store value

Payment Instruments

Overview of definition

A facility that provides the terms on which a person may, as payer, use a particular method to make non-cash funds transfers using funds standing to the credit of that payer under a facility.



Key features

- Funds used for transfers made using payment instruments can be from one or more sources of value, including SVFs.
- Often provided by the issuer of the account or facility that is the source of value, but in other cases those issuers will partner with another person to issue a payment instrument.

Examples provided by Treasury

- Debit and credit cards
- Online account management facilities (eg, BPay)

Tokenised SVFs

One of the most notable impacts of the Draft PSP Legislation is the regulation of some fiat currency-referenced stablecoins as 'tokenised SVFs', previously referred to as 'payment stablecoins' in the consultation papers. Under the Draft PSP Legislation, a 'tokenised SVF' product would be introduced, and additional obligations would apply to issuers of tokenised SVFs (being tokenised SVF providers).

Overview of definition

An SVF, where:

- each right to redeem a particular amount in respect of the amount standing to the credit of the facility is exercisable only by the person who possesses the digital token attached to that right; and

- the amount that may be redeemed in exercising that right is fixed and denominated in a single currency (whether Australian or foreign currency).



Key features

- Adopts the definition of 'digital token' proposed in the Treasury's concurrent reforms relating to the regulation of digital asset platforms.
- A tokenised SVF is not transferred in practice, rather the digital token connected to the facility is the thing transferred.

Overview of additional obligations applying to tokenised SVF providers

- **Material changes:** Providers must publish on the internet a notice of any material change or significant event that may reasonably affect the ability to meet redemption obligations or the value of reserve assets.
- **Monthly disclosure:** Providers must, within seven days of the end of calendar month, publish on the internet information relating to reserve assets and outstanding liabilities.
- **Recovering loss due to failure to meet disclosure obligations:** Contravention of the disclosure obligations may enable a person to recover from a tokenised SVF provider any loss or damage for the provider failing to meet disclosure requirements.

The new financial services – providing a payment service

An overview of the new financial service of providing a payment service is set out below.

Payment initiation services

Overview of definition

A person provides a payment initiation service if they:

- take action to initiate a non-cash funds transfer to be made by another person; and
- are not:
 - the issuer of the account or facility holding the funds in the transaction;
 - the payer or payee for the non-cash transfer; or
 - another person interposed between the payer and payee



Key features

- The provider provides the payment initiation service each time a non-cash funds transfer occurs. The service is provided irrespective of whether the transfer is not completed.

Examples provided by Treasury

- Direct debit services
- 'PayTo' services

Payment facilitation services

Overview of definition

A person provides a payment facilitation service if:

- under an arrangement with another person, funds are transferred to the provider in connection with making a non-cash funds transfer; and
- the funds are so transferred on the basis that the provider will further transfer the funds in accordance with the instructions for that non-cash funds transfer.



Key features

- The service is provided to the person in the arrangement and is deemed to be provided each time the provider receives and transfers funds.
- Payment facilitation services may also be provided by one PSP to another PSP.

Examples provided by Treasury

- Merchant acquiring services
- Remittance services

Payment Technology and Enablement

Overview of definition

A person provides payment technology and enablement services where they take action to support or enable non-cash funds transfer, in particular by taking action to verify a person's identity to enable the non-cash funds transfer or they take action to transmit an instruction.



Key features

- These services are provided to the payer or payee involved in making non-cash funds transfers.
- Entities that perform these activities for other PSPs, and do not engage with the payer or payee (ie, 'back-end' service providers) are excluded.
- The provider provides the service each time they take the relevant action.

