

MERCHANT ADVISORY

Dear Merchant,

This law firm, Constantine & Partners is lead counsel for United States merchants in the case called *Visa Check/MasterMoney Antitrust Litigation* and sometimes referred to as the “*Wal-Mart*” case.

The merchants and Visa and MasterCard agreed to settle the case in June of this year. The final approval of these “Settlements” and of a “Plan” to allocate and return the roughly \$3 billion in monetary relief which Visa and MasterCard agreed to pay merchants is currently being considered by the United States District Court in Brooklyn, New York.

While the Court’s decision about the Settlements and Plan to distribute the money is expected at any time, relief obtained for merchants under the Settlements is already being provided by Visa and MasterCard prior to the Court’s formal decision. More than \$225 Million has already been paid into an escrow account earning interest. On August 1, 2003, Visa and MasterCard lowered the interchange fees applied to their “off-line” signature debit card transactions by roughly one-third. These interchange fees make up most of the “merchant discount” which is the price paid by merchants for accepting Visa and MasterCard signature debit transactions.

Moreover, unless the Court acts to the contrary, on January 1, 2004 Visa and MasterCard's signature debit card transactions and credit card transactions will be "untied," meaning that merchants will be free to reject Visa and/or MasterCard signature debit transactions while continuing to accept Visa and MasterCard credit cards. Merchants will also be free to reject Visa and/or MasterCard credit card transactions while continuing to accept their signature debit card transactions.

The rest of this advisory is intended to explain to merchants their rights under the Settlements with respect to the untying of debit from credit, to explain the steps a merchant must take if it chooses to reject the debit and/or credit card transactions of Visa and/or MasterCard, and to give each merchant some information it may wish to consider as it makes an individual decision about continuing to accept or reject the signature debit or credit products of Visa and MasterCard. This advisory is not intended to suggest what each merchant's decision should be.

The decision which each merchant can now make concerning whether to continue accepting Visa signature debit, MasterCard signature debit and, indeed, Visa and MasterCard credit is, as previously stated, an individual decision for each merchant. Much of the merchants' lawsuit and the public discussion of the Settlements has focused on a merchant's choice about whether to reject signature

debit on or after January 1, 2004. However, each merchant also has the option to accept Visa and/or MasterCard debit but not credit.

This decision must be made independently by each merchant. But as each merchant makes this independent and unilateral decision, it may take into consideration the fact that other merchants are also making similar decisions and factor in how its independent decision will affect other merchants and how their decisions will affect it.

A merchant's decision is not a one-time only choice. A merchant can decide to stop accepting or continue accepting one or both of the defendants' signature debit products at any time beginning now or later on; weeks, months or years from now. A merchant can also reverse that decision later on, depending upon pricing, quality issues and the response of the merchant's customers.

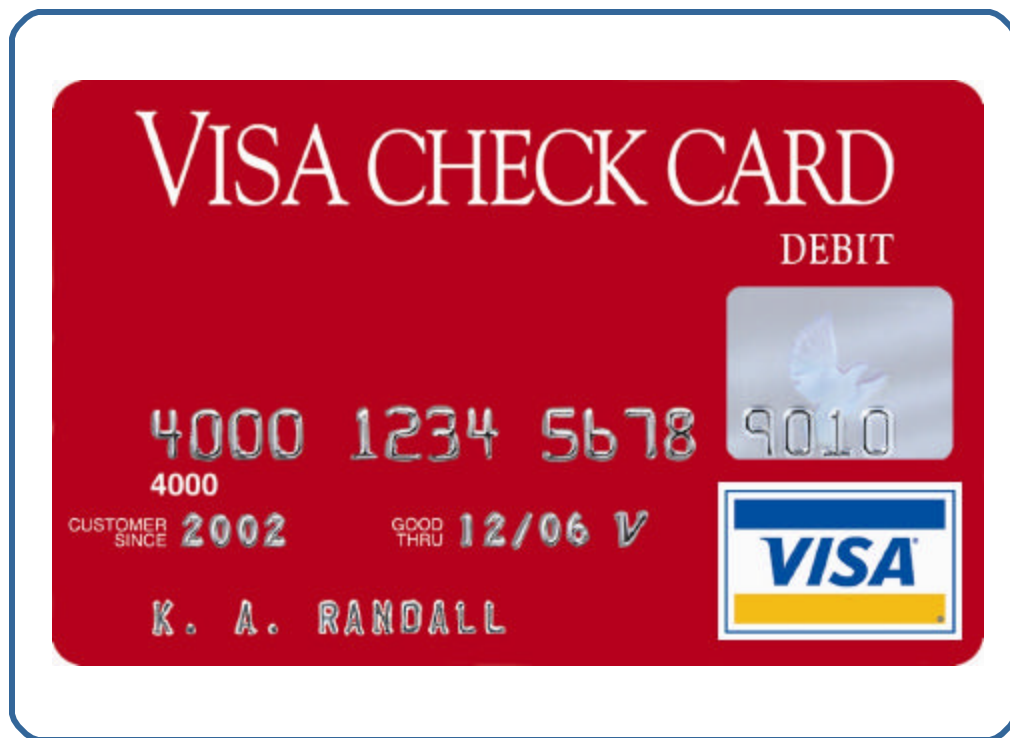
Beginning now and continuing throughout the three year period of January 1, 2004 through December 31, 2006, all of the more than 200 million ATM/Debit cards bearing the Visa or MasterCard logos will be physically rebranded with clear and conspicuous visual "Debit" identifiers and will be given distinct electronic identities. By prominently placing the word "Debit" on all of these cards, as Visa and MasterCard have agreed to do, many merchants will for the first time have an easy and foolproof way to visually tell the difference between debit cards and credit

