

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: :
 : MASTER FILE NO.
 : CV-96-5238
VISA CHECK/MASTERMONEY ANTITRUST : (Gleeson, J.) (Mann, M.J.)
LITIGATION :
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This Document Relates To: :
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**SUPPLEMENTAL DECLARATION OF FRANKLIN M. FISHER
VALUING BENEFITS TO CLASS OF
VISA AND MASTERCARD SETTLEMENT AGREEMENTS**

I. INTRODUCTION

1. I submit this declaration in support of Class Counsels’ Application for final approval of the Settlement Agreements between the plaintiffs and Visa and MasterCard.¹

2. I have previously submitted three expert reports in this case: an initial expert report dated April 4, 2000, a rebuttal expert report dated April 25, 2000, and a supplemental report dated September 23, 2002 (collectively, the “Fisher Reports”). I also recently submitted two declarations dated August 14, 2003, one in support of the Plan of Allocation (“Fisher Allocation Declaration”) and the other valuing the benefits to the class of the Visa and MasterCard Settlement Agreements (“Fisher Valuation Declaration”).

3. In the Fisher Valuation Declaration I evaluated and quantified the benefits that Class Members likely will receive from the injunctive portions of the Settlement Agreements. Subsequent to the submission of that declaration, *The Nilson Report*

¹ See Settlement Agreement, between MasterCard International, Incorporated and Plaintiffs, dated June 4, 2003 (“MasterCard Settlement Agreement”); and, Settlement Agreement, between Visa U.S.A. Inc. and Plaintiffs, dated June 4, 2003 (“Visa Settlement Agreement”); (collectively, the “Settlement Agreements”).

Capitalized terms used herein shall have the same meaning as in the Settlement Agreements.

published newly available Visa and MasterCard off-line debit transaction data for the first half of 2003.² The availability of this data allows me to more accurately estimate the value of injunctive portions of the Settlement Agreements, particularly the value of the interim off-line debit interchange fee reductions. I have been asked by counsel for plaintiffs to update my previous estimates.

II. BENEFITS TO CLASS MEMBERS FROM THE INTERIM INTERCHANGE RATE REDUCTIONS

4. In Section IV.A of the Fisher Valuation Declaration I outlined the procedure used to quantify the benefit to the Class resulting from the interim off-line debit interchange rate reductions. As mandated by the Settlement Agreements, on August 1, 2003, Visa reduced its off-line debit supermarket rate from \$0.40 to \$0.26, and its aggregate effective non-supermarket rates by 48 basis points. On the same day, MasterCard reduced its projected aggregate effective interchange rates for its off-line debit product by slightly more than one-third. These rates will remain in effect until the end of the year.

5. The value of these interim rate reductions to merchants is measured by multiplying the projected dollar volume of off-line debit transactions during August 1, 2003 through December 31, 2003, by the difference between the interim rates and the interchange fees that would have prevailed during this same time period in the absence of the changes mandated by the Settlement Agreements.

6. In the Fisher Valuation Declaration I projected Visa and MasterCard off-line debit volume for the period August through December 2003 using projections published in *The Nilson Report*.³ The newly available transaction data indicate that these projections will underestimate the growth of off-line debit volume in 2003 by about six percent. To account for this, I re-estimated the off-line debit volume for the period August through

² *The Nilson Report*, Issue 794 (August 2003).

³ Since Visa and MasterCard had not reported mid-year 2003 debit figures, I used full year 2002 figures reported in *The Nilson Report* and its projections for 2005 for my estimates. See *The Nilson Report*, Issues 784 (March 2003) and 772 (September 2002). Specifically, full-year 2003 off-line debit volumes were projected by interpolating a constant annual growth rate between the 2002 and Nilson's projection for 2005. The period August through December 2003 was estimated from quarterly data and assuming that July was one-third of the third quarter.

December 2003.⁴ Using these projections, I calculate that the interim rate reductions mandated by the Settlement Agreements will save the Class approximately \$846.0 million through the end of 2003, or \$51.6 million more than previously estimated. These additional savings are a result of the higher than expected off-line debit volume.

