

VISA and MasterCard Settlement Information

January 31, 2013



VISA & MasterCard Settlement Information

Navigating the increasing number of changes in the payments industry can be difficult for companies of any size. At Elavon, we realize the importance of providing proactive information related to industry changes that may have an impact on your customers' business. In support of this, Elavon has this guide to help you and your customers understand the important details related to the Payment Card Interchange Fee and Merchant Discount Antitrust Litigation and the recent settlement proposed by Visa® and MasterCard®.

First, it is important to understand the background of the case. In 2005, various groups of merchants filed a number of class action lawsuits against Visa, MasterCard and various financial institutions which issue payment cards carrying the Visa or MasterCard marks. The class groups of plaintiffs claimed that Visa, MasterCard and the named financial institutions unlawfully set the fees charged to merchants for U.S. credit card transactions over the Visa and MasterCard networks. They also claimed that the rules enacted by the card networks prevented them from adequately protecting themselves against those fees. All of these lawsuits were consolidated in federal court in New York for more efficient management and resolution. *It's important to note that Elavon and its affiliated entities are not defendants in any of these pending class action lawsuits or the proposed settlement of these cases.*

In an effort to bring closure to these disputes and avoid the costs and expenses of further litigation, the parties involved in these cases have formulated a proposed settlement, which addresses this lawsuit and other outstanding litigation. This proposed settlement has been granted preliminary approval as of November 9, 2012. All U.S. merchants (including the District of Columbia, Puerto Rico, and all U.S. Territories) who have accepted a Visa or MasterCard payment card at any time since 2004 are members of the class. The terms of the settlement include the creation of a settlement fund with an estimated \$7.25 billion dollars, of which \$6.05 billion will be in cash. It also includes changes to acceptance practices that were alleged by merchants to restrict competition, as well as temporary interchange reductions that have an estimated value of \$1.2 billion.

As a result of this litigation, Visa and MasterCard recently announced that they have formally made changes to their acceptance practices related to surcharging. Effective January 27, 2013, merchants are able to surcharge a customer's credit card transaction (not debit or pre-paid) where permitted by local and state laws. Merchants must register with Visa, MasterCard and their acquirer 30 days prior to implementation of surcharging. While the card associations are set to accept merchant registrations, like other acquirers, Elavon is working to make the significant system changes and enhancements required to support the new technical rules associated with surcharging. In the meantime, merchants who intend to surcharge may continue to notify/register as required by the changes in the acceptance practices. Future updates will be provided as significant changes related to the settlement details occurs.

Important Details

- Surcharge rules are changing effective January 27th, 2013
- February – May 2013 is the window for deadlines for notice to class members, to file objections, and file an opt-out notice
- Final settlement approval hearing is set for September 2013
- If the decision is appealed, the appeal decision will take place by mid to late 2014
- Disbursements of the class settlement fund to merchants may not occur until 2015 (if final approval is granted and not modified on appeal.)

Important Settlement Details

Important Estimated Timeframes:

- Surcharge rules are changing effective January 27, 2013
- February – May 2013 is the window for deadlines for notice to class members, to file objections, and file an opt-out notice
- Final settlement approval hearing is set for September 2013
- If the decision is appealed, the appeal decision will take place by mid to late 2014
- Disbursements of the class settlement fund to merchants may not occur until 2015 (if final approval is granted and not modified on appeal.)

Cash settlement and fee reductions

- Cash settlement of \$6.05 billion due to the class plaintiffs; may be reduced depending on merchants opting out of the proposed settlement.
- Credit interchange fees on U.S. Visa and MasterCard consumer and commercial credit cards will be reduced by 10 bps for a period of 8 months. The 8 month period for the calculation will start July 29th, 2013, at which point Visa and MasterCard will withhold interchange revenue from issuers and place into an escrow account for later disbursement to claimants. These escrow funds will not be held by Elavon.

