

Visa/MasterCard Interchange Fee Litigation – May 28, 2013 Deadline to Respond to Class Action Settlement Agreement

All entities that accept Visa- or MasterCard-branded credit and/or debit cards must decide, on or before May 28, 2013, how to respond to the settlement agreement with Visa and MasterCard on behalf of a class covering merchants who accept Visa- or MasterCard-branded payment cards in the United States. The decision by any entity covered by the settlement to accept the settlement offer, to opt-out of the settlement class, and/or to object to the terms of the settlement agreement necessarily involves a complex cost-benefit analysis of the value to be received by such entity compared to the value of the rights released by such entity under the settlement agreement. As a result, any entity that accepts Visa- or MasterCard-branded credit and/or debit cards is advised to carefully review the terms of the proposed settlement so as to be in a position to make a considered decision regarding the exercise of its opt-out and objection rights regarding the settlement.

On November 27, 2012, the United States District Court for the Eastern District of New York issued an order granting preliminary approval of the Definitive Class Settlement Agreement dated October 19, 2012 (the “Class Settlement Agreement”) among class plaintiffs and defendants in the putative class actions and individual plaintiff actions consolidated as *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-MD-1720-JG-JO (“*Interchange Fee Litigation*”). The *Interchange Fee Litigation* proceedings involved claims alleging that Visa and MasterCard, separately, and together with various financial institutions, violated antitrust laws and caused merchants to pay excessive fees for accepting Visa and MasterCard credit and debit cards, including by agreeing to set, apply and enforce default interchange fees, limiting what merchants could do to encourage customers to use other forms of payment, and continuing such conduct after Visa and MasterCard changed their corporate structures.

The Class Settlement Agreement establishes two classes: a “Cash Settlement Class,” which includes all persons, business, and other entities that accepted any Visa or MasterCard cards in the United States between January 1, 2004 and November 28, 2012 and a “Rule Changes Settlement Class,” which includes all persons, business, and other entities that, as of November 28, 2012 or at any point in the future, accept any Visa or MasterCard cards in the United States.

- In exchange for the settlement and release of Defendants, members of the Cash Settlement Class who submit a valid claim will receive payment from a settlement fund, comprised of a maximum cash payment of \$6.05 billion and a payment based on a reduction in interchange fees during an eight-month “Interchange Period,” which has an estimated value of \$1.2 billion.
- In exchange for the settlement and release of Defendants, members of the Rule Changes Settlement Class will not receive any monetary payment. Instead, Visa and MasterCard have agreed to make changes to their rules and practices by permitting, under certain conditions, surcharges on credit (not debit) cards and discounts or other financial incentives to customers who do not use Visa or MasterCard cards, allowing merchants to accept Visa or MasterCard at fewer than all of a merchant’s “trade names” or “banners,” and, for merchants that form buying groups, agreeing to accept proposals about card acceptance on behalf of the group’s members.

Members of the Cash Settlement Class have until May 28, 2013 to decide whether (a) to “opt out” of the class or (b) to object to the terms of the settlement. Members of the Cash Settlement Class who do not

exclude themselves from the settlement will be eligible to receive payment from the settlement fund based on the covered entity's interchange fees attributable to Visa and MasterCard transactions from January 1, 2004 through November 28, 2012. In exchange, members of the Cash Settlement Class will release Visa and MasterCard and other entities from claims that are alleged or which could have been alleged in any of the complaints filed in the *Interchange Fee Litigation*, including, but not limited to, claims based on or relating to any interchange rules, interchange fees, or interchange rates, any Merchant Fee, or any "no surcharge" rules, "honor all cards" rules, "no minimum purchase" rules, "no discounting" rules, "non-discrimination" rules, "anti-steering" rules, "all outlets" rules, "no bypass" rules, or "no multi-issuer" rules.

Additionally, members of the Cash Settlement Class who do not exclude themselves from the settlement may also submit an objection to the Class Settlement Agreement, which the Court will consider in deciding whether or not to finally approve the settlement.

Members of the Cash Settlement Class who decide to opt-out will not be eligible to receive any payment from the settlement fund but would remain entitled to assert claims against Visa and MasterCard that are alleged or that could have been alleged in any of the complaints filed in the *Interchange Fee Litigation* based on any conduct, acts, transactions, events, occurrences, statements, or failures to act prior to November 28, 2012.

Members of the Rules Changes Settlement Class may not "opt out" of the settlement and, thus, will be deemed to have released those claims contained in the release and covenant not to sue in the Class Settlement Agreement, which includes claims related to the period after November 28, 2012 that are alleged or that could have been alleged in any of the complaints filed in the *Interchange Fee Litigation*, including, but not limited to, claims based on or relating to any interchange rules, interchange fees, or interchange rates, any Merchant Fee, or any "no surcharge" rules, "honor all cards" rules, "no minimum purchase" rules, "no discounting" rules, "non-discrimination" rules, "anti-steering" rules, "all outlets" rules, "no bypass" rules, or "no multi-issuer" rules. However, members of the Rules Changes Settlement Class may submit an objection to all or any portion of the settlement by May 28, 2013, which the Court will consider in deciding whether or not to finally approve the settlement.

The Court has scheduled a final fairness hearing for September 12, 2013, at which the Court will consider any objections submitted by Class members and during which Class members may have an opportunity to speak regarding the terms of the Class Settlement Agreement.

To discuss how the Class Settlement Agreement affects your interests, please contact your usual Ropes & Gray attorney or one of the following Ropes & Gray attorneys: [Douglas H. Meal](#) and [Seth C. Harrington](#).