
From: Locovare, Christopher
Sent: Wednesday, July 28, 2010 11:01 AM
To: Rule-Comments
Subject: DF - Other Initiatives:

To whom it may concern,

The purpose of this correspondence is to bring your attention to what I believe is an unregulated and unjust section of the credit card industry. Today's credit card system has many protections in place for the customer, the card issuer and the Merchant Account Processor, but there is no protection afforded to the merchants. Towards this end, I would like to see Federally enacted legislation that would grant some protection to the merchants of the United States through regulation and over-sight of the Merchant Account Processors. This legislation might be called The Merchant's Rights Act.

Merchants, in order to be able to process customer credit card sales, must secure a "Merchant Account". A Merchant Account serves as an interface between the VISA & Mastercard Association, the customer and the merchant. When the customer uses their credit card, they in effect secure a "loan" through the card issuer and the VISA & Mastercard Association in order to make a purchase. Hence, Federal and State banking laws are applicable to this business. The "merchant account" portion of the business is given the authority, through the powers of the VISA & Mastercard Association, to deposit monies from the aforementioned loan, into the account of the merchant. The Merchant Account Processor charges the merchant a sign-up fee, a monthly service fee, a percentage of each sale, a transaction fee and sometimes, a batch fee in addition to rental or purchase costs of transaction equipment. Internet merchants usually are charged higher fees for this service under the guise that they are using a high-risk transaction format, that is, allegedly, rife with theft.

It is our contention that the Merchant Account Processor portion of this business is un-regulated. The small merchant, through the Merchant Account Processor portion of this business, is being selectively discriminated against; indiscriminately charged fees; must accept contract terms that do not reveal costs, fees and penalties and is forced to restrict business practices; is tracked, judged and possibly blacklisted through a covert chargeback tracking system that is absent of over-sight and appeals; and is at a disadvantage from a chargeback system that is absent of external checks, balances, audits and appeals and subject to mining to increase the profits of the Merchant Account Processors.

Allow me to elaborate on these claims one by one.

- 1) **The small merchant, through the Merchant Account portion of this business, is being selectively discriminated against** – A merchant can not affect sales with a credit card without the use of a Merchant Account. This applies to the mom-and-pop business as well as the largest international chain stores. A chargeback is an action that is taken, at the direction of the customer, to reverse a charge that appears on their credit card bill. Such an action is

warranted to deter fraudulent activity through the unauthorized use of the customer's account. The customer will contact the card issuer and identify the unauthorized charge. The charge in question is then suspended from the customer's account and the Merchant Account Processor that appended the charge to the customer's account is to investigate, by direction of the VISA & Mastercard Association, the customer's claim, within a certain timeframe (30 days). The Merchant Account Processor will identify the merchant that presented the charge, and then forward to the merchant a request for proof that the customer, did in deed, authorize the charge. Once the merchant is identified, a fee (\$19.95 - \$25.00) is assessed against the merchant. There is occasion, when the customer is incorrect about a claim of an unauthorized charge. This may be attributed to a spouse using a card, or the customer temporarily forgetting about the incurred charge. However, the aforementioned fee is not returned to the merchant. The Merchant Account Processor's position is that they did work and should be paid AND such actions and fees are stipulated in the contract. It is advised that the merchant accept this fee as a cost of doing business. However, there are some merchants that don't have to pay these fees at all. These are the larger corporations that submit daily charges in the tens of thousands or millions of dollars instead of the hundreds to thousands of dollars that their smaller counterparts submit. Therefore, since Merchant Account Processors only assess chargeback fees to the mom-and-pop merchants because they "should get paid for their work", then the mom-and-pop shops are subsidizing the chargeback work of the larger corporations. This amounts to nothing less than selective discrimination.

- 2) **The small merchant is indiscriminately charged fees** – Since 1996, my company has had 2 different Merchant Accounts. The first Merchant Account Processor that we had would charge \$25.00 for every chargeback. The second Merchant Account Processor would charge \$19.95 for every chargeback. We felt we had found a more merchant friendly Merchant Account since their fees were lower. But since the Merchant Account Processor left us only a few days to gather the required information for presentation to the VISA & Mastercard Association, we were late in meeting the suspense date. We then incurred an additional \$19.95 charge for the collection from our checking account of the original \$46.00 sale we had originally made. So we lost the original \$46.00, had already paid for the original merchandise that the customer had already received, and then was charged \$39.90 for the experience. What makes this particular sale most infuriating is that after the customer was contacted by us during the investigation period, the customer wrote to the card issuer to direct them NOT to perform a chargeback; the charge was authorized. The card issuer chose to ignore this direction from the customer.
- 3) **The small merchant must accept contract terms that do not reveal costs and is forced to restrict business practices** – Both contracts that I received from the two Merchant Account Processors that we retained, stated that there would be chargeback fees, but did not indicate how much these fees were. The Merchant Account Processor sales person, that was a representative of a large bank, did not know what the fees were and stated that they were what all of the other Merchant Account Processors were charging. In her words, it was the industry standard. But there is no industry standard. And the legalese in the contract stipulates that the Merchant Account Processor can increase any fees

at any time and without prior notice. So, not only can the Merchant Account Processor select who will be charged chargeback fees, they can vary the cost of these fees from one merchant to another at whim. In addition, if, for argument sake, a customer instigated an unwarranted chargeback, and the customer later admitted that it was unwarranted, the merchant is NOT permitted to pass the chargeback fee back on to the customer. Such an infraction permits the Merchant Account Processor to drop the merchant as a client.

