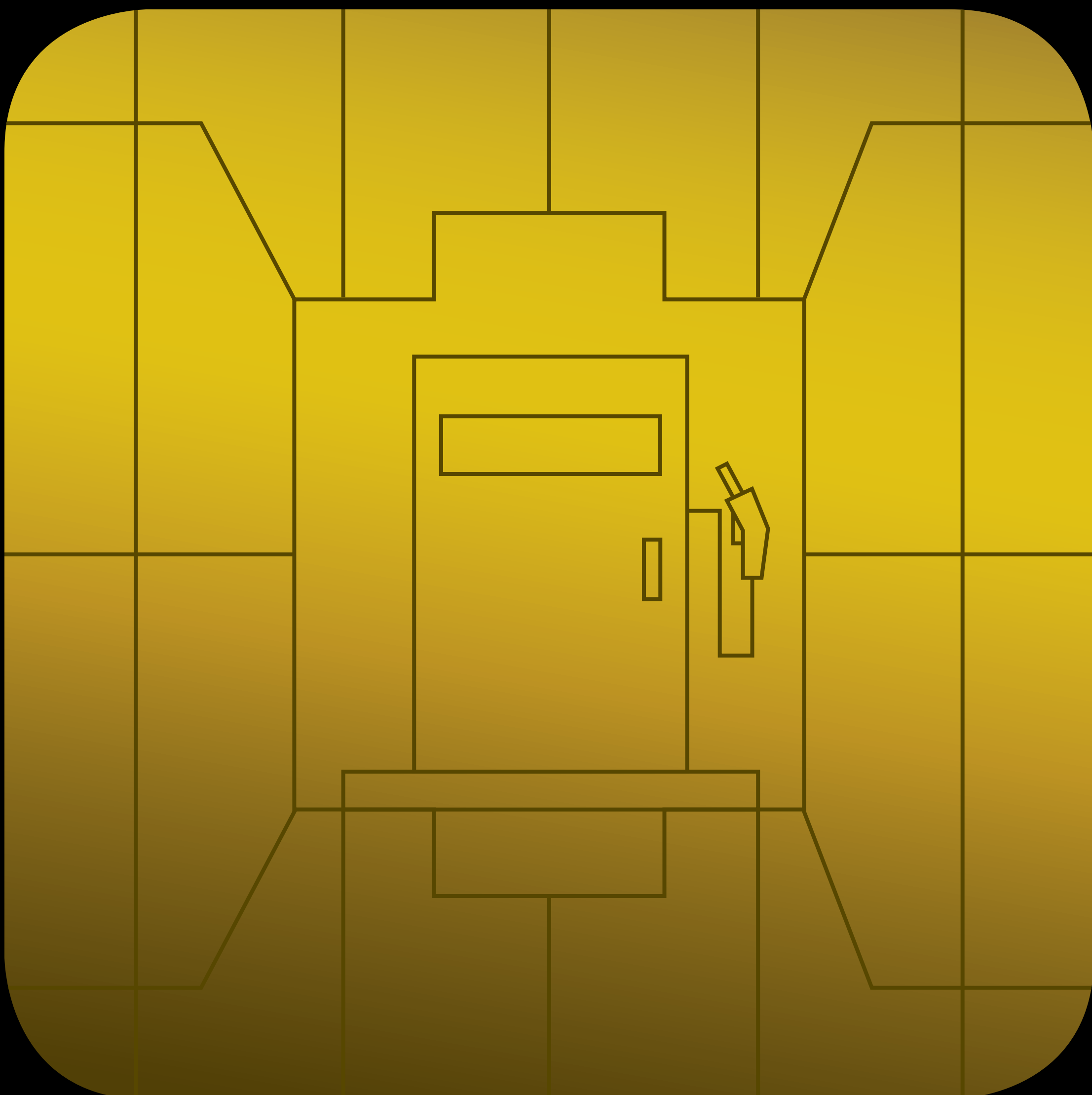
WAIT LIST: PUMPED UP FOR EMV



As retailers struggled to comply with yet another liability shift, they earned a reprieve from the card brands. Or did they?

