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February 13, 2012 • Issue 12:02:01

# Elavon versus Ciscero's dispute could have major repercussions

**C**isero's Inc., a family-owned small business that runs Ciscero's Ristorante and Good Times Bar in Park City, Utah, is going head to head against top-tier acquirer Elavon Inc. in the Third Judicial State Court, Summit County, Utah. And the firm representing Ciscero's? None other than Constantine Cannon LLP of "Wal-Mart case" fame. That class action, led by Lloyd Constantine, secured for merchants in 2003 the largest anti-trust settlement in history: \$3 billion.

It is not far-fetched to believe this case, which stems from fines assessed because of stolen card data used to commit fraud, could call into question the validity of merchant agreements devised by acquiring banks, operating rules and regulations promulgated by card brands Visa Inc. and MasterCard Worldwide, and the Payment Card Industry (PCI) Data Security Standard (DSS) itself.

## The background

In the spring of 2008, Visa and MasterCard, through a "common point of purchase" method, identified Ciscero's as the source of a data theft. The card companies deduced some cards that had been counterfeited and employed in fraud events had been used at Ciscero's beforehand, and they concluded the card data had been stolen from Ciscero's.

Visa claimed the alleged data theft from Ciscero's resulted in \$1.26 million in "actual fraud" and assessed hefty fines. U.S. Bancorp subsidiary Elavon, as is allowed under its merchant contract, attempted to pass the fines on to Ciscero's by deducting funds from the restaurant's merchant account. But after Elavon's withdrawal of \$10,000, Ciscero's closed the account and refused Elavon's demands for reimbursement. In May 2010, Elavon sued Ciscero's, complaining it had "suffered \$82,692.29 worth of damage through March 18, 2010." In August 2011, Ciscero's filed a counterclaim.

## Ciscero's point of view

Cissy McComb, owner of Ciscero's, said her bank, U.S. Bank N.A., and Elavon wrongfully penalized the restaurant and took money out of the restaurant's bank account for Ciscero's alleged violations of the PCI DSS. And in its countersuit, Ciscero's noted it had to accept Visa's and MasterCard's terms when it opened in 2001, because it could not survive without being able to accept the payment cards used by most of its customers.

The countersuit stated that when the contract was signed, Visa's rules were not available to merchants, and the PCI DSS was not even enacted. The countersuit also said Ciscero's merchant agreement was later "materially changed" without Ciscero's consent, yet Ciscero's was required to obey

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## Notable Quote

**While the largest banks focused on the issuing side, the ISOs made it all work, selling merchants on card acceptance and thereby enabling consumers to use their cards at merchants essentially everywhere.**

See story on page 40



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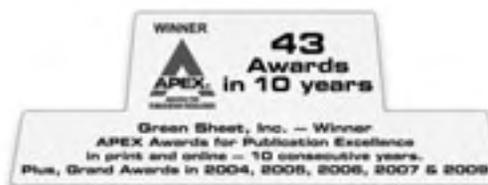
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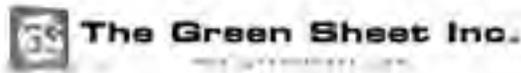
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# Forum



## From GS Online's MLS Forum

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### How to start over in the payments business?

Recently, GS Online MLS Forum member **JDECKARD** asked forum members what they would do differently and what they would do the same if they had to start from scratch in payments, knowing what they know today. Following are excerpts from the responses he received. To read all the replies, see the "Starting over ..." thread on the forum.

"You want to be the chicken, not the egg: hire, train, motivate, lead."

- SLEMMMA

"Move to a new area (think out of box). Go work for a company that pays upfront (less residuals). Try to save as much as you can. Get to a point that you can live for six months on savings. Renegotiate, residual only, and knock the freaking ball out of the park. Or, get a loan and start an ISO."

- JMATHIS

"I'd move to a resort town (or any relatively small town if that doesn't strike you as entertaining) and become the go-to guy for processing in that area. I'd find a good ISO that would give me a fair deal (no upfront moneys as it's a ripoff long-term, period) and had good support. I would focus on select clients and absolutely make it to where they couldn't possibly live without me from a service/product standpoint."

"Chasing \$20 a month accounts and losing them as fast as you sign them is for the birds. Focus on clients who are successful and don't begrudge paying you a fair wage to handle all of their payment needs. Work on finding additional products that add value to the merchant's business."

"I love running an ISO, but if I had it to do over, I'm telling you, one man/woman shop with a fair ISO is the way to go. I see the checks I cut and I know how much some of those guys don't work, lol. Dominate your area and don't be obsessed with putting 15 deals on the board, put up a smaller number with quality deals up and keep stacking it."

- JEH1003

"I still would probably do most of my sales over the phone. Driving all over the town/city/state/county is not my style - too expensive and a lot of wasted time. Phone sales may produce more noes - but you can contact so many more merchants, be available for support related issues, monitor boards (like GS) and much more."

"Additionally, after I was able to stand on my own fiscally, I'd focus on partnerships rather than individual sales. I started doing this about a year ago and built up a good number of POS and association partnerships since then. These relationships usually mean a few good accounts a month without any real 'work' (just follow ups, proposals and applications usually). Add in a little real work, it gets really easy to start boarding a lot of good accounts and push your numbers up."

- MBRUNO

"There are several considerations in starting in this business: 1) how much you have and 2) how much you need. Both will change your approach to how you rebuild. If you have six months of savings, you can pound the streets for sales and build a residual on a program with the highest split possible. If not, you will likely need some upfront 'boost' to fuel you each month and for that, you will likely give up some percent split or have to sell a value-add that has some upfront component to it."

"I would never underestimate the value of revisiting old accounts and asking for new leads - not to flip the old accounts - but to say, 'Hey, do you know five other owners I can talk to?'"

"Also, see if your ISO has a national association in their bag and ask for the leads in your area. I know in the past we've given out leads that were local to the ISO/agent for an association and also accounts that were direct buyout merchants but had since closed, so an ISO could get back on their feet quicker by revisiting those accounts."

"Definitely team up with your partners and the value-add companies to see what they can recommend."

- EMPIRE



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# QSGS

A quick summary of key articles in this issue to help keep you up-to-date on the latest news and hot topics in the payments industry.

Cover Story

1

## **Elavon versus Cisero's dispute could have major repercussions**

In 2008, Cisero's Ristorante and Good Times Bar allegedly experienced a data breach that resulted in Elavon Inc., the restaurant's processor, suing Cisero's for breach-related damages. Cicero's filed a countersuit, which may call into question the validity of merchant agreements, card brand rules and regulations, and the Payment Card Industry (PCI) Data Security Standard (DSS).

News

29

## **Visa says PIN unnecessary for EMV in U.S.**

The debate over data security took a turn when Visa Inc. issued a best practices document that claims implementation of the Europay/MasterCard/Visa security standard in the United States will not need both chip and PIN. According to Visa, you can forget the PIN because transactions will be processed online and in real time, eliminating the need for an offline, static PIN.

News

26

## **Will PayPal hit critical mass with recent deals?**

PayPal Inc. inked deals to deliver contactless payments in brick-and-mortar retail environments without the need for retailers to make expensive POS upgrades. If consumers only need a mobile phone number and a PIN to make proximity payments, maybe near field communication technology will become obsolete before it can be widely adopted.

Feature

33

## **N.J. unclaimed property ruling favors prepaid, sort of**

For many months, lawyers have been grappling with New Jersey's amended unclaimed property law designed to allow the state – for the first time – to seize unused balances on gift cards after dormancy periods have expired. A recent ruling made by a court of appeals hasn't completely settled the issue. In fact, it seems to raise as many questions as it answers.

News

28

## **Zappos.com hit with breach, lawsuit**

The latest big data breach occurred at Zappos.com, the online apparel retailer and Amazon.com subsidiary. Over 24 million customer accounts were compromised – allegedly the handiwork of one lone fraudster. A class-action lawsuit filed in Kentucky seeks financial damages. Now Zappos.com laments the damage done to its reputation.

Feature

34

## **nFinanSe, InComm wrangle over reload network**

A complex legal battle is underway between general-purpose reloadable prepaid card provider nFinanSe Inc. and prepaid card distributor InComm. The host of questions before the district court in Atlanta involve an alleged price-fixing conspiracy and the potential violation of federal anti-trust law.

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*- Shawn Dillon, Director of Sales*



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View

38

### The CPP exam - before, during and after

What was the inaugural round of testing for the Electronic Transactions Association's Certified Payments Professional certification like? Is the exam too difficult, too easy or just right? What kind of preparation is necessary? How can the exam be improved? These questions and more are answered in this article by one Green Sheet Advisory Board member who aced the exam.

Street Smarts

56

### Street Smarts<sup>SM</sup> Putting the right tools into your tool kit

Blue collar workers can't do their jobs without the right tools; neither can ISOs and MLSs. In the MLS world, tools mean whatever sellers can leverage to do better business. The referral list is one tool, a particular smart phone app is another. In the end, whatever tool works best for each individual sales agent is the right one.

View

40

### Big changes ahead

The traditional POS paradigm is being upturned. Taps on terminals are replacing card swipes and tablets are replacing terminals. But ISOs and merchant level salespeople (MLSs) need not be replaced as well. If the future is online and contactless, sellers should focus on service, not hardware, and become turnkey POS hosting companies for small merchants that cannot afford to do it themselves.

Education

62

### Strategic planning nuts and bolts

With the economy on a mild uptick, it may be time to revitalize plans for the future. The basis of that endeavor is the strategic plan - a living, evolving document that charts the path your business will take in the coming years. The plan marries tactics with vision to reach the place where you want to be, rather than the place you end up.

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Education

66

**Give your goals some oomph!**

Setting personal and professional goals is worthless if you don't hold yourself accountable to them. One secret to making goal setting meaningful is to invest emotionally in the outcome, which will spur you to detail the steps you need to take to reach that goal. Another secret is to assure that when you reach that goal, a big, satisfied smile accompanies the achievement.

Education

72

**Are your marketing materials compliant?**

The card brands not only have rules that govern interchange and data security, but they also regulate how merchant service providers market services, too. It is incumbent on sellers to adhere to these regulations, right down to the wording on company letterhead and business cards. The alternative means potential audits, penalties and fines.

Education

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**Turn no into knowledge**

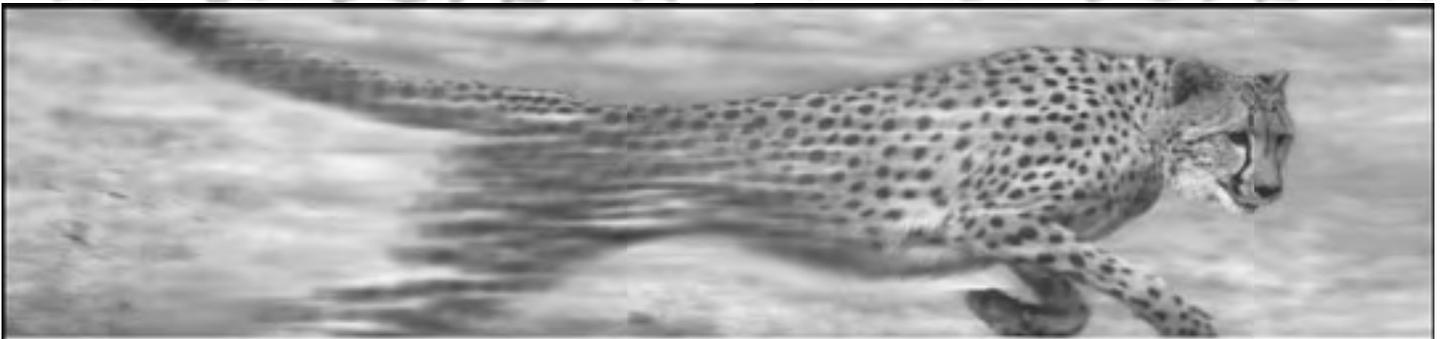
In your mind, the sale is complete. All that's needed is the mere formality of a signature on a contract. But then the merchant backs out of the deal. What happened? The painful post mortem of a sale gone wrong can illuminate what signs you missed and what mistakes you made. In this regard, a no is always an opportunity for growth and improvement.

Inspiration

81

**You, too, can become a CPP**

The first round of testing for the ETA's CPP program is complete, and over 80 percent of payment pros who took the exam passed. The next round of testing is coming up. If you want to take the next test, now's the time to prepare. The first step is to download the candidate's handbook at the ETA's website. The next step is to get busy.



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# IndustryUpdate

## NEWS

### MasterCard introduces road map to EMV

In January 2012, **MasterCard Worldwide** introduced its road map to Europay/MasterCard/Visa (EMV) adoption in the United States. The payments industry has expected MasterCard to introduce its own plan for EMV adoption ever since Visa Inc. revealed in August 2011 it would push for EMV here.

Visa's plan for U.S. EMV adoption removes the requirement that merchants annually validate their Payment Card Industry (PCI) Data Security Standard (DSS) compliance if they implement EMV technology and meet certain other requirements.

Visa merchants who haven't adopted EMV standards by October 2015 will be liable thereafter for any counterfeit POS card-present transactions they accept.

MasterCard spokesman Seth Eisen confirmed MasterCard will, with some nuance, be implementing the same incentive and reward program as Visa. "MasterCard is offering PCI audit relief," he said. "However, what MasterCard will do is take it a step further and provide incentives as merchants reduce their exposure to account data loss."

Eisen said MasterCard is not instituting a liability shift per se, though merchants who are counterfeit card vic-

tims will be held liable if they do not have EMV technology in place after the industry deadline.

"We have introduced a framework that accommodates a variety of options, including EMV and other advanced technologies, while encouraging increased security and increasingly making payments smart, safe and secure," he said. "In the road map, we've put a liability hierarchy in place that encourages greater security with both the issuer and the merchant."

MasterCard's EMV plan calls for working with acquirers to have the company's EMV infrastructure in place by April 2013. The company backs "current industry timelines" set by Visa for EMV implementation: retail merchants have until October 2015 to implement EMV; petroleum customers have until October 2017 to make the transition.

### T-Mobile to distribute Square readers

**T-Mobile USA Inc.** said it is now the first wireless carrier to offer **Square Inc.** credit card readers in a select number of its retail stores.

"The success of our small business customers is important to us," said Matt Millen, Vice President of Small and Medium Business Sales at T-Mobile. "Formerly 'cash only' small businesses can now simply and cost-effectively accept credit cards with their smart phone using Square, giving them an easy path to growth. As

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LINES

HEADLINES  
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- The **U.S. Census Bureau** estimated U.S. retail and food services sales in December 2011, seasonally adjusted, grew to \$400.6 billion, up 6.5 percent from December 2010.
- Survey results published in **The NPD Group Inc.**'s *E-Commerce Hot Topic* report revealed top purchase categories online in 2011 were books, stationery and office supplies (48 percent each); apparel and consumer electronics (46 percent each); and footwear (25 percent).
- A **Capital Access Network Inc.** *Small Business Credit Sales Report* stated the restaurant sector sustained five consecutive quarters of card sales growth; sales for the fourth quarter 2011 were 1.8 percent higher than the same period in 2010, with tickets averaging \$50 to \$100.

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## Industry Update

these businesses evaluate their wireless needs, T-Mobile is committed to providing quality of service, cost savings and connectivity that are a requirement for their success."

### EC wants input on payment integration

A new paper issued in January 2012 by the **European Commission** seeks to build on the work of the single euro payments area (SEPA) initiative to create a fully integrated market for card, Internet and mobile payments. SEPA is working on a European standard to allow smooth and unencumbered cross-border and domestic electronic retail payments in the European Union.

The EC paper looked at the obstacles hindering European market integration. Michel Barnier, the EC's Internal Market and Services Commissioner, said Europe could lead the world in payment innovation if the payments market were not so fragmented.

The EC is asking for comments from stakeholders who review the paper with an eye toward which obstacles hinder market integration and how these obstacles can be resolved. Responses to the paper are due by April 11, 2012. For more information go to: [http://ec.europa.eu/internal\\_market/payments/cim/index\\_en.htm](http://ec.europa.eu/internal_market/payments/cim/index_en.htm).

### W.Net President elected

**Marla Knutson**, President of Financial Institutions at payment processor TransFirst LLC, was elected President of the **Women's Network in Electronic Transactions (W.net)**, a professional organization for women in the payments industry. Knutson will work with a 14-member board of directors to develop W.net networking and outreach programs.

W.net said it surpassed its goals for 2011 with record-breaking numbers for membership and increased sponsorship and event participation. "We have some exciting plans for this year that will include a 2012 Advisory Council comprised of industry leaders, both male and female, which we believe will propel us to even greater growth in years to come," Knutson said.

Knutson promised more reliance on social media in 2012 to spread awareness of the professional development opportunities available to women in payments and to help members keep up with industry events and news.

W.net is also starting a career center to help women transition to employment in the payments industry without cost, while giving companies the chance to advertise career opportunities at a significant savings compared with other job boards.

## ANNOUNCEMENTS

### Alpha Card Services re-launches website

ISO **Alpha Card Services** revamped its corporate website. The company said the website was redesigned to better serve its growing number of merchants and partners. It also hopes the site will attract new website visitors. The site, [www.alphacardservices.com](http://www.alphacardservices.com), contains social media, search engine optimization content and interactive graphics.

### CO-OP Financial's milestone

Credit-union-owned EFT network and processor **CO-OP Financial Services** reported it processed more than 200 million electronic payment transactions during December 2011 – the first time the company exceeded 200 million transactions in a month.

Stan Hollen, the company's President and Chief Executive Officer, said reaching the milestone was a tribute to the demand for credit union debit and credit card services.

### CSRSI now CSR

**CSRSI, The Payment Advisors**, a data compliance solutions company known for its PCI ToolKit that simplifies PCI DSS compliance, changed its name to **CSR**, which stands for Compliance Solutions and Resources.