Surcharging details effective January 27, 2013

- While the card networks are set to accept merchant registrations, like other acquirers, Elavon is working to make the significant system changes and enhancements required to support the new technical rules associated with surcharging. In the meantime, merchants who intend to surcharge may continue to notify/register as required by the changes in the acceptance practices.
- All merchants who elect to charge a surcharge to a customer's payment card transaction must register with Visa and MasterCard as well as with Elavon. Note: Registration must occur 30 days prior to implementation of surcharging. Surcharges can only be applied on credit (not debit or pre-paid cards) card transactions.
- Any surcharge must be charged at the brand level (i.e., same surcharge to all Visa and/or MasterCard credit card transactions), or at the product level (i.e. same surcharge to credit card transactions of similar product type, e.g., Visa Signature card, MasterCard World card, etc.). All merchants will need to identify what type of surcharging they will do at the time of their registration.
- Merchant surcharges must not be higher than the cost of card acceptance. Brand level surcharges should not exceed the Merchant Discount Rate. Product level surcharges should not exceed MDR minus the regulated interchange rate adjustment. The maximum allowable surcharge amount should not exceed 4% (this is the current cap, will be periodically reviewed and may change) A clear disclosure notice of any surcharge must be posted for customers at the store entry and at the merchant's Point-of-Sale (POS). Surcharge notices cannot disparage any card brand, card network, card issuing bank or payment card product being used.
- The dollar amount of the surcharge must be clearly disclosed as a separate line item on the transaction receipt provided by the merchant to the customer.
- It's important to note that currently New York, California, Texas, Florida, Connecticut, Massachusetts, Colorado, Oklahoma, Kansas and Maine currently have state laws that prohibit merchants from surcharging consumers. These state laws will take precedence over card brand rules.
- Additional dispute rule modifications are expected but have not been published to date.
- Because the provisions of the proposed settlement require a "level playing field" related to a merchant's decision to surcharge Visa and MasterCard transactions, the ability to collect a surcharge may be impacted by the surcharge rules of other payment types accepted. To create this level playing field among

the competitive card brands, the merchant may only surcharge an accepted credit card in the same way in which the merchant would be allowed to surcharge another payment card product which it could accept.

It is important to remember that Merchants should not discriminate or surcharge based on the involved payment card issuer (i.e. national bank, state bank, credit union, etc.

“Elavon is working on a registration process. More details to follow. You may also continue to check the Tell Me More site for additional details.”

Merchant Facing Materials

Merchant Statement Insert Copy

Important Notification from Visa® Proposed Settlement – Important Changes to Merchant Acceptance Practices

In November 2012, the federal district court overseeing *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MDL 1720)*, the merchant class action interchange litigation against Visa and other defendants, preliminarily approved a class settlement agreement that resolves antitrust claims involving Visa's interchange and merchant acceptance rules in the U.S. and its territories. We are writing to inform you of the changes Visa is making to its rules, effective January 27, 2013, applicable to transactions at merchants in the U.S. and U.S. territories 1 (“U.S. merchants”). This letter describes certain merchant acceptance practices that will be permitted. The text of Visa's revised rules is available at www.visa.com.

Visa's Operating Regulations already allow merchants to engage in certain practices to steer customers to forms of payment other than Visa cards, including offering discounts to customers that initially present a Visa card to steer to another payment type or to a different type of Visa card. Following this settlement, U.S. merchants may surcharge Visa Credit card transactions (not debit or pre-paid card transactions) at the Visa “brand level” or at the “product level,” but not both, subject to the following requirements:

First, a U.S. merchant's surcharges on Visa Credit card transactions cannot exceed certain levels. U.S. merchants who surcharge at the “brand level” may impose a surcharge on Visa Credit card transactions if the surcharge:

- Is the same for all Visa Credit card transactions, regardless of the card's Issuer or product type (e.g., Visa Traditional, Visa Traditional Rewards, Visa Signature, Visa Signature Preferred);

- Is no greater than the merchant's average discount rate for Visa Credit card transactions for the preceding one month or 12 months; and does not in any event exceed 4% (even in cases where the merchant's average discount rate exceeds 4%).

U.S. merchants who surcharge at the "product level" may impose a surcharge on Visa Credit card transactions if the surcharge:

- Is the same for all transactions on the particular product type (e.g., Visa Traditional, Visa Traditional Rewards, Visa Signature, Visa Signature Preferred), regardless of Issuer;
- Is no greater than the merchant's average discount rate associated with the Visa Credit card product type transactions being surcharged for the preceding one month or 12 months, minus the regulated debit cap established by the Board of the Governors of the Federal Reserve System;
- Does not in any event exceed 4% (even in cases where the merchant's average discount rate exceeds 4%).

¹ This includes American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Puerto Rico, U.S. Outlying Islands, and U.S. Virgin Islands.