BY JERRY SOVERINSKY

MONTHS IN ADVANCE of the October 1, 2015, liability shift to retailers for any in-store, fraudulent POS transaction executed on non-EMV equipment, Florida-based grocery and liquor store chain B&R Supermarket Inc. (owner of Milam's Market and Grove Liquors), believed it was well ahead of its peers and on its way to compliance. It had purchased new card readers "well prior to the liability shift," the retailer said, deploying them at stores and even training staff on using them.

After notifying the card networks and issuers that its equipment was ready to be certified—the final step in being able to use the terminals' EMV capabilities—B&R waited.

And waited.

And waited.

Five months after the deadline had passed, B&R's equipment remained uncertified. In the meantime, the retailer had incurred more than $10,000 in liability for fraud, chargebacks and chargeback fees—costly penalties for operating card processing equipment that had not passed EMV certification. Rather than continuing to wait and watch the fees mount, the retailer fought back.

B&R sued the card networks and issuers over the fees. "[N]othing [we] could have done—short of making the business-crippling decision to stop accepting Visa cards—could have prevented this outcome," the company said in its complaint, which alleges that the card networks and issuers have violated antitrust laws in compelling retailers to shoulder the financial costs of technology upgrades that they neither requested nor approved.

The defendants filed a motion to dismiss the claim, which a federal judge denied in September 2016. "The amended complaint sufficiently alleges a context that raises a plausible and reasonable suggestion of collusion," the court wrote in its opinion. "Plaintiffs have sufficiently pled the basic evidentiary facts as to involvement in Visa, MasterCard and American Express in the alleged conspiracy."

It is against this backdrop that convenience retailers struggled with complying with an October 2017 deadline for EMV-certified pumps, yet another card network-mandated liability shift that is certain to expand card-imposed penalties and fees on merchants. And as we nearly went to press with this story, guess what: The card brands, acknowledging the procedural backlogs, offered an extension to the compliance deadline. Or did they? With any card brand-associated mandate, you've grown accustomed to reading the fine print. And this announcement is no different. Here's what you should be considering as you assess whether—and when—to invest in EMV-capable pumps at your stores.

The Process: Version #1

October 1, 2017, marked the deadline for Automated Fuel Dispenser (AFD) terminals to be included in the Global EMV Liability shift and applies to Visa, MasterCard, American Express and Discover card transactions. Those retailers who had not updated their equipment to accept EMV cards by that date would be liable for the cost of chargebacks.

> "WITH ANY CARD BRAND-ASSOCIATED MANDATE, YOU'VE GROWN ACCUSTOMED TO READING THE FINE PRINT. AND THIS ANNOUNCEMENT IS NO DIFFERENT.""

But it wasn't a matter of simply investing in the new equipment, as the B&R case demonstrates. That was merely the first step in what is a time-consuming process.

"Purchasing an EMV-compatible dispenser does not mean you're done with the process," explained Linda Toth, director of standards for Conexxus. "While it may be EMV compliant, there are upgrades to software applications that need to be tested, certified and installed for the dispensers to utilize their EMV capabilities. Many retailers are saying they purchased and installed the equipment but they don't have the application update to make it happen." And when you consider the combination of POS stations, PIN Pads, electronic point of sale stations (EPS), multiple product dispensers and payment processors—all of which must be tested and certified prior to receiving a green light for public use—the certification process is indeed daunting. (See illustration on the next page.)

"Keep in mind, everyone is sharing the same certified technicians to install and upgrade their equipment," Toth said. And that limited pool of technicians is likely to contract.

To reduce small retailer breaches, beginning January 31, 2017, Visa mandates that all Level 4 merchants must use only Payment Card Industry (PCI)-certified Qualified Integrators and Reseller (QIR) professionals for their POS application and terminal installation and integration.

