

WHAT'S IN A NAME – PLENTY!

One of the most confusing topics in the bankcard industry is the rules that govern what name a sales agent must use to market its good and services. Below I will discuss the nature of the problem and some suggested solutions.

How Must You Market?

Sales agents generally have a contract with an ISO and in effect are resellers of that ISO's credit processing goods and services. The ISO supplies the products and the sales agent is the engine that markets those goods and services to the merchants. The question becomes what name must the sales agent use when it is marketing to the merchants?

The Visa and MasterCard association rules provide that unless a sales agent has registered with Visa and MasterCard, the sales agent must market in the name of the ISO that it has contracted with. For instance, if your ISO is called "*Great Card Processing*" and your company is called "*MLS Processing*", then you, as a sales agent, must market to the general public under the name *Great Card Processing* exclusively, unless you register with the card associations. This means that all your marketing materials such as mailers, websites, business cards and fliers must all identify your company as *Great Card Processing*. You are not allowed to market under any other name, including *MLS Processing*, unless you register that name with Visa and Mastercard.

This leads some sales agents that wish to market under their own name to register with Visa and Mastercard. If a sales agent registers, then the sales agent can market under any name it chooses (assuming the name does not infringe on any other names). To continue our example, if a sales agent who has a contractual relationship with our fictional ISO *Great Card Processing* registers with Visa and MasterCard it can market under the name *MLS Processing*. It does not have to use the name *Great Card Processing* in its marketing materials, but only has to make sure that it identifies the bank and the location of the bank that it is utilizing in its marketing materials in order to comply with the Visa and MasterCard rules on the subject.

The Effect of the Rules

The practical application of these rules is much more complicated than the explanation above would imply. The fact is in this day and age almost no sales agents have an exclusive relationship with an ISO. Most sales agents have multiple relationships with ISOs that allow them to place merchants with ISOs that cater to particular market segments. Even if a sales agent has one relationship where it places the vast majority of its business, the sales agent almost invariably has a alternate ISO that it utilizes in order to place high-risk merchants or other hard-to-place business.

The conundrum is that if a sales agent is representing two or more ISOs, how must the sales agent identify itself to the general public? The general rule is that the sales agent cannot use its own company name, but must use the name of the ISO that it is soliciting the merchant for at the time of the sale. If the sales agent is representing multiple ISOs, then it cannot know which ISO it will be placing the merchant with, as it has to evaluate the merchant before it can make that decision. If the sales agent submits applications to multiple ISOs, this makes it effectively impossible for the sales agent to properly represent itself based upon the rules that the card associations have laid down.

Suggested Solutions

I have seen a number of different suggestions on how to comply with the rules but they are generally of little practical value for a sales agent. The most common suggestion is that the sales agent have multiple business cards and multiple sets of marketing materials in the different names of the sales agent's various ISOs. When the sales agent enters the merchant's location, it can produce the correct card based upon the ISO that the sales agent believes it will be placing the merchant with. This is somewhat impractical and expensive for the sales agent, to the extent that it has to get numerous different sets of marketing materials produced for its numerous ISO relationships. What is a merchant to do if it has ten or more ISO relationships, print up ten or more different sets of marketing materials? This solution to the problem is therefore not really practical.

There is no good answer as to what a sales agent should do when faced with the situation of trying to market itself in compliance with the Visa and Mastercard rules, when the sales agent has relationships with multiple ISOs. From a practical standpoint, it is almost impossible for the sales agent to comply with the card association rules unless it writes exclusively for one ISO.

The sales agent that is not registered and utilizes multiple ISOs finds itself in a situation where it is not trying to comply with the rules but instead is trying to minimize its exposure to fines for violating the Visa and Mastercard rules. The most common way that sales agents address this problem is that they market under the name of the ISO where they place the vast majority of their business. If a sales agent is marketing in this fashion, any review of the sales agent's marketing materials will generally lead anyone who is investigating to the ISO that the sales agent uses to place most of its merchant accounts. An inquiry to that ISO by anyone investigating the sales agent's marketing compliance with the association rules will generally lead to a situation where the sales agent will be confirmed as a sales agent for that ISO and that will be the end of the inquiry.

Of course, this leaves the sales agent in a situation where it is not in compliance to some extent, if it places merchants with ISOs other than its primary ISO. The rules as

currently written, almost force the sales agent to write for one ISO, which is unfair to the sales agent that is trying to provide a good product mix to its customers. The card associations have some options to address this problem, should they have a desire to do so.

One way to do so would be to change the rule that states that the sales agents must market in the name of the ISO. I find this rule to be detrimental to the ISOs to the extent that the ISOs are often sued by merchants because of the actions of their sales agents. The reason that the ISOs are sued is because the sales agent is marketing in the same name as the ISO, and hence, the merchant identifies the ISO as the party that it believes is liable for any wrongful actions. (See “Is an ISO Liable for the Actions of Its Independent Sales Agents?”, *Transaction World Magazine*, October, 2003) ISOs could substantially reduce their potential liability for sales agents’ actions by rescinding this rule.

One objection that has been made to repealing this rule is that having sales agents market in the name of the ISO gives the ISO an incentive to more carefully screen its sales agents. From a global perspective, I am of the opinion that it really does not matter because most sales agents can find an ISO that will sign them up with little or no background checks. Since a bad sales agent can find a lax ISO no matter how many good ISOs are doing background checks, the overall pool of sales agents will still contain a very small percentage of bad sales agents. The way to resolve this situation would be to have all sales agents go through a process overseen by Visa and MasterCard that calls for a mandatory background checks including a criminal background search, along with a credit search. This will at least provide some measure of comfort that the sales agent is potentially a reputable individual.

Until the card associations address this issue, there will be no easy answer for a sales agent that wishes to place business with multiple ISOs. All a sales agent can do is try to minimize its risk of being fined, while knowing that it is not complying with the Visa and Mastercard regulations as currently written.

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