Statement of the Federal Trade Commission
on Amendments to the Telemarketing Sales Rule
November 18, 2015

Following careful study of an extensive public record, the Commission is amending the Telemarketing Sales Rule ("TSR") to address new forms of telemarketing fraud and more effectively protect consumers from deceptive and abusive telemarketing practices.[1] The main change is a ban on the use in telemarketing of four types of non-conventional payment methods as to which fraudulent use is pervasive—remotely created checks ("RCCs"), remotely created payment orders ("RCPOs"), cash reload mechanisms, and cash-to-cash money transfers.

In assessing whether a telemarketing practice is "abusive," we apply our traditional unfairness test and ask whether the practice causes or is likely to cause substantial injury to consumers that is neither reasonably avoidable by consumers nor outweighed by countervailing benefits to consumers or competition. As detailed at length in our Federal Register Notice, we conclude that the use of these four payment methods in telemarketing transactions constitutes an abusive practice.

The record demonstrates that the telemarketing use of each of these payment methods has resulted in rampant abuse that has caused substantial harm to consumers. This abuse persists despite significant law enforcement efforts by the Federal Trade Commission and other federal and state law enforcers. Indeed, gaps in our financial system make it difficult to detect and stop fraudulent use of these payment methods. And, in contrast to the overwhelming evidence of telemarketing fraud exploiting the use of these payment methods, we find almost no evidence that they are being used for legitimate telemarketing purposes. This has led numerous law enforcers to call for a prohibition on the use of all four of these non-conventional payment methods.[2] Based on the record before us, as well as our own extensive enforcement experience, we agree that a ban is both necessary and appropriate.

Opponents of a ban acknowledge the substantial harm consumers have suffered and continue to suffer but argue that a prohibition is premature, would fragment legal requirements for payments, and would impinge on legitimate and emerging uses of the four payment methods. We find these arguments unpersuasive when balanced against the unmitigated and significant harm to consumers that the Commission continues to see in this area.

First, it is undeniable that years of public efforts to control the widespread abuse of RCCs and RCPOs in telemarketing have failed to protect consumers, and there is no indication that this situation will change in the foreseeable future. For instance, efforts to add protections to RCCs have languished for the past decade. Nor has there been any progress in recent years in efforts to improve the tracking of remotely created payments. Similarly, regulations governing

[1] This statement reflects the views of Chairwoman Ramirez, Commissioner Brill, and Commissioner McSweeny.
[2] The Commission received comments in support of the proposed TSR amendments from the following federal and state agencies: Consumer Protection Branch, U.S. Department of Justice; Criminal Division, U.S. Department of Justice; Consumer Financial Protection Bureau; and the Offices of Attorneys General in 24 states and the District of Columbia.

remittances, including cash-to-cash money transfers, as well as proposed rules regarding prepaid accounts, which would address only certain cash reload mechanisms, do not address the telemarketing abuses that concern us. Simply put, there are no regulatory efforts underway that would address the serious harms to consumers that our proceeding has identified.

Second, we believe the clear, bright line rules we are putting in place provide much needed clarity for telemarketers and payment processors in a landscape that currently consists of a patchwork of state and federal rules. Rather than fragmenting the law in this area, we are simplifying it.

Finally, as noted above, we have found virtually no evidence of legitimate telemarketing uses of the four payment methods at issue. Our ban is focused on addressing abusive telemarketing practices using these payment methods; it does not get in the way of future innovation in the area of payor-initiated payments—including the use of digital checks created by consumers using their smartphones—in telemarketing and other transactions. In fact, the telemarketing industry has already adopted a variety of newer and safer payment alternatives.[3] Moreover, in light of existing requirements, our amended TSR Rule is unlikely to impose any significant additional costs on the payments industry.[4]

For all of these reasons, we believe the TSR amendments we announce today are an important and necessary step to stop ongoing substantial harm to consumers from telemarketing fraud.

[3] *See* Press Release, InComm, *InComm Expands Vanilla Reload Network, Plans to Add Swipe Reload at Over 15,000 More Retail Locations: InComm removes reload packs from stores to help prevent victim assisted fraud* (Oct. 24, 2014), *available at* http://www.incomm.com/news-events/Pages/Press%20Releases/InComm-Expands-Vanilla-Reload-Network-Plans-to-Add-Swipe-Reload-to-Over-15000-More-Retail-Locations.aspx (describing InComm's plans to add over 15,000 swipe reload locations to its network to help eliminate fraud perpetrated through the use of reload packs); Testimony of William Tauscher Chairman and Chief Executive Officer Blackhawk Network Holdings, Inc. Before United States Senate Special Committee on Aging Hearing "Private Industry's Role in Stemming the Tide of Phone Scams," at 3 (Nov. 19, 2014), *available at* http://www.aging.senate.gov/imo/media/doc/Tauscher_11_19_14.pdf (describing Blackhawk's enhancements to its reload options for its Reloadit Pack product to combat fraud).

[4] Payment processors and their financial institutions already must comply with the Bank Secrecy Act and associated anti-money laundering laws and regulations which require initial and ongoing customer due diligence. *See* 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 18 U.S.C. 1956-1957 & 1960, 31 U.S.C. 5311-5314 and 5316-5332, with implementing regulations at 31 CFR Ch. X. These obligations require banks to understand and monitor the business of their merchant and merchant processor customers.