Second, for U.S. merchants that accept credit or charge cards of other payment network brands, surcharging practices are subject to a competitive "level playing field" limitation that depends on whether those payment network brands impose surcharge restrictions on credit cards and the merchants' costs of accepting those credit cards:

- If the merchant accepts a competing payment network brand that is as or more expensive to the merchant than Visa, and that competing payment network limits the merchant's ability to surcharge credit cards, the merchant may surcharge Visa Credit cards only in the same way as the merchant would be allowed to surcharge the competing payment network's credit card (or on the terms on which the merchant actually surcharges the competing payment network's credit cards).
- If the merchant accepts a competing payment network brand of credit card that prohibits or effectively prohibits the merchant from surcharging in a particular channel of commerce (i.e. either face-to-face or non-face-to-face), the merchant may not surcharge Visa Credit cards unless it also surcharges the competing payment network's credit cards regardless of the cost of that card to the merchant. The amount of the surcharge on the competing payment network brand must equal at least the lesser of: the cost to accept the competing brand's credit cards or the surcharge imposed on Visa Credit cards.

This cost-based comparison is performed by comparing the merchant's Visa Credit card cost of acceptance (the average effective interchange rate plus the average of all network fees imposed on merchants or acquirers applicable to Visa credit card transactions at the merchant for the preceding one or twelve months), with the merchant's cost of acceptance for other credit card networks (the average merchant discount rate for the preceding one or twelve months). If the merchant cannot determine its Visa Credit card cost of acceptance, a merchant may use the Visa Credit card cost of acceptance for its merchant category, which is available on www.visa.com/merchantsurcharging, to compare its Visa Credit card cost of acceptance in the merchant's category to the cost of accepting competing payment network credit cards. A U.S. merchant can "contract out" of these competitive "level playing field" provisions by entering into an individually negotiated agreement with another payment network in which the merchant waives or limits its ability to surcharge transactions on the competitive credit card brand, as long as the agreement is for a fixed duration, the merchant's acceptance of the competitive credit card brand is unrelated to and not conditioned on the merchant's entry into the agreement, the agreement is supported by independent consideration, and the agreement expressly specifies a price at which the merchant may accept transactions on the competitive payment network credit card brand and surcharge those transactions up to the merchant's discount rate for the other credit card brand.

Third, a U.S. merchant that chooses to surcharge Visa Credit card transactions must satisfy notification and disclosure requirements. A U.S. merchant that intends to surcharge must provide advance written notice to both Visa and the merchant's acquirer at least 30 days prior to surcharging, which must identify whether the merchant intends to impose surcharges at the brand or product level. Merchants can easily provide this notification to Visa through the www.visa.com/merchantsurcharging site. While notifications may be provided beginning December 20, 2012, actual surcharging of Visa Credit transactions may not commence until January 27, 2013. Please contact your acquirer for their notification requirements.

In addition, a U.S. merchant who surcharges must provide clear disclosure to the merchant's customers **(1) at the point of store entry**, or in an online environment on the first page that references credit card brands, that the merchant imposes a surcharge that is not greater than its applicable merchant discount rate for Visa Credit card transactions; **(2) at the point of interaction** or sale with the customer, of the merchant's surcharging practices (including the amount of any surcharges that the merchant imposes and a statement that the surcharge is being imposed by the merchant), in a manner that does not disparage the brand, network, issuing bank, or the payment card product being used; and **(3) of the dollar amount of the surcharge on the transaction receipt** provided by the merchant to its customers.

Merchants must continue to respect a cardholder's decision to pay with Visa: the settlement does not impact merchants' existing obligation to accept for payment properly presented Visa cards, including rewards cards. In addition, the rule changes that Visa is implementing under the settlement do not affect any obligation of a U.S. merchant to comply with all applicable state or federal laws, including state laws regarding surcharging of credit or debit card transactions, and federal and state laws regarding deceptive or misleading disclosures.

Additional Practices and Policies

- Visa will meet with merchant buying groups that meet certain criteria and that seek to negotiate proposals that provide reasonable commercial benefits to both parties
- A merchant will be permitted to decline acceptance of Visa products at all of its merchant outlets that operate under the same trade name or banner in the United States

If you have any questions regarding merchant surcharging, please contact your acquirer or visit www.visa.com/merchantsurcharging.

Important Notification from MasterCard® Proposed Settlement – Important Changes to Merchant Acceptance Practices

Notice of MasterCard Rule Changes

As a result of the U.S. merchant class settlement agreement that was executed on 19 October 2012 and preliminarily approved by the U.S. District Court on 27 November 2012, MasterCard will make changes to certain of its rules and practices affecting merchants in the United States. The class settlement agreement also obligates Visa to make similar modifications of its practices.