cards. By the same token, the requirement of giving each debit card a distinct electronic identity will allow merchants with point of sale card terminals to electronically distinguish debit transactions from credit transactions. This is an example of what an ATM/Debit card will look like with the new MasterCard “Debit” identifier:



The “Debit” identifier will always be this size and style placed prominently within the hologram.

Here is an example of the new Visa “DEBIT” identifier, which will appear directly above the hologram or in even larger typeface within the hologram:



Eighty percent of this visual and electronic rebranding must be accomplished by June 30, 2005 under the Settlements. All 100% must be accomplished by December 31, 2006.

However, on January 1, 2004 only a small percentage of the visual and electronic rebranding will have occurred.

The clear and consistent visual electronic identities which Visa and MasterCard are required to give all ATM/Debit cards branded with Visa or MasterCard will make it easier for a merchant to exercise two options they have achieved under the Settlements. A merchant has the right to attempt to steer customers to a form of payment other than signature debit, such as PIN debit, check or cash. Second, the merchant can choose to stop accepting Visa and/or MasterCard signature debit altogether. The new visual and electronic identifiers on ATM/Debit cards will make either choice easier for a merchant to enforce.

While this visual and electronic rebranding is being accomplished during the period of January 1, 2004 through December 31, 2006, any merchant can tell its processor or acquirer to block Visa and/or MasterCard signature debit transactions from authorizing at that merchant's outlet(s) and the acquirer/processor must block these transactions without charge to the merchant, under terms of the Settlements.

The Settlements also require that a merchant's acquirer or processor provide any merchant upon its request, a complete and updated list of the BIN numbers (Bank Identification Numbers) that apply to all Visa and MasterCard signature debit cards, payroll cards and pre-paid cards. The merchant can obtain these BIN numbers in any form they reasonably request, such as in an electronically readable file. The merchant is then free to use these BIN numbers to assist it in rejecting signature debit or in steering consumers to make payment another way, if that is what the merchant chooses to do. Attached to this advisory is a form which a merchant can use to obtain Visa and MasterCard Debit Device BIN numbers.¹

Visa and MasterCard have also agreed in the Settlements to provide signage to merchants to assist them in informing their customers which types of Visa and MasterCard payments they will continue to accept after January 1, 2004. Here is the merchant signage which Visa will provide at no charge to the merchant through the merchant's processor or acquirer:

¹ A copy of this form is also attached in PDF format and may be downloaded.



CCB1: Standard Composed
Credit/Business



CCB2: International Composed
Credit/Business



CD1 – Standard Composed Debit



CD2: International Composed Debit

MasterCard will also provide signage for the same purpose in the next few weeks.

There are a number of things to keep in mind for a merchant that wants to make a decision in the next few weeks about whether to accept or reject signature debit (or credit). These factors should also be considered if a merchant wants to reassess and potentially change this decision (as frequently as a merchant chooses), during the next decade and even later.