III. BENEFITS TO CLASS MEMBERS OF UNTYING PROVISIONS AND OTHER INJUNCTIVE RELIEF

7. The injunctive terms of the Settlement Agreements mark the beginning of a new, competitive environment for the payment card industry. In Section IV.B of the Fisher Valuation Declaration, I quantified the benefits to the Class of lower interchange fees that will result from this competition. I valued these likely rate reductions over the next ten years for several scenarios that I consider to be likely outcomes. I have updated these estimates using the newly available mid-year 2003 off-line debit transaction data. These estimates are included in **Exhibit FVD-2 Updated**. In general, the updated valuations have increased slightly as the interchange fee reductions resulting from the Settlement Agreements are applied to slightly higher projected volumes of off-line debit.⁵

8. In Scenario 1, debit interchange fees merely remain at their current interim levels, a conservative assumption. Accounting for the newly available off-line debit data, the estimated value to merchants for this scenario increases from \$25.1 billion to \$25.3 billion. In Scenario 2, off-line debit interchange fees fall to current on-line debit interchange levels. The updated estimated value of this scenario is \$58.6 billion, up from the previous estimate of \$58.5 billion. In Scenario 3a, on-line interchange fees remain at current levels through June 2005, and fall to 2001 levels in July 2005, and off-line fees fall to these on-line levels. I view this as the most likely scenario. The updated estimated value of this scenario is \$70.5 billion, up from the previous estimate of \$70.4 billion. In Scenario 3b, on-line interchange fees remain at current levels through June 2005, fall to 2001 levels in July 2005, and fall to 1998 levels in January 2007. The updated estimated

⁴ Specifically, with the new data I calculate the percentage growth rate for off-line debit from the first half of 2002 to the first half of 2003. I then apply this growth rate to the off-line debit transaction volumes reported for the second half of 2002 to project the volume for the second half of 2003.

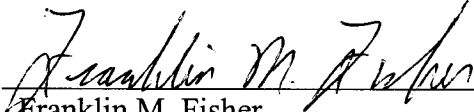
⁵ The off-line debit projections based on the new data also show a slightly lower average transaction size in 2003. For Scenario 1, this has the effect of lowering the projected level of off-line debit interchange fee rates under the terms of the Settlement Agreements, which contributes to the higher updated valuation.

value of this scenario is \$78.6 billion, up from the previous estimate of \$78.5 billion. Scenario 3c is similar to Scenario 3b, except that off-line and on-line debit interchange fees fall to par in January 2007. The updated estimated value of this scenario is \$87.5 billion, up from \$87.4 billion.


IV. CONCLUSION

9. Based on newly available data, the updated value of the interim rate reduction is estimated to be \$846.0 million through the end of 2003. I estimate the value of the remaining injunctive relief portions of the Settlement Agreements as ranging from \$25.3 billion to \$87.5 billion.

I declare under penalty of perjury that the foregoing is true and correct.



Franklin M. Fisher



Date

Exhibit FVD-1 has not been updated. This page intentionally left blank.

Exhibit FVD-2 Updated

Scenario 1

Assumes No Further Off-line or On-line Interchange Fee Reductions Beyond the Interim Rate Reductions Mandated by the Settlement Agreements

	Present Value Due to Off-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Present Value Due to On-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Total Present Value (\$ million)
2004	\$2,024	\$0	\$2,024
2005	\$2,156	\$0	\$2,156
2006	\$2,260	\$0	\$2,260
2007	\$2,368	\$0	\$2,368
2008	\$2,480	\$0	\$2,480
2009	\$2,595	\$0	\$2,595
2010	\$2,714	\$0	\$2,714
2011	\$2,813	\$0	\$2,813
2012	\$2,916	\$0	\$2,916
2013	\$3,016	\$0	\$3,016
Total for 2004-2013	\$25,341	\$0	\$25,341

Notes:

It is assumed that in the absence of the Settlement Agreements, off-line interchange fees would continue to grow after 2003 at the constant yearly rate of growth from 1999 to 2003.

It is assumed that with the settlements, from January 2004 on, the structure of off-line interchange fees will remain the same as on August 1, 2003, the day the off-line interchange fee reductions stipulated by the Settlement Agreements went into effect.

It is assumed that with or without the settlements, on-line interchange fees would continue to grow after 2003 by the annual average increase in cents per transaction from 1999 to 2003.

See the following pages for additional notes and sources.

Exhibit FVD-2 Updated

Scenario 2

Assumes On-line Interchange Fees Remain at Current Levels, and Off-line Interchange Fees Fall in January 2004 to the On-line Debit Level

	Present Value Due to Off-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Present Value Due to On-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Total Present Value (\$ million)
2004	\$4,234	\$145	\$4,379
2005	\$4,447	\$320	\$4,767
2006	\$4,582	\$483	\$5,065
2007	\$4,728	\$647	\$5,375
2008	\$4,880	\$809	\$5,689
2009	\$5,036	\$969	\$6,006
2010	\$5,207	\$1,132	\$6,338
2011	\$5,348	\$1,355	\$6,703
2012	\$5,490	\$1,499	\$6,989
2013	\$5,628	\$1,638	\$7,266
Total for 2004-2013	\$49,580	\$8,998	\$58,578

Notes:

It is assumed that in the absence of the Settlement Agreements, off-line interchange fees would continue to grow after 2003 at the constant yearly rate of growth from 1999 to 2003 and on-line interchange fees would continue to grow after 2003 by the annual average increase in cents per transaction from 1999 to 2003.

