

# ACI's 9<sup>th</sup> National Forum on Balancing Innovation with Consumer Protections in Emerging Payment Systems

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## Ensuring Compliance with State Laws

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Tweeting about this conference?

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# Current Topics of Interest

Recent  
Enforcement  
Actions

“Agent of the  
Payee”

Consumer  
Protection

“Authorized  
Delegate”

Virtual  
Currency

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# Recent Enforcement Actions

## Penalties are Increasing

- 10 years ago, a fine of \$50,000 for offer money transfer services without a license was considered high.
- Now, fines of \$500,000 or even \$1 million are being levied
- No link to customer losses, criminal activity, intentional misconduct

## Innovators Often Cited

- Square, TouchPay, Skrill, Netspend, Bill.com, Qpay
- Action by one State often followed by actions in others



# Recent Enforcement Actions

## Source of Leads

- Competitors
- Cross-reference to new FinCEN registrations
- Customer complaints
- Industry news

## Evolving View of “Money Transmitter”

- “Holding oneself out” as providing the service
- Co-branding
- Ability to “instruct” payment, even if not holding funds

## Implications

- Uncertainty about what is and isn’t covered
- Potential for more regulation than necessary to protect consumers
- Potential to slow innovation in payments



# “Agent of the Payee”

## Long Considered not “Money Transfer”

- No “transmission” because funds received for payment and are considered received by payee when received by agent
- Bill payment a typical use case
- A few states explicitly exempted activity from money transmitter regulation, notably New York

## Trend Is to Regulate as Money Transfer

- More states now take the position that activity is “money transfer” unless specifically excluded
- Even where recognized, more scrutiny and expectations for express agency language in contracts and direct contracts with end point receiving payments
- California recently adopted statutory exception after Department of Financial Institutions raised questions

## Implications

- Activities not usually considered money transfer but payments could be subject to state regulation
- Most impact on new entrants and technology-based solutions



# Consumer Protection

Historically, Focus on Protecting Consumers' Funds from Insolvency of Money Transmitter

- Net worth, bonding, character & fitness, and permissible investment requirements
- States are requiring higher levels of net worth and bonding

Focus Now Includes Protecting Consumers from being Defrauded by Scammers Using Payment Services

- Money transmitters (and others) expected to have controls in place to identify and stop transactions where the sender is likely a victim of a scam
- Federal and State authorities see this as a priority
- Large fines and on-going monitoring of business

Implications

- Obligation on providers to police their networks
- If not done well, can adversely affect customer experience
- Scope extends beyond those subject to regulation as money transmitters



# Authorized Delegates (Agents)

Authorized Delegates do not have to be Separately Licensed

- Licensee has significant supervisory responsibilities and liabilities under Federal and State law
- Expectation is that delegate is carrying on the licensed activity of the licensee, not its own
- Allows for expansion of licensed services while limiting the regulatory burden

Stressing the Model

- Offering new services not under licensee's brand
- "Light" integration with licensee's systems
- Whose services do customers think they are receiving?

Implications

- Could reduce or eliminate "agent" model as way to enter the market
- Could slow innovation



# Virtual Currency

## New York Revised Regulation

- New regulation proposed in February after 3700 comments on first proposal
- Comments due 30 days after publication in New York Register
- Clarifies and limits scope, excluding gift and loyalty programs, software development, merchants accepting virtual currency
- Provides for “conditional license” for startups and small businesses that do not satisfy all licensing requirements
- Retains many of the strict licensing and other requirements of the 2014 proposal

## CSBS Draft Model Framework

- Issued in December 2014, comment period closed February 16
- Similar to, but less restrictive than, New York approach
- License for companies that transfer, manage or hold virtual currencies on behalf of consumers
- States to decide if they want to issue a special license or use current banking or money transmission laws

## Implications

- Until final regulations issued, licensing requirements will be unclear
- License in one or a few states will not provide national certainty
- Federal anti-money laundering laws likely to remain a significant factor
- Market forces may have more to say about future than regulatory action





# Bio, Disclaimer & Acknowledgments

Mike Rodin is Associate General Counsel at The Western Union Company.

His responsibilities include leading legal support for Western Union Digital (westernunion.com and other electronic and mobile channels) new products and mergers & acquisitions. Over the past several years, Mike has focused on the global expansion of Western Union's business in core money transfer, digital, and business payments.

Mike also has extensive experience in the formation and on-going support of joint ventures in a wide range of businesses in the United States and in other countries.

Before joining Western Union, he served as general counsel and regional counsel for bank holding companies, and was a partner in what is now K&L Gates, concentrating on corporate and securities matters.

Mike received his undergraduate degree from the University of Chicago and his law degree from New York University.

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