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## Industry Update

CSR Founder Ross Federgreen said the new name leverages the company's past while informing the public that the company is a provider of compliance solutions and resources.

### Datatel expands ISO program

Miami-based telephone payment solutions provider **Datatel Communications Inc.** expanded its ISO Partner Program to allow for new revenue areas through a wider portfolio of telephone payment solutions, more learning resources and advanced marketing tools. Datatel's Hosted IVR Telephone Payment Solutions accepts electronic payments by phone.

### EPS, Meritus Stevie Awards finalists

**Electronic Payment Systems LLC** and **Meritus Payment Solutions** are finalists in the sixth annual Stevie Awards for Sales & Customer Service. The Stevie Awards honor outstanding workplace performance. EPS is a finalist in both the Customer Service Team of the Year Recovery Situation category and the Customer Service Complaints Team of the Year category. Meritus is a finalist in the Customer Service Manager of the Year category.

### NCR introduces cloud-based POS

**NCR Corp.** introduced the first cloud-based POS software platform that allows retailers to manage transactions, track sales and inventory, process credit cards and market to customers on both POS touchscreen terminals and Apple Inc. smart devices. The new platform debuted at the National Retail Federation Annual Convention & Expo and will be available in early spring 2012, the company said.

### Payfirma mobile payment update

Canadian mobile payment company **Payfirma Corp.** released a new version of its mobile payment application. The app's new features reportedly focus on user efficiency, location awareness and real-time information in addition to doubling transaction speed in a sleeker design. Payfirma stated its customers will now have real-time transaction reporting and multiple language options.

### PDS debit-only payment product

**Payment Data Systems Inc.** introduced a debit-only card payment product. The product is targeted at churches and other organizations that prefer their congregations or customers not incur debt with their payments. Each organization offering the debit-only option must get permission from the card companies to offer the debit-only payment method.

### Priority gets AmEx OnePoint

Georgia-based payment processor **Priority Payment Systems** is now a certified servicing agent of **American**

**Express Co.**'s **OnePoint**, a select, all-in-one solution providing small to midsize businesses with statements, settlement and customer service for all major card brands.

### Sequent NFC for any app

**Sequent Software Inc.**, a provider of mobile near field communication (NFC) software and services, released **Core Card Services** for software application developers. The new program allows app developers to integrate NFC payments, ticketing, coupons, identification badge access and other features into their designs.

### Telepin passes 1 million mark

Canadian mobile transaction platform provider **Telepin Inc.** said it now has more than 1 million active merchants on its global network. The company now services more than 132 million mobile subscribers in the Middle East, Southeast Asia, Africa and the Americas. The company said it is processing more than 31 million transactions daily.

### VeriFone's busy month

In January 2012, **VeriFone Inc.** introduced its "next generation payment solutions" and added important new retailers to its list of mobile solutions customers. The company showcased its new technology and services at the NRF Annual Convention & Expo held in New York.

First up to debut was the VeriFone MX 900 series, the new addition to the MX line. On the mobile front, VeriFone released its latest versions of GlobalBay Mobile POS and retailing solutions that allow retailers to use smart tablets and mobile devices such as the Apple iPod Touch to the retail floor.

VeriFone reported the women's apparel store **C.Wonder LLC** and outdoor sports retailer **Eastern Mountain Sports Inc.** are using the solution and that its terminals will now work with Google Wallet at thousands of top retailers.

VeriFone also introduced **HQ**, an estate management solution that allows retailers to rapidly deploy new payment technologies like smart card and mobile wallet applications, social commerce applications and digital content. VeriFone HQ is a cloud-based solution that will be available later in 2012.

## PARTNERSHIPS

### Equinox, Voltage Security, Merchant Link partner

Payment processors and security vendors **Equinox Payments LLC**, **Voltage Security Inc.**, and **Merchant Link** collaboratively created a cloud-based payment solution to protect POS payment data. Equinox's



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## IndustryUpdate

payment terminals were combined with Voltage SecureData Payments solutions and Merchant Link's TransactionVault tokenization and payment gateway. The system was created for Columbia Sportswear Co. and should be in all its stores by spring.

In other news, **TransFirst LLC** will market Equinox Payments' high security M4230 mobile payment terminal to TransFirst's more than 170,000 U.S. customers.

### First Data, SunTrust Banks renew partnership

Payment processor **First Data Corp.** and **SunTrust Banks Inc.** renewed their merchant services partnership agreement, **SunTrust Merchant Services LLC**. The partnership provides for the needs of 67,000 merchant locations and does more than \$29 billion in processing every year.

### PayLane now an AmEx partner

Online payment processing provider **PayLane Group** is now a certified **AmEx** partner allowing PayLane clients to accept AmEx cards without having to apply for a merchant account with another acquiring bank. PayLane said its clients will now have lower fees and simpler account opening procedures as a result of the partnership.

### tekservePOS teams with Motion Computing

POS technology and information technology solutions provider **tekservePOS** is partnering with **Motion Computing Inc.**, a mobility solutions provider for tablet PCs, on a complete mobile retail POS solution. The companies promise the new product will improve efficiency, increase profitability and provide a competitive advantage for their customers.

In other news, Motion Computing said it is partnering with electronic payment security technology provider **MagTek Inc.** to launch the MagTek QwickPAY for the Motion CL900 SlateMate terminal.

The companies said the combined technology can lower the cost of accepting cards as much as 30 percent for merchants by allowing them to accept both credit and signature debit sales.

### Voltage, Ingenico partner on POS security

Encryption and key management company **Voltage Security** and payment solutions provider **Ingenico S.A.** partnered on an end-to-end POS data protection solution. Voltage data protection technology is now included with the new Ingenico Telium terminals.

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## ACQUISITIONS

### FIS increases mFoundry investment

Mobile banking and payment solutions provider **mFoundry Inc.** said banking and payment technology provider **Fidelity National Information Services Inc.** (FIS) recently increased its investment and ownership holdings in mFoundry. FIS and mFoundry have been working together on mobile banking solutions for the past several years.

## APPOINTMENTS

### Ayala, Hyun elected to WSAA

**Xavier Ayala**, formerly an executive with Moneris Solutions Inc., was elected Vice President of the Western States Acquirers Association. **Mobius Payments** Founder **Mia Hyun** was elected a new WSAA Director.

WSAA also has two new advisory board members: **Patrick E. Ford**, Senior Vice President of Client Relations for Total Systems Services Inc. (TSYS) Acquiring Solutions, and **Linda Grimm**, CSR Director of Consulting Services.

### Spindle taps three for executive team

Mobile commerce and alternative payment solutions company **Spindle Inc.** named its new executive team following the acquisition of **Spindle Mobile** by **Spindle Inc.** Former **Spindle Mobile** President **Bill Clark** was named the new President. **Thomas DeRosa**, who has 30 years' experience in technology management, was named Chief Architect and Technology Officer.

**Kevin McNish**, who helped develop a number of patented technologies at **First Data Corp.**, was appointed Vice President for Product Development.

### Clark goes to Cardtronics

**Cardtronics Inc.** said former **First Data** Senior Vice President and General Manager **Todd Clark** joined the company in the newly created position of Senior Executive Vice President, Sales and Relationship Management Group. Clark will report to CEO **Steve Rathgaber**.

### USA Tech appoints board members

**USA Technologies Inc.** appointed **Steve G. Illes**, an entrepreneur and investor, and **Frank A. Petito III**, **Orbitz Worldwide Inc.** Senior Vice President of Corporate Development, to its board of directors. The two men are filling vacant seats. The company still has one board vacancy to fill.

### TSYS adds Jones, Machold to executive team

**TSYS** appointed **Dennis Jones** Group Executive of Business Operations, **TSYS International**, and made **Rick Machold** **TSYS** Group Executive, Assistant General Auditor. Jones' long payments industry experience includes time as President of the **Neteller** Division of **Optimal Payments**. He will oversee account migration, data center and facilities, and customer care and production support operations.

**Machold** has spent 26 years working for several leading U.S. payment providers. He will perform independent reviews and evaluations of the company's operations, information systems, controls, major business processes and reporting functions, and make recommendations to management.

### Logan moves to CPP

**Michelle Logan** joined **Certified Payment Processing L.P.** as Director, Learning and Development. Logan ran her own company before joining **CPP**. She also once served as the Senior Director of Learning for **First Data**. Logan will be responsible for planning, initiating and managing **CPP's** professional development programs. ■

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## Will PayPal hit critical mass with recent deals?

**P**ayPal Inc., the payment arm of eBay Inc., isn't waiting for the development of near field communication (NFC) or Europay/MasterCard/Visa (EMV) infrastructures to revolutionize payment paradigms for U.S. retailers and consumers.

For instance, AJB Software Design Inc. said in January 2012 it will introduce PayPal payment options to its more than 140 customers (many of whom are tier-one retailers) and their more than 250,000 POS terminals.

PayPal's cloud-based, Internet protocol-enabled solution involves a POS application programming interface that allows AJB retailers to offer customers the ability to pay with a PayPal payment card or by using PayPal's Empty Hands solution, through which users enter mobile phone numbers and PINs at the POS, with no new infrastructure costs or technology upgrades required by merchants.

***"Let's be clear about something - we're not just shoving a credit card on a phone. PayPal is re-imagining money and making it work better for merchants and consumers - whatever device you're on, wherever you are in the world, and however you prefer to pay (whether that's cash, credit or installments)."***

Scott Thompson, former President of PayPal Inc.

AJB is also building a PayPal interface into its payment solutions platform, Retail Transaction Switch. AJB hasn't disclosed which retailers will be offering the service, but it boasts a customer base that includes "25 of North America's top 100 companies by 2006 sales volume" and "nine of the world's fastest growing merchants."

The AJB-PayPal rollout will be operational by the end of the current fiscal quarter, an AJB spokeswoman confirmed.

### Critical mass

Consumers having the opportunity to use the PayPal

solution at some of the largest U.S. retailers that operate in a variety of retail environments, including clothing, department stores, electronics stores, oil and gas, restaurants, sporting goods and toy stores, means PayPal will have the opportunity to reach what payments consultant Paul Martaus calls critical mass.

"Critical mass in this context means when there is enough buzz, knowledge and awareness on the part of consumers that the technology has the opportunity to go from curiosity to adoption," said Martaus, President of Martaus & Associates.

"The test I've applied over 30 years of watching transaction technology in this business is the 'better, faster, cheaper test.' If you have two out of the three, if something provides the consumer with a better, faster and/or cheaper service, it is likely to be adopted."

The question is whether PayPal meets this test, according to Martaus. But the partnership looks promising to him. He said, "250,000 terminals may not be a lot of terminals when you consider there are 6 million terminals out there, but these are tier-one merchants and tier-one merchants provide 90-plus percent of all transactions submitted for closure."

Martaus pointed out that less than 4 percent of retailers have installed NFC readers at the POS. He believes the push to introduce NFC and EMV in the United States will not curb PayPal's inroads into the retail payments market because PayPal doesn't require that technology to offer retailers proximity payments. Additionally, PayPal's popularity continues to grow. In its recent quarterly report, eBay said PayPal is adding 1 million accounts per month.

In September 2011, before Scott Thompson resigned as president at PayPal to join Yahoo! Inc. as Chief Executive Officer, he said in a PayPal blog, "Let's be clear about something - we're not just shoving a credit card on a phone. PayPal is re-imagining money and making it work better for merchants and consumers - whatever device you're on, wherever you are in the world, and however you prefer to pay (whether that's cash, credit or installments)."

Thompson said PayPal's goal is to allow customers not to have to stand in line to make purchases. He added that PayPal technology also offers consumers the ability to decide how they want to pay, arrange for payment installments instantly if needed and use any smart device to make payments - and it gives customers the ability to change how they pay even after they've checked out.

## POS penetration

Recently, PayPal entered a pilot with Home Depot U.S.A. Inc. to test PayPal's new POS service. Don Kingsborough, PayPal's Vice President of Retail and Prepaid Products, stated in a Jan. 26, 2012, company blog post that the trial is expanding to 51 stores – 44 in Northern California, six in Omaha, Neb., and one in Atlanta – and that PayPal has invited nearly 500,000 customers to participate in the pilot. PayPal reportedly intends to expand the service to 2,000 Home Depot locations by March 2012.

Russ Jones, a partner with consulting and research firm Glenbrook Partners LLC, tried the solution at a Home Depot store. He summed up his experience in a Glenbrook blog published Jan. 20. "I felt that paying without having to take anything out of my wallet was nice, and I liked it in a subtle but pleasing way," he wrote. "Now that I think about [it], I don't know why anybody would want a PayPal card if they can use PayPal Empty Hands. ... I'm pretty sure that I'll be using PayPal for every one of my purchases going forward at Home Depot."

Karen Webster, CEO of technology consulting firm Market Platform Dynamics, wrote in the January 2012 issue of *The Lydian Payments Journal* that the biggest hurdle PayPal faces is merchant penetration. However, she said PayPal drove \$56 billion in retail payments in 2010.

Webster noted that PayPal's solution is a "versatile approach to solving POS acceptance for consumers and merchants, leveraging what consumers and merchants have available to use today, including 100 million (and growing) populated wallets.

"Their solutions are also handset and carrier agnostic, which is a big plus. There are already too many moving parts in the mobile payments space to orchestrate. Eliminating this one is pretty huge."

Regarding PayPal's retail integration, Ingenico S.A. and PayPal established a relationship to enable merchants with Ingenico POS devices to accept PayPal payment options. And Ingenico has already begun integrating PayPal's payment card solution into its legacy Unicapt32 platform POS devices and new generation of Ingenico Telium 2 series POS devices.

In a Jan. 17, 2012, statement about the partnership, Ingenico said, "Given the vast installed base of Ingenico's devices in the United States, the company will integrate and support PayPal on both of its platforms. The integration will allow merchants with Ingenico's i6xx series and iSc250/iSC350 devices to accept both PayPal's payment card and its alternative mobile phone number and PIN payment solutions." 

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## Zappos.com hit with breach, lawsuit

**O**nline fashion retailer and Amazon.com subsidiary Zappos.com revealed in on Jan. 15, 2012, that over 24 million of its customer accounts were breached. Zappos.com said a fraudster was able to obtain names, email addresses, billing and shipping addresses, phone numbers, the last four digits of credit card numbers listed with accounts, and encrypted passwords.

A class-action lawsuit on behalf of Zappos.com customers was subsequently filed Jan. 16, 2012, in the Western District of Kentucky in Louisville.

Tony Hsieh, Zappos.com Chief Executive Officer, emphasized that the database where credit card and other payment data is stored was not breached. "We were recently the victim of a cyber attack by a criminal who gained access to parts of our internal network and systems through one of our servers in Kentucky," he wrote to employees and customers following the breach. "We are cooperating with law enforcement to undergo exhaustive investigation."

Zappos.com disconnected its customer service phone lines following the breach, electing to answer customer inquiries into the breach only by email. Hsieh explained, "We have made the hard decision to temporarily turn off our phones and direct customers to contact us by email because our phone systems simply aren't capable of handling so much volume. (If 5 percent of our customers call, that would be over 1 million phone calls, most of which would not even make it into our phone system in the first place.)"

Zappos.com urged customers to change passwords on its site and on any other sites where they use the same passwords. "We've spent over 12 years building our reputation, brand and trust with our customers," Hsieh said. "It's painful to see us take so many steps back due to a single incident. I suppose the one saving grace is that the database that stores our customers' critical credit card and other payment data was not affected or accessed."

### Repercussions

The class-action lawsuit filed in Kentucky said the breach not only forced customers to take the time to reset passwords on Zappos.com and on other sites, but it also represented an invasion into customer privacy that may have future repercussions. "[P]laintiff and class members now face a greater risk of identity theft – including, but not limited to, identity theft from 'phishing' and 'pharming,'" according to the suit.

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The complaint charges Zappos.com with willful and negligent violation of the Fair Credit Reporting Act, along with negligence and invasion of privacy by public disclosure of private facts. The class action seeks compensation for customers who, among other things, lost the use of passwords and must deal with credit monitoring and identity theft insurance issues, as well as damages for anxiety and emotional distress caused by the breach.

The complaint also asks for other damages to punish Zappos.com's alleged wrongful conduct and a requirement that Zappos.com submit to periodic compliance audits to ensure cardholder data security is maintained.

When reached for comment, Zappos.com Senior Public Relations Director Diane Coffey said, "We are aware of the lawsuit. Our company policy is not to comment on pending litigation. Every single department in our company is currently focused on assisting customers." At press time, plaintiff attorneys had not responded to requests for comment. ■

## Visa says PIN unnecessary for EMV in U.S.

**I**n its push for the adoption of Europay/MasterCard/Visa (EMV) chip cards and near field communication (NFC)-enabled mobile payment devices in the United States, Visa Inc. released a set of best practices designed to clarify issues that concern EMV. One popular myth Visa seeks to dispel is that EMV will require personal identification numbers (PINs).

"There's a lot of confusion around the myth that EMV means 'chip-and-PIN,'" Stephanie Ericksen, Visa Head of Authentication Product Integration, said in a blog published Jan. 13, 2012. "It doesn't in many countries, including the U.S. That's because, in the U.S., we can rely on online processing where transactions are transmitted in real time to the issuer for approval. With that in place, there's no need for the offline authentication that was the genesis of chip-and-PIN."

Ericksen said because the United States will be a late adopter of EMV, it can avoid many of the costs and complexities of EMV implementation around the world and yet still receive the benefits of reducing fraud. Ericksen believes the key to EMV in the United States is to "implement a streamlined, online-only version of EMV chip."

"Our telecommunications system means we can rely on online processing that is fast, and where transactions are routinely analyzed with our real-time fraud scoring system prior to issuer review," Ericksen noted. "By adding the dynamic cryptogram of the EMV chip to online authorization, we'll increase transaction safety even more, yet

without the more complex and expensive cards, terminals and processing capabilities that are needed to support offline authorization."

