

Judith Rinearson

Female Speaker:

Hi everyone. It's great to be here. This is a really an amazing day of presentations about an area of the emerging payments industry that I just love. This is really an exciting time to be a lawyer in this phase, and that's what I'm here for. It's my lucky job to help companies who want to issue emerging payments, particularly in the mobile space. And I have to tell you, I was a little surprised at the comment that Roy made because I work with a lot of international companies that have successfully done this overseas, and they come and meet with me [laughs] and maybe it's just a, what I'm telling them, but they tend to be kind of surprised at how much regulation is already in this space. I never tell the clients that "Oh, this is all brand-new products, so don't worry there are no laws about it." There are plenty of laws.

Before we get into that, I wanted to start out, however, talking about some of the risk and some of the noise that we see in this space. I hope this doesn't pop up. Okay. Are mobile payments riskier for consumers than other products? And I always tell people yes and no. Here's some of the reasons yes is because well, you know, the funds come through a cell phone or PDA. It's not branded. People don't know where the money is. Is the linkage between the mobile payments and banking isn't always obvious. You know, I get this question, "Where are the terms and conditions?" You can't have a payment product in the United States without terms and conditions at least two or three or four fine print pages and then, you know, what if this phone is lost or stolen? Which seems to happen, I know for my teenagers, it happens all the time.

On the other hand, you know, this is why it's not clear, you know, there's not a lot of the certain unfounded fears and there's some founded fears out there. There's not a lot of clarity and we're here -- I think one of the nicest things about being here is learning from our colleagues overseas who have done this that there really is a lot of reason not to be quite so fearful in this space. It is really a payment product that's on a different access device. They're really already is payment system law in place. The money is held securely at a bank or, because we talked about this briefly, through a license money transmitter and we'll I can get to that a little bit later. But I just want to assure you that the states are watching this very carefully, and if there is a non-bank that is holding money anywhere in that transaction process they're going to want them to be licensed and while that money is being held, they want a hundred percent reserve, dollar for dollar, to cover those funds.

There are terms and conditions, usually when the consumer enrolls, usually they get it online the folks who have the mobile payments, they are very computer savvy. They often have access to all those terms and conditions, and they are protected by a Bank Card Association rules, which we heard about, by the contract rules, and by other existing laws.

Now, here's something that we haven't talked about that much today. And I noticed there didn't seem to be a lot of law enforcement people here. I am involved a lot in the

anti-money laundering world. And I can tell you I spent probably 70 to 80 percent of my time doing prepaid cards which is an area which gets people very nervous, especially in the law enforcement area. I've had at least two or three different FBI agents, Homeland Security guys say, "Well you know what? I really don't have to worry that much about prepaid. I know that I have to worry about cell phone payments, mobile payments." They're very nervous about these. And it's because, you know, there are cell phones that can be purchased anonymously. There are prepaid cell phones. And then there's all this worry about interception of wireless transmissions. What if it's unencrypted? So there are reasons to be concerned.

On the other hand, when you talk to guys in the mobile industry they'll say, "You know what? We really do know our customers. We probably know our customers better than most banks know their customers." I think we've heard that today as well. The funds, again, they're not on the phone. So when my teenager loses the phone, which she will definitely do, the funds are still at the bank. They're still protected. They're still -- communications are still encrypted. And many cell phone companies, they provide access to existing card products, just on a different space.

So, again, we're in the middle of a lot of change in this. The question of, who is right? Are these dangerous? It's always something as with everything in life. It's always a little bit of everything and that's why it's so important to get a group like this together to sort of hear the whole story, make sure we know the facts. I think the thing that we who represent the industry worry about is, anything that talks about legislation that's not really fact-based and it's not really based on what's happening where the data is.

I really want to spend a little more time -- when people come to my office say they want to launch a product in the United States any kind of payment product, you have to take a look at sort of what the framework is. I started -- I always look at the prepaid world because about ten years ago prepaid was similar. People thought it was a whole new thing. It really isn't that different from paper prepaid products. I started out as a Traveler's Check lawyer. And there's a lot of similarities between a Traveler's Check and a prepaid card if you think about it, or a money order, those other kinds of prepaid payment products.

So any time a product involves non-banks holding and transmitting funds, it's going to be scrutinized by the statement and transmitters and anytime it involves a bank working with a, we call them a program manager or a third party or a carrier, the banks regulators. You know, there are lots of already guidance out there, that's been out there for, you know, 10 years. Banks get audited and regulated over how they keep an eye on their third-party vendors and contractors. They have very severe due diligence obligations. And, you know, now and then you run into a time where maybe a bank, you know, was too trusting and, you know, the famous moula zoula [spelled phonetically] prepaid card criminal indictment was one small bank that was taken advantage of. But that is the exception and not the rule. Banks are very, very careful. Anyone who represents the non-bank trying to contract with the bank knows, you know, they want to see audited financials, they want to

see your AML compliance program, they want to see your OFAC screening program so, you know, just to -- once you have a bank in there, it really does make a difference.

