

# Mobile Payments Forum: “Cash, Checks or Cell phone?” *Consumer, Fraud and Money Laundering Risks*

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February 23, 2010



*A Broader Perspective*<sup>SM</sup>

# Are Mobile Payments Riskier for Consumers than Other Products?

## YES and NO

- **Yes**

- Funds accessed through a cell phone or PDA – not a branded credit, debit or prepaid card raises issues “Who’s Holding the Money” “What laws apply”?
- Linkage between the Mobile Payments and banking system less obvious
- Where are the Terms & Conditions? Where’s the Expiration Date?
- What if the cell phone is lost/stolen? How is the consumer protected?

# Are Mobile Payments Riskier for Consumers than Other Products?

## YES and NO

- **No**
  - It's simply a payment product in a different form – the underlying payment systems are still there.
  - The money is still held securely at a bank
  - The terms and conditions are provided when a user enrolls
  - Consumers are protected by contract, or by the bank card association rules

# Are Mobile Payments More Vulnerable to Criminal Misuse than Other Products?

## YES and NO

- **Yes**

- Funds could be accessed and moved through a cell phone or PDA – not a bank or card account requiring a Customer Identification
- Cell phones – especially prepaid cell phones that are purchased anonymously and reloaded with cash to pay for “minutes” – have been linked to criminal and terrorist activity
- Wireless communications can be intercepted, customer data can be breached, without stealing a wallet or breaking into a vault

# Are Mobile Payments More Vulnerable to Criminal Misuse than Other Products?

## YES and NO

- **No**

- Telecom carriers note that they often have more information about their customers than many banks
- Even for prepaid cell phones, carriers can track where customers are and to whom they make calls
- The funds are never “on the phone” but held at banks
- Communications are often encrypted to protect against theft
- Many cell phone payment products are offered jointly with banks
- Many cell phone payment products just provide a “wallet” that holds an existing credit card issued by a bank with all the same protections.

# Who's Right? It Depends.

- In many respects, these are simply access devices for pre-existing payment products
- On the other hand, these new products offer unprecedented new challenges, functions, and technology
  - Speedier transactions
  - Global functionality
  - New companies and players including carriers and prepaid phone companies

# Providing Legal Guidance in an Uncertain Legal Landscape

## Where to Start

- Look for guidance from the past
  - Prepaid Cards in a similar space 10 years ago
  - Any payment product that involves non-banks holding and transmitting funds will be scrutinized by state money transmitter regulators
  - Any payment products that involve banks working with non-bank marketers and sponsors will be subject to bank regulators' scrutiny

# Applying lessons learned to Mobile Payments

- Federal laws are important – but the states may move more quickly
- Laws develop to address perceived shortcomings – negative media coverage translates to more legislation
- A few bad apples CAN spoil the barrel
  - A few bad examples of misleading advertising or consumer losses hurts everyone
  - Publicized instances of criminal activity also creates demand for regulation
- Industry cooperation to monitor and react to legislative developments is critical

# Applying lessons learned to Mobile Payments

- Understand underlying flow of funds, data flows
- Basis of the entire system: Contracts
  - Carriers
  - Banks
  - Merchants
  - Consumers
  - Payment networks
- Disclosures
  - Critical – linkage to the world
  - Difficult – don't underestimate

# Applying lessons learned to Mobile Payments

- Risks
  - Money laundering and terrorist financing
    - Customer Identification is key
    - No easy way to see whether a cell phone is “just” a phone or includes payment functionality
  - Fraud
    - Waving a phone at a transponder avoids review of cards and signatures – speed helps criminals too
    - Concern about wireless technology and the ability of third parties to access
    - PINs are increasingly involved

# Applying lessons learned to Mobile Payments

Existing Laws which are likely to apply

- State laws
  - Abandoned Property
  - “Money transmitter” Licensing
  - Consumer protection – Fair advertising laws
- Federal laws
  - Privacy, GLBA and FCC
  - Anti-money laundering laws
  - Banking and deposit-taking
  - Patents, IP issues

# Qs & As

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