### Static authentication supported, not the best

Visa will continue to support a number of static authentication methods after EMV is introduced, Ericksen wrote. The cardholder verification methods that will continue to be supported include signature, online PIN and no-signature for low-value transactions.

"In the longer term, we expect the industry will reduce or even eliminate its use of static verification methods, such as signature and PIN, in favor of new and dynamic forms of cardholder verification," she added, noting that online PIN entry devices must comply with the Payment Card Industry Data Security Standard.

Randy Vanderhoof, Executive Director of the 180-member nonprofit Smart Card Alliance, agreed that PINs need not be part of EMV verification. "The problem with static PINs is they can be copied or wormed and used to commit fraud much like the fraud we have today with cards without PINs," he said. "PINs are not a great solution."

Vanderhoof advocates for a "more dynamic card verification method" that would make it impossible for thieves to access accounts via skimming and phishing scams. "Static authentication methods remain vulnerable to replay attacks," he said, adding that the creation of dynamic authorization will be an important part of the payments industry. He called EMV a "starting point" in the United States' effort to curb card cloning and counterfeiting.

MasterCard Worldwide's own push for EMV adoption in the United States is "forthcoming," Vanderhoof said.

### Recommended practices

Visa's best practices document, *Recommended Practices for EMV Chip Implementation in the U.S.*, stresses "all chip transactions should leverage the...infrastructure for authorization and authentication" because nearly all U.S. transactions are authorized online in real time. The card brand said its EMV specifications are specifically tailored for the U.S. market.

Visa added, "There are many options for additional complex functionality in the EMV specification, including offline authentication, offline cardholder verification and offline authorization, which are not necessary for chip technology implementation in the U.S."

Among Visa's recommendations for acquirers, acquiring processors and merchants implementing EMV are:

- Adopt chip technology "early"
- Ensure that merchants can send complete chip data to acquirers

## News

- Deploy chip-enabled, dual-interface terminals supporting contact chip, Visa payWave and mag-stripe interfaces
- Use the latest version of the Visa contactless payment specification
- Enable the Visa smart debit/credit acceptance product and mag-stripe data features
- Support the acquirer device validation tool kit and device module, as well as the contactless device evaluation tool kit
- Configure EMV terminals to only support online options
- Guarantee that POS environments support online PIN verification if merchants choose to support PINs in addition to other card verification methods

The best practices document can be accessed at [www.blog.visa.com/wp-content/uploads/bulletin-chip-recommended-practices1.pdf](http://www.blog.visa.com/wp-content/uploads/bulletin-chip-recommended-practices1.pdf). 

## A European perspective on U.S. EMV

**A** recent white paper issued by Dutch international digital security firm Gemalto N.V., a strategic partner of VeriFone Inc., gives a European perspective on the drive to introduce the Europay/MasterCard/Visa (EMV) chip technology to the United States. The free paper, titled *The Migration to EMV Technology – EMV Implementation in the U.S.*, discusses the importance of Visa Inc.'s EMV push in the United States and looks at the consequences and costs of EMV implementation here for merchants and issuers.

VeriFone and Gemalto are working together on new chip-card solutions and technology for U.S. retailers and card networks.

### Visa forces issue

The paper acknowledged Visa's effort to promote EMV. Visa said in 2011 it would bring its Technology Innovation Program (TIP) to the United States beginning in October 2012. Under the TIP program, eligible merchants will no longer have to validate Payment Card Industry (PCI) Data Security Standard (DSS) compliance in any year in which at least 75 percent of the merchant's Visa transactions originate from chip-enabled terminals.

To be eligible for this cost-saving TIP benefit, terminals must support both contact and contactless chip acceptance, including mobile near field communication technology. Merchants must also still comply with the PCI DSS.

"With this announcement from Visa, the United States payments landscape is no longer a future of magnetic stripe technology, but one of EMV chip technology and contactless and mobile payments," the paper stated.

### Benefits

Gemalto pointed to a number of merchant and acquirer benefits when the switch to EMV technology is made – not the least of which is fraud prevention. The encryption embedded in the EMV technology makes captured data worthless to criminals.

"When [card not present] fraud is included in the equation, the picture gets even more attractive for the merchants," the paper said, noting that fraud concerns are among the most compelling reasons for moving to EMV technology. "It is the consensus among observers ... that physical world fraud in the U.S. is already above the global average today and is on the rise. The lessons learned from the many migration activities worldwide clearly indicate that fraud migrates toward those regions which have not yet migrated to EMV technology."

The introduction of EMV will also make U.S. payments compatible with payments in the rest of the world, meaning when U.S. citizens travel they will be able to use their credit and debit cards virtually anywhere.

### Implementation

Gemalto endorsed Visa's request to issuers and merchants to move at the same pace as they begin EMV implementation. "The stakeholders are well advised to consider forced replacements of cards and devices outside of the normal replacement cycles," Gemalto said in the report. "The additional investment has a clearly identifiable return."

"It is even more important to initiate the migration of the ATM-installed base synchronously with the cards and devices. If ATMs are not made EMV compliant in sync with the POS devices, the life of the magnetic stripe technology will be prolonged, and ATMs become the single point of failure (or fraud for that matter) in the card payment system."

Gemalto believes contactless and mobile payments are the industry's future but it noted the "bulk of the hardware and software upgrades are still in front of the industry in order to make contactless and mobile payments a success. It would only take a small incremental investment to also provide EMV contact transaction capabilities in these new devices and thereby open up the U.S. acceptance infrastructure for the globally accepted EMV standard.

"Because of lower costs of terminals and cards, as well as Visa's TIP program, migrating to EMV will be easier and less costly than it was even a few years ago," Gemalto said. 

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# Selling Prepaid



## Prepaid in brief

### NEWS

#### Dec. 2011 gift card stats double 2010 numbers

Gift cards continue to gain popularity as a holiday gift giving staple. **First Data Corp.**'s *SpendTrend* analysis of gift cards for December 2011 showed that reload dollar volume on open-loop, network-branded gift cards grew 47 percent and transaction volume rose 50.9 percent over December 2010. Reload transaction growth at specialty retail merchants posted a yearly high of 5.2 percent, as consumers reloaded previously-used gift cards to support holiday spending, First Data said.

#### Power players pilot prepaid electricity metering

Smart meter technology firm **PayGo Electric** entered a pilot program with utility company **Georgia Power** for prepaid electricity metering in Georgia. PayGo's technology utilizes the mobile telecommunications infrastructure to allow consumers to reload prepaid electricity accounts via smart phones, and therefore eliminate the need for them to travel to retail locations to reload accounts via self-service kiosks.

#### Guns swapped for gift cards in Delaware

A recent gun buyback program administered by the **Delaware Department of Safety and Homeland Security** in conjunction with **Canaan Baptist Church** and **Ezion Fair Baptist Church** in Wilmington, Del., was so successful that all \$100,000 worth of Visa Inc.-branded, open-loop gift cards allocated for the program were exchanged for guns. More funds were requested from the state to satisfy citizens' demand to exchange guns for gift cards. Over 2,000 weapons were reportedly collected and earmarked for destruction.

### ANNOUNCEMENTS

#### Bancorp backs Approved Card

The **Bancorp Bank**, the lead banking subsidiary of The

**Bancorp Inc.**, became the issuing bank for **The Approved Card**, a MasterCard Worldwide-branded prepaid card backed by celebrity financial guru **Suze Orman**. The bank said it agreed to issue the card because its fee structure aligned with the bank's consumer-friendly values.

#### BillMyParents' SpendSmart hits milestone

Less than a year after **BillMyParents Inc.** launched the SpendSmart MasterCard, the teen payments facilitator reported over 1 million purchase alerts had been either texted or emailed to parents when their teenage children transacted with the prepaid card.

#### ElectraCard launches next-gen products

Pune, India-based **ElectraCard Services** rolled out electraPrepaid 3.0 under its next generation iTx product series. The iTx series offers a feature-rich, best-in-class product with integrated middleware **electraWIRE**, **electraVIEW** for event-based monitoring and **electraMAP** for faster interface development with Payment Application Data Security Standard compliancy, according to ElectraCard.

#### InsurCard quickens workers comp payments

Citing an announcement by the U.S. Postal Service that it will close over 487 post offices, **InsurCard** said mail delivery will slow down in the affected areas, and injured workers waiting for workers compensation checks to arrive will have to wait longer. As a solution to that dilemma, InsurCard touts payments loaded on the InsurCard Visa Prepaid Card, which reportedly ensures timely payments, improved cash flow and reduced insurer check costs.

#### OpenMotion unveils kiosk at NRF

**OpenMotion LLC**, a digital and mobile marketing solutions company, demonstrated the ConnectNow Custom Gift Card Kiosk at the National Retail Federation's 101st Annual Convention & EXPO held in New York. The kiosk allows customers to create and dispense personalized, retailer-specific gift cards.

#### Citi Ventures funds Plastic Jungle

Gift card exchange operator **Plastic Jungle Inc.** received a strategic investment from Citi Ventures, a unit of global financial services company Citigroup Inc. The undisclosed amount of funding will be used to accelerate Plastic Jungle's growth and innovation, said Plastic Jungle Chief Executive Officer **Bruce Bower**.

### PrepaYd Wireless opens first Express

PrepaYd Inc. subsidiary **PrepaYd Wireless Inc.** opened its first retail Express location in the Westminster Mall located in Westminster, Calif. The Express location – a standalone retail cart rather than a retail storefront – allows for the sale of prepaid phone services, such as account activations and top ups.

### Gift card auction site offers discounts

Gift card auction **YouNeverLose.com** went live with its service that allows users to bid on gift cards and potentially win discounts of 90 to 95 percent on gift cards with denominations ranging from \$25 to \$100. YNL said it leverages aspects of penny auction sites, but that its users never lose money.

### Top-up kiosks piloted in Budapest

The Hungary division of mobile telecommunication company **Vodafone Group PLC** deployed Sicap mobile money kiosks at Vodafone Hungary Inc.'s Smart Store on Fashion Street in Budapest. Vodafone prepaid phone users can use the kiosks to top up prepaid accounts. Vodafone said the Sicap kiosks will be embedded with near field communication (NFC) technology to allow for contactless transactions.

## PARTNERSHIPS

### New tandem for tax season

Prepaid card provider **AccountNow Inc.** struck a deal with tax preparation software company **ezTaxReturn.com** to provide tax refunds on prepaid cards. The companies said taxpayers can receive refunds on the cards as few as eight days after filing returns.

### Cash, prepaid converge with alliance

A partnership between surcharge-free ATM network operator **Allpoint Network** and prepaid card processor **TxVia Inc.** resulted in Allpoint Network access being added to the menu of third-party services offered by TxVia to its program manager (PM) clients. PMs can now offer ATM access to consumers via prepaid cards, the companies said.

### Obopay, Warid Telecom to serve Uganda

Mobile payment technology firm **Obopay** collaborated with Abu Dhabi, United Arab Emirates-based **Warid Telecom (Pvt) Ltd.** to launch Warid Pesa, a mobile banking and payment service in Uganda. The companies said Warid Pesa represents a new financial service distribution channel to unbanked Ugandans.

### Plastyc, Green Dot team for cash loading

**Plastyc Inc.**, operator of the UPSide Visa prepaid card,

said its cardholders can now load cash onto their cards at over 6,500 7-Eleven Inc. stores via **Green Dot Corp.**'s Swipe&Load technology. The technology embedded into POS systems allows cashiers to swipe and load the cards at the POS in exchange for cash.

## APPOINTMENTS

### APPPA names leaders

**Gustavo M. de la Garza Ortega**, founder and President of Mexico telecommunications company Grupo Marcatel, was elected Chairman of the newly formed American PrePaid Phonecall Association. **Pete Pattullo**, CEO of cloud-based prepaid services company Network Enhanced Telecom LLP (doing business as NetworkIP), was elected Vice Chairman. And **Gene Retske**, retired editor of *The Prepaid Press*, will serve as Executive Director and oversee day-to-day operations.

### Green Dot reorganizes

Following the resignation of Mark Troughton, President, Cards and Network at Green Dot, the prepaid card pioneer said **Kostas Sgoutas** and **Eric Duehring**, division managers who reported to Troughton, will assume new executive vice president positions. Sgoutas becomes Chief Product Officer, Executive Vice President for Non-Retail Customer Acquisition and Duehring becomes Chief Marketing Officer, Executive Vice President of Retail Customer Acquisition. 



## Features

## N.J. unclaimed property ruling favors prepaid, sort of

**A** Jan. 5, 2012, ruling by the U.S. Court of Appeals for the Third Circuit upheld an injunction that blocks New Jersey from enforcing all of the controversial gift card provisions contained in its updated abandoned property laws. The law firm Ballard Spahr LLP called the ruling "a victory for gift card issuers." However, it apparently wasn't a total victory, as aspects of the law that gift card issuers wanted eliminated were deemed legal and enforceable.

In a Jan. 19, 2012, editorial titled *Third Circuit Upholds Challenge to NJ Gift Card Escheat Law*, Ballard Spahr

## Selling Prepaid

lawyers Alan S. Kaplinsky and Jeremy T. Rosenblum said the court found that gift card issuers behind the November 2011 injunction successfully argued that New Jersey's new escheatment rules, which passed into state law in June 2011, posed such significant threat to issuers (retailers that issue closed-loop gift cards and payment entities that issue open-loop, network-branded gift cards) that parts of the law could not go forward.

Ballard Spahr said the court of appeals agreed that part of the law which addresses gift card regulations (contained in Chapter 25 of New Jersey's unclaimed property regulations), "imposed unanticipated, retroactive obligations on the issuers" and would "substantially impair their contractual relationships." Additionally, the court found issuers would "suffer irreparable harm without the injunction," the law firm noted.

Ballard Spahr said, "According to the issuers, if New Jersey could enforce Chapter 25, they would either face prosecution and fines for noncompliance or, if they turned over funds, be precluded by state sovereign immunity from getting the funds back should Chapter 25 subsequently be invalidated."

### Place of purchase

A chief mandate of New Jersey State Assembly Bill NJ A3002 was that retailers collect names and addresses of gift card purchasers to establish the legal basis for New Jersey to seize funds that lay dormant on gift cards. The "unanticipated, retroactive obligations" involved these new data collection and reporting policies.

In a Jan. 6, 2012, blog post, unclaimed property specialist Keane said gift card transactions did not have to be reported to the state of New Jersey prior to enactment of NJ A3002. The new law obliges retailers to record the ZIP codes of gift card buyers when gift cards are purchased and, if such information is unknown (as was the case prior to implementation of the law when no card purchaser information was collected), retailers have to report those cards to the state on the basis of a "place of purchase" presumption, Keane said.

But, according to Keane, that presumption was deemed unenforceable because it violated a U.S. Supreme Court ruling that outlined three priority rules designed to resolve ownership to unclaimed property, such as unused gift card balances.

The first priority rule is that if the owner of the property cannot be located, the property falls to the state of the owner's last known address. The second priority rule is that if an address cannot be established, the property reverts to the state where the card issuer's business is incorporated. If requirements of the first two rules cannot be satisfied, the third and final priority rule is invoked and the state where the card was purchased becomes the beneficiary of the funds.

Plaintiffs in the New Jersey case argued that the new law renders the Supreme Court's second priority rule meaningless in some cases, Keane said. The court of appeals agreed. But the plaintiffs argued that if the "place of purchase" presumption was found invalid, then the entire data collection mandate was unenforceable – an argument the court ruled against.

Keane said the court held that the ZIP code collection requirement was "severable" from the "place of purchase" presumption; therefore, New Jersey can enforce the data collection provision. But the provision cannot be administered retroactively as it infringes on issuers' contractual relationships, Keane noted. However, the court left vague whether the ZIP code requirement represented sufficient data to establish addresses for the purposes of reporting unclaimed property under the first priority rule, Keane said.

### Gift cards into perpetuity

An additional outcome from the circuit court's ruling involved the time it takes for unused gift card funds to be deemed abandoned and subject to seizure by the state. Ballard Spahr said the court rejected the issuers' argument that Chapter 25's two-year abandonment period was preempted by The Credit Card Accountability, Responsibility and Disclosure Act of 2009 (the Credit CARD Act), which requires that gift card funds remain available for at least five years after the date a card is issued or the date on which funds are last loaded onto a card.

Barbara S. Mishkin, Counsel at Ballard Spahr, told *SellingPrepaid* that the court determined that the escheatment of funds to New Jersey after two years had no effect on the consumer's right to recover those funds. "The Third Circuit held that it was reasonable for the district court to find that Chapter 25 provided greater protection to consumers than the Credit CARD Act because Chapter 25 would allow consumers to recover escheated card funds in perpetuity, whereas the Credit CARD Act only requires the funds to be available for five years," she said. ☞

## nFinanSe, InComm wrangle over reload network

**G**eneral purpose reloadable (GPR) prepaid card provider nFinanSe Inc. and prepaid card distributor InComm are locked in a legal battle over InComm's Vanilla Reload Network. At issue is whether InComm is engaged in price fixing and anti-competitive business practices over how it operates the reload network, and if nFinanSe in particular is the victim of those practices.

nFinanSe's initial lawsuit filed in October 2011 alleged that InComm attempted to coerce the Tampa, Fla.-based GPR card provider into a "price-fixing conspiracy" when

it told nFinanSe it would not distribute nFinanSe's GPR cards unless nFinanSe agreed to join the Vanilla Reload Network and raise the fee it charges cardholders to reload its cards from \$2.95 to \$3.95.

In November 2011, InComm countered that its reload network is available to partners at a "generally accepted reload price point" and that "nFinanSe is free to participate or not participate on those terms at its discretion."

