

November 23, 2009

Mr. Ralph Moyal
President & CEO
The Retail Merchants' Association of Canadian
10 Milner Business Cr, Suite 401
Scarborough, Ontario
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Dear Mr. Moyal,

Thank you for your letter of November 09th, 2009. I am pleased to respond to you on behalf of TD Merchant Services and TD Bank Financial Group.

Many of the issues raised in your letter could be impacted by the code of conduct announced by the Minister of Finance on November 19th but, we believe it is important to address the chief issues raised in your letter and explain the approach that TD has adopted to manage these concerns.

We are committed to work with other industry participants during the consultation period on all aspects of the draft code of conduct. We are very encouraged by the Minister's call for increased transparency and disclosure to Merchants, as this is consistent with our approach to our clients.

With respect to the concerns raised in your letter, it is important to note that all payment processors and acquirers, including TD Merchant Services, are bound by the operating regulations that are provided to us by VISA and MasterCard (the 'networks'). These regulations lay out many rules about the manner in which processors/acquirers must deal with merchants. With the introduction of new debit products into the Canadian environment, each processor/acquirer had to make a choice about how they wanted to deal with this challenge while remaining within the boundaries of these regulations. It is clear that different processors/acquirers have taken different approaches.

As you know, VISA has made it clear that they intend to enter the debit market in Canada. While VISA Debit acceptance at the merchant level is optional, VISA has amended their operating regulations, obligating acquirers to be able to process their debit product by October 1, 2009. The VISA Debit product will be launched using the same EMV platform that supports their credit offering.

We would estimate that there are approximately 400,000 EMV-enabled POS terminals in use in the Canadian market place, which means that those terminals would automatically accept VISA Debit unless something was changed on the device. While VISA Debit does offer real eCommerce, mail order, telephone order and contactless transaction advantages, we believe that merchants deserve a chance to make a real, active and informed choice about whether they want to accept any product offered by TD Merchant Services, including VISA Debit. For this reason, over the past several months TD Merchant Services has been sending our service technicians to merchant locations and/or downloading software to tens of thousands of POS devices used by TD Merchant Services customers to suppress the Visa Debit application.

Subject to any changes resulting from the draft code of conduct, in the new year TD Merchant Services will contact our customers to present them with the opportunity to accept VISA Debit. This is an important choice for merchants because VISA Debit will have an interchange fee, resulting in a higher transaction cost compared to Interac Debit. TD Merchant Services will present merchants with a clear, understandable pricing structure and state all of the applicable terms, so that merchants can make an active decision about whether they wish to accept VISA Debit.

Due to volume constraints, TD Merchant Services has not yet been able to suppress all EMV-enabled POS devices being used by our customers. This means that some merchants could accept VISA Debit without having made an informed choice. This is not consistent with the way we do business. As a result, although we have not yet processed a single VISA Debit transaction, if VISA Debit cards were to enter the Canadian market prior to TD Merchant Services providing our customers with an informed choice, TD Merchant Services will absorb the full cost of the VISA Debit interchange and continue to charge our clients their current Interac Debit transaction rate.

Merchant Services providing our customers with an informed choice, TD Merchant Services will absorb the full cost of the VISA Debit interchange and continue to charge our clients their current Interac Debit transaction rate.

TD Merchant Services' customers that run on-line businesses present a rather unique case. Because Interac is not accepted on-line by the vast majority of on-line merchants, we expected that merchants running on-line businesses would be quite excited about the prospect of accepting VISA debit, since this offers the possibility of net-new sales at a lower cost than accepting a VISA credit card – at least with the pricing offered by TD Merchant Services. As we expected, less than 0.4% of our customers asked to have the Visa Debit option turned off and we have complied with the wishes of these customers.

With respect to MasterCard's debit product, Maestro, TD Merchant Services continues to offer merchants this product. For TD Merchant Services' merchant clients, Maestro is not auto-enabled and merchants will only have this feature enabled if they have provided positive consent. Full pricing disclosure is provided in advance of a decision so that the merchant can make an informed choice. If a merchant elects to accept Maestro then according to MasterCard's current rules we must route the transaction via the MasterCard network. This 'priority routing' is stated in the operating regulations and is not a decision made by the acquirer. Should a merchant elect to cancel the Maestro service at any time in the future, they can do so without penalty. All services used by the merchant and associated pricing are fully disclosed on our monthly billing statement.


Finally, at TD Merchant Services we believe that a merchant enters a contract based on the prices in that contract. Therefore, if a merchant faces any price increase – whether it is initiated by TD Merchant Services or by a network – our standard contract provides merchants with the opportunity to exit their contract without penalty.

We believe that our approach to these new debit products is consistent with our brand promise to provide payment solutions that our merchant clients can rely on – both in terms of transparent and competitive pricing coupled with reliable, leading POS solutions supported by superior service.

* We look forward to engaging on these important topics and an environment where all acquirers and payment processors embrace the Minister's call for increased transparency and disclosure to Merchants.

Since we know that this issue continues to be of great interest to each of your Members, I would request that you provide each of your members with a copy of this letter so that they can have a clear understanding of this issue.

Yours sincerely,



Jeff van Duynhoven
President
TD Merchant Services

c.c: The Hon. James Flaherty, Minister of Finance
Melanie L. Aitken, Commissioner of Competition
Nancy Hughes Anthony, President & CEO, Canadian Bankers Association
Tim Wilson, President, VISA Canada
Kevin Stanton, President, MasterCard Canada
Mark O'Connell, President & CEO, Interac Association