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Client Alert: FTC Amends Telemarketing Rule to Ban "Cash-To-Cash" Money Transfers, "Cash Reload" Payments, and Remotely-Created Payment Orders and Checks, in Effort to Curb Scammers

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In an Official Press Release last week, the Federal Trade Commission (FTC) announced that it has approved final amendments to its Telemarketing Sales Rule (TSR) that, in large part, help protect consumers by eliminating various payment methods popular amongst scam artists. The highly-anticipated amendment—initially proposed on July 9, 2013—comes after a lengthy public comment period.

The Director of the FTC's Bureau of Consumer Protection, Jessica Rich, stated with the Press Release that "[c]on artists like payments that are tough to trace and hard for people to reverse," and that the new rules therefore "ban payment methods that scammers like, but honest telemarketers don't use."

These methods include:

- "Cash-to-cash" money transfers.
  - Described by the FTC as "a specific type of money transfer in which a consumer brings cash or currency to a money transfer provider that transfers the value to another person who can pick up cash in person."
  - Common money transfer providers include MoneyGram, Western Union, and RIA.
- "Cash reload" mechanisms.
  - Described by the FTC as "a virtual deposit slip for consumers to load funds onto a [reloadable debit card] without a bank intermediary."
  - Typically a consumer pays cash, plus a small fee, to a retailer that sells cash reload mechanisms.
  - Common retailers include MoneyPaks, Vanilla Reloads, or Reloadit packs.
- "Remotely created checks" (RCCs).

    - Described by the FTC as a type of check created by the payee using the consumer's personal and financial account information that is not actually signed by the payor, but rather, typically bears a statement such as "Authorized by Account Holder" or "Signature Not Required."
- "Remotely created payment orders" (RCPOs).
    - An electronic version of a RCC.

The FTC concluded in its official statement that "the telemarketing use of each of these payments methods has resulted in rampant abuse that has caused substantial harm to consumers," as "gaps in our financial system make it difficult to detect and stop fraudulent use of these payment methods." The FTC further concluded that it found "virtually no evidence of legitimate telemarketing uses of the four payment methods at issue," and expressly noted that the rule does not prohibit in anyway innovative, new technologies related to payor-initiated payments, such as digital checks created by consumers using their smart phones.

The amendments to the TSR, however, were not limited to banning these unconventional payment methods. The final rule also expands the advance fee ban on recovery services to include "recovery of losses incurred in previous telemarketing and non-telemarketing transactions," and includes several amendments to the National Do Not Call Registry (DNC), including:

- Requiring sellers/telemarketers to demonstrate that they have an existing business relationship with, or express written consent from, a consumer it calls if the consumer is listed on the DNC;
- Disqualifying sellers/telemarketers who do not get the information needed to place a consumer's number on the entity-specific DNC;
- Prohibiting sellers from sharing the cost of fees to access the DNC.

The final rule, with the exception of the prohibition on certain payment methods, will become effective 60 days after publication. The ban on cash-to-cash money transfers, cash reload mechanisms, RCCs and RCPOs becomes effective 180 days after the publication.

Click here to read the text of the Federal Register publishing the final rule and here to read the Official Statement of the FTC.

If you have any questions about the FTC Telemarketing Rule Amendments, please contact: John L. Landolfi (614.464.8390) or Steven A. Chang (614.464.6384).