NFinanSe followed that rejoinder with a Jan. 17, 2012, preliminary injunction motion filed in the Atlanta district court that argued for the stoppage of InComm's reload network on the grounds that the network violates federal anti-trust law. NFinanSe also alleges in the motion that InComm's retaliatory actions to punish nFinanSe for refusing to join the network has left nFinanSe in a position where its viability as a business "hangs in the balance."

Three days later, InComm filed a motion to have nFinanSe's lawsuit dismissed. The motion contends that how InComm operates its reload network breaks no laws and that nFinanSe's allegations against InComm are "unsupported, implausible and legally meritless."

#### **nFinanSe's claims**

According to nFinanSe's lawsuit, InComm initiated talks

about nFinanSe joining the Vanilla Reload Network around September 2010; it was at that time nFinanSe received its "first hint that InComm wanted to pressure nFinanSe on price."

NFinanSe said it refused to join the network under those terms, which would have forced the company to raise its reload fee by 34 percent and undermine its standing among consumers as a low-fee leader. NFinanSe contends its relationship with InComm subsequently deteriorated, to the point where InComm stopped distributing nFinanSe's Visa Inc.-branded GPR cards to new retailers. NFinanSe said InComm's actions have cost nFinanSe "millions" in lost revenue.

Additionally, nFinanSe claims InComm's reload network violates the Sherman Antitrust Act because it stifles competition by requiring its partners, which are competing sellers of different GPR cards, to charge consumers the same \$3.95 reload fee and thereby deprive consumers of choice based on price. That action is compounded by InComm offering its own GPR card product on the network, nFinanSe said; as a "horizontal" competitor with nFinanSe on the same network, InComm thus has a vested interest in seeing nFinanSe's product not succeed.

NFinanSe said InComm distributes 90 percent of

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nFinanSe's GPR cards. NFinanSe's attorney, H. Lamar "Mickey" Mixson, characterized InComm as using its market dominance to force nFinanSe to raise its reload fee. "It's not only hardball, it's illegal," he said.

## **InComm's rejoinder**

In its motion, InComm said "there is nothing inherently unlawful about InComm's unilateral decision to set a \$3.95 reload fee for the services it offers in the reload network" and that no factual evidence exists that InComm conspired with other GPR card providers to fix the reload price.

Additionally, InComm said it had a written agreement with nFinanSe to distribute its Discover Financial Services-branded GPR cards to retailers, but that no written agreement existed for the distribution of nFinanSe's Visa-branded cards. InComm said it made it clear to nFinanSe that it reserved the right to distribute the Visa GPR cards at its discretion and that it didn't distribute the cards to new retailers on a "case-by-case basis."

InComm's attorney, Debra D. Bernstein, stressed that nFinanSe is under no obligation to join the reload network or raise its reload fee. "First of all, they're in reload networks outside of InComm that already offers them the ability to reload," she said. "They can continue to reload the card they have. InComm currently distributes their GPR card and distributes their reload card. And that [distribution] option will still be available to them for the retailers at which they are currently being distributed."

In regard to the Vanilla Reload Network, Bernstein said, "Just like any service, services have a fee associated with them, and this is the fee set. It is unrelated to [nFinanSe]."

Bernstein stated that InComm's new reload network represents a pro-competitive, technological advancement for the industry. The reload network is designed to consolidate multiple reload packs into a single pack, underscored with a single, uniform reload fee (which is required based on the technology available for reload packs), that would work with all of its partners' GPR cards, she said.

The program eliminates the necessity by retailers to stock different reload packs for different GPR cards and makes it easier for GPR card users to reload cards, Bernstein noted. She added that InComm is expanding its "swipe" reload technology for the Vanilla Reload Network that would eliminate reload packs altogether so that cardholders can reload cards at the POS without having to buy reload packs. Bernstein expects the pending motions to be resolved in the next few months. ☺

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## First Data, Ingenico push next-gen EFT/POS

First Data Corp. and Ingenico S.A. signed a five-year agreement to develop, produce and supply next-generation electronic funds transfer (EFT) POS terminals enabled with smart card and signature capture capabilities. The terminal program was to support First Data's 2.6 million merchants, 1,400 card issuers and millions of consumers globally.

## Fraud hot topic at BAI Show

Fraud was the focus of the Bank Administration Institute show, as banks faced an estimated 447,342 check fraud cases for the year, averaging \$1,518 gross loss per incident. Visa Inc. reported 19 billion checks valued at \$3.5 trillion were written at the POS. MasterCard Worldwide cited card-not-present transactions in 80 to 85 percent of credit card fraud cases reported.

## Smart card for auto industry

AutoSmart Inc. introduced the AutoSmart Card, a chip-embedded card designed to record vehicle maintenance, operation, service and regulatory compliance. The patented application provided car buyers, sellers and owners with a portable, permanent, updatable, secure and certified record of a vehicle's operation, repair and service history.

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# The CPP exam – before, during and after

By Steve Norell

US Merchant Services Inc.

**A**s many of you are aware, the Electronic Transactions Association developed the Certified Payments Professional (CPP) program to advance the credibility and professionalism of merchant level salespeople (MLSs) and ISOs in today's ever changing market.

The CPP program essentially is a test-based certificate program. The test consists of 125 questions covering several areas of the payments industry, including technical subjects, ethics and basic knowledge. More weight is given to certain categories than others, but in general it is an all encompassing group of questions. If you pass, you receive a certificate, and your name is listed on the ETA website under the CPP Registry.

After having taken and passed the test (whew!), I can say it was harder than I thought it would be. Following are some further observations.

## The prep stage

The first thing to capture my attention was the lack of study materials – no book, no notes, no nothing. I wasn't that nervous since I have been in this industry for over 15 years and, as many who know me are aware, I think I

know everything. (My wife knows better; she thinks I don't even know how to use our dishwasher correctly.)

Since I am an ETA member, I registered for the test at the ETA website, [www.electran.org](http://www.electran.org), and paid \$325 versus the \$425 fee for nonmembers. In my opinion, it is a fair price. I was able to pick a testing site very close to where I live. I received notification that my requested site was accepted, and the date and time were set. (Not to be redundant, but no study guide was offered at this point either.)

## The day of reckoning

So, the big date arrived. As I drove to my test site, two thoughts were running through my mind:

*How many of my competitors will be there?*

*If I don't pass, I will never be able to show my face at work again.*

Once I arrived at the site, I was directed to a private room with a computer where a moderator provided instructions on taking the test. The moderator also verified my identity.

The first thing I noticed, and was a bit disappointed by, was that when I looked around to see how many others were taking the test, the only person there was me. So much for competition. Soon, the bell went off, and away I went, answering the questions, which were multiple choice; there was only one correct answer per question.

I finished the test in approximately 1 hour and 30 minutes, signed out and headed back to the office. Everyone wanted to know how I did and, to tell you the truth, I had no idea.

Almost two months later, I received my results and, hooray, I passed. So now I have a wallet card, a certificate and listing on the ETA website. As a bonus, and with no input from me, on the site's list of CPP certified MLSs and ISOs in Florida, I am listed right at the top. I must have done something right.

## The pros and cons

So after taking this test and hoping it is

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**So here is my recommendation to the ETA when it comes to tweaking the test. It is a simple one: issue a notebook with 500 questions along with the correct answers. Let the test taker study this until it is time to take the test, knowing that only 125 comparable questions will be asked.**

the right move to add some type of certification and credibility to our industry, here is what I think is good and not so good about the CPP exam. The good things are:

- We are moving in the right direction by endeavoring to add certification and credibility to our industry.
- The test was genuinely hard, as it should be.
- The test will be given twice a year, and there are ample sites throughout the United States, so no one should use lack of access as an excuse for not taking the exam.

The not so good things are:

- The questions covered too broad a base of topics, which I felt was a mistake. Some of the questions covered topics that were outside the area of credit cards.
- Some questions clearly could have been answered with two answers, and they both would have been correct. But according to the test designers, only one option was correct.
- Some of the questions were very subjective, and a test taker could have easily been tripped up by the nature of the question.
- Some of the questions were of a technical nature, and I doubt anyone with one year of experience could have gotten them right.

The ETA stated in the requirements that you need a minimum of one year of industry experience to take the test. I wholeheartedly agree, but as I just stated and based on some of the questions, I doubt that without a study guide there is much chance a person with only 12 months' industry experience could pass this test.

### Suggestion box

So here is my recommendation to the ETA when it comes to tweaking the test. It is a simple one: issue a notebook with 500 questions along with the correct answers. Let the test taker study this until it is time to take the test, knowing that only 125 comparable questions will be asked.

Having to study 500 questions will allow the individual to gain more knowledge than the test actually covers.

The only thing that will make this program a success is if it has real perceived value, which means, as a CPP, I have an advantage over competitors who are not CPP certified. And to do that, we need to have retail and industry associations endorse the program. Something along the lines of notifying members to only do business with CPP members.

Well, that is my take on the test. I do encourage others to take it the next time around. By then, hopefully, there will be a study guide. 📖

*Steve Norell is Director of Sales at US Merchant Services Inc. Based in Port St. Lucie, Fla., he oversees the USMS sales force and maintains the company's bank and processor relationships. You can reach him by email at [steven@usmllc.com](mailto:steven@usmllc.com) or by phone at 772-220-7515.*

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# Big changes ahead

By Brandes Elitch

*CrossCheck Inc.*

**I**n the early 1980s, I worked in the cash management group for a major insurance company that was owned by one of the largest financial services companies in the world. The day I started work, they hired the management consulting firm McKinsey & Co. to evaluate the whole operation, top to bottom, and implement something they called "activity value analysis."

The idea was that all employees would keep journals documenting what they did during the day, and it would be a relatively simple matter to calculate inefficiencies and redundancies and take appropriate action to reduce expenses.

Of course, while this was happening, everyone was busy justifying their existence and lost focus on their real purpose, which was to generate revenue, pay claims, and keep the independent agents and regulators happy.

During this time, we employees would exchange meaningful glances and say, "Big changes are coming!" And they were. Within a couple of years, every senior manager of the firm was terminated, from the chief executive officer and president on down. The firm was sold to a German company, and the parent company CEO was also terminated. Big changes, indeed.

Today, as I look at the payments landscape, I see big changes in store for the ISO industry. The underlying causal factors have been in plain view for some time, but now they are apparent even to casual observers.

## Industry in evolution

Let's start with a look at how it all started. In the credit card industry, the focus has always been on the issuing side: how many cards can we issue? This is an industry of tremendous scale: you need to issue tens of millions of cards to garner any kind of meaningful market share, and only a dozen or so banks can do this.

Also, most banks were more comfortable underwriting consumer credit, say, a \$5,000 unsecured credit card line, than processing the merchant side of transactions.

Over time, only larger banks could become "principal banks" of what were then card associations, meaning the banks were association members. The largest merchants typically used the largest acquiring banks. Some industries, such as grocery stores and convenience stores, negotiated directly with the associations for special interchange rates.

Smaller merchants typically had banking relationships

with community banks that were not principal members, and those banks used upstream correspondent banks or had relationships with third-party ISOs that brought their own processors.

It was like a railway: POS to gateway to processor to network to issuer and back down. It was continuously available and secure, but it was inflexible.

The 1979 advent of electronic ticket capture created the ISO industry as we know it. Suddenly, somebody needed to inventory terminals, program and install them, train merchants, and handle ongoing customer service.

Banks weren't capable of doing this then, and most banks aren't capable of doing it today (just look at the banking industry's anemic efforts to deploy remote deposit capture to date, something that should have been a slam dunk).

While the largest banks focused on the issuing side, the ISOs made it all work, selling merchants on card acceptance and thereby enabling consumers to use their cards at merchants essentially everywhere.

This is the extraordinary contribution ISOs made to the industry. You could say it was the electronification of payments that created the ISO industry, and it is the further electronification of payments that is changing it now.

## Upheaval in store

Some people believe this year is the beginning of the end for the traditional POS platform. Up to now, merchants have paid more for in-store POS devices than it would cost to purchase PCs. But with an Android OS tablet, priced at \$100, the numbers have changed. For a small merchant, an Android tablet with a Square Inc. reader can handle all POS functions at a quarter of the price.

Look at what happened in the cash register industry. At first, every merchant had a cash register and a separate POS terminal. The cash register manufacturers figured out they could do both functions, with a big net savings to merchants.

The Apple Inc. iPad was another game changer: for \$500, merchants could get touch screen technology, which used to be really expensive. Initially, these were mobile applications, driven by consumers shopping at the POS, and are now online too.

Historically, POS providers seem to have devoted the brunt of their efforts to maintaining their price points rather than dropping prices to be competitive with new devices.

To become competitive, POS manufacturers must move to the cloud, taking the processing out of the store and into data centers. They will have to be compatible with all



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## View

**All three major equipment manufacturers have embraced NFC. For ISOs, this means 11 million terminals in use will need to be replaced. Even at a rate of 2.5 million annual replacements, it would take over four years to complete the conversion to new card readers.**

devices, not build an application for each platform. This changes the POS game in a big way.

Recently, I attended a presentation by Aite Group LLC on this subject. The presenter, Aite Senior Analyst Rick Oglesby, pointed out that for the last 30 years, merchant acquiring has been run like a railway, where the processor specializes in a single type of transaction.

We will need to support multiple transaction types and services, for example, loyalty programs, transaction modifications by third parties like Google, electronic receipts for consumers and reconciliation for merchants, as well as credit apps, rewards, commissions, discounts, offers and coupons.

In the new environment, card swipes will be replaced by taps at the POS. Data will flow back from new payment players that need to be on the back-end of transactions, and this will increase complexity so the back-end software will need a complete facelift. The only way to manage this is to remove the complexity from POS devices.

The result: a gateway will manage the connections to the marketing providers, alternative payment vehicles, devices and the development community. As Oglesby said, "The gateway will be the cable company, and the device will be the cable box."

But the real implication for ISOs is that payment acquiring now becomes the low man on the totem pole. Some merchants will be able to connect directly to the card brands and skip the processors altogether. For ISOs, the goal should be to focus on services, not devices.

Now there are three components to the buying experience: the POS hosting providers, the payment providers and the marketing providers. Large merchants could be processors themselves and do POS hosting, but small merchants will need turnkey solutions, which ISOs can and should provide.

This is complicated by the fact that Visa Inc. will incentivize migration to Europay/MasterCard/Visa and near field communication (NFC) technology to attack counterfeit card fraud.

All three major equipment manufacturers have embraced

NFC. For ISOs, this means 11 million terminals in use will need to be replaced. Even at a rate of 2.5 million annual replacements, it would take over four years to complete the conversion to new card readers.

### Litigation at issue

I also want to touch on looming antitrust litigation against Visa, MasterCard and 13 of their largest banks. This is a sequel to the 1996 class-action lawsuit, popularly known as the Wal-Mart case, which cost said card brands and banks \$3 billion in monetary damages and over \$25 billion in income lost due to changes in business practices (according to Bryan Keane, an analyst for Deutsche Bank).

That case was narrowly defined, and the government did not bring a price-fixing case against the card brands at that time. The plaintiffs in the current case (the National Restaurant Association and the National Association of Convenience Stores, among others), which are not yet certified as a class, claim the card brands overcharged merchants, and that the 2 percent interchange rate typically charged should be in the range of 0.50 percent.

Imagine the impact on the defendants if credit card interchange rates were reduced by 75 percent, to say nothing of the effects on the ISO community.

And if the court finds for the plaintiffs, the damages would come primarily from the 13 large banks that are the Visa Class B shareholders. In 2009, industrywide interchange fees were in the range of \$40 billion, and this case could cover eight years.

A finding for the plaintiffs would have a material effect on the capital base of these banks, and it would have a material effect on the income statements for any ISOs focused on interchange. It should be an exciting year. ■

*Brandes Elich, Director of Partner Acquisition for CrossCheck Inc., has been a cash management practitioner for several Fortune 500 companies, sold cash management services for major banks and served as a consultant to bankcard acquirers. A Certified Cash Manager and Accredited ACH Professional, Brandes has a Master's in Business Administration from New York University and a Juris Doctor from Santa Clara University. He can be reached at brandese@cross-check.com.*



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# Company Profile



## CSR – Compliance Solutions and Resources

### ISO/MLS contact:

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 Email: [info@csrcorporate.com](mailto:info@csrcorporate.com)  
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## Compliance powerhouse welcomes ISOs

Since 1999, payment and data privacy consultancy CSRSI, The Payment Advisors, has advised government agencies, multinational corporations, financial institutions and ISOs on how to reduce the costs of acquiring, protect against fraud, and maximize data security and compliance. Over 1,750 consulting jobs later, the company is evolving – and so is its mission. In January 2012, CSRSI added a doing-business-as moniker, CSR, which stands for Compliance Solutions and Resources.

"We started out with the name CSRSI, and that originally stood for Cost Savings Reduction Specialists Inc.," said company founder Ross Federgreen. "As time marched on, we really became very focused on consultative compliance audits."

But Federgreen found that clients sometimes had a difficult time remembering the name. The new, simplified name more accurately reflects the company's core competencies as consultants and resource providers, Federgreen noted.

"We have a consultative side, which has been the traditional side of the company, as well as a mass-market production side where we provide compliance solutions for a significant number of merchants, whether it's the PCI ToolKit or the CSR Breach Reporting ToolKit," he said.

CSR has several other products under development, including the HIPAA (Health Insurance Portability and Accountability Act) Hitech ToolKit. "These are all compliance solutions on a consultative basis," Federgreen added. "They're all resources, so we thought the name tied in well to where we are, what we're doing and what we want to do in the future."