It is assumed that with the settlements, from January 2004 on, off-line interchange fees will be set such that merchants will be indifferent between accepting off-line and on-line debit.

It is also assumed that with the settlements, from January 2004 on, each network's on-line interchange fees will remain at their July 2003 structure.

The July 2003 on-line interchange fee structures used here include recently announced interchange fee increases by NYCE, Pulse Pay, Accel/Exchange, and AFFN.

See the following pages for additional notes and sources.

Scenario 3A

Assumes On-line Interchange Fees Remain at Current Levels Through June 2005, and Fall to 2001 Levels in July 2005; Off-line Interchange Fees Match On-line Interchange Fees

	Present Value Due to Off-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Present Value Due to On-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Total Present Value (\$ million)
2004	\$4,234	\$145	\$4,379
2005	\$4,902	\$550	\$5,452
2006	\$5,479	\$935	\$6,414
2007	\$5,646	\$1,101	\$6,746
2008	\$5,817	\$1,265	\$7,082
2009	\$5,995	\$1,428	\$7,423
2010	\$6,180	\$1,591	\$7,771
2011	\$6,322	\$1,830	\$8,152
2012	\$6,453	\$1,968	\$8,421
2013	\$6,579	\$2,100	\$8,679
Total for 2004-2013	\$57,606	\$12,913	\$70,519

Notes:

It is assumed that in the absence of the Settlement Agreements, off-line interchange fees would continue to grow after 2003 at the constant yearly rate of growth from 1999 to 2003 and on-line interchange fees would continue to grow after 2003 by the annual average increase in cents per transaction from 1999 to 2003.

It is assumed that with the settlements, from January 2004 on, off-line interchange fees will be set such that merchants will be indifferent between accepting off-line and on-line debit.

It is also assumed that with the settlements, each network's on-line interchange fees will remain at their July 2003 structure through June 2005. From July 2005 on, each network's on-line fees will revert to their 2001 structure.

The July 2003 on-line interchange fee structures used here include recently announced interchange fee increases by NYCE, Pulse Pay, Accel/Exchange, and AFFN.

See the following pages for additional notes and sources.

Exhibit FVD-2 Updated

Scenario 3B

Assumes On-line Interchange Fees Remain at Current Levels Through June 2005, Fall to 2001 Levels in July 2005, and Fall to 1998 Levels in January 2007; Off-line Interchange Fees Match On-line Interchange Fees

	Present Value Due to Off-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Present Value Due to On-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Total Present Value (\$ million)
2004	\$4,234	\$145	\$4,379
2005	\$4,902	\$550	\$5,452
2006	\$5,479	\$935	\$6,414
2007	\$6,377	\$1,507	\$7,884
2008	\$6,558	\$1,671	\$8,229
2009	\$6,744	\$1,833	\$8,576
2010	\$6,935	\$1,993	\$8,927
2011	\$7,081	\$2,248	\$9,329
2012	\$7,198	\$2,378	\$9,576
2013	\$7,309	\$2,503	\$9,812
Total for 2004-2013	\$62,817	\$15,762	\$78,579

Notes:

It is assumed that in the absence of the Settlement Agreements, off-line interchange fees would continue to grow after 2003 at the constant yearly rate of growth from 1999 to 2003 and on-line interchange fees would continue to grow after 2003 by the annual average increase in cents per transaction from 1999 to 2003.

It is assumed that with the settlements, from January 2004 on, off-line interchange fees will be set such that merchants will be indifferent between accepting off-line and on-line debit.

It is also assumed that with the settlements, each network's on-line interchange fees will remain at their July 2003 structure through June 2005. In July 2005, each network's on-line fees will revert to their 2001 structure. From January 2007 on, each network's on-line fees will revert to their 1998 structure.

The July 2003 on-line interchange fee structures used here include recently announced interchange fee increases by NYCE, Pulse Pay, Accel/Exchange, and AFFN.

See the following pages for additional notes and sources.