The rule changes, which will take effect on 27 January 2013, are summarized below. A detailed description of the MasterCard rule changes and other information relevant to those rule changes can be found at www.mastercardmerchant.com.

Brand-level Surcharge Rules on Credit (not Debit) Cards

Merchants will be able to charge an extra fee to all customers who pay with MasterCard credit cards. This is called a brand level surcharge, and it is allowed if the surcharge:

- Is the same for all MasterCard credit cards, regardless of the card's issuer;
- Is no more than the lesser of the merchant's average MasterCard merchant discount rate (calculated historically or based on the previous month) or the maximum surcharge cap, which will be posted on MasterCard's website at www.mastercardmerchant.com.

For merchants that accept other brands of credit payment networks, such as American Express, Discover, PayPal or Visa, there are other requirements that depend on whether those brands enforce surcharge restrictions and the costs of those brands to the merchant.

- If the merchant accepts a competing brand of credit card that is as or more expensive than MasterCard, and that competing brand limits the merchant's ability to surcharge, the merchant may surcharge MasterCard credit cards only in the same way as the merchant would be allowed to surcharge the competing brand's cards or on the terms on which the merchant actually surcharges the competing brand's cards.
- If the merchant accepts a competing brand of credit card that prohibits or effectively prohibits the merchant from surcharging in a particular channel of commerce (i.e., either face-to-face or non-face-to-face), the merchant may not surcharge MasterCard cards unless it also surcharges the competing brand's cards regardless of the cost of that brand to the merchant. The amount of the surcharge on the competing brand must at least equal the lesser of: the cost to accept the competing brand or the surcharge imposed on MasterCard cards.

Exception: A merchant may individually negotiate an agreement with the competing brand to waive or limit its ability to surcharge that brand, if that agreement fulfills the terms set out in the surcharge rule modifications that can be found at www.mastercardmerchant.com.

Product-level Surcharge Rules on Credit (not Debit) Cards

A merchant that does not wish to surcharge all MasterCard credit cards may instead impose a surcharge on a particular MasterCard credit card product, such as World Elite MasterCard®. The amount of the surcharge must not be more than the merchant's cost to accept the particular MasterCard credit card product, minus the Durbin Amendment's cap on debit-card interchange fees. The surcharge must be the same for all transactions on the particular MasterCard credit card product, regardless of the card's issuer.

For merchants that accept credit cards issued by competing brands, there are requirements similar to the brand level surcharge rules summarized above.

Merchant Registration and Disclosure Obligations Concerning the Surcharge Amount

A merchant's ability to apply either a Brand-level or Product-level Surcharge is conditioned on the merchant's satisfaction of certain disclosure requirements. These disclosure requirements include advance notice to both MasterCard and the merchant's acquirer of the merchant's intention to impose a surcharge no less than thirty days before the merchant implements a surcharge and clear disclosure to the merchant's customers of the merchant's surcharging practices at the point of interaction. In addition, the merchant must disclose the dollar amount of the surcharge on the transaction receipt provided by the merchant to its customers. A detailed description of the merchant disclosure requirements is contained in the rule and a link for a merchant to register its intent to surcharge with MasterCard can be found at www.mastercardmerchant.com.

Nothing in the changes to MasterCard's rules described above affects any obligation of a merchant to comply with applicable state or federal laws, including but not limited to state laws regarding surcharging of credit transactions, and federal and state laws regarding deceptive or misleading disclosures. However, the fact that a merchant's



ability to surcharge may be restricted under the laws of one or more states is not intended to limit that merchant's ability under the settlement to surcharge Visa or MasterCard credit cards where permitted by state law.

Additional MasterCard Rules and Policies Impacted by Settlement

All Outlets: Merchants may accept MasterCard cards at fewer than all of the merchant's "trade names" or "banners" if the merchant operates multiple businesses under different trade names or banners.

Buying Groups: Merchants that form buying groups that meet certain criteria may make proposals to MasterCard about card acceptance on behalf of the group's members. If MasterCard believes that the group's proposal "provides reasonable commercial benefits to the parties," it must negotiate with the buying group and decide, in "good faith," whether or not to make an agreement with the group. Information concerning how a buying group could contact MasterCard to initiate such negotiations can be found at www.mastercardmerchant.com.

Additional Information

In addition to the MasterCard website previously identified, all these rule changes are set forth in full in the Settlement Agreement, which appears on the website: www.PaymentCardSettlement.com.

Interested in surcharging? Visit www.tellmemore.elavon.com/surcharge

-Merchant Insert End-