### Consultants with experience

As a consultant, Federgreen has a substantial pedigree, having served as an advisor to the United States Senate, the U.S. Agency for International Development and numerous multinational corporations. He has also consulted for The Rockefeller Foundation and management advisory firm McKinsey & Co., and is among an elite group who carry a governmental sub-specialization rating, meaning he possesses in-depth knowledge of federal statutes pertaining to sets of procedures and protocols for interfacing with the government and for the government to operate internally.

"I have bridged the political-economic advisory role for 30 years, and it's been one large continuum," Federgreen said. A majority of his early consultative work focused on the traditional payments space, ranging from requests for proposals from large acquirer entities to cross-border, cross-national payment solutions.

Federgreen works in tandem with Rick Heroux – the only business partner Federgreen has ever had. As company President, Heroux oversees corporate operations and product development. He has also advised hundreds of businesses – from Fortune 100s to startups – on payment cost performance,

## CompanyProfile

Payment Card Industry (PCI) Data Security Standard (DSS) compliance, alternative payments and fraud prevention management.

Federgreen said that at this point, CSR does little to no consulting for clients below \$25 to \$50 million in annual revenue. "Most of our clients are in the hundreds of millions or more," he said. Consulting expertise for these clients includes multilateral payment system design, integration and cost; risk and regulatory compliance; and data security for domestic, foreign and cross-border entities.

But smaller merchants also benefit from CSR. In 2005, the company developed its PCI ToolKit for large processors. That kit was ultimately distributed to the small merchant population and continues to be enhanced.

"We have four CIPPs [Certified Information Privacy Professionals] in our organization, so we're fully certified to provide these services, and we sell them to our ISOs," Federgreen said. Internally, CSR has approximately 25 to 30 individuals assembled into teams to deal with specific needs of clients and specific sets of performance criteria. Federgreen plans to extend the on-demand team model as CSR expands.

### A variety of tool kits

CSR offers its compliance products on a software-as-a-service basis. Its flagship product, the PCI ToolKit, serves approximately 30,000 to 40,000 merchants each month. The soft launch of the CSR Breach Reporting ToolKit was expected to conclude in January 2012, with a formal launch shortly thereafter.

"The PCI ToolKit is unique in that it is a survey type of system that is not standard SAQ [self assessment questionnaire] by any stretch of the imagination," Federgreen said. "It provides merchants with a very sophisticated survey set of questions.

"And then from those answers, they'll get a specific set of tasks that they need to complete before they can become compliant. So, really, it's gap analysis for their remediation schedule. Then we also do all the brand reporting associated with it."

In addition to automating the SAQ process, PCI ToolKit assists merchants with quarterly network security scans as mandated by the PCI DSS. The system is approved scanning vendor (ASV) agnostic, which means clients can contract with the ASV of their choice.

According to Federgreen, there are five PCI regulated data types: date of birth, Social Security number, driver's license number, credit and debit card number, and automated clearing house routing number. To help merchants comply with data breach reporting requirements, CSR's system provides a single point for clients to make the initial call once a breach has been detected.

"We report that information to all of the appropriate parties at the federal, state, local levels and to the brand as required based upon what data was stolen," Federgreen said. "They are under a very significant timeline to report the breach ... and usually don't have the business bandwidth to do it."

A key benefit in reselling the breach reporting tool kit is that it doesn't require ownership of the merchant identification number, Federgreen noted. "We have a lot of resellers who are actually selling it outside of their own merchant population because with the PCI ToolKit, obviously, they need to own or control the merchant ID number," he said. "That is absolutely not true with the CSR Breach Reporting ToolKit."

CSR's soon-to-be released HIPAA



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Hitech ToolKit product will draw upon the same survey technique used in its PCI ToolKit to guide health care providers through the steps involved in medical records compliance as required by law.

### The 'five percent factor'

Aligning with a company well versed in compliance has been reassuring for Merchant Services Inc. "I do not see that [level of competency] with every product vendor that I come across," said Nathan Jurczyk, Vice President at MSI.

"We use their product for the vast majority of merchants as long as it's the right fit. They're a very appropriate fit for your standard brick-and-mortar and midsized businesses. It's a good quality product that delivers results. We bundle it with our master package of services."

In working with thousands of merchant businesses, Jurczyk has observed that a certain number inevitably fall outside traditional models. "You always have that 5 percent factor," he said. "Those are the folks that can be incredibly difficult to walk through PCI compliance. That's where I've found CSR to be invaluable."

To address the disparate needs of merchants across the spectrum, CSR segments its services, providing formal privacy consultations to large merchants, while smaller merchants receive its Tier 2 services based on their level of progress in the compliance process.

"Number one, there is some percentage of merchants who want us to come in early on, review the data elements they have, look at the lifecycle of those data elements and then advise them what the proper handling and match them with that," Federgreen said. "That's a growing part of our portfolio." He added that the second type of merchant typically calls upon CSR to examine specific back patterns and advise them accordingly.

CSR also has a growing population of merchants victimized by breaches that ask CSR to put on its "forensic hat" and "advise them of the areas of privacy that were violated, what may have happened, and, most importantly, what the rules and requirements are for data subject notification," Federgreen noted.

### Two-way education

Federgreen said most merchants, regardless of size, have reservations about the compliance process, especially about advisers that deliver mediocre service – an unfortunate but all-too-common occurrence. "They engage with someone and they don't get complete answers," he said. "They don't stay with them over time."

Federgreen noted that this doesn't happen at CSR, where follow-through is imperative. He estimated that 85 percent of CSR's clients are ongoing. "We're all about education and learning," he said. "That's true in everything we do."

Federgreen said mass-market distribution of CSR's products through ISO channels has made its online compliance solutions affordable to a majority of the merchant population, and he added it clearly generates revenue.

He pointed out that with the commoditization of the interchange side of the business, income from the service side has become more important for the economic well-being of CSR's partners, and CSR is fully cognizant of that.

"The message I'd like to deliver is that we have great, proven products, are very proud of what we've accomplished, but we want to do more," Federgreen said. "We want to hear from people because I think they're the ones that generate the interesting ideas. If somebody has the question, usually 9 out of 10 other people have something similar, too, that they're concerned about. That's been our mantra." ■

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## Elavon versus Ciscero's from page 1

rules it had not even seen. Ciscero's said it was never told it was required to comply with the PCI DSS.

Ciscero's also accused Elavon of imposing fines even after two independent forensic examinations of the POS terminals, paid for by Ciscero's, revealed no proof of a breach. The counterclaim further stated Ciscero's was never given an opportunity to defend itself or challenge the fines.

The countersuit additionally maintained Visa assessed fines even though it did not follow its own account data compromise recovery (ADCR) rules, which require a minimum of 10,000 unique compromised Visa account numbers before ADCR fines are assessed; if fewer than

10,000 unique account numbers are compromised, an issuer cannot recover losses from a merchant.

Ciscero's forensic examinations found unencrypted account numbers on the POS hard drive, but the restaurant said there is no proof this data was compromised, and that with duplicate card numbers eliminated, Ciscero's only had 8,107 unique Visa account numbers on its POS. Ciscero's also claimed Visa did not explain its ADCR calculations, nor did it support its conclusions with evidence.

### Questionable fines

"These various shifting numbers based on unexplained calculations demonstrate that the ADCR process is little more than a scheme to extract steep financial penalties from small merchants such as Ciscero's for the benefit of Visa," Ciscero's stated in its complaint.

MasterCard assessed \$15,000 in fines against Ciscero's, saying it decided "not to administer an issuer reimbursement process." However, multiple MasterCard issuing banks started proceedings to recover damages from U.S. Bancorp for the alleged fraud.

Ciscero's further noted neither Elavon nor its parent company challenged the fines, deciding instead to accept them and pass the costs on to Ciscero's.

"These are punitive fines that bear no relation to any amount of actual losses," Ciscero's stated. "In fact, Visa and MasterCard will impose these fines even though there has been no fraud loss at all because these fines are profitable to them. ... The penalties are completely at the discretion of interested parties – namely Visa and MasterCard – that profit from this system.

"They are imposed on acquirers, which, pursuant to the indemnification provisions in typical merchant agreements, then help themselves to reimbursement from merchant bank accounts. Merchants have no recourse. There is no process directly available to merchants to challenge the fines, demand proof of noncompliance or present exonerating evidence."

### Industry response

According to Ciscero's counterclaim, Bob Russo, General Manager of the PCI Security Standards Council (PCI SSC), confirmed PCI fine amounts are "arbitrary" in a speech he made in Houston in 2011.

Laura Johnson, PCI SSC Communications Manager, neither confirmed nor denied the remark when asked. "The Council is not in the business of compliance or issuing fines," she stated. "Nor do we have any comment on or part in this lawsuit. Enforcement of compliance with the [PCI DSS] and determination of any noncompliance penalties are carried out by the individual payment brands and not by the council."

### What is a contract of adhesion?

A contract of adhesion is a legally binding agreement between two parties that is imbalanced because one party to the contract has virtually all the bargaining power and uses it to write the contract primarily to its advantage.

According to West's Encyclopedia of American Law, an example of such a contract is a "standardized contract form that offers goods or services to consumers on essentially a 'take it or leave it' basis without giving consumers realistic opportunities to negotiate terms that would benefit their interests. When this occurs, the consumer cannot obtain the desired product or service unless he or she acquiesces to the form contract.

"There is nothing unenforceable or even wrong about adhesion contracts. In fact, most businesses would never conclude their volume of transactions if it were necessary to negotiate all the terms of every consumer credit contract. Insurance contracts and residential leases are other kinds of adhesion contracts. This does not mean, however, that all adhesion contracts are valid.

"Many adhesion contracts are unconscionable; they are so unfair to the weaker party that a court will refuse to enforce them. An example would be severe penalty provisions for failure to pay loan installments promptly that are physically hidden by small print located in the middle of an obscure paragraph of a lengthy loan agreement.

"In such a case a court can find that there is no meeting of the minds of the parties to the contract and that the weaker party has not accepted the terms of the contract."

Source: *West's Encyclopedia of American Law, Edition 2. Copyright © 2008 The Gale Group Inc.*

## CoverStory

MasterCard, Elavon and U.S. Bank did not respond to requests for comment. Visa issued a statement which said in part, "In every breach Visa has investigated, security weaknesses could have been addressed with full compliance with PCI DSS. ... Liability assessments are not intended to be punitive, and Visa considers the relative size of the merchant in assessing liability. The ADCR process was developed as an efficient mechanism for ensuring partial compensation to issuers for the losses suffered related to a compromise, including the counterfeit fraud that their cardholders experience."

Brandes Elitch, who is Director of Partner Acquisitions for CrossCheck Inc. and holds a law degree as well, believes the standard merchant contract is a

"contract of adhesion." Such a contract is usually a standard form contract that allows for no negotiation because of the unequal bargaining positions of the parties involved. This kind of contract, while not necessarily illegal, is given special scrutiny by courts.

"What is important here is not this plaintiff, Cisero's Restaurant, (although they appear to have done everything possible to prevent/mitigate damages, and would be an ideal plaintiff to put in front of a jury)," Elitch said.

"It is that virtually every small business is in exactly the same situation. Visa put them in this situation, or to be more precise, the half dozen large issuers did, because they did not want to spend the money to replace the outdated mag stripe cards with EMV-chip cards, which would have solved this underlying problem in the first place.

"That was a business decision along the lines of Ford's decision not to relocate the gas tank in the Pinto. Ford calculated their exposure from wrongful death jury verdicts versus what it would have cost them to do the engineering changes, and made an incorrect cost-benefit decision. The same thing happened here."

Elitch said the big payments industry risk in the case is the possibility the court could modify interchange rates "and sharply curtail any profitability in the acquiring industry."

### Cannon's perspective

W. Stephen Cannon, a partner in the Constantine Cannon firm and one of the attorneys representing Cisero's, was the co-author of a December 2009 article titled *'The Currency of Progress?'* *Visa and MasterCard arrogate governmental powers in the name of card system security* published in HospitalityLawyer.com's *PCI Compliance Newsletter*.

In the paper Cannon and his co-author, Michael McCormack of Palma Advisors LLC, stated that PCI DSS enforcement currently assumes regulatory powers and authority that belong only to the government.

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"Visa and MasterCard have set themselves up as prosecutor, judge and jury to penalize merchants and others with expressly denominated 'fines,' potentially amounting to hundreds of thousands of dollars – amounts that automatically can be deducted from payments owed to merchants from their card acceptance cash flow," they wrote.

The article asserted many of the same points made in the Cisero's counterclaim and stated the legal ability of the card companies to impose fines has not been settled. "One day, the test case will arise, and merchants should be prepared to act," the article concluded.

In an interview with *The Green Sheet*, Cannon did not call the Cisero's litigation his test case, but he did say, "Obviously, there are a lot of issues here of large importance." He said litigation is generally too expensive for most merchants to challenge fines – even fines amounting to hundreds of thousands of dollars.

Cannon said Cisero's had no choice but to defend itself in a suit initiated by Elavon.

"There is a question of enforceability of fines and penalties," Cannon said. "What governments can impose,

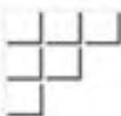
### 'Wal-Mart case' background

If you'd like more information about the landmark lawsuit brought against Visa and MasterCard on behalf of millions of merchants, please check out the following in our archives:

- "The 'Wal-Mart case' revisited," by Brandes Elitch, *The Green Sheet*, April 26, 2010, issue 10:04:02
- "Fallout from Wal-Mart debit suit begins to rain down," *The Green Sheet*, Sept. 22, 2003, issue 03:09:02

private parties can't. We strongly believe this is a contract of adhesion, but these are very solid claims even if this is not found to be a contract of adhesion."

Cannon's partner Todd Anderson, who is also working on the Cisero's litigation, added, "The system is broken. It is completely disadvantageous to merchants and their customers. There is a cascade of liability flowing downhill, and merchants are left holding the bag. Cisero's is just the tip of the iceberg." ■



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# Education StreetSmarts<sup>SM</sup>

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## Putting the right tools into your tool kit

By Bill Pirtle

*C3ET Credit Card Consortia for Education & Training Inc.*

**T**here are many sales tools available to ISOs and merchant level salespeople (MLSs). On the GS Online MLS Forum, usually one or two posts a month are devoted to the best \_\_\_\_\_ available, where the best \_\_\_\_\_ can be anything from an ISO, to a prospecting method, to a gateway. In other words, people are always on the lookout for the best sales tools.

The catch is that there is no one best sales tool. MLSs need to explore a variety of tools to find the ones that work best for them. In this article, I share tools that I have found useful. If you like a particular tool, research it further to see if it would be a good fit for you.

### Tap into referrals

In a forum topic called "Current Customers – Referrals, Additional Sales and Attrition," **BLUESTAR** said, "I personally think the most overlooked and underutilized resource in most sales peoples' tool boxes is their current customer list.

"When managed properly, existing customers have the ability to provide high quality referrals for new business, additional sales of other products and services with significantly lower marketing expenses, and tremendous revenue loss when they leave you for another vendor."

**CLEARENT** added that the challenge is when the sales rep receives the majority of his commission up front. "This tends to lessen retention efforts on the part of the agent, and likewise the opportunity to bond with existing merchants," he said. "Simply put, your largest source of referrals should be your existing merchant base.

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"They are sending people to you because they trust you and, as a result, the person they refer will likely be more open to listening." In asking the forum about sales tools, **BLUESTAR**'s hope was "to encourage dialogue on the techniques or strategies proven to work or that were tried but didn't work. I understand people don't want to lose their competitive edge, but this thread would be truly helpful for people trying to grow their businesses.

"One recommendation I share here is hiring a person to just call on existing customers, ensuring they are touched at least once a quarter. This person could say, 'Hi, this is \_\_\_\_\_ from \_\_\_\_\_, the company that provides your \_\_\_\_\_ services. I just wanted to touch base and make sure everything is going okay with your service.

"I also wanted to make sure your email address is correct and you are receiving our monthly newsletters with information about our other products and services. Do you have any questions about any of those products? Do you need to re-order paper, supplies, gift cards, etc.? Lastly, I want to remind you about our referral program. Here are the details. Is there anyone you would like to refer to us?"

"I have to believe paying a person like this \$500 per week would generate a great ROI."

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**"I have been very successful in retaining my accounts. One of many things I do is use SendOutCards. You can build a campaign and automatically send strategic messages throughout the year. Email or PM me and I will be happy to show you what I do and discuss other items."**

NCRUM GS Forum member

making follow-up calls. "We turn the account over to them after the merchant has received two statements," **LADERA BUSINESS SOLUTIONS** said. "They call and ask for referrals, pitch other products, etc.

"You have to be ready for the 'Can you lower my rates?' request, but other than that, the program is very successful for us. I actually have considered increasing the program."

Referrals are an excellent tool for use in sales. But not everyone agrees that current clients are the best source of referrals. Author and referral expert Tim R. Green believes happy clients only comprise a small portion of referrals (for more information, see "Referrals: Do you play the numbers game?" by Bill Pirtle, *The Green Sheet*, Feb. 28, 2011, issue 11:02:02).

Other articles I penned in issues 11:07:01, 11:07:02 and 11:08:01 focused on other referral ideas from Business Networking International BNI founder Ivan Misner and Local Business Network founder Chuck Gifford. A satisfied client might lead you to similar clients, but an accountant or other contact might get you into a chain.

### Consider SendOutCards

In response to **BLUESTAR's** post, **NCRUM** offered, "I have been very successful in retaining my accounts. One of many things I do is use SendOutCards. You can build a campaign and automatically send strategic messages throughout the year. Email or PM me and I will be happy to show you what I do and discuss other items."

**JDECKARD** suggested caution, saying, "SendOutCards is a MLM [multilevel marketing] online service. I've used it for years, and it's an effective way to do a mailer, but the quality leaves a bit to be desired when it comes to that 'personal' touch.

"It's a great way to send a holiday card to 1,000 prospects, but runs the chance of looking cheap when marketing to clients. If you take the time to make a personalized card for each client, it can be a nice touch. But if you're going to invest that much time, why not just call or stop by and see them in person?"