- 4) **The merchant is tracked, judged and possibly blacklisted through a covert chargeback tracking system that is absent of over-sight and appeals** – All of the Merchant Account Processors share information about the merchants with regard to chargebacks. There is a certain threshold of a percentage of chargebacks-to-sales (believed to be 1% to 1.5%) that is monitored by the Merchant Account Processors. Once this threshold is crossed, the merchant can be dropped by the Merchant Account Processor, and all other Merchant Account Processors are notified of this action. Without guidelines on how much time is reserved for the merchant to react to a chargeback, a merchant can easily, through circumstances beyond their control and through no fault of their own, reach this threshold, be dropped as a client by a Merchant Account Processor and be put out of business. The merchant has no say, appeal, review or recourse from such actions. There is no agency or over-sight authority that will work on behalf of the merchant for any kind of investigation. The merchant can not get a printed status of their position in this system at any time in order to monitor their condition and take corrective or preventive action, as necessary, in order to protect their Merchant Account privileges.
- 5) **The small merchant is at a disadvantage from a chargeback system that is absent of external checks, balances, audits and appeals and subject to mining to increase the profits of the Merchant Account Processors** – The customer is protected through Federal laws. The VISA & Mastercard Association is protected because of their monopolistic influence over the marketplace. The Merchant Account Processor is protected through the powers bestowed upon them through the VISA & Mastercard Association. There are no laws, appeal processes, watchdog committees or authorities that looks out for the welfare of the small merchant. There is no third party audit that is done to verify that the chargeback processes are being followed correctly. In fact there is no incentive to do so. The chargeback fees that are collected are split between the Merchant Account Processor and the VISA & Mastercard Association. So a chargeback process that is designed to work against the merchant, will only increase the income of the Merchant Account Processor and the VISA & Mastercard Association.

When we were fortunate enough to submit the appropriate proof that a chargeback was unwarranted - the charge was authorized, I received a notification back from our Merchant Account Processor indicating that we would have to "...anticipate a maximum of 4 – 6 months for a final disposition to be obtained." See also #2 above.

There are many Visa television commercials that air these days stating how well the credit card customer is protected from fraud and identity theft. These commercials

appear to send the message that Visa protects them by absorbing these losses. The reality is that the merchant absorbs ALL of these losses AND is charged for the privilege, with chargeback fees.

I feel it is totally wrong that I have gone through the process of creating a business, file and pay taxes as a business, and yet my business has less rights than the seller of a \$2.00 vase on eBay. This is not right. This discrimination must be addressed. The VISA & Mastercard Association process needs to be amended and dragged into the 21st Century where it belongs. All I ask for is a level playing field.

What is proposed:

- 1) Outline for the customer defined courses of action to investigate charges on their bills.** The customer is not given enough information, or the right choices, to fairly challenge charges on their bills. When I talk to customers about the chargebacks, they usually say that they called up the card issuer for information, as their memory about the charge they are questioning is not clear. The card issuer then advises the customer to instigate a chargeback. It then becomes obvious that the customer desires to have an alternative to a chargeback. This alternative should be: A Request For Information (RFI). This action should go through the VISA & Mastercard Association system to the appropriate Merchant Account Processor. The Merchant Account Processor should then be able to respond to the RFI with a pre-craft response from the merchant that describes the business, the business location and the products sold as well as contact information.
- 2) The investigation process is to be standardized and structured.** I'm sure VISA & Mastercard Association has one format that is used to notify the Merchant Account Processor that a chargeback has been instituted. A standard format needs to be generated that the Merchant Account Processors use to request appropriate information from the merchant to support the merchant's claim of an authorized charge. This format needs to clearly include detailed instructions on exactly what is needed from the merchant, how to complete the form, the date issued from VISA & Mastercard Association, the process as a whole, how the merchant can monitor the process of the chargeback and how the merchant can instigate an appeal process. The format and detailed instructions are to identify the different information required for face-to-face transactions, telephone transactions and internet transactions.

