EMV: An Examination of Both Historical and Current Trends

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EMV: Historically

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EMV: Historically

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Before EMV: The Basics

- 1980's: All face-to-face credit or debit card transactions involved use of a magnetic stripe with signature verification.
  - Card would be passed through a magnetic reader at the point of sale ("POS") transaction;
  - System would verify account details in real-time via a phone line;
  - System would print a slip for customer to sign;
  - Merchant would then verify the signature on back of card and receipt.

Before EMV: The Basics

- Operational issues present with traditional mag-stripe credit cards:
  - Processing costs for phone line verification were only about $.03 in United States;
  - Europe had a $.35 authorization cost.

- Security issues present with traditional credit cards:
  - Cards could go missing prior to owner knowing;
  - Signatures could be altered, erased, or forged;
  - Cards and magnetic strips could be cloned.

Before EMV: The Basics

- Liability for fraudulent transactions traditionally rested with issuing institution
- Issuing institution would then try and seek reimbursement against merchant consistent with fraud guidelines
  - Fair Credit Billing Act as governing law for credit cards
    - Thief presents your card: $50 cap in customer liability
    - Thief stole number: no customer liability
  - Electronic Funds Transfer Act as governing law for debit cards

EMV: The Basics

- Needed a new system to combat the high costs of magnetic stripe authorization and protect against in-person credit card fraud.
  - European Council for Payment Systems began exploring alternatives to mag-stripe in 1990s;
  - Chip cards being used in France since 1984;
  - Goals were to: (i) cut down on authorization costs, (ii) move from a signature authorization to PIN authorization, and (iii) to add additional loyalty programs

- What is EMV?
  - EMV = Europay, MasterCard, Visa

EMV: The Basics

- How does EMV work?
  - An EMV card is a “smart card” with an integrated chip that interacts with point of sale (“POS”) systems for authentication.
    - Chip is considered to be dynamic, digital, data as opposed to the static data on a magnetic stripe
    - Chip creates a unique transaction code
    - PIN transaction to verify accountholder

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EMV: Current Issues

- EMV continues to roll out in United States, but requires chip reader technology
- October 1, 2015: Liability shift went into effect
  - Issuing institution continues to hold liability for chip cards when chip technology has been put in place by merchant
  - Liability shifted to the merchant in certain instances
    - If chip card is used at a merchant that only carries mag-stripe technology—merchant holds liability for fraudulent transaction
- October 1, 2017: Liability shift for automated teller machines and fuel dispensers
- EMV equipment must be installed and “certified”

EMV: Current Issues

- EMV shift does not apply in the traditional way to card-not-present fraud transactions
- A 2018 study from the Federal Reserve said the amount of card-present fraud in the U.S. declined from $3.68 billion in 2015 to $2.91 billion in 2016, while the amount of card-not-present fraud jumped from $3.4 billion to $4.57 billion during the same period
- Issuing bank and merchant liability for card-not-present transactions
  - Must prove that cardholder placed order or funds will be collected by cardholder's issuing bank

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EMV/PIN Litigation

- *Kroger Co. v. Visa, Inc.,* No 05-CV-6409-DAB (S.D.N.Y. July 14, 2005) (alleging that the requirement that POS terminals allow non-PIN transactions for chip cards was motivated by an intent to restrain competition)
- *Home Depot, Inc. et. al v. Visa Inc et. al,* No 1:16-CV-05507 (E.D.N.Y. June 13, 2016)(alleging that Visa and MasterCard have long recognized that magnetic stripe technology is "inherently insecure and fraud prone.").

EMV/Antitrust Cases

- *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.,* No. 652540/2016, (N.Y. Sup. Ct. Feb. 27, 2017)
- *Kroger Co. v. Visa Inc.,* No. 1-16-cv-00693-MRB (S.D. Ohio June 27, 2016).
- *B & R Supermarket, Inc. v. Visa, Inc.,* No. 16-cv-01150 (N.D. Cal. 2017)
- *In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-MD-1720 (E.D.N.Y. 2005)

Questions?

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