This will create an even greater bottleneck for retailers who are struggling to comply with the indoor EMV requirement that has already passed—much less meet the new requirement for fuel dispensers.

"The 2017 deadline is challenging, and unlikely to be met [by many retailers]," said Mike Lindberg, payment solutions director for CHS Inc. (CENEX). "We're still seeing software that was ready for the 2015 deadline but still needs to be installed. And if you missed the inside date by 11 months, what's the likelihood that you'll meet the [outdoor] deadline?"

Lindberg said he's heard estimates that only 1% to 3% of pumps will be ready by the deadline, a phenomenon that is likely to lead to an increase of counterfeit fraud at the pumps. "And as a merchant, how can you cover that? And why [should you], if it's the result of software not being available?"

All of this led to uncertainty about whether the card brands would relax the October 2017 deadline.

"We have continued to see firm commitment from the major card brands," said Luke Grant, director of payment and marketing applications for Gilbarco. However, recognizing mounting retailer frustrations, the brands appear to be softening their all-or-nothing liability stance for deadline compliance.

Cracks in the Foundation

In June 2016, Visa, MasterCard and American Express announced they were taking steps to speed up the certification process and limit chargebacks in certain situations. Additionally, Visa and American Express eliminated retailer liability for fraud chargebacks arising from transactions of less than $25 while limiting chargebacks to 10 per card, policies that were to remain in effect until April 2018.

But for convenience retailers weighing the option of upgrading their AFD dispensers, the relief did not go far enough, especially noting that the majority of fuel transactions exceed the $25 limit that Visa and American Express have excluded from the liability shift. And many retailers were finding the upgrade costs prohibitive.

Testifying before U.S. House Small Business Committee on October 20, 2015, Jared Scheeler, managing director of The Hub Convenience Stores Inc., told lawmakers that he spent more than $134,00 installing POS and pump card readers that accept EMV chip transactions at his four North Dakota c-stores. On average, he said, the EMV transition will cost retailers $26,000 per store, which must be weighed against an average profit of $47,000 per location per year. "As a small business, the transition to EMV has been a costly and burdensome undertaking. It does not appear that the card companies took into consideration the realities of operating a small business when they came up with their transition plans," asserted Scheeler.

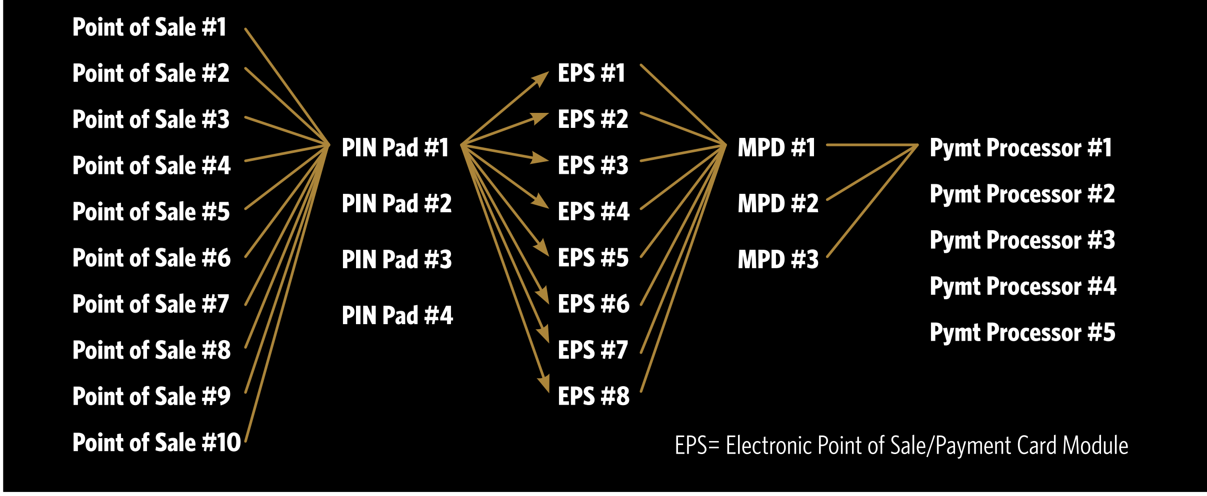
Those realities include upgrade costs on newer dispensers that still run $1,500 per side, "and our new, ground-up store has 21 of those," Scheeler

TAKE IT FROM ME...