"The real deal is about MLM and selling SendOutCards to other people. This aside, I've been involved for about six years, have done several promotions and have made my money back many times over."

**GMARTIN** uses SendOutCards daily. "I am a distributor, but I've never marketed it," **GMARTIN** said. "It's a great product to give a little personal touch. But as John says, you have to personalize the cards. I've gotten many 'thank you' notes from my customers stating that I was the only person who sent them a birthday card."

While writing *Navigating Through the Risks of Credit Card Processing*, I invited Kathy Koze, a senior manager with SendOutCards, to write a chapter on using the cards for client retention. If you would like to view her chapter on customer retention using SendOutCards, email me and I will forward you the chapter in PDF.

The prices at SendOutCards have come down in recent years. You can sign up as a customer, an independent

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**"Sales Genie, when you use all parts of it, is like a CRM sales module measuring the lead, etc. It also lets you pull down a list of leads sorted in various fashions. Remember, a lead from these is just information - it's up to you to use it wisely."**

CLEARENT GS Forum member

distributor or a marketing distributor. While technically an MLM company, business professionals can sign up as distributors – with no intention of ever selling the program – just to use the system to the fullest. While I know of many distributors, Niles is the only one I know of in our industry who promotes it. He can show you how he uses it to sign and retain clients.

### Check out Sales Genie

One popular topic on the forum is sales leads and products like Sales Genie from InfoUSA.com Inc. On this topic, **CLEARENT** stated, "Sales Genie, when you use all parts of it, is like a CRM sales module measuring the lead, etc. It also lets you pull down a list of leads sorted in various fashions. Remember, a lead from these is just information – it's up to you to use it wisely."

For large ISOs, Sales Genie can be a great tool for pulling business leads. For smaller ISOs and one-man offices, it is not as attractive. One sales agent from Sales Genie I spoke with turned me off of the program when he proudly mentioned that several large processors used his company.

I knew better than to expect that the leads would be exclusive, but paying \$1,000 a year for the same leads that larger competitors were getting seemed excessive. To get the jump on the lead companies, have you considered buying new dba (doing business as) lists from the county you are targeting? Or have you tried accessing the new corporate listings filed with the state?

Chambers of commerce can be good sources as well, provided you try to build relationships and not just hand out business cards and expect results.

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### Add value, work smart

Agents should also consider offering other products. Most jump to check, gift, loyalty, ATMs and phone cards, but others are mentioned in issue 11:06:01 ("Become the go-to expert on merchant services," by Bill Pirtle, *The Green Sheet*, June 13, 2011). If you see a topic of interest, come to the forum and ask the experts. **BLUESTAR** (Marc Brown) can help with loyalty programs, **TEXASCOMMERCE** with gift card programs and **CARDPLAYER** (Don Apgar) is considered top notch with Payment Alliance International's ATM program.

One issue that has always plagued me is spending time in the office versus being in the field. As a writer and publisher, and needing to be available for book collaborators, I recently purchased a smart phone with a data plan. I now have the ability to access important email in the field without lugging my 17-inch laptop everywhere I go.

I also have the ability to expand the screen image to make most text easily readable. I picked up the Apple Inc. iPhone 4S, and I love it, but there are great Android phones as well. Thousands of apps (applications) that can be downloaded to make you more productive. Many apps free for phones that operate on Google Inc.'s Android

operating system have a cost associated with the iPhone – due mostly to the fee to the app developer.

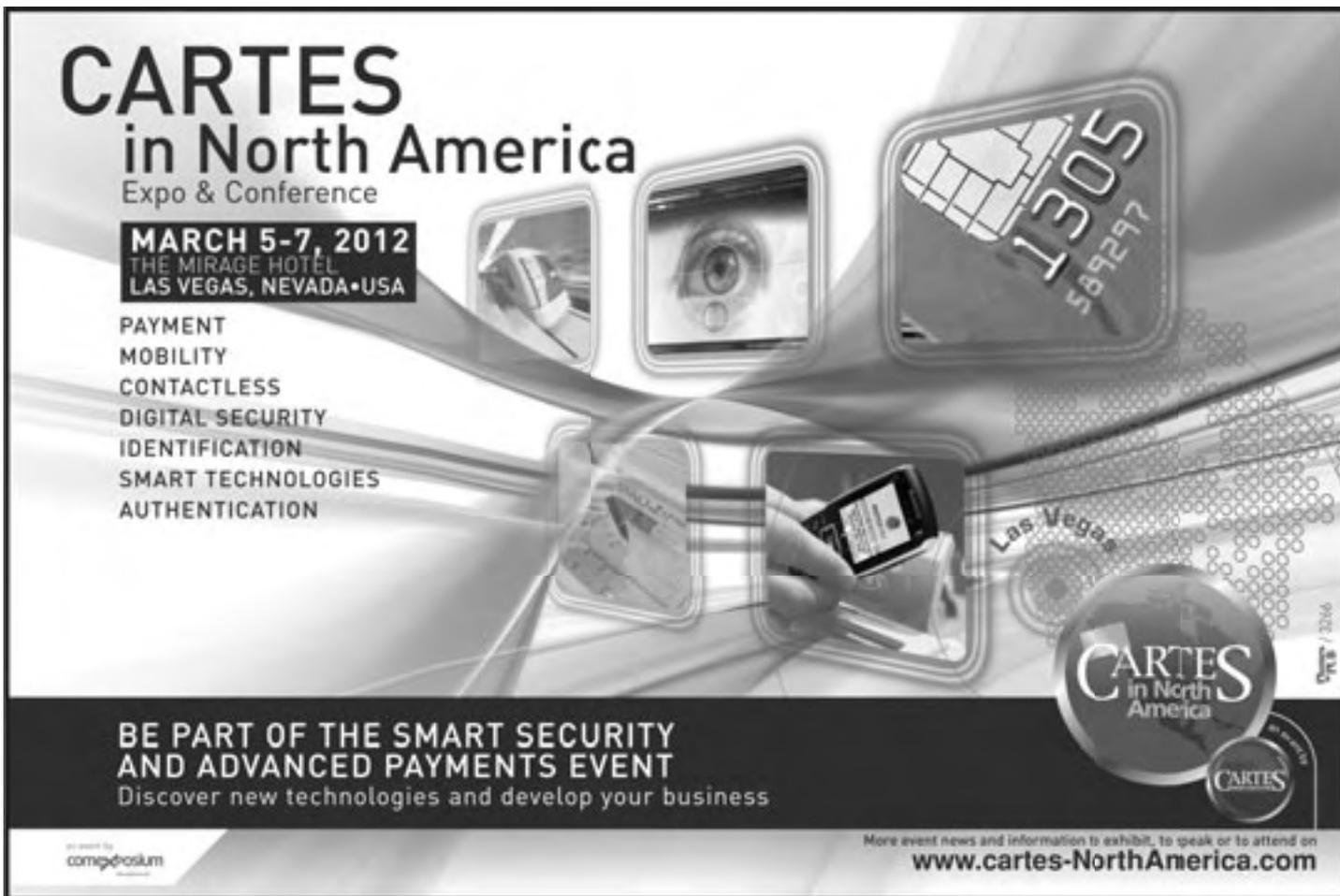
If you offer eProcessing Network LLC, USAePay or other gateways, you should be able to find a free app for both phone types; these are good not only because they enable you to accept credit cards in the field for terminal purchases, but you can also use them to show potential clients how easy it is to accept electronic payments.

### Tool around, find the best fit

I hope you found the insights shared here useful and that you take the time to find which work best for you. But there is no magic bullet. Different tips and techniques will work differently for every agent. It is up to you to find the ones that work best for you.

What you do today, determines your tomorrow. 

*Bill Pirtle is the President of C3ET Credit Card Consortia for Education & Training Inc., a joint venture with Theodore Svoronos of Merchant University. Created to establish a comprehensive training program for ISOs and merchant level salespeople, C3ET is working with industry experts to produce a training guide to be published in early 2012. Bill's email address is bill@c3et.net. He welcomes all connections on Facebook and LinkedIn.*



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# Strategic planning nuts and bolts

By Vicki M. Daughdrill

*Small Business Resources LLC*

**I**t's a new year. The economy appears to be improving somewhat, evidenced by job creation, improved manufacturing output, increased construction spending and the continuing rise in the stock market, despite some wildly fluctuating periods. In January 2009, the Dow Jones Industrial Average Index stood at 9,015; in January 2010 it was 10,583; in January 2011 it was 11,697; and in January 2012 it rose to 12,397.

Businesses have spent the last two years holding the course, maintaining the status quo or simply staying afloat. Now is the time to take a focused look at your company and develop a strategic plan for the next three to five years.

The economy is predicted to continue to grow slowly in early 2012, making this an ideal time to position your company to take advantage of the anticipated economic uptick.

## What is strategic planning?

Strategic planning is the formal evaluation of the company's future course of action. It is a process that answers four questions:

1. What do we do?
2. Who are our customers?
3. What is our distinctive competency?
4. What tactics will we employ to fulfill our mission and reach our goals?

A strategic plan is an outline or road map of future plans. It is a process – not a document – to help companies focus on the areas of their businesses that generate the greatest level of profitability and achieve the most success at reaching their goals. Frequently, a strategic planning session will result in a document a company can use to guide its actions and measure and evaluate its success.

The strategic plan should be reviewed, revised, updated and amended on a regular basis, depending on market conditions, the economy and the owner's personal situation. It should never be intended as a fixed document that cannot be adjusted or modified.

## The benefits of strategic planning

Business owners and managers sometimes are so absorbed with day-to-day business operations that they fail to focus on the company's ultimate objectives. Conducting a stra-

tegic planning process can help decision makers see the big picture and develop longer-term strategies.

While a strategic plan cannot prevent business failure, it can provide a recipe for success and a foundation for the company's business, a definite "must have" in today's commercial environment.

There are countless benefits to conducting strategic planning sessions, including the following:

- Defining the purpose of an organization in a straightforward, easy-to-understand manner
- Establishing goals and objectives that meet the company's mission
- Communicating established goals to internal and external stakeholders of the business
- Providing clarity for the company that produces greater efficiency and effectiveness
- Prioritizing effective use of the company's resources
- Creating a tool to measure outcomes of the company's activities against its mission and objectives
- Establishing an apparatus to allow participation and build consensus on ways to achieve the company's goals

In addition, many financial institutions now require a strategic plan be submitted as part of the loan application process.

## Components of the process

Strategic planning includes an understanding or development of a company's mission and vision, recognition of its ethics and values, and identification of its strategic direction. The planning focuses on analysis, planning and identification of tactics.

A mission statement is a powerful tool to clearly define your company's reason for existence. It is the articulation of how your dream is going to become a reality. It sets the tone, defines the path you will follow and acts as a guiding principle for your company.

Your mission statement tells your customers exactly what your company stands for, believes in and what you intend to achieve (for more information, see "Creating a mission statement," by Vicki M. Daughdrill, *The Green Sheet*, Jan. 10, 2005, issue 05:01:01).

As for vision, the big-picture concept focuses your thoughts, feelings and actions toward realizing that vision (for more information, see "Creating your business vision," by Vicki M. Daughdrill, *The Green Sheet*, Dec. 13, 2004, issue 04:12:01).

Additionally, recognition of your company's core ethics

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and values is essential, as they drive the business culture, establish priorities and determine what strategies will be employed.

### Developing a strategic plan

There are several methods for determining which strategic planning process will work for your company. These include organizing objectives by hierarchies, utilizing the "top rank objective," evaluating goal congruency, and setting short-term, medium-term and long-term goals.

Once you determine which method best suits your company, the next step is conducting the strategic planning process. Here is a simple, step-by-step guide to assist you in starting the process for your company.

1. **Determine the process.** How do you want to go about conducting the planning session? Before the session, identify the participants, facilitator, timeline and expected outcome.
2. **Review and analysis.** It is essential to review the present status of the business. A look back over the past one to two years will help you evaluate the trends facing your business. Conduct a thorough SWOT (strengths, weaknesses, opportunities, threats) analysis.

Ask yourself these questions about the period:

- a. Was the company profitable?
  - b. Did the business experience growth?
  - c. Did it add or lose customers?
  - d. Was it able to sustain its profit margin?
  - e. What happened to its market share?
  - f. Did the market mix change? If so, how?
  - g. How did your competition fare?
  - h. Did the market itself change with the addition or removal of products or services?
  - i. Did supplier costs change in any way?
  - j. How did changes in the regulatory environment impact the business?
3. **Planning.** During this phase, set the goals for your company for the next three to five years. While planning this phase of the process, consider conducting a needs assessment of both staff and employees to determine what needs and issues can be addressed during strategic plan preparation.

Remember, a goal must be SMART – specific, measurable, attainable, realistic and timely. A goal that states, "Increase profitability," is not a goal. A goal statement that reads, "Increase profitability by 10 percent before Dec. 31, 2012," is an actual goal.

As you work to develop your goals, consider these items:

- a. Developing a solid marketing approach
  - b. Identifying the desired market
  - c. Establishing a marketing mix
  - d. Recognizing the issues potential customers face
  - e. Recognizing real and perceived gaps in leadership, management, product line, sales team and pricing
  - f. Forecasting potential sales
  - g. Assessing future industry trends, including technology and regulatory changes
  - h. Calculating the impact ongoing economic struggles will have on the company in the coming years
  - i. Analyzing the competition for possible additions or reductions in the marketplace
  - j. Evaluating the value of entering an untapped market, growing an existing market, dominating an existing market or dominating a segment of an existing market
  - k. Identifying additional resources, including human and financial, the company may require to meet new goals
4. **Establishing tactics.** Each of the methods identified above utilizes establishing tactics or detailing individual steps the company will take to meet its goals. These tactics are the day-to-day projects, tasks and activities required to achieve the planned goals.

Remember:

- a. Tactics are tools. They describe the steps you will take to reach your goals.
- b. Tactics include areas such as marketing, advertising and sales.
- c. Tactics define specifically what is to be done, who will do it and the timeline to follow.
- d. Tactics allow for periodic assessment and evaluation of the company's efforts to reach its goals.

Yogi Berra said, "If you don't know where you are going, you will wind up somewhere else." By developing a strategic plan, you can be sure you know exactly where you want to take your company, identify the goals you want to meet, and establish the strategies and tactics necessary to attain them. 📌

*Vicki M. Daughdrill is the Managing Member of Small Business Resources LLC, a management consulting company. E-mail her at vickid@netdoor.com or call her at 601-310-3594.*

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J. David Siembieda,  
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## Education (continued)

# Give your goals some oomph!

By Adam Moss and Jeffrey Shavitz

Charge Card Systems Inc.

**H**ow many times have you written out your goals either from a personal or business perspective? More importantly, once you've written them down, who has held you accountable for reaching those goals? What was the consequence if you didn't lose 25 lbs in 6 months or if you only wrote 10 deals a month instead of your goal of 20? Is, "Oh well," the first thought that comes to mind?

The reason most of us don't hold ourselves accountable is rooted in the manner in which we create goals. Generally, the process starts at the beginning of the year when we make New Year's resolutions. We think about the past and what we want the future to be, both personally and professionally.

So we sit down with a blank piece of paper, a pen and great intentions. Then we start to write. And when we finish our list, whether it contains just a few items or more and whether the goals are modest or grandiose, we tend to put those goals in a drawer and forget about them.

### Invest in your goals

The question is, what would happen if we attached meaning and even emotion to these goals? And what if we looked at those goals every day, twice a day? Most likely our goals would be more attainable, and we would be more successful. Too often our goal setting is rooted in thought and our goals tend to be vague and often unattainable.

Also, to be successful in reaching our goals, we need to make them attainable. We want to be able to celebrate our successes once we have reached our goals. One success leads to another and so on. With that being said, a good plan must be in place if your goal is to become reality in this world.

### Take smart steps

It all begins with the process. Here are some tips for setting business goals as we move into 2012:

- Start by determining your desired end results. Once you determine your desired end result you are better situated to determine what actions you need to do in order to be successful.
- Put a timetable on when you expect to reach these goals – three months, six months and one year.
- Attach an emotion to the goals. This is the key. Ask yourself how you would feel if you reached your

**The reason most of us don't hold ourselves accountable is rooted in the manner in which we create goals. Generally, the process starts at the beginning of the year when we make New Year's resolutions. We think about the past and what we want the future to be, both personally and professionally.**

goal or goals. Make sure it makes you smile, makes you happy.

- Figure out what steps you need to take to put things into motion.

You now have a game plan, and you have set out a plan that is rooted in emotion rather than in thought.

### Use your eyes

There is one final step in the process and that is the visual part. After you have created your goals, create some type of visual board with your goals listed on them. You can have just words listed or even attach pictures. Place that visual where you can see it – and see it often. Maybe you can make one for your office and one for your home. The key is to see your goals and to keep the emotion alive.

We work in a very vibrant and ever-changing industry. Setting goals and knowing your end result will allow you to better navigate the twists and turns. And being able to write an average of 30 deals a month rather than 10 will surely put a smile on your face, along with more money in your pocket due to an increased residual.

Here's to a happy, healthy and prosperous New Year. 🍷

*Jeffrey Shavitz is a founder and Adam Moss is the Vice President, National Sales Manager of Charge Card Systems Inc., a nationwide leader in merchant services offering a full suite of products and 12-hour funding. Shavitz is an active member of The Green Sheet Advisory Board and the First Data ISO Advisory Board; both Shavitz and Moss are frequent contributing writers to The Green Sheet. They can be reached at [jshavitz@chargecardsystems.com](mailto:jshavitz@chargecardsystems.com) or [amos@chargecardsystems.com](mailto:amos@chargecardsystems.com) or 888-505-CARD. For additional information on CCS, please visit [www.chargecardsystems.com](http://www.chargecardsystems.com).*



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# Turn no into knowledge

By Jeff Fortney

*Clearent LLC*

**Y**ou return to your car after a disappointing sales presentation and wonder what just happened. The application was complete. You asked all the right questions and knew your offering was perfect for this merchant. You'd had a number of productive conversations, and it looked like it was a done deal.

