Legal Impacts of COVID-19 on the Payments Industry

The Jaffe Payments team has prepared the following tips for ISOs, processors, payment facilitators, ISVs, money services businesses, and banks in light of COVID-19 developments.

- **Review Termination Rights and Implications.** Contracts often include a force majeure clause that excuses nonperformance when it is caused by unforeseen events beyond the control of the parties. An evaluation of whether the current circumstances qualify as a force majeure event should be conducted. If the contract does not contain such a provision, there may be other remedies if you are unable to perform.
- **Examine Performance Standards.** Many payment processing contracts contain minimum processing and service level requirements that companies are now unable to satisfy as a result of changing market conditions. An analysis of whether there may be a breach of such obligations, including service level agreements, and the options that may be available to mitigate damages and liability should be conducted.
- **Analyze Contractual and Compliance Obligations.** The current economic crisis has impacted merchants large and small. These drastic changes may trigger reporting requirements to various parties, such as sponsoring processors, banks, and the card brands. Merchant diligence and monitoring obligations should also be evaluated. With increasing economic hardship to consumers, greater chargeback activity is expected. This can impact not only contractual obligations under payment processing agreements but also card brand rule compliance.
- **Examine Reserve Account Rights.** Processing contracts may require ISOs, payment facilitators, processors, or merchants to maintain reserve accounts. Reserve obligations to and of those up and down the payment chain should be analyzed. You may be able to increase the amount of reserves, offset from existing reserves, or impose additional requirements.
- **Keep Apprised of Revised Regulatory Requirements.** For banks, money services businesses, money transmitters, and virtual currency businesses, compliance obligations should be evaluated. Regulators may have modified regulatory reporting requirements and imposed additional compliance obligations to ensure continuity of service.
- **Reevaluate Risk in Your Portfolio.** Merchants are modifying their business models to pivot toward the new card-not-present reality. For instance, restaurants that may have had all card-present transactions historically may now be accepting cards online or by phone. For those in the payment processing chain, this could result in increased risk, additional compliance obligations or notification requirements.
- **Determine if You Qualify as an Essential Business.** States' shelter in place orders should be evaluated to determine whether your company qualifies as an "essential business" exempt from certain restrictions.

In addition to the issues specific to payment contracts, the Jaffe team has been advising on other business impacts, including:

- Data privacy issues
- Insurance-related matters (including business interruption coverage)

- Intellectual property concerns due to remote work and access
- Human resources and employee matters
- Tax ramifications
- Lending
- Bankruptcy, insolvency, and business reorganization options
- HIPAA compliance

More information is available at Jaffe's COVID-19 Resource Center which may be found at: https://www.jaffelaw.com/covid-19.

Our commitment to client service remains steadfast throughout this difficult time. Let us know if we can assist in any way.

For questions, please reach out to:

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