

D.C. OUTLOOK: Payments & Cybersecurity

Ken Clayton and Bill Boger give prospects for 2013 legislation and more in an exclusive interview

This article is an online companion to the January 2013 ABA Banking Journal cover story, "The Road Ahead." To read that article and other online articles in the report, please [click here](#).

You can pay in a dizzying amount of ways these days--even through social media. The question often is, it may be trendy, but is it safe?

Safe and efficient handling of financial transactions is, and has always been, at the core of banking. Referred to now as the payments system, it encompasses a wide and rapidly expanding range of methods, and devices.

ABA

has always tracked developments in payments, but the digital revolution's impact on the magnitude and speed of change prompted the association to step up efforts even further. The organization will soon announce a high-level core group to take the reins on an ongoing basis from the now completed work of its Payments Systems Task Force. The new group will focus on the risks, opportunities, trends, and policy direction in the payments marketplace.

ABA Banking Journal Editor and Publisher Bill Streeter spoke with Ken Clayton and Bill Boger last month about the challenges facing the industry in the payments world, with a particular focus on what can be expected from Washington in 2013. Clayton is executive vice-president of legislative affairs and chief counsel for the ABA. Boger is senior vice-president and chief legislative counsel. The following report is an edited version of the interview.

ABABJ: It's hard to keep track of all the new payment initiatives that have been announced or rolled out in the last couple of years. Banks are involved in some of these developments but are also concerned about their role going forward. How do you frame the issue in conversations with policymakers?

Clayton: The market is moving at incredible speed. If you just look at the evolution of payments--from PayPal, Google, and the like--there are implications from that movement for consumers and everybody else that depends on the payment system. We really need to watch the pace of change in the payments world and it's impact on banks' central role in the payment process. Right now, the public has great trust and confidence in the way the system works. They take for granted just how seamless it is--but they don't fully understand that banks are the ones essentially responsible for that.

Boger: That trust is due in large part to familiarity, but also to the fact that banks have the highest security and consumer protection standards, especially when compared to non-banks. And it's important for ABA and the industry to defend that principle.

ABABJ: Is there any interest and support on Capitol Hill for keeping banks in that central position in the payments system?

Clayton: The debate hasn't been fully engaged yet, so it's hard to anticipate how policymakers will view this. There are some very significant political interests--the communications industry, and the retail industry, for example--that want their piece of the pie here. But when you cut to the chase, at the core of the system--the core of the trust, confidence, and security that people believe is present in the current system--that's where the banks stand. And it's important for us to remind people of that.

ABABJ: Will that debate be engaged in 2013? And is it a debate ABA would want to initiate?

Clayton: With the rapid evolution of payment products, it's challenging sometimes for banks to know where some of the transactions occur. If they are run through the filter of a PayPal or a Google system, they no longer identify the merchant involved. And that exposes the

consumer to more fraud. Moreover, do consumers get the same disclosures and protections if a payment runs through a non-bank? We invite competition, but consumer protection is paramount. We think it's important for policymakers to understand that these types of issues are out there and we will initiate those kind of conversations. We will ask policymakers, including people on the Hill and the regulatory chiefs: Do they fully appreciate the implications of recent developments in the payments marketplace and what the impact is on consumers?

Prepaid cards and CFPB

ABABJ: One of the innovations in card payments has been rapid growth of prepaid cards. ABA has a prepaid card program to assist member banks to compete in that market. The Consumer Financial Protection Bureau has said it will focus on the prepaid card market. Do you see that scrutiny coming this year?

Top speakers highlight ABA Prepaid Roundtable

After a successful debut at last year's National Conference for Community Bankers, ABA is once again holding a Prepaid Roundtable just prior to the start of this year's conference, and has expanded the program with an afternoon of CEO-level information.

In one panel, "A Conversation with the Consumer Financial Protection Bureau," Marla Blow, assistant director of CFPB's Card and Payment Markets Program, will cover the bureau's views on prepaid cards including promoting innovation, ways that prepaid cards can serve the "unbanked" population, and potential federal regulations including UDAAP

(unfair, deceptive, and abusive acts and practices) and disclosure requirements. She will be joined by Nessa Feddis, vice-president and senior counsel of ABA's Center for Regulatory Compliance.

The Prepaid Roundtable will take place from 10 a.m. until 3:00 p.m. on Sunday, Feb. 17 in Orlando, Fla. The Community Bankers Conference runs from Feb. 17 to Feb. 20. Both events take place at the JW Marriott Orlando, Grande Lakes.