Gilbarco's Luke Grant offers these best practices tips as retailers move forward with implementing EMV at pump dispensers.

1. **Start early:** As the October 2017 liability shift date approaches, there will be higher demand on industry technician resources to support site installations and upgrades. Start your EMV upgrades early to ensure you are fully prepared in advance of the liability shift.
2. **Buddy-up:** Partner closely with point-of-sale providers to understand their EMV implementation guidelines for supporting EMV transactions at fuel dispensers. Have them confirm their expected timelines for network certifications so that site upgrades can be planned.
3. **Buddy-up #2:** Partner with your dispenser providers early to share equipment needs and expected deployment timelines so that capacity can be planned effectively.
4. **Train staff:** After upgrading your POS system, teach your staff how to operate the equipment. "Understanding the needs of your staff and predicting what is needed for your c-store to be a success is essential to building up your customer service."

CERTIFICATION COMPLEXITIES



told Congress. "Plus, we had an eight-hour closing when the software was installed."

The process was fraught with significant financial implications. "Our investment group has a few existing sites in small, low-volume rural areas, that we oversee," he said. "We looked at retrofitting them because it's cheaper [than purchasing new pumps], but one site has five MPDs [multiple product dispensers] that are more than 20 years old, and the cost of the upgrade was $9,000 per dispenser"—roughly half that of a new dispenser. As such, Scheeler opted instead for a new one. "It's too bad, we bought new dispensers that we wouldn't have needed for another 20 years, if not for EMV."

More than a year later, Scheeler is still reeling from the financial impact of his store upgrades. "That site has very little fraud and I will never see an ROI on the investment," he said. With a final tally of $17,000 per new dispenser (installed), totaling $85,000 for his small, rural station, Scheeler said in hindsight, he wouldn't have made the upgrade. "Part of that decision was providing a better service to our customers but I'm not sure that EMV is more secure than the mag stripe," he said.

As such, he offers some well-heeled advice for retailers. "I encourage retailers to look at upgrade projects from all angles, not just the cost of new equipment. There's software, there's downtime, there's the question of should we or shouldn't we because of current fraud levels and expected future fraud levels," he said. "My advice for low-volume sites in rural areas is to really consider whether or not to do the upgrade."

The Process: Version #2

Feedback from Scheeler and others began to mount and the card brands got the message: The compliance deadline was unreasonable. As a result, in December 2016, the card brands announced a three-year delay in the liability shift to October 2020.

"We knew that the AFD segment would need more time to upgrade to chip because of the complicated infrastructure and specialized technology required for fuel pumps," Visa noted in a statement. "Furthermore, five years after announcing our liability shift, there are still issues with a sufficient supply of regulatory-compliant EMV hardware and software to enable most upgrades by 2017 … "Given our discussions with merchants, clients and partners, Visa has decided to delay the U.S. domestic AFD EMV activation date from October 1, 2017 to October 1, 2020." MasterCard followed suit with its own announcement, to the relief of NACS and its members.

"We applaud the card brands who have recognized the significant challenges petroleum retailers face in implementing EMV," said Gray Taylor, executive director of Conexxus, "We have worked well together to identify these challenges, and we believe that all parties see these challenges as jointly shared. Work and advocacy, over the past several years, within the various trade groups and press has served to inform all stakeholders of the reality petroleum retail faces."