The first thing to keep in mind is just precisely what the merchants' lawsuit was all about.

The merchants sued Visa and MasterCard because they were forced to accept off-line signature debit if they accepted Visa and MasterCard credit and they also alleged that Visa and MasterCard attempted and conspired to monopolize the debit market.

Most merchants were not against accepting signature debit at any price, they objected to being forced to accept signature debit at roughly the same price as credit.

The main points of dispute in the lawsuit were:

A) The forcing of merchants to accept signature debit - meaning their lack of

choice, and

B) The high price and certain other characteristics of signature debit.

Now that each merchant is free to reject signature debit, it must determine whether the price and quality justifies continued acceptance.

A merchant may be concerned about being in a minority of stores who reject Visa and/or MasterCard signature debit and whether this will hurt it with respect to competitors who continue to accept signature debit.

And as a merchant considers that issue, it may consider these things.

A merchant may consider what Visa and MasterCard were able to market until now but can no longer market - a single product with universal or ubiquitous acceptance.

Debit and credit never were economically a single product, but were frequently marketed as if they were one product. That should stop on January 1, 2004 with the end of the tying arrangements. And Visa and MasterCard can continue to market universal acceptance of their debit products after January 1, 2004 only if one of two things happen -

A) if they lower the price of signature debit and improve the quality of the product sufficiently for all or virtually all merchants who currently are forced to accept signature debit to continue to freely accept it, or

B) if merchants simply continue to accept signature debit regardless of the price, regardless of the quality and regardless of the real choices they now have. (This would be similar to disenfranchised people who win the right to vote and then stay home on election day.)

If through individual choices some merchants choose to refuse signature debit, the claim of universal acceptance begins to disappear.

A second consideration for a merchant also involves facts disclosed in the merchants' lawsuit. People who pay with signature debit have ready access to several other ways to access their depository accounts. They carry cash or have ready access to it. They have a checking account with checks. Through an electronic process, those checks can also be "truncated" if the merchant wants to offer that service. Perhaps most importantly, the ATM/Debit cards that provide the signature debit function, in almost every case, also allow the cardholder to pay with an on-line PIN debit transaction. And although there are some ATM/Debit cards that can only be used "off-line" with a signature to make a purchase, there are 249 million ATM cards that are on-line PIN capable at the point of sale, as contrasted with only 175 million that are both signature and PIN capable. That means that roughly 74 million ATM/Debit cards are PIN capable but cannot be used with a signature.

But to accept these 249 million PIN debit cards a merchant must have PIN pads or must install them. Most, if not all, supermarkets have already taken this step. The cost of installing PIN pads has come way down and it continues to rapidly decline. A merchant claiming it has no choice but to continue accepting signature debit because it has no PIN pad can remedy that by making a prudent investment that provides real choice for both the merchant and the merchant's customers.

A merchant should also consider the price and quality of competing debit products. When considering quality, the merchant may compare the frequency of fraud occurring in signature debit transactions and PIN debit transactions. The merchant may also wish to compare the amount of time it takes to get its money in signature debit transactions and PIN debit transactions and to also compare the amount of time signature and PIN debit transactions take at the checkout counter. The merchant may also consider the "holds" placed on shoppers' funds in certain signature debit transactions. The merchant may also consider and inquire with its bank about how signature debit affects the incidence of bounced checks. In a recent antitrust case filed by the United States and the Attorneys General of eight states, federal and state officials said the following about the relative merits of off-line signature debit and on-line PIN debit:

“PIN debit networks offer a number of substantial advantages to consumers and merchants that distinguish them from signature debit networks. PIN debit networks are generally considerably less expensive to merchants than signature debit networks, due to significantly lower interchange rates. PIN debit networks also provide a more secure method of payment than signature debit because it is much easier to forge a person’s signature than to obtain an individual’s PIN; consequently fraud rates for PIN debit are substantially lower than for signature debit. Because of the increased security of PIN debit, there is no need for the complicated and expensive charge-back procedures that allow consumers to challenge signature debit transactions, thereby saving merchants additional time and money. PIN debit transactions also settle instantaneously, guaranteeing the merchant ready access to its receipts, whereas signature debit transactions usually take a day or two to settle. Finally, PIN debit networks allow for faster execution than signature debit networks. With a PIN debit transaction, customers can enter their PIN as soon as the first product is scanned. By contrast, customers cannot sign for signature debit transactions until after the entire order is totaled, prolonging the checkout process.