But when the time came to put pen to paper, the merchant said no and decided not to proceed. This caused you to spend another 30 minutes backtracking, going over all the positives you previously mentioned – like the savings and that there would be no surprise expenses. After all that, the merchant still said no.

## Down but not out

Sound familiar? Chances are this has happened to you at one time or another. And it's easy to understand why depression may set in and negatively affect your future sales performance. Because this could lead to further lost sales, you must recover quickly and move on. The key to a speedy recovery is to perform a post-mortem examination, which is done by asking key questions about the process you just completed.

These include:

- Did your merchant postpone or delay your appointments when you were trying to get him or her to sign?
- Did you really listen, or did you primarily sell?
- Did you explain the application process clearly before you started?
- Did you say or do anything that cost you the sale?

## Time to analyze

Now I'll discuss each of these questions so you'll have an idea why they are important and how to approach them.

### Did your merchant postpone or delay your appointments when you were trying to get him or her to sign?

This is a clear sign of someone who is afraid to say no. Many people are uncomfortable saying no. They may ask for something to review; they may even sound interested in everything you've said. Yet, in fact, they are giving you signals that they are not going to sign. They may even go so far as

give you the information for the application, but when commitment time arrives, they finally tell you no.

A timely no is not a bad result. Remember, time is your most important and valuable asset. It cannot be replenished. Chasing a maybe that you perceive as a yes eats up time that could be used to follow real opportunities.

When prospective merchant customers reschedule or delay appointments, top merchant level salespeople (MLSs) give them the opportunity to say they aren't interested – to say no if that's truly what they want to do.

These savvy MLSs make it clear that their feelings won't be hurt if the merchants are not interested or if they're postponing merely because they are afraid to say no. The true sales professional tells merchants that saying no now will save them time in the long run.

Sometimes a postponement is just that – a postponement. But by giving merchants a chance to say no early on, you'll be able to find out the reason why a merchant isn't interested in what you have to offer.

### Did you really listen, or did you primarily sell?

Merchants will tell you their needs and desires, their pains and complaints – if you just listen. However, all too often MLSs will hear a few key words and instead of continuing to listen, they tune out and start thinking about how they will handle the merchant's objections.

When it's time to sign, the merchant balks because his or her issues have not been addressed. The merchant may even feel like the MLS wasn't listening to what he or she had to say. Sadly, that's probably the case.

Top salespeople know the first thing a merchant says may not be the real problem. It could simply be a symptom of a problem. They listen further and ask questions. They encourage the merchant to explain further and give examples while they determine how important the issue is to the merchant. They know the key to the sale is not addressing the symptom; it's addressing the root problem.

### Did you explain the application process clearly before you started?

The merchant boarding process can be intimidating



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because it involves an application. If merchants don't understand the risk factors of payment processing, they may not understand why you need a Social Security number, a personal guarantor and other personal information.

Many merchants will feel they are being asked to provide confidential information for no purpose. They will resist providing certain data and either refuse to sign or refuse to provide the information. Either way, you end up with an unsigned or incomplete application.

Before beginning to fill out the application, top salespeople walk the merchant through the process, explain what will be asked and why it's needed. After all, they know it's better to have the merchant refuse and not complete the application than to submit an incomplete application with the hopes that the underwriter will just ignore the information gaps.

### Did you say or do anything that cost you the sale?

We all want to build affinity with merchants, and it's our hope that they will become long-time partners. Good rapport is key to successful long-term relationships. Without it, there is a great chance you will lose the merchant's business.

However, top salespeople also understand the critical need to mirror merchants. Mirroring means using the same terms, the same approach and the same words the merchants use.

This doesn't mean becoming a yes person or agreeing with everything a merchant says. What it means is that you must recognize how he or she communicates and then mirror that form of communication.

For example, if a merchant uses words like frustrated, upset or angry, don't concentrate on numbers. Focus on what's causing the frustration or anger. Mirror the merchant, and you will build rapport.

Completing this post-mortem exercise will help you learn from lost sales. You can then incorporate what you learn into future sales efforts. In essence, even though you lost the sale, you gained valuable lessons. ■

*Jeff Fortney is Vice President, ISO Channel Management with Clearent LLC. He has more than 17 years' experience in the payments industry. Contact him at [jeff@clearent.com](mailto:jeff@clearent.com) or 972-618-7340. To learn about how Clearent can help you grow faster and go further, visit [www.clearent.com](http://www.clearent.com).*

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# Are your marketing materials compliant?

By Peggy Bekavac Olson

*Strategic Marketing*

**P**ayment Card Industry (PCI) Data Security Standard (DSS) compliance has been a hot industry issue in recent years. Are you aware the card brands have rules and regulations for marketing solicitation and program materials, too? It's important to adhere to the standards, which were established to prevent reputational harm to the payments system, because if you don't, your business could face potential audits, penalties and fines.

## Who needs to comply?

According to the *Visa International Operating Regulations* dated Oct. 15, 2011, third-party agents must act in accordance with all rules pertaining to marketing solicitation and program materials. Visa Inc. maintains two public lists of third-party agents at its website, [www.visa.com/third-party-agent](http://www.visa.com/third-party-agent).

Included in the lists are: Independent Sales Organization (ISO), Encryption Support Organization (ESO), Third

Party Servicer (TPS), Merchant Servicer (MS) and High-Risk Internet Payment Service Provider (HRIPSP). MasterCard Worldwide provides a slightly different list of service providers in the Dec. 7, 2011, *MasterCard Rules*: Independent Sales Organization (ISO), Third Party Processor (TPP), Data Storage Entity (DSE) and Service Provider Registration Facilitator (SPRF).

## What materials are involved?

What constitutes marketing solicitation and program materials? *MasterCard Rules* identifies the following items: stationery, letterhead, business cards, merchant applications, merchant agreements, merchant statements and marketing materials. Marketing solicitation and program materials can encompass many formats, including brochures, websites, flyers, advertisements, postcards, telemarketing scripts, email signatures, tradeshow booth graphics, forms, manuals, quick reference guides.

A good rule of thumb in determining which materials need to comply with card brand rules and regulations is to identify whether the materials are merchant-facing. Ask if they will be put in front of current or prospective merchants. If the answer is yes, compliance standards apply.

## How to be compliant?

Basically, the card brands want merchants to know exactly who they will be or are doing business with. As such, TPAs and service providers may not suggest or in any manner imply they are direct customers or representatives of the card brands or that they are acquiring bank employees. They must identify their relationships with merchant acquiring banks (which are the card brands' customers), and not create the impression that the card brands or their merchant acquirers endorse their businesses.

TPAs and service provider organizations must make it clear to merchants the role they play in providing services and not use any misleading statements. How is this accomplished? By providing a clear statement that identifies the TPA or service provider as an agent of its merchant acquirer, as well as the location of the acquiring bank's headquarters on every piece of marketing and program material. An example of this statement could be:

ABC Merchant Services is a registered ISO of XYZ Acquiring Bank, City, State.

If a TPA or service provider has multiple acquiring relationships, this needs to be denoted. Further, marketing and program materials must not state or imply the TPA or service provider is participating in or conducting any activity not expressly permitted by the card brand standards.

Sub-ISOs, agents and merchant level salespeople (MLSs) cannot advertise and promote their businesses without

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## Education

identifying themselves as representatives of their ISOs. An example of this type of disclosure statement could be:

LMNOP Inc. is an authorized representative of ABC Merchant Services, a registered ISO of XYZ Acquiring Bank, City, State.

Note: Visa stated it does not recognize "sub agents"; confer with your registered ISO for advice on correct wording.

### How is compliance validated?

Your merchant acquirer specifies the disclosure verbiage that should appear and be communicated on all your marketing and program materials. If card brand, merchant acquirer or ISO, sub-ISO, agent or MLS logo use is desired, your acquiring bank will dictate their order, location and placement. Generally, if an ISO's logo appears, the acquiring bank logo must also be present in an equal font size and location. Merchant acquirers have procedures for reviewing solicitation and program materials; typically they will want to review and approve them before publication, distribution or any other use.

### Consequences of noncompliance

The card brands and acquirers regularly audit and randomly investigate payment businesses for proper and clear

disclosure. Identified noncompliance typically results in a warning to correct the situation on first offense, but continued noncompliance can result in substantial fines and disciplinary action levied by the card brands, which are passed down through merchant acquirers.

An unregistered ISO, agent or MLS can face a \$25,000 fine for the first offense, with fines escalating to six figures if noncompliance is not readily rectified. Additionally, many sub-ISO, agent and MLS agreements include a residual stream penalty clause for noncompliance.

So make sure your marketing solicitation and program materials comply with card brand rules and regulations and are in line with your merchant acquirer's policies and procedures. This will protect your business from penalties and fines, as well as serve to enhance the reputation and legitimacy of your business as a participant in the payments industry. ■

*Peggy Bekavac Olson founded Strategic Marketing, a full-service marketing and communications firm specializing in financial services and electronic payment companies, after serving as Vice President of Marketing and Communications for TSYS. She can be reached at 480-706-0816 or peggyolson@smktg.com. Information about Strategic Marketing can be found at [www.smktg.com](http://www.smktg.com).*

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# NewProducts

## A mobile app for Windows

**Product: Aircharge Windows Mobile**

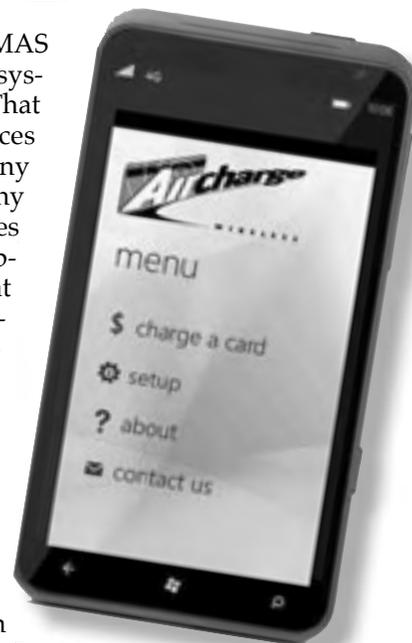
*Company: Cynergy Data LLC*

**C** ynergy Data LLC recently added another piece to the mobile payments puzzle. In conjunction with mobile partner Aircharge Inc., the newly released Aircharge Windows Mobile application delivers an integrated payment processing solution that is compatible with Microsoft Corp.'s Windows Phone.

Previous rollouts through the joint venture included applications for Apple Inc. iPhone, Google Inc. Android, and Research In Motion Ltd. BlackBerry devices. "Find any mobile phone and Cynergy Data can process on it," stated Randal McCoy, Chief Executive Officer at Cynergy. With the addition of Microsoft Windows compatibility, Cynergy now offers more mobile platforms than any other payments provider, McCoy said.

"Aircharge maps to our LUCY gateway and is fully

integrated with our VIMAS account management system," McCoy noted. "That means our sales offices don't need to add any other vendors, pay any additional gateway fees or order any other equipment. And it means that our merchants get real-time batch monitoring and reporting and back-office automation, all at no extra charge." Todd Brix, Microsoft's Senior Director, Windows Phone Marketplace, added, "Cynergy Data's Aircharge application offers our customers a flexible mobile payment solution, complete with fast and secure card payments, printed receipts and real-time batching, all right from their Windows Phones."



According to Cynergy, unlike similar products, the Aircharge hardware connects not only to mobile phones and personal digital assistants, but also to desktop and laptop computers. Cynergy's proprietary LUCY gateway enables merchants to link all workstations and devices via a single, integrated IP connection, the company said. And merchants have direct, online access to account information, transaction details and summary records for custom reporting.

Cynergy's gateway provides a variety of payment options, including bank and nonbank credit cards with signature capture, PIN-based debit, checks, electronic benefit transfer services, fuel and fleet cards, as well as gift card payments. With Aircharge integration to Cynergy's VIMAS online management system, sales agents benefit from expanded features, Cynergy said. In January 2012, the company added an online application with digital signature, a merchant pricing model, customizable residual pricing and private-labeling options to the VIMAS system.

Cynergy reported the new app is compliant with all major credit card brand regulations and federal laws pertaining to printing and viewing credit card information; to reduce paper, sales receipts can be sent directly to customers' mobile devices or email accounts; and, because the software is compatible with virtually every cellular network provider and computer manufacturer, merchants can change equipment or providers whenever they choose. ■

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# DateBook

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## Women's Network in Electronic Transactions (W.net)

LINC Phoenix

**Highlights:** W.net's LINC Phoenix will host an evening networking session with special guest speaker Cindy Kim, Director of Marketing and Social Media at JDA Software Group Inc. A recognized expert in developing and implementing global social media marketing campaigns, Kim will address how to best utilize social media strategies to drive business in her presentation, A Fireside Chat on Building Your Personal Brand for Networking.

W.net's LINC meetings occur periodically throughout the United States and provide a forum for women in the payments industry to empower and inspire each other through networking opportunities.

**When:** Feb. 29, 2012

**Where:** Country Club, DC Ranch, Scottsdale, Ariz.

**Registration:** [www.w-net.biz](http://www.w-net.biz)



## Comexposium

CARTES in North America

**Highlights:** Based on the success of CARTES events globally, the inaugural CARTES in North America conference is coming to Las Vegas.

Technology and application demonstrations from a sold-out roster of 100 international exhibitors will offer an inside glimpse at innovations in card manufacturing, payment solutions, identification and authentication schemes, mobile payment innovations, and digital security.

To promote smart technology adoption in North America, leading experts in mobile commerce, smart technologies and digital security will present 70 sessions on such topics as near field communication, mobile payments, Europay/MasterCard/Visa deployment, trust, privacy and information technology security.

**When:** March 5 – 7, 2012

**Where:** The Mirage Hotel & Casino, Las Vegas

**Registration:** [www.cartes.com/divers2/cartes-in-north-america-5-7-march-2012-las-vegas-nv-usa](http://www.cartes.com/divers2/cartes-in-north-america-5-7-march-2012-las-vegas-nv-usa)



## IIR Holdings

Prepaid Expo USA 2012

**Highlights:** This independent expo is designed to generate business for the entire prepaid and stored-value community. Aims of this year's show are to promote prepaid businesses with next-generation solutions, discuss regulatory challenges and analyze technology disruptions to the industry. The seventh annual expo will boast more than 1,700 attendees and over 100 exhibitors.

Independent market research and an unbiased conference structure will create an atmosphere that gives industry professionals the chance to be inspired by provocative keynote speakers; connect with leading prepaid card providers; and discover the regulatory issues, emerging and mobile payment technologies, distribution challenges and consumer insights that are changing business practices today.

**When:** March 12 – 14, 2012

**Where:** Mandalay Bay Resort and Casino, Las Vegas

**Registration:** [www.iirusa.com/prepaid/welcome-page.xml?registration=XU2548GRST](http://www.iirusa.com/prepaid/welcome-page.xml?registration=XU2548GRST)



## Southeast Acquirers Association

2012 SEAA Annual Conference

**Highlights:** The Southeast Acquirers Association's annual conference focuses on current issues of concern to merchant level salespeople and ISOs. Each year, the meeting brings industry leaders to the Southeast region of the United States for the purpose of advancing the success of the industry's feet on the street.

The 11th annual SEAA conference will begin with an opening reception, the popular Field Guide Seminar and W.Net's networking session for women attending the event. The conference will feature keynote speaker Pam Joseph, Vice Chairman of U.S. Bancorp Payment Services and Chairman of Elavon Inc., as well as presentations by vetted payment experts. Ample time will be designated for networking in the exhibit hall, where more than 80 vendors and sponsors will be on hand.

A closing breakfast will be hosted in the hotel restaurant.

**When:** March 19 – 21, 2012

**Where:** Dallas Fairmont Hotel, Dallas

**Registration:** [www.southeastacquirers.com](http://www.southeastacquirers.com)

# 2012 Calendar of events

To submit your event to this calendar, email a press release to [press@greensheet.com](mailto:press@greensheet.com). Please include the name, date and location of the event, as well as highlights of planned activities and registration contact information.

