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Deposit Insurance and Consumer Protection for Mobile Financial Services

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Deposit Insurance
&
Mobile Banking

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Outline

- What is a “deposit”?
- What about money in mobile payment systems? Do these funds qualify as “deposits”?
- Who is the depositor? What is “pass-through” insurance coverage?
- What are some of the consumer risks?

What is a “deposit”?

“Deposit”

- Broadly defined as “unpaid balance of money or its equivalent received or held by a bank or savings association.” 12 C.F.R. 1813(l).
- Definition includes exceptions, including exception for deposits payable solely at foreign branch.

“Deposit”

- Bank or savings association
- Must receive “money or its equivalent”
- And must be obligated to repay this money

“Money or Its Equivalent”

- United States Supreme Court has interpreted this phrase to mean “hard earnings” or “tangible assets.” See FDIC v. Philadelphia Gear Corporation, 106 S. Ct. 1931(1986).
- Under this definition of “deposit,” the FDIC does not protect those unpaid creditors who have provided a bank with goods or services; rather, the FDIC only protects those creditors who have entrusted a bank with “hard earnings” (money).

Types of Deposits

- Checking accounts
- Savings accounts
- Certificate of deposit (CD) accounts
- Money orders
- Official checks (cashier's checks)

What about money in mobile payment systems?

Stored Value Cards

- In General Counsel's Opinion No. 8 (GC8), the FDIC addressed issue of whether funds underlying stored value cards qualify as "deposits." See 61 Fed. Reg. 40490 (August 2, 1996).
- In this opinion, the FDIC took position that funds in "customer account systems" are "deposits," but funds in commingled "reserve systems" are not "deposits."

FDIC

Stored Value Cards

- In new General Counsel's Opinion No. 8 (new GC8), the FDIC reconsidered issue of whether funds underlying stored value cards qualify as "deposits." See 73 Fed. Reg. 67155 (November 13, 2008).
- In this opinion, the FDIC took position that funds underlying stored value cards *or other nontraditional access mechanisms* are "deposits" to the extent that the funds have been placed at an FDIC-insured depository institution.

Mobile Payment Systems

- Stored value cards (prepaid cards)
- Computers
- Mobile phones
- Whatever

Regardless of the form of the access device, the funds are "deposits"

But who is the depositor?

The person with the access device?

Or the company that provided the access device?

Two Bank Accounts

- Account titled "Jane Smith" with balance of $500
- Account titled "ABC Mobile Phone Company" with balance of $5,000,000

Individual Accounts vs. Custodial Accounts

- If consumer maintains individual account at bank, the consumer will be recognized as depositor
- But if consumer has access to account maintained by a corporation, the consumer will not be recognized as depositor for insurance purposes unless "pass-through" requirements are satisfied

“Pass-Through” Requirements

- Custodial nature of account must be disclosed in bank’s account records (for example, account title such as “ABC Mobile Phone Company as Custodian”)
- Identities and interests of actual owners (consumers) must be disclosed in bank’s records or custodian’s records or records maintained by other party
- Funds in account actually must be owned by purported owners (and not by custodian) under applicable agreements and applicable state or foreign law

"Pass-Through" Requirements

- If "pass-through" requirements *not* satisfied, FDIC will treat the corporation (the mobile phone company) as the depositor in applying the $250,000 insurance limit
- If "pass-through" requirements satisfied, insurance coverage up to $250,000 limit will "pass through" the custodian to each of the actual owners (consumers)
- *In either case*, in event of bank failure, FDIC will disburse insurance to custodian (the named accountholder)

What are the consumer risks?

What happens if…..?

- The mobile phone company collects money from consumer, but does not deliver money to bank for several days

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- The company collects money from consumer, and *never* delivers money to bank

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- The company goes bankrupt

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- The company goes bankrupt
- The company fails to satisfy “pass-through” requirements

What happens if…..?

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- The company collects money from consumer, and *never* delivers money to bank
- The company goes bankrupt
- The company fails to satisfy "pass-through" requirements

Dangers exist despite FDIC

Remember:

- FDIC only provides deposit insurance on “deposits” upon failure of insured depository institution

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- FDIC deposit insurance is limited to $250,000 for deposits of particular depositor at particular insured depository institution (except “noninterest-bearing transaction accounts” are fully insured through December 31, 2012)

Remember:

- FDIC only provides deposit insurance on "deposits" upon failure of insured depository institution
- FDIC deposit insurance is limited to $250,000 for deposits of particular depositor at particular insured depository institution (except "noninterest-bearing transaction accounts" are fully insured through December 31, 2012)
- *FDIC does not supervise nonbanking companies that may provide mobile payment services through banks*

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Mobile Financial Services:
Balancing Regulatory Risks with Financial Inclusion Opportunities

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