Exhibit FVD-2 Updated

Scenario 3C

Assumes On-line Interchange Fees Remain at Current Levels Through June 2005, Fall to 2001 Levels in July 2005, and Fall to At-Par in January 2007; Off-line Interchange Fees Match On-line Interchange Fees

	Present Value Due to Off-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Present Value Due to On-line Fees Being Set Lower Than They Otherwise Would Have Been (\$ million)	Total Present Value (\$ million)
2004	\$4,234	\$145	\$4,379
2005	\$4,902	\$550	\$5,452
2006	\$5,479	\$935	\$6,414
2007	\$7,140	\$2,006	\$9,146
2008	\$7,327	\$2,167	\$9,494
2009	\$7,518	\$2,326	\$9,845
2010	\$7,715	\$2,484	\$10,199
2011	\$7,866	\$2,759	\$10,625
2012	\$7,968	\$2,879	\$10,846
2013	\$8,065	\$2,994	\$11,059
Total for 2004-2013	\$68,214	\$19,246	\$87,460

Notes:

It is assumed that in the absence of the Settlement Agreements, off-line interchange fees would continue to grow after 2003 at the constant yearly rate of growth from 1999 to 2003 and on-line interchange fees would continue to grow after 2003 by the annual average increase in cents per transaction from 1999 to 2003.

It is assumed that with the settlements, from January 2004 on, off-line interchange fees will be set such that merchants will be indifferent between accepting off-line and on-line debit.

It is also assumed that with the settlements, each network's on-line interchange fees will remain at their July 2003 structure through June 2005. In July 2005, each network's on-line fees will revert to their 2001 structure. From January 2007 on, each network's on-line fees will revert to at-par.

The July 2003 on-line interchange fee structures used here include recently announced interchange fee increases by NYCE, Pulse Pay, Accel/Exchange, and AFFN.

See the following pages for additional notes and sources.

Additional Notes to Exhibit FVD-2 Updated

Off-line debit volumes for 2003 were estimated by applying the mid-year growth rates between 2002 and 2003 to full year 2002 volumes. Off-line debit volumes for 2004 were projected by interpolating a constant annual growth rate between 2003 and Nilson's projection for 2005.

Off-line debit volumes for 2006-2009 were projected by interpolating a constant annual growth rate between Nilson's projections for 2005 and 2010.

Projections of total debit volumes for 2005-2013 are provided by *The Nilson Report*.

Off-line debit volumes for 2011-2013 were projected by calculating the average of off-line debit's share of total debit volumes for 2005-2010 and applying it to Nilson's projections of total debit volumes for 2011-2013.

On-line debit volumes for 2003-2004 were projected by interpolating a constant annual growth rate between 2002 and Nilson's projection for 2005.

On-line debit volumes for 2006-2009 were projected by interpolating a constant annual growth rate between Nilson's projections for 2005 and 2010.

On-line debit volumes for 2011-2013 were projected by calculating the average of on-line debit's share of total debit volumes for 2005-2010 and applying it to Nilson's projections of total debit volumes for 2011-2013.

It is assumed that 10% of off-line volumes and 50% of on-line volumes are attributable to purchases in supermarkets.

The interest factor used for calculating the value of the difference in float between off-line and on-line debit is based on effective interest rates for 3-month U.S. Treasury bills. The average effective interest rate for 3-month U.S. Treasury bills for the first 6 months of 2003 is used as a proxy for the effective interest rate every year thereafter.

The discount factor is based on the 2003 weighted average cost of capital for wholesale and retail trade.

Sources to Exhibit FVD-2 Updated

"POS Authorization Fee 5-Year Planning", December 16, 1997 (HTI 012818)
2003 off-line interchange fee information provided by MasterCard to counsel
2003 off-line interchange fee information provided by Visa to counsel
ATM & Debit News, Thomson Media, 5/08/2003
ATM & Debit News, Thomson Media, 7/17/2003
Confidential memorandum from Stan Paur to Pulse Board of Directors re: Visa, June 1, 1998 (NC-D-002912)
Cost of Capital 2003 Yearbook, Data Through June 2003, Ibbotson Associates (www.ibbotson.com)
Fisher Exhibit FMF-8B
Fisher Exhibit FMF-24A
Fisher Exhibit FMF-4A Updated - Fisher Exhibit FMF-4N Updated
<http://www.federalreserve.gov/releases/h15/data.htm>
Settlement Agreement between MasterCard International, Incorporated and Plaintiffs, June 4, 2003
Settlement Agreement between Visa U.S.A. Inc. and Plaintiffs, June 4, 2003
The Nilson Report (Issue numbers: 761, 770, 772, 777, 784, 785, 788, 794)
Thomas Bennion, Honor Technologies, 2/24/99, Dep. Tr. 64-88
William Sheedy, Visa, 10/21/99, Dep. Tr. 139-140.