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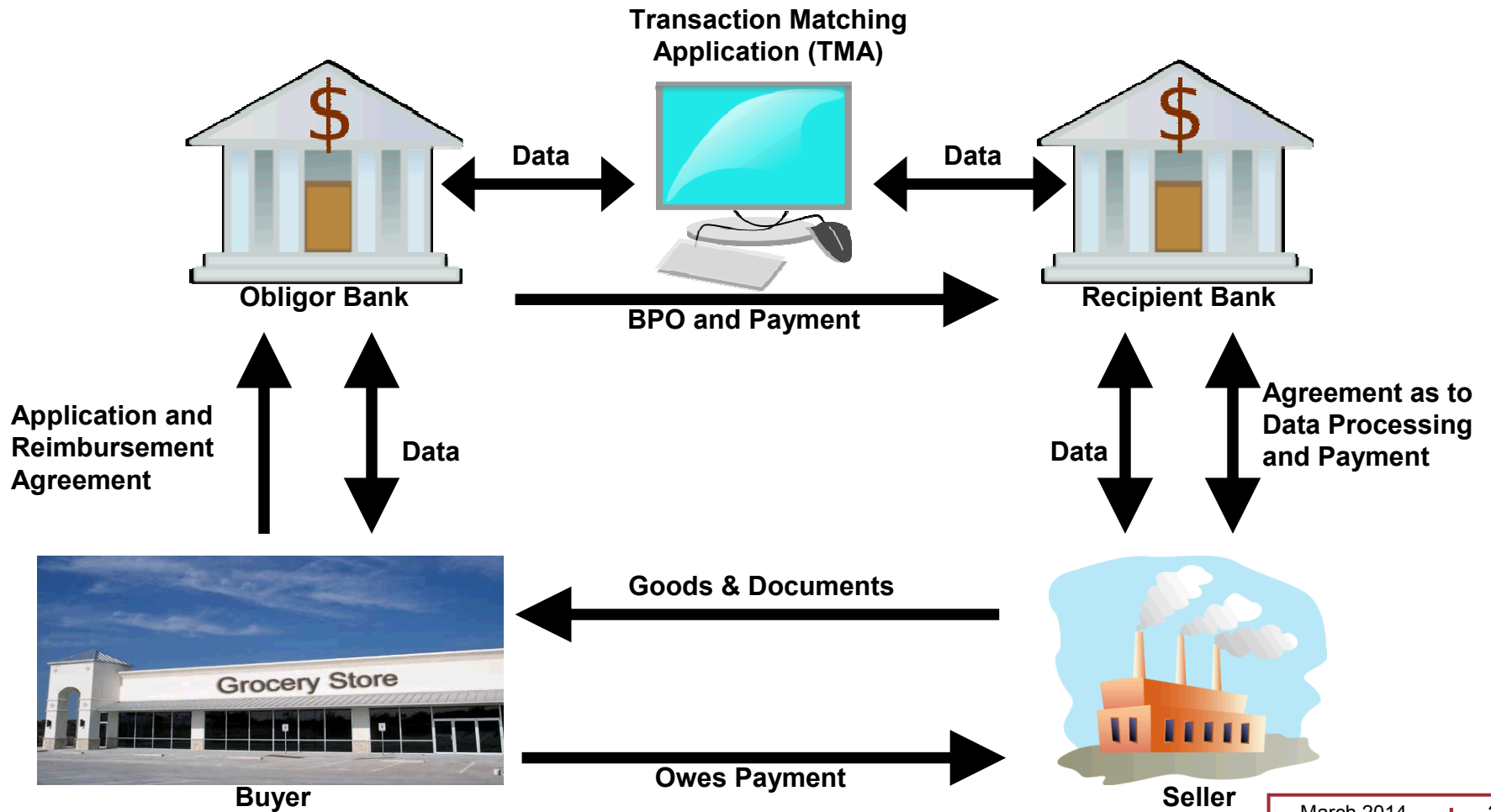
**The New Bank Payment  
Obligation (BPO)  
and  
New York Letter of Credit Law**

Presentation for  
March 2014 Americas Annual Survey of  
Letter of Credit Law and Practice

## Definition of BPO

- "Bank Payment Obligation" or "BPO" means an irrevocable and independent undertaking of an Obligor Bank to pay or incur a deferred payment obligation and pay at maturity a specified amount to a Recipient Bank following Submission of all Data Sets required by an Established Baseline resulting in a Data Match or an acceptance of a Data Mismatch pursuant to sub-article 10 (c). (URBPO Article 3.)

# Basic BPO structure



Under the Uniform Rules for Bank Payment Obligations (URBPO), a BPO is:

- Irrevocable (once established under URBPO Article 10(a)),
- Independent (URBPO Articles 3, 6 and 7),
- An undertaking (i) to pay or (ii) to incur a deferred payment obligation and pay at maturity (URBPO Article 3),
- In a specified amount (URBPO Article 3), and
- Payable following a Data Match (or acceptance of a Data Mismatch) (URBPO Article 3)

## Under New York Uniform Commercial Code Article 5, a letter of credit is:

- Irrevocable (once issued, except if it provides that it is revocable) (NYUCC 5-106(a) and (b)),
- Independent (NYUCC 5-103(d)),
- An undertaking (i) to pay or (ii) to incur a deferred payment obligation and pay at maturity or (iii) to accept a draft and pay at maturity (NYUCC 5-102(a)(8)),
- In a specified amount, or an undertaking to deliver a specified item of value (NYUCC 5-102(a)(8)), and
- Payable following a presentation that appears on its face strictly to comply (or a waiver of discrepancies) (NYUCC 5-108(a))

## Is a BPO a “letter of credit” within the meaning of NYUCC Article 5?

- Under NYUCC 5-102(a)(10), “letter of credit” means:
  - a definite undertaking,
  - that satisfies the [formality] requirements of NYUCC 5-104,
  - by an *issuer* to a *beneficiary*,
  - at the request or for the account of an *applicant* or, in the case of a financial institution, to itself or for its own account,
  - to *honor a documentary presentation*,
  - by payment or by delivery of an item of value

## Does it matter if a BPO is a “letter of credit” under applicable law?

- Yes. It has important legal and practical consequences
- Different results will follow if a BPO is not a letter of credit but rather an ordinary contract, a suretyship guaranty, an insurance policy, a performance bond, a negotiable instrument, or other type of undertaking
- For example, if a BPO is an ordinary contract:
  - Must the Obligor Bank have received consideration?
  - May the Seller enforce the BPO as a third-party beneficiary?
  - Must the Recipient Bank have relied upon the BPO to recover damages? May it recover consequential damages?
  - May there be interbranch BPOs?

## Questions?

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