Examples provided by Treasury

- Payment gateways
- Pass-through digital wallets



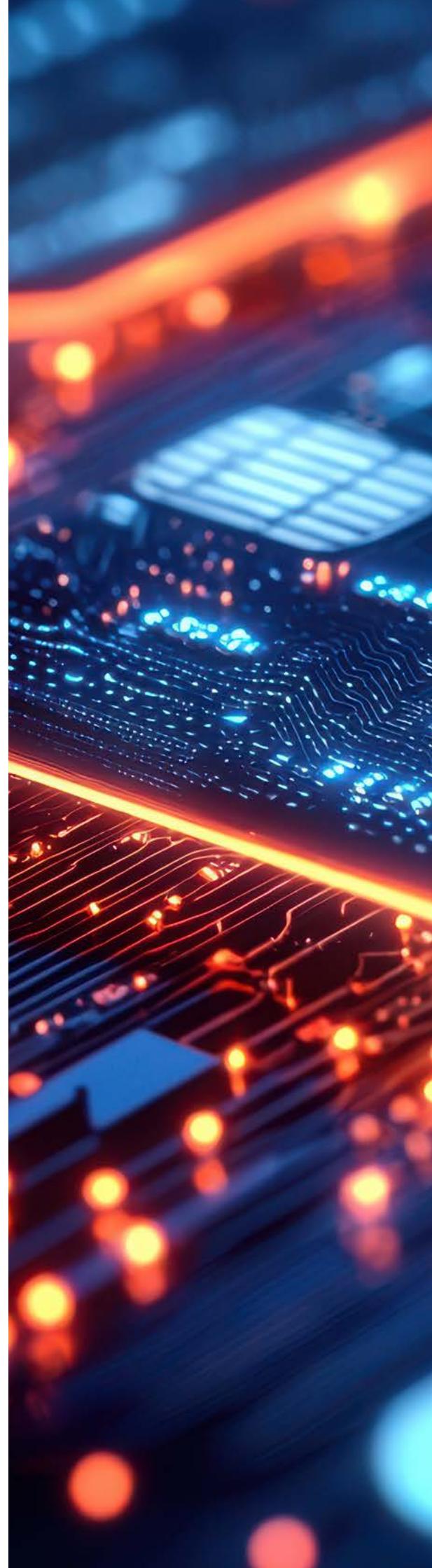
What don't we know?

The Draft PSP Legislation sets out the framework for the regulation of PSPs. However, significant detail is left to be developed as part of Tranche 1b and the following Tranche 2. In particular, while the general definitions of the new financial products and financial services are set out in the draft PSP Legislation, we have not seen the drafting of any specific exclusions that are otherwise contemplated in the Treasury materials.

In particular, while the Exposure Draft Explanatory Materials states that the exclusions and exemptions contained in Chapter 7 of the Corporations Act, that currently apply to NCPFs and related financial services will continue to have effect, *'changes will be made'* to *'either limit or clarify their application'*. On this, the drafting explanatory materials state that:

- the exclusions included in the definition of 'when a person makes non-cash payments' will continue for example the 'single payee facility' exclusion or licensing exemptions covering issuers and related bodies corporate; but
- the exclusion that covers 'electronic transaction facilities' (contained in regulation 7.1.07G of the Corporations Regulations 2001) will no longer apply.

Lastly, the Draft PSP Legislation also does not provide for the repeal of the purchased payment facilities provisions in the *Payment Systems (Regulation) Act 1998* (Cth) (**PSRA**). It is anticipated that this will be covered as part of APRA's powers and payment-related money in the Tranche 1b exposure draft legislation in early 2026.



The broader reform agenda - key takeaways

Some key areas of upcoming reform

The Exposure Draft Materials also describe the following to be introduced as part of the PSP reforms:

- **ePayments Code:** A Ministerial rulemaking power to enable the Minister to create a new, mandatory ePayments Code. It is proposed that this will require that the ePayments Code sets out core obligations for unauthorised transactions and mistaken payments. In the context of the government's scam prevention framework, the importance of addressing the role and scope of the ePayments Code is increasingly important to ensure harmonisation and certainty of regulatory obligations.
- **Safeguarding money:** New requirements to safeguard payment-related money to ensure security and availability of customer funds, including segregating payment-related money in a trust account with an Australian ADI (with some flexibility contemplated).
- **Unclaimed money:** A streamlined process for managing money held in inactive or dormant SVFs, including establishing criteria for determining inactivity, a legal pathway for the transfer of unclaimed funds to the Commonwealth and a process for individuals to identify unclaimed money.

Two sub-tranches of consultation - one piece of legislation

While the Draft PSP Legislation is the start of active consultation on legislative proposals (rather than consultation on the policy intent), there are a number of stages in the process and we won't see action on all aspects of the PSP reforms at once.

The Government is aiming to introduce a single package of Tranche 1 legislation in 2026, following consultation of the Tranche 1a and Tranche 1b proposals. The Government intends to further consider Tranche 2 reform elements from 2026 including common access requirements and the review and update of the ePayments Code.

