

The past week has seen numerous developments regarding credit and debit card interchange fees. On September 1, 2006, Visa announced that it made its operating rules, which are incorporated by reference into the contracts merchants have with their acquiring banks, available to retailers. In addition, the American Banker reported on September 1, 2006 that the Puerto Rico Department of Consumer Affairs decided to allow retailers to surcharge for credit card purchases of gasoline. Finally, MasterCard announced on September 5, 2006 that it would make its rates available to merchants and would cap the interchange fees charged on gasoline purchases.

### **Visa Announcement Regarding Disclosure of Its Operating Rules**

Visa's announcement regarding the availability of its operating rules may fall short of a complete public disclosure. A key component of Visa's announcement was the condition that merchants would have to sign a non-disclosure agreement in order to view the operating rules. These agreements may restrict the retailer's ability to discuss the content of the operating rules with other people – including state legislators, Members of Congress, and trade associations, among others. This could seriously inhibit perfectly legitimate conversations that would help assist retailers' understanding about the rules and efforts to ensure that the rules ultimately become fair for retailers.

It is also interesting to note that on July 19, 2006, the Senate Judiciary Committee held a hearing on credit and debit card interchange fees. During the hearing, witnesses pressed Visa and MasterCard on their refusal to provide retailers with the full operating rules. Chairman Arlen Specter questioned the card association witnesses on this point and asked whether they would make their rules available to the Committee. When they agreed, Chairman Specter indicated that he would provide them to the witness appearing on behalf of the Merchants Payments Coalition (MPC). These rules were supposed to be provided to the Committee on August 28, 2006.

### **Puerto Rico Allows Gasoline Retailers to Surcharge for Credit Cards**

The decision by the Puerto Rico Department of Consumer Affairs allows retailers to charge up to 20 cents on every credit card purchase of motor fuel to help defray the cost of these transactions. In addition, this charge can only be applied to purchases under \$10 at self-serve pumps and only when retailers have both full and self-serve pumps available. The policy will be in effect for 90 days.

The Department created this policy in spite of the fact that surcharging violates Visa and MasterCard's operating rules. The Department, however, believes that its decision overrides what is in the operating rules. The Puerto Rico Bankers Association disagrees with this interpretation.

While this policy is limited in its scope, it is significant that a regulator (particularly a consumer-protection regulator) would undertake this action and it demonstrates that retailers' concerns are legitimate and are being heard.

### **MasterCard Announcement Regarding Interchange Fees**

The significance of MasterCard's announcement that it would make its fees public and cap fees on gasoline purchases is unclear. The announcement lacked details regarding how the caps will work and the extent of fee information that would be made available to retailers.

These developments over the past week reinforce the legitimacy of retailers concerns regarding interchange fees and show that those concerns are being noticed by regulators and the card associations themselves.