PIN debit networks also allow individuals to receive cash back at the register when making a purchase, a popular feature with many consumers. Customers cannot receive cash back when making a signature debit purchase. Today, customers request cash back in approximately 20 percent of all PIN debit transactions. Customers also value the additional security provided by PIN verification as opposed to signature.”

Many of these characteristics of signature debit can be improved by Visa and MasterCard and their bank members, beginning with the price of signature debit.

During the current interim period of August - December 2003, signature debit interchange fees have been reduced by \$846 Million – for just these 5 months alone. But certain merchants have complained that this reduction was disappointingly small. This reduction, negotiated as part of the Settlements, occurred while signature debit and credit continued to be tied together. On January 1, 2004, when the tying ends, if a merchant believes that the price is too high, that merchant has the right to stop accepting signature debit, while continuing to accept Visa and/or MasterCard credit cards. It has also been said that some merchant acquirers/processors pocketed some of the interchange fee reductions rather than passing them along to merchants as lower prices. Each merchant should inquire about this with its acquirer or processor and should take any steps it deems prudent to assure that any reduction in interchange is completely passed on to that merchant through a cost-plus contract or other specific agreement.

As previously stated, the Settlements require that a merchant give 30 days advance written notice to the merchant's processor or acquirer if it chooses to stop accepting Visa and/or MasterCard signature debit and/or credit on January 1, 2004 or on any date after that. Also attached to this advisory is a second form a merchant can use if it chooses to stop accepting Visa and/or MasterCard signature

debit and/or credit card transactions.² This form tells the merchant's acquirer or card transaction processor that it has chosen to stop accepting certain transactions, when that will happen and it requests signage required to be provided by Visa and MasterCard to show consumers which type of Visa/MasterCard payment cards are still accepted by the merchant.

The Settlements also contain other provisions which relate to a merchant's decision. Under the Settlements, in order to change their signature debit pricing from the reduced interim debit rates, which have been in effect since August 1, 2003, Visa and MasterCard must either notify the merchants' acquirers or processors 45 days in advance or alternatively notify the merchants' counsel, which is Constantine & Partners, 30 days in advance.

If a merchant chooses to stop accepting one or more of these payment products, it may consider explaining this decision to its customers and explaining that lower prices and safer products for the shopper is the ultimate goal of that merchant. Visa and MasterCard are currently communicating with shoppers about what they can and should do in stores. A merchant may consider communicating with its own customers about the way its customers make payment for merchandise in the merchant's store(s). A merchant may consider telling its

² A copy of this form is also attached in PDF format and may be downloaded.

customers about the benefits of PIN debit, and of telling them which banks in their area have removed the PIN debit feature from the shoppers' ATM/Debit cards, which banks are charging consumers each time they make a PIN debit purchase and which banks do not penalize cardholders when they use PIN debit.

If a merchant suspects that a competitor has gotten a better deal from Visa or MasterCard on debit - it is not appropriate to call the competitor and ask about this - but you may request a "most favored nations" agreement from Visa or MasterCard or from your processor or acquirer. If you have any questions about the mechanical aspect of making your decision or registering your decision to reject debit or credit or requesting merchant signage, or obtaining debit BIN numbers or directing your acquirer/processor to block signature debit transactions, you are free to call us, the merchants' lead counsel. We will not advise you about what your decision on any of these matters should be.

This should be an exciting time for merchants to be active participants in the rapidly evolving payments markets. Merchants can affect the outcomes of this new and competitive market dynamic by being knowledgeable about their rights, by being tough, and being communicative with their customers. The ultimate price to merchants of signature debit and PIN debit and the quality and features of these competing debit transactions will be a result of how individual merchants respond to the new options they have won in the Settlement of their lawsuit.

Copies of this Advisory and the attached merchant forms can also be obtained at the following websites:

www.inrevisacheckmastermoneyantitrustlitigation.com (case website)

www.cpony.com (Constantine & Partners website)

www.nrf.com (National Retail Federation website)

www.fmi.org (Food Marketing Institute website)

www.imra.org (International Mass Retail Association website)

Sincerely,

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