But while the delay came as welcome news to industry stakeholders, Taylor qualified its application. "Reading between the lines, starting on November 1, 2017, instead of all counterfeit being charged back, that will only happen to locations that

ANOTHER COMPLIANCE CARVE OUT

The recent liability shift delay only pertains to U.S.-issued cards. As such, "foreign issued cards will still have counterfeit liability shifted on October 17," said Gray Taylor, executive director of Conexxus. "Additionally, many of the methods used to reduce risk, like address verification, do not apply to these cards. Retailers operating in tourist or border markets should take note of this."

exceed a certain level of fraud; 20 basis points. And if all the petroleum sites exceeded 20 basis points of fraud this October, the deadline would be, in effect, exactly as it was before the announcement."

Taylor said high-risk sites around interstates and other high volume stores will likely find themselves exceeding the threshold on November 1, with liability shifted to them. "They then have to reduce fraud (ostensibly through installing EMV or other techniques) for the next three consecutive months in order to deflect liability. The message from Visa here is 'install EMV'– but it's not ready!"

And with an uneven playing field of EMV participants, Taylor said fraud will not return to the card brands but migrate to lower-risk retailers. "Even as high-risk sites install EMV, [thieves] will migrate down the road, or across the street to retailers who are not compliant and who did not surpass the threshold, making this announcement really nothing more than a rolling liability shift until everyone is EMV compliant.

Weighing Your Options: If and When

Whether it's now or later, complying with EMV comes at a steep industry cost, totaling more than $7 billion, Taylor said, with roughly one-third of the nation's 750,000 pump dispensers too old to be retrofitted and must be replaced. "About a quarter of the industry can't afford to do it," Taylor told *Bloomberg* last fall.

As a result, many retailers will never be able to pursue the makeover, while still others may weigh the consequences of non-compliance, an approach that Toth of Conexxus understands. "As you consider upgrading or retrofitting your fuel dispensers, keep in mind that this is a liability shift but not a mandate," she said. "There's a lot to consider. While you are not required to implement EMV at the pump, there are risks, as you'll be liable for specific kinds of card fraud after the liability shift date." And those are risks that are making a profound impact on retailers' bottom lines.

"Chargebacks among small- and medium-size merchants rose 15% in the fourth quarter from a year earlier," the *Wall Street Journal* reported in the spring of 2016, estimating the costs in the "tens-of-millions of dollars," a figure that "will likely continue to rise."

For those committed to the change but still finding the standalone investment too painful, Toth advises an approach that shares part of the investment with other operational investments. "Just rolling out EMV by itself, there's a lack of ROI other than the potential to avoid chargebacks," she said. "As long as you are investing in the new technology, maybe roll out another technology, like mobile or encryption, and take full advantage of the technicians who will already be coming to your store."

There may also be the option of defraying some of the deployment costs by implementing advertising at your new pumps, Lindberg said. "If you decide to add media at your pumps, the pump manufacturer may offer you a discount on the equipment, he said. "Plus, you can put your own commercials on them."

Down to the Wire

For those committed to EMV but now breathing a sigh of relief and adding the transition to a future year's CapEx line item, Taylor said the holiday will be short-lived. "Visa's announcement will not accelerate equipment readiness, and might even slow down readiness as some vendors or retailers take their foot off the gas."

In which case, retailers can look forward to yet another time crunch to complete a process that is time intensive. ""You can't start too early in putting your plan in place," said Wayne Fueling System's Tim Weston, who works in the company's North America Technology Solutions division.

Weston recommends allowing up to six months for complete deployment, "as there are a lot of folks competing for the same resources and the process is far more complex than [the indoor transition].

"It takes longer outdoors than indoors, the time to do the dispenser work is more time consuming and the configurations are more involved. Some guys can do half the islands in the morning and the other half in the afternoon and things need to be operating at the station at the same time. There is also the lights-on date, which requires a separate trip."

That's a lot of moving parts. And a lot to consider. Now or later. NACS

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