What should you do to prepare?

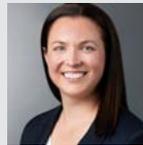
In considering the Draft PSP Legislation and surrounding materials:

- any service provider in the payments ecosystem should be considering the impact of the new financial product and financial services definitions. This includes those that already have an AFSL and those that do not;
- to the extent an entity is likely to be in scope, the impact of holding and AFSL and meeting the associated regulatory obligations or, for existing AFSL holders, extending regulatory obligations to new product and service types should be considered; and
- we expect that issues of stablecoins and digital asset companies operating in secondary markets will be particularly interested in the drafting and scope of the new proposed 'tokenised SVFs' as a financial product.

We recommend that any business that is involved in Australia's payments ecosystem is actively involved in the consultation process, whether directly or through relevant industry bodies.

Please reach out to the authors if you would like to discuss what the Draft PSP Legislation means for your business.

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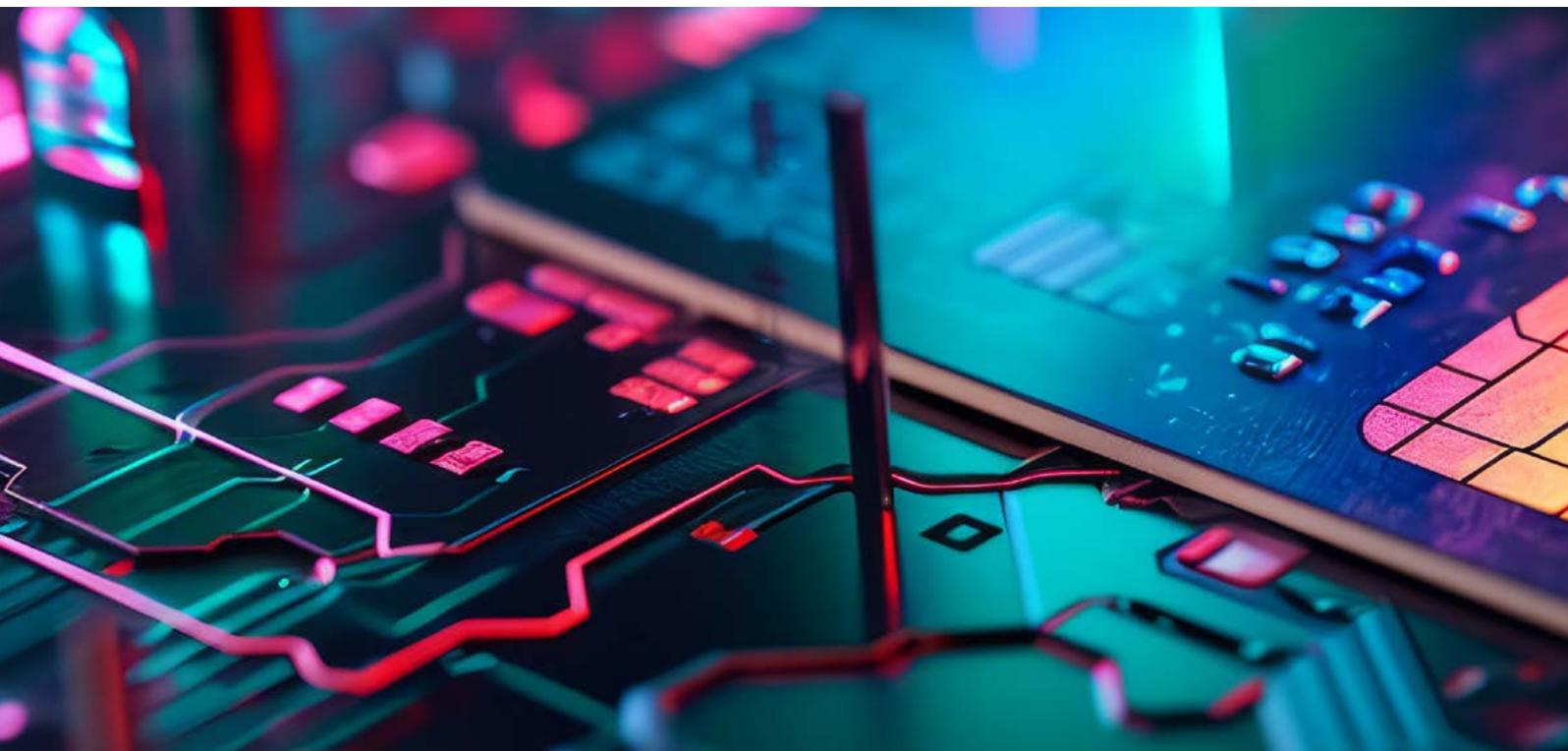
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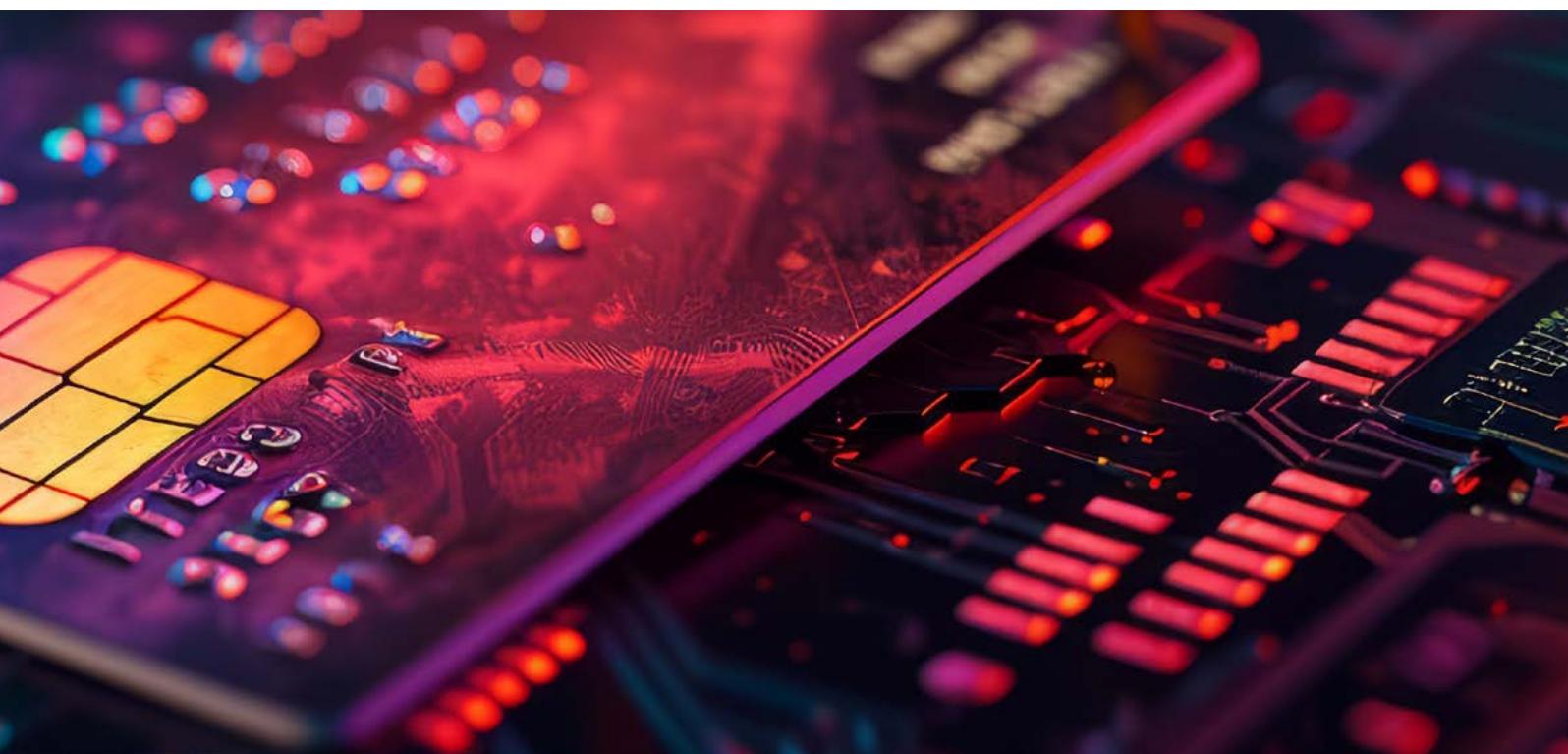
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