Other Prepaid Roundtable presentations include a panel discussion among three banks participating in ABA's Community Bank Prepaid program, and market segmentation research from Cathy Corby Parker, chief revenue officer of TransCard, ABA's partner on the prepaid program. [Click here for the full program.](#)

ABA launched the Community Bank Prepaid program in 2011 in partnership with TransCard and using a MasterCard prepaid card. More than 95 banks have joined the program to date. [Click here for more information on the program.](#)

To register for the ABA Prepaid Roundtable, [click here.](#)

To register for the ABA's National Conference for Community Bankers, [click here.](#)

Clayton: Absolutely. CFPB has already indicated it's starting to focus on the prepaid card market. I don't want to put words in the Bureau's mouth, but my guess is that its primary focus will be on making sure that the terms and conditions of these cards are clear to the consumer so they can make educated choices. We're supportive of that. Banks already work really hard to make sure that the fees and terms are clear for consumers when they purchase these products. The wrong way to go would be to use the regulatory apparatus to force-feed the marketplace in a certain direction.

ABABJ: Has CFPB's staff been receptive to input in the payments area?

Clayton: Generally, yes. Sometimes it takes a while to overcome their initial skepticism regarding whether banks have their customers' interests at heart. But once you overcome that hurdle and provide them with credible information about how the marketplace really works and how consumers really see it, we found them willing to engage with us. That doesn't mean they always agree with us and we've seen a number of examples where, while they listen politely, they haven't necessarily embraced our perspective. At least they're keeping the door open to dialogue--that's a start.

Durbin Amendment

ABABJ: Shifting

to interchange and the Durbin Amendment, what's the likelihood of this rule being made even tougher?

Clayton: Senator [Richard] Durbin [D., Ill.] and the retailers are just not going away. Their current target seems to be expanding price controls to credit-card interchange. Or trying to get a better deal out of the Fed on debit-card rules. And so it's important that banks continue to speak with one voice on this issue, and if we do I'm hopeful and confident that those kind of additional regulations won't happen.

ABABJ:

Do

you sense that there is a fair amount of support on the Hill for that kind of expansion?

Clayton: The primary focus of members of Congress on interchange is to avoid being in the middle of the debate.

Members in general - other than a few isolated, though powerful, Senators and Representatives - understand that this is a fight between industries. And so they really don't want to be picking

winners and losers in the marketplace. Currently, I don't think policymakers want anything to do with the debate on the interchange issue. That said, interchange fights are going to continue given the money involved to the retail industry--the Durbin Amendment only dealt with debit cards, after all--and Sen. Durbin is relentless, as are the big-box merchants.

That's why it's really important for the banking industry to stay aggressively engaged to protect our interests. We have every right to get paid for the payment services we provide, based on marketplace conditions. Price controls can be a slippery slope as we've seen with debit interchange already. People think there's not going to be any consequences to consumers on this. Well, it's like a balloon--when you press on one side it comes out on the other side. When they impose price controls on one aspect of the pricing model dealing with payments, it affects access and price to others, like free checking. Low-income people are the ones that need the low-cost services the most, but yet they are the ones that get harmed by the Durbin Amendment and that's an example of unintended consequences. So it's of interest to every bank that these continued efforts to control how we price our products are pushed back.

Cybercrime

ABABJ: Did the recent denial-of-service attacks that targeted several large banks lead to any new focus on cybercrime in Washington?

Boger: The attacks reemphasized the need to have a robust system of information sharing, not only among private sector entities but with the government. From our perspective the attacks showed that we actually do that pretty well. All the mechanisms that were put in place to deal with such attacks were shared among financial institutions. There wasn't anything negative from our perspective.

In terms of cybersecurity legislation, the denial-of-service attacks were the subject of some conversations on Capitol Hill. Everything right now is being used by the Administration and the proponents of the Rockefeller Bill [The Cyber Security Act of 2012, S 3414] to add to the sense of urgency to get legislation enacted.

Banking is all for cyber security. We're working very hard on it all the time. Everyone readily admits that banks are the gold standard in this area--we have probably the highest level of security and the most stringent regulatory requirements of all sectors.

But having said that, it's hard for Congress to say "You guys are okay and we're going to focus on other sectors." The problem that we have is that we don't want to put in place conflicting or regulatory requirements that can actually be a step backwards.

ABABJ: Will the Rockefeller Bill be reintroduced in the new Congress?

Boger: We believe it will be. We've got some new players involved and a sense of renewed urgency to do something, so there might be a bit more willingness to make some modifications and hopefully get everybody in the room and get something done.

Because the legislation wasn't enacted in the last session, the Administration may issue an executive order--the staff has it drafted already--that would attempt to accomplish some of the things that were contained in the legislation. In particular, giving the Department of Homeland Security [DHS] more of a lead role in dealing with cyber security across all the sectors.

ABABJ: Is the involvement of DHS a concern?

Boger: It's not that DHS wouldn't be in the room, it's just that DHS isn't really set up to be an identifier and regulator of critical infrastructure in the financial services area.

Clayton: They are not experts in the field and all we're really concerned about is essentially reinventing the wheel. That, and having resulting regulations that aren't as focused as they need to be, because the people that are doing the regulation may not fully appreciate all that's involved.

But it's clear that the topic of cyber security is not going away.

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