- 3) The timeframe to investigate a chargeback must be equitably divided between the Merchant Account Processor and the merchant.** The Merchant Account is required to have a computerized system for tracking all of the information relating to the charges. The amount of time needed to identify a merchant, from the time that the chargeback request is received from VISA & Mastercard Association, is strictly a function of manpower. With an abundance of manpower, the Merchant Account can process the request in 1 day and forward the request to the appropriate merchant. Lack of manpower will allow the identification of the merchant to take 20 days or more. It seems to me that if the check clearing process can take no more than 5 days, so should the information transference process for the Merchant Account Processor. Therefore, in the interest of resolving charge disputes in as expeditious, efficient and fair a manner as possible, the Merchant Account Processor is to be allowed no more than 5 days to submit information to the appropriate recipients. This means that the Merchant Account Processor is to send to the merchant, notification of a chargeback no more than 5 days from the time of notification from VISA & Mastercard Association. In addition, the Merchant Account Processor is allowed no more than 5 days to forward the merchant provided information to VISA & Mastercard Association.
- 4) All fees, costs and penalties are to be spelled out on a schedule in the contract.** This will create some healthy competition in this part of the industry and is just good business practice. In addition, the chargeback threshold for expulsion is to be included on this schedule. All procedures and processes relating to the Merchant Account process are to be provided, upon request, to prospective and current customers.
- 5) Chargeback fees are to be borne by all merchants or by none.** The times of the small business subsidizing the expenses of the large corporations is over. Within each Merchant Account Processor, all businesses that incur a chargeback will have the same fee assessed. This may polarize the industry into having some Merchant Account Processors service just the big dollar customers and not assess chargeback fees on them, and then create a subsidiary corporation that will just service the smaller merchants and continue to charge them fees. Therefore, Merchant Account Processors are to be required to have small business customers that make up at least 50% of the annual charges of the large business customers they have. A small business customer is defined as one that has no more than \$200,000 worth of charges per year. A large business customer is defined as one that has \$200,000 or more worth of charges per year.
- 6) Audits.** Each Merchant Account Processor is to be subject to an annual audit by the state banking authority or be ISO-9000 certified and continually re-certified, per the ISO standard.

- 7) Appeals.** A chargeback appeals process is to be established that is arbitrated by a state banking authority of the merchant's state, and whose cost is borne by the merchant. However, if the arbitrator finds in favor of the merchant, then VISA & Mastercard Association, Discover, American Express or whomever the card processing venue is, will, within 5 days, pay treble back to the merchant whatever the cost that the merchant initially bore, plus the reversal of the chargeback, reversal of any penalties and any negative marks or reports resulting from the chargeback or the appeals process.
- 8) Complaints.** The merchant is the customer of the Merchant Account Processor. However, there is no higher authority that the merchant can go to in the event of poor service or abusive practices. Most often, the Merchant Account Processors work across state boundaries to deposit and extract monies to and from merchants accounts. The legislation that this effort proposes is to put Merchant Account Processors under the scrutiny of the merchant's State Banking Authority. The merchant can complain to their state banking authority through a formalized complaint process to be defined at a future date, only after not getting satisfaction through the internal complaint processes of the Merchant Account Processor. If the state doesn't have a State Banking Authority, the Federal Banking Authority will be substituted. Disputes will be entertained and ruled upon by the Authority. Decisions may be suspended or reversed through an appeal process to be defined at a future date. Financial penalties can be levied against the Merchant Account Processor for infractions as well as expulsion from continuing to do business in the merchant's state.
- 9) Chargeback Tracking System** – The chargeback tracking system, conceptually, is needed to monitor the negative actions of merchants, and ensure continued customer satisfaction. But instead of being used solely as a stick, this system should be used as a tool to improve the overall nature and status of the merchants and the system as a whole. This proposal will require that the Merchant Account Processors report the status of the merchant's chargebacks on the monthly statement that is already provided. A process is to be set up, at a later date, for any challenges that the merchant may have in relation to their status in this tracking system. It will be encouraged for the Merchant Account Processor to use the statistics gleaned in the Chargeback Tracking System to encourage good business practices that sets an example for the rest of the industry through the lowering or suspension of certain fees. This system is subject to audit.
- 10) Audit, Enforcement & Corrective Action** – The Merchant Account Processors are encouraged to monitor themselves as well as take preventative and corrective actions to ensure that their systems are healthy and serving their customers. The Merchant Account Processors will be

subject to annual audits by their State Banking Authority unless customer complaints warrant tightened over-sight. Annual audits may be waived for audits every 5 years if the Merchant Account Processor is certified to the latest ISO-9000 Quality Management System standard. The Merchant Account Processor must notify the State Banking Authority once there is a lapse in their ISO-9000 certification. Failure to do so subjects the Merchant Account Processor to a fine in an amount to be determined at a later date. The results of audits are subject to the Merchant Account Processor's customers' review at the Merchant Account Processor's discretion. A request in writing of a listing and status of complaints made to The State Banking Authority against a Merchant Account Processor will be made available through The State Banking Authority. The State Banking Authority will have the power to review any and all parts of a Merchant Account Processor's system at any time. The State Banking Authority will have the power to request, review and follow-up corrective actions to any observations or infractions as a result of any audit or review of a Merchant Account Processor. Any censure or penalty previously imposed upon a merchant that The State Banking Authority finds to be unwarranted, harsh, discriminatory or arbitrary may be reversed.

Thank you for the time you have afforded me in reading this. I look forward to your response and the prospect of fair treatment in this industry.

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