

Consumer Financial Services

Visa and MasterCard Enter into Memorandum of Settlement in Credit Card Interchange Antitrust Litigation

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On Friday, July 13, 2012, the parties announced they settled the lawsuit known as [In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation](#), Case No. 1:05-md-01720-JG-JO, pending in the United States District Court for the Eastern District of New York (Brooklyn) since October 20, 2005 (the "Settlement"). The Settlement is worth approximately \$7.2 billion (\$6.05 billion to be allocated among the merchants opting into the Settlement and \$1.2 billion to be credited as interchange fee reductions for eight months following the execution of the Settlement).

The original case, filed by four trade groups representing thousands of merchants, alleged that Visa and MasterCard engaged in certain price-fixing practices by setting interchange fees at an excessive rate for credit card transactions. Interchange fees are fees assessed by the Visa and MasterCard payment networks and paid by merchants to the financial institutions issuing the credit cards. Interchange fees have various categories, depending on the type of merchant, type of transaction, risk involved, etc., and have long been a source of complaint among merchant groups.

Capping interchange (on debit transactions) has already been addressed by statute in the Dodd-Frank Act. If the Settlement is approved, it will result in certain reductions in interchange fees for credit card transactions over a period of time. The Settlement also sets forth proposed changes to the rules of Visa and MasterCard, which have prevented merchants from charging a surcharge in connection with credit card transactions. Although the rules of Visa and MasterCard may change, at least 10 states (California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma, and Texas) prohibit surcharges on credit card transactions and would not be affected by the Settlement. Of course, even though a merchant may surcharge a credit card transaction in a state which does not prohibit surcharges, a recent poll of merchants indicates that many do not plan to do so, given the sensitivity of increasing costs for customers.

The Settlement is subject to the Court's approval and includes provisions for termination if certain conditions are not met. If approved, changes to the surcharge rule (and payments to be made under the Settlement) will likely occur in the early part of 2013.