Event	Date	Location	Website
Western Payments Alliance, 2012 ACH Rules Workshop	Feb. 14	Bellingham, WA	<a href="http://www.wespoy.org/imis15_live/wespoy/">www.wespoy.org/imis15_live/wespoy/</a>
Western Payments Alliance, 2012 ACH Rules Workshop	Feb. 15	Portland, OR	<a href="http://www.wespoy.org/imis15_live/wespoy/">www.wespoy.org/imis15_live/wespoy/</a>
Isis Mobil Innovation Forum	Feb. 21 - 22	Austin, TX	<a href="http://www.regonline.com">www.regonline.com</a>
W.net, LINC Phoenix	Feb. 29	Scottsdale, AZ	<a href="http://wnetonline.org/PageDisplay.aspx?l=7966">http://wnetonline.org/PageDisplay.aspx?l=7966</a>
Comexposium, Carles in North America	March 5 - 7	Las Vegas	<a href="http://www.cortes.com">www.cortes.com</a>
ILR Holdings, Prepaid Expo USA 2012	March 12 - 14	Las Vegas	<a href="http://www.ilrusa.com/prepaid/welcome-page">www.ilrusa.com/prepaid/welcome-page</a>
SEAA 2012 Annual Meeting	March 19 - 2	Dallas	<a href="http://www.southeaststockquirers.com">www.southeaststockquirers.com</a>
Gulf Boy Consulting LLC, Mobile Payments	April 11 - 12	Orlando, FL	<a href="http://www.socialmobilepayments.com">www.socialmobilepayments.com</a>
ACI, Emerging Payment Systems West Coast Edition	April 16 - 17	San Francisco	<a href="http://www.dvt.com/Events?find=441258">www.dvt.com/Events?find=441258</a>
ETA, 2012 ETA Annual Meeting & Expo	April 17 - 19	Las Vegas	<a href="http://www.electran.org/content/view/815/494/">www.electran.org/content/view/815/494/</a>
SourceMedia, 24th Annual Card Forum & Expo	May 9 - 11	Orlando, FL	<a href="http://www.globalmediodynamics.com/upcoming-events">www.globalmediodynamics.com/upcoming-events</a>
World Research Group, 3rd Annual Prepaid Card Congress	May 10 - 11	Las Vegas	<a href="http://worldgroup.com/showConference.cfm?confCode=FW12006">http://worldgroup.com/showConference.cfm?confCode=FW12006</a>
Smart Card Alliance, NFC Solutions Summit 2012	May 22 - 24	Burlingame, CA	<a href="http://www.smartcardalliance.org/pages/activities-next-conference">www.smartcardalliance.org/pages/activities-next-conference</a>
2012 NBPCA Annual Congress	June 3 - 5	National Harbor, MD	<a href="http://www.PrepaidEvent.com/">www.PrepaidEvent.com/</a>
NEAA Summer 2012 Conference	June 5 - 6	Hamburg, NJ	<a href="http://northeaststockquirers.com/">http://northeaststockquirers.com/</a>
Global Media Dynamics, 2012 Mobile Payments	June 11 - 12	Las Vegas	<a href="http://www.globalmediodynamics.com/upcoming-events">www.globalmediodynamics.com/upcoming-events</a>
MWAA 2012 Conference	July 18 - 19	Chicago	<a href="http://midweststockquirers.com/next_event.php">http://midweststockquirers.com/next_event.php</a>
W.net Career & Leadership Summit	Sept. 10 - 11	Atlanta	<a href="http://wnetonline.org/PageDisplay.aspx?l=8667">http://wnetonline.org/PageDisplay.aspx?l=8667</a>
WSAA 2012 Conference	Sept. 26 - 27	Huntington Beach, CA	<a href="http://www.westernstatesacquirers.com">www.westernstatesacquirers.com</a>



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April 17 - 19, 2012

July 18 - 19, 2012

Sept. 26 - 27, 2012

# Inspiration

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- Abraham Lincoln

## You, too, can become a CPP

**T**he inaugural round of testing for the Electronic Transactions Association's Certified Payments Professional (CPP) program is complete, and 180 of the 220 individuals who took the test scored high enough to earn the CPP designation. If you'd like to be on the CPP list, now is the time to begin preparing for the test.

First, determine when you want to take the exam, which is offered twice a year. The next test windows are May 1 through 31 and Nov. 1 through 30, 2012. Their respective deadlines are April 1 and Oct. 1. Be sure to get your application in on time – given the pace of the payments industry, it's easy for important, but not urgent, items to slip through the cracks.

If you're like most working adults, it's probably been a while since you've taken a test. And the skills required to succeed in sales are different in many respects than those needed to score well on multiple choice exams. Following are several tips to help you prepare so you can be confident when you walk into your nearest testing center that you've done your best to master the material on the exam.

### Study well, study often

- Review all the information about the exam on the ETA's website, [www.electran.org](http://www.electran.org). And download the candidate handbook, which lists the topics covered.
- Assess your strengths and weaknesses to determine which areas merely need a review, which ones need moderate attention and which ones will require significant study for you to fully understand them.
- Take stock of all available resources, including books, articles, websites, webinars, classes, video and audio recordings, live presentations and panels, and industry mentors. Then, based on how you learn best, select the resources you want to use.
- Determine the number of hours you want to study each week, and schedule in the time. Don't put them all into one block. It's better to split them up

into several smaller chunks during the course of each week. And with the smaller segments, say one hour, take a short break after 20 and 40 minutes to refresh yourself.

- Decide what topics you are going to cover each week and in each session.
- Locate at least one good place to study, preferably a quiet spot where you will be comfortable and will not be distracted or interrupted. Be sure you have all the supplies you need to accomplish your goals for each session, as well.
- In each study session, tackle the most difficult material first, while your mind is still fresh.
- Take notes as you study, and review them at the end of your study time. Notes should include questions that may arise, as well as points and concepts of particular importance. Be sure to get your questions answered as soon as possible after the session, either by a trusted mentor or through research.
- If you are having difficulty with a particular topic, find out who in the industry knows it inside-out and ask that person for help.
- If you know someone else who is studying for the exam, set up some joint study sessions where you can talk about what you're learning and help one another. And when the test date is drawing near, devise practice tests for each other.
- Teach what you're learning to someone who is new to the industry.

It is also important that you eat well, exercise and get plenty of rest throughout your test preparation period, especially in the days before your exam. And on your appointed day, focus on enjoying how well your mind works as you, a well-prepared professional, breeze through the test.

Good Selling!<sup>SM</sup>



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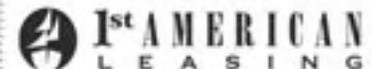
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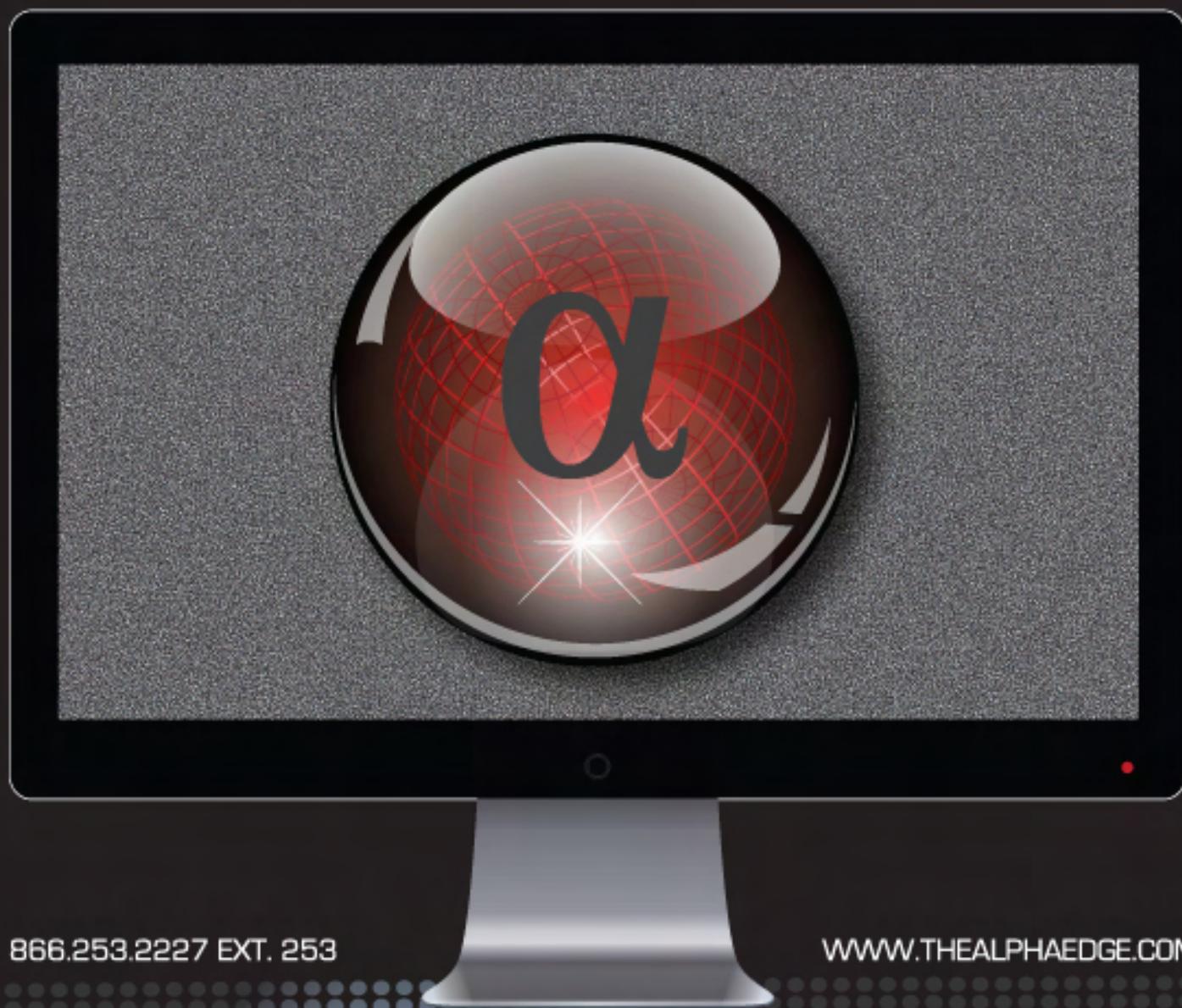
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A NEW BEGINNING

UNITED BANK CARD  
IS NOW



HARBORTOUCH

## We're changing our name!

Our free Harbortouch POS program has been an enormous success, differentiating our sales partners and enabling them to build a stronger merchant portfolio. We are confident that this is the future of the industry and, as such, it has become increasingly central to our operations. To reflect the fact that we are moving in this direction, United Bank Card's name will be changed to "Harbortouch". It is important to note that we will be the same company, same management and same employees; it is simply a name change to highlight our shifting focus as an organization.



### Introducing

## HARBORTOUCH POS Elite

**THE FREE POS SYSTEM  
FOR HIGH-END MERCHANTS**

All-in-one design - the CPU is built right into the monitor

Cast aluminum body for maximum durability  
and sleek appearance

State-of-the-art processor delivers blazingly fast speed

Massive storage and impressive power

Visit [www.isoprogram.com](http://www.isoprogram.com) today

for more information on  
the free POS program and  
these exciting new announcements

For more information, contact:

Brian Jones, EVP Sales and Marketing: 800-201-0461 x 136

Jonathan Brandon, National Sales Manager East: 800-201-0461 x 145

Brian Fitzgerald, National Sales Manager Central: 800-201-0461 x 257

Max Sinovoi, National Sales Manager West: 800-201-0461 x 219



**HARBORTOUCH**

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Harbortouch is a registered ISO/WSP of First National Bank of Omaha,  
1620 Dodge St., Omaha, NE - Member FDIC

### PLUS OTHER EXCITING IMPROVEMENTS TO THE EXISTING FREE POS PROGRAM:

- ▶ **Innovative Enhancements to Harbortouch Hospitality**
  - Harbortouch Reservations - allows restaurants to accept online reservations and track them through their POS system
  - Harbortouch Tableside - enables servers to input orders right at the table using an Apple iPad®
- ▶ **Major Improvements to Harbortouch Retail**
  - Color/size/style matrix
  - Support for rentals and consignment
  - Robust customer and inventory management
  - Vendor and PO management
  - and many more new features!

### NEW SPECIALTY SOFTWARE!

- ▶ **NEW Harbortouch Delivery**
  - Perfect for pizzerias, Chinese restaurants and any other hospitality business offering delivery services
- ▶ **NEW Harbortouch Spirits**
  - Custom features for wine and liquor stores
- ▶ **NEW Harbortouch C-Store**
  - Designed specifically for convenience stores

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## NEW ENHANCED FEATURES!

**CASH TRANSACTIONS** – Accepts and records both cash and credit card transactions.

**DISCOUNTS** – Includes discounts by percentage or specific dollar amount.

**STORE AND FORWARD** – Saves and processes sales, even if Internet connectivity is unavailable.

**MULTI-MERCHANT** – Easily switches accounts for multiple businesses or employees using one mobile device.

## PHONE SWIPE GIVES YOU:

Customizable inventory, e-mail receipts with Google Maps™, tip calculator, Geo Tax, real-time reporting and FREE user-friendly software app.

**PLUS**  
a PAY-AS-YOU-GO OPTION with no monthly fees!

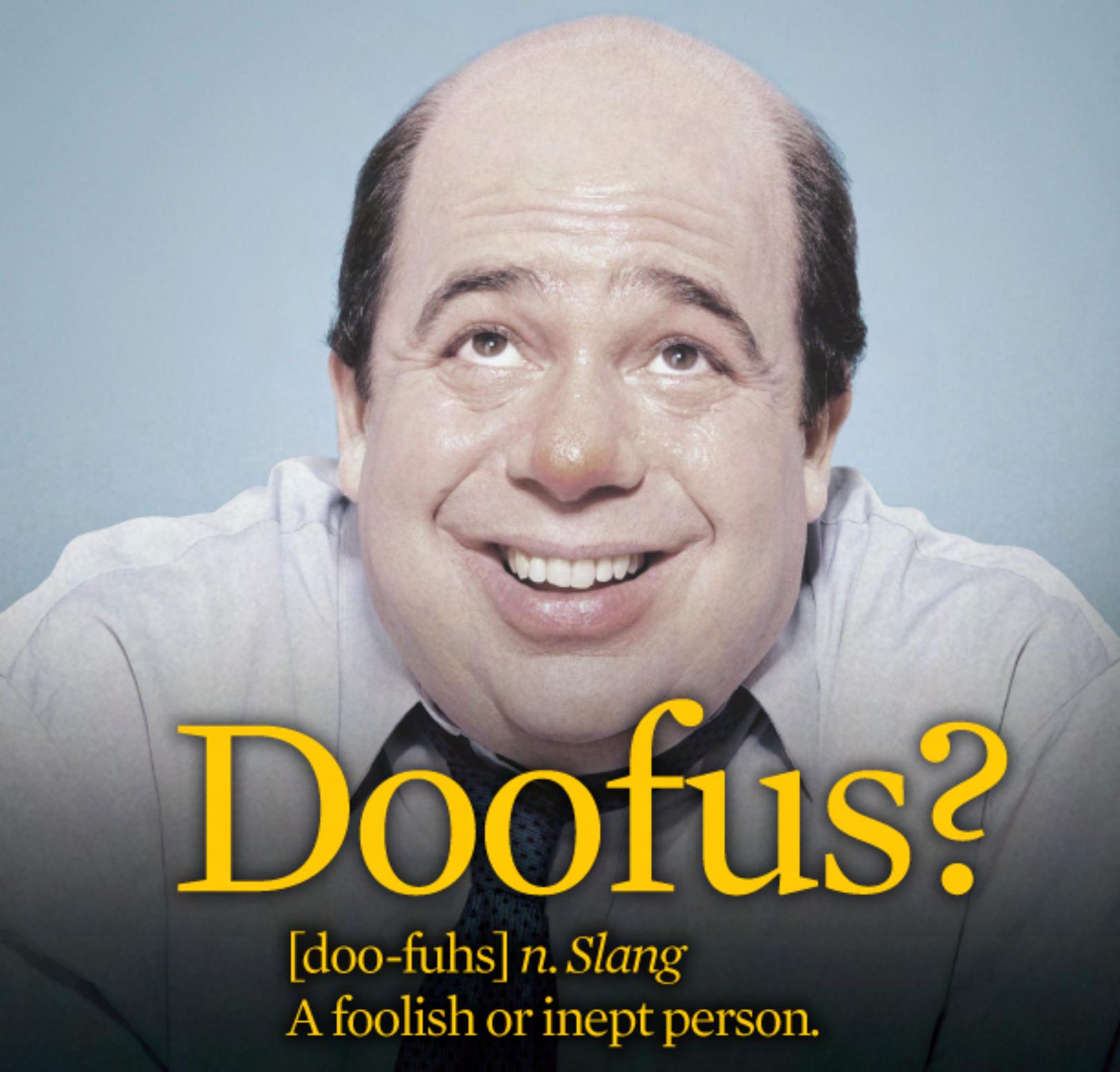
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MERCHANT TRANSACTION!**



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# Doofus?

[doo-fuhs] *n. Slang*  
A foolish or inept person.

*Avoid being one with Total Merchant Services.*

Who wants to get slapped with an  
undisclosed \$79 - \$99 Compliance Fee?

***Not your merchants!***

Who wants to get angry phone calls from  
merchants who feel they were tricked?

***Not You!***

Who is going to get a referral from  
those angry merchants?

***Not You!***

See the many ways  
Total Merchant Services  
protects you and  
your merchants!

# Hidden Compliance Fees? Angry Merchants? Don't take it anymore!



## We've got some better ideas! Take a look:

**You can have it all!** You can still earn an 8x upfront bonus, 50%-65% revenue sharing splits, the best free terminal placement programs in the business, with an honest, transparent, reasonable Compliance Program.

### **Total Transparency**

Total Merchant Services protects you and your merchants with total transparency. We take a reasonable approach in disclosing the financial details of our Compliance Program to every new merchant on our Schedule Of Fees in simple, clear language.

### **Easy To Sell**

All our merchants receive the Compliance Program at no additional charge during the first year of their processing relationship with us and these services may be accessed immediately. On the 13th month of processing, and from that point forward, merchants will be assessed a fee of \$4.95 per month. We even offer a \$25,000 Compliance Reimbursement Program to make sure our merchants feel good as they are getting something in return.

### **Honesty is our Everyday Policy**

At Total Merchant Services, you'll find no compliance fee trickery and zero surprises. We believe in being upfront, honest and ethical in all of our business dealings. We will not use bait and switch tricks or surprises to get over on merchants or sales partners. We know that doing anything less would be a recipe for disaster—not growth.

### **Still not sure? Want to be convinced?**

If you'd like help comparing our program, including the true impact of the Compliance Program fees, please give us a call. We'll show you that chasing a deal that looks better is NOT going to make up for a Compliance Fee Program that destroys your reputation and your business.

**Who's going to have happier customers?**

**You!**

**Who's going to earn more money?**

**You!**

**Who's going to get more referrals?**

**You!**

**Who's going to break through in '11?**

**You!**



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payment solutions for your business

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