white paper

BEST PRACTICES

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COMMITTEE OF THE
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ASSOCIATION

ETA

BEST PRACTICES

In the last few years the transaction processing industry has faced troubling events that have threatened revenues and the ultimate viability and longevity of businesses. While the industry is technology driven, its roots and most common dominator exists in the highly regulated banking industry. The unique challenge is maintaining the independence, creativity and flexibility of innovative and entrepreneurial service providers while instilling some of the process, audit, legal and regulatory requirements of the banking business. The balance of these disciplines can be achieved through a series of "best practices" recommendations for the acquiring market.

The areas that can most affect an acquiring company fall into the following categories: sales representative training, sales representative disclosure monitoring, process and audit control of new account setup, conforming documentation, customer service, and ethics and compliance monitoring. The ETA has appointed a Best Practices Committee to make recommendations on the "Best Practices" to offer a level guidance and accountability in acquiring relationships.

For purposes of this paper, the primary focus is on best practices of third party organizations, specifically processors and independent sales organizations. Third party organizations are not bankcard association members, and thus are not subject to the more stringent rules enforced by such associations. Therefore, these best practices are directed toward third party organizations as a guideline for sound and ethical business policies.

Our definition of a "Third Party Organization" includes any company or person providing merchant processing sales and services directly or indirectly to an acquiring bank. These services include but are not limited to soliciting merchants, processing merchant applications, detecting fraud, providing merchant support, and the selling/leasing/renting of processing equipment.

While no industry or business is so unique that common solutions cannot solve business problems, transaction processing has elements that do pose special risks. One such risk is a lack of control over non-employees. Many merchant services are sold and serviced by a wide variety of non-employee and loosely affiliated salespeople. Policing the non-employee sales representatives, while ensuring that such sales representatives maintain their independent contractor status, poses unique challenges for this industry.

With all of the above in mind, set forth below are some recommended best practices with respect to merchants and sales representatives:

A. Best Practices With Respect To Your Merchants:

1. Disclose fees, charges and assessments on the first page of every agreement **CLEARLY AND CONSPICUOUSLY.**

2. Do not engage in deceptive pricing practices by offering special deals or offers that are not different from your every day pricing and practices.

3. Deliver what you (or your representatives or agents) promise. Caution representatives that the following violates the law: 1) misrepresentation by failing to say something (or covertly agreeing with a merchant) about products or services at the time of sale, and 2) oral representations that conflict with terms in the contract.

4. Do not misrepresent the cost or character of any equipment or service that you offer. Do not misrepresent a merchant's existing terminal as obsolete, if that obsolescence is based on the ability to use your services or based on laws contemplated but not yet passed.

5. When leasing equipment, make sure that non-cancelable leases are clearly disclosed and that you honor "right of rescission" time periods required by state law.

6. Promptly document and respond to all merchant complaints. Understand and correct the problem. Be proactive if there are any trends (retraining a sales agent or revising a contract to make sure it accurately reflects what you sell).

7. Make sure your contract with the merchant clearly spells out all rights and responsibilities, including merchant fees, card sales process requirements, notification of change in ownership, compliance with card association rules, and merchant liabilities.

8. Monitor state consumer protection agencies and the local Better Business Bureau to see if you have a file or any complaints.

9. Monitor your attrition rate and see if there are any trends; especially confirm that the merchants understand the agreements. If you see any trends regarding misrepresentations or other acts that can be corrected, take the necessary corrective actions.

10. Have a complaint mechanism in place to monitor merchants' complaints and monitor complaints by type, by representative and by product to identify trends.

B. <u>Best Practices With Respect To Your ISOs Or Sales Staff</u>:

1. Have a clear agreement with your ISO, which includes financial compensation, price changes, assignment of contract, specific obligations of the parties, confidentiality, record keeping requirements, fraud and chargeback loss responsibility, merchant acceptance criteria, future use and solicitation of merchants, portability of merchants, indemnification and reserve requirements.

2. Define what are unacceptable merchants.

3. Have the ISO represent and warrant that it is not mixing merchants with low chargeback rates with other merchants.

4. Monitor your ISOs' sales procedures with frequent reports and assessments of consumer complaints. Ensure that merchants are receiving full disclosure and that the sales process is full and complete.

5. Know the ISOs' merchant acceptance procedures.

6. Make sure the ISO does not misrepresent any of your services or products, and especially prices. Continuously screen for fraudulent acts.

7. Make sure the ISO is familiar with the products you are offering.

8. Review telemarketing scripts.

9. Review compensation structure to make sure that the ISO is not compensated solely on making a sale.

10. Consider recording telephone calls.

11. Review and prevent high-pressured sales tactics.

12. Examine the due diligence utilized by the ISO when evaluating a prospective merchant.

13. Have the ISO monitor and report whether the merchant's chargebacks are excessive, and whether the merchant has ever been placed on VISA's active monitoring list.

14. The ISOs due diligence should also include a review of a merchant's history with its previous processor to make sure it matches up to the length of time that the merchant says it has been in business, as well as a Dun & Bradstreet or Better Business Bureau file.

15. The ISO should continuously review the merchants' customer complaints.

16. Make sure that the ISO or you have a policy for approving new merchant accounts that includes the following issues:

    a. Documentation requirements for merchant accounts.

    b. Termination procedures.

    c. What derogatory information is acceptable on credit reports.

    d. Criteria for approving processing for additional locations.

    e. Underwriting guidelines.

C. Best Practices Of Your Merchants:

1. Make sure that you know what your merchant is selling and that customers are aware of what they are buying (to avoid chargebacks).

2. Make sure that the merchant delivers what it promises.

3. Make sure telemarketing and sales scripts/pitches do not misrepresent what the merchant sells.

4. Make sure that the merchant has appropriate fraud prevention policies in place.

D. Best Practices Regarding Your Operations:

1. Evaluate the adequacy of the chargeback system. Make sure the system can quantify outstanding chargebacks and their age, prioritizes research into chargebacks, measures daily chargeback activity, provides exception reports, and measures the efficiency of the chargeback process.

2. Implement an ongoing review of merchant accounts, including annual review of large merchant financial statements.

3. Periodically audit operations, including compliance with operating procedures, compliance with card association rules, compliance with written contracts, review of all vendor disaster recovery plans, and adequacy of merchant and ISO reserves.

4. Implement a fraud detection system, including an early warning system, daily fraud reports, trained employees, exception reports that screen for significant variances from average ticket size and volume, multiple tickets in the same dollar amount, multiple use of same card number, keyed rather than swiped transactions, high chargeback rates, authorization declines, and excessive returns.

5. Provide your sales representatives/ISOs/non-employee representatives with a copy of your own best practices paper and have them affirmatively agree to comply with such practices. Renew that commitment annually.