

AN ALERT FROM THE BDO RETAIL & CONSUMER PRODUCTS PRACTICE

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► SUBJECT

IS \$5.7 BILLION ENOUGH? INTERCHANGE FEE SETTLEMENT CONTINUES

► DETAILS

Resolving litigation that began in 2005 over interchange fees, in December 2013, a U.S. District Judge approved a \$5.7 billion settlement with Visa and MasterCard – the largest private antitrust settlement in U.S. history. Retailers have struggled with the inability to negotiate interchange fee amounts with Visa and MasterCard, arguing that agreements with the banks prevented them from incentivizing customers to use other forms of payment. The National Retail Federation (“NRF”) estimates that retailers and their customers have lost up to \$30 billion a year due to interchange fees – a hefty loss in the face of a strong consumer preference for credit and debit transactions over cash or check. Interchange or “swipe” fees comprise the bulk of the fees paid by retailers to Visa and MasterCard in order to accept those forms of payment from customers. The fees apply every time a customer “swipes” their credit or debit card to make a purchase, and typically range from two to five percent of the purchase price of a transaction.

Reimbursement. Should retailers give up future rights?

Proposing reimbursement for losses related to interchange fees since 2004, the terms of the settlement would have Visa and MasterCard paying retailers \$5.7 billion, encompassing direct reimbursement, temporary interchange rate reductions, and the ability to pass along card processing fees to customers. The settlement would provide cash payments to retailers in the U.S. that accepted Visa or MasterCard credit or debit cards between Jan. 1, 2004 and Nov. 28, 2012.

Is the \$5.7 billion settlement, however, enough to forego future claims? Not according to the NRF, which filed an appeal of the December 2013 ruling in January of this year, stating that the settlement was not sufficient to prevent banks from imposing more onerous fees in the future, and potentially hindering future litigation. Due to these concerns from certain retailer plaintiffs, an initial \$7.8 billion settlement approved in July 2012 has dwindled to \$5.7 billion as retailers have pulled out of the settlement over concerns about future rights to sue. The December 2013 settlement will not become final until all appeals have been resolved.

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BDO RETAIL AND CONSUMER PRODUCTS PRACTICE

BDO has been a valued business advisor to retail and consumer product companies for 100 years. The firm works with a wide variety of retail clients, ranging from multinational Fortune 500 corporations to more entrepreneurial businesses, on myriad accounting, tax and other financial issues.

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What happens if the settlement is finalized?

Having a settlement class of 12 million merchants, it remains unclear how many will file claims. Some of the largest U.S. retailers, for example, have opted out, possibly due to concerns about constraining future suits against Visa and MasterCard without resolving future interchange fee concerns. Some merchant account providers have announced that they will automatically file a settlement claim on behalf of their retail clients unless the retailer informs them otherwise. The merchant providers will likely charge fees ranging from 15 to 25 percent of each retailer's settlement portion. Retailers should consider whether they want to handle this on their own and avoid having these fees deducted from their settlement proceeds.

Navigating the claims process

While the final details of the settlement remain to be finalized pending the resolution of the NRF's appeal, retailers have options to consider now. For example, some "Claim Buyers" have been purchasing claims from retailers, allowing the retailers to obtain cash now, without having to wait for the settlement process to become finalized. Retailers needing help evaluating the settlement to recover fees are well-advised to consult with a financial advisor to maximize their recovery efforts in filing or selling their claims. BDO can help retailers assess their options and assist with the claim process related to the ultimate interchange fee settlement.

Transforming the Retail Sector

As the retail and consumer products market continues to manage economic strain and increasing challenges from online competitors, BDO Consulting offers various consulting services to help retailers reposition operations to achieve success. As a long-standing advisor to the retail industry, BDO advises clients on developing strategic business plans to drive performance improvement, reduce expenses and improve profitability. Our seasoned professionals also provide advice on liquidity management, strategic alternatives, restructuring, interim management and real estate optimization services.

BDO Consumer Business Compass Blog

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