Applying lessons learned, as I said before, federal laws are important. I have found, at least on the prepaid card world, the states did move more quickly. And I was very grateful for the fact that the Fed decided to hold off regulating prepaid back in the late '90s. But that did not stop the states, and that's why we have over a hundred different state laws in areas like abandoned property, consumer protection. Laws do develop to address perceived shortcomings. And that a couple bad apples can spoil the barrel. And this is where I'm talking to the industry here. When you have one set of misdeeds, when you have one particular entity that is, you know, price gouging, it effects the whole -- that starts the ripple effect, and it hurts the whole industry. And, of course, criminal activity, that's why we're, that's another reason why we're here and why we have to be very careful with who we're dealing with at all times. And then industry cooperation to monitor and react is critical as well. You know, the industry needs to work with the regulators and law enforcement because I truly believe my 13-year-old daughter she doesn't even want to carry a purse. She wants to carry nothing but her cell phone, and I'm convinced that really in 10 years this is what we're all going to be doing. Really I'm convinced [laughs].

So to get a new project started, to do a new program here in the U.S., there are certain things you have to know beforehand. These are the first questions I ask a new client. "Okay where's the flow of funds? Who's holding the money? When? What is the carrier's role? Do they have a role? What is the role of the banks? The merchants, the consumers, the payment networks?" And then one of the hardest things and people underestimate the difficulty of disclosures. The disclosures are really you're linkage between your payment product and the whole world. And it's not just the disclosures and the fine print, it's the packaging. It's on your website. And it is the difficulty of making these clear and understandable. It is easily underestimated, but that is -- we've heard this word transparency about a million times today. Transparency is so important in being fair, in being, you know, win-win for the consumer, for the industry, for the regulators.

Risks, you've got to be aware. And I have to admit, I'm a little surprised sometimes that I have run into non-banks or carriers in particular who I don't think, think about these things. That money laundering is really a concern in this area. Customer ID is key. And I thought it was interesting hearing about someone the passport photo was saved. There's no easy way to tell what is on a phone, whether it's just a cell phone or whether it's a wallet. I know that the law enforcement is worried about that when they are arresting someone. How do they know if this is a payment instrument or not? That's something we're going to have to work out. Fraud, there's always worry about anything that allows the transaction to be sped up. Is something that will make it easier to misuse, concerns about wireless technology. I think that, you know, end-to-end encryption is starting to be more the standard, but we need to make sure that we don't make it easy again to pick up transactions. And, of course, pins, or other kinds of authentication. I've got to have it in order to make this work.

And so when people come to my office and I have to tell them, well I have to tell them a little bit about abandoned property laws. That's one area that always surprises any company from overseas that they don't have to deal with the same thing. Money transmitter licensing, which is not uniform at all on a state-by-state basis and it's a very -- these are difficult, burdensome laws. On the other hand, I want to assure people that when you are dealing with a money transmitter, they're obligated to keep 100 percent of the funds, dollar-for-dollar, in permissible investments. Very highly secured investments. That is how you know that your money is protected, if you are dealing with a licensed money transmitter instead of a bank. And consumer protection, there is a state of laws already out there in terms of fair trade, fair advertising, and then both on the state and federal side.

Of course, we have the Federal laws, the privacy we've heard about, AML after money laundering, OFAC screening, banking and deposit taking to the extent that this falls into that category. Is it FDIC insured? Should it be? How is it on a password basis? And then, of course, anyone who's doing business in the U.S. has to worry about patents, intellectual property issues.

One of the interesting things that I saw, or heard today, was this discussion, and for me it was new. I don't know about the rest of you, on the role of a trusted service manager, a TSM. I thought that was fascinating. And I had two sort of views on it. But my first thought was, "Oh God another, you know, regulator. Another, you know, agency," but I've since had a chance to talk to a few people, and it sounds more like a standards organization or a consortium that should not add an extra level of regulation. I'm an optimist, so I'm going to view it that way. If it gets this industry moving, I think it might be a good thing to have. But I'm still going to wait and see a little more about it.

But as a final note I just want to add that these are, I think, very, very valuable products. I think that is the way of the future. I think they will benefit the underserved, the under banked, as well as the banks. I mean, I am looking forward to myself using these and my kids. I am worried about the difficulty in the payments area for everyone -- and we've heard a few references to this -- to make money. I mean, let's face it. You have to have revenues. You have to, you know, you're hiring people. You're providing protection for lost or stolen, customer service. These things cost money. And there are a lot of players in this space. And the more players there are, everyone has to have a little piece. And so these are expensive products to offer. They're wanted by consumers, but that makes me worry about not going overboard on the regulation side. There has to be a balance so that the public has them. They have access to these products. But in a way, that protects them, but leaving them as products that are still, you know, viable. We want economically viable products.

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