TESTIMONY OF CHRIS NEWTON

PRESIDENT

TEXAS PETROLEUM MARKETERS AND CONVENIENCE STORE ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES INVESTIGATIONS AND OVERSIGHT SUBCOMMITTEE OF THE COMMITTEE ON SMALL BUSINESS

HEARING ON

"THE IMPACT OF INTERCHANGE FEES ON SMALL BUSINESSES"

JULY 29, 2010

Chairman Altmire, Ranking Member Falling and Members of the Committee, I am honored to appear before you today and appreciate the opportunity to share my views on the small business impact of interchange fees. My name is Chris Newton. I am President of the Texas Petroleum Marketers and Convenience Store Association (TPCA).

TPCA was formed in 1949. One of the largest state trade associations of its kind, this 250-member organization represents petroleum marketers and convenience store owners and operators who own, operate, or supply approximately 10,000 convenience stores, service stations, and other retail motor fuel outlets in Texas and the southwest United States. Collectively, these petroleum marketers and convenience store companies supply nearly 9,000,000,000 gallons of fuel and tons of related products annually to Texas motorists. The average TPCA member owns and operates ten convenience stores and supplies twelve more. These businesses provide fuel and lubricants to the vast majority of commercial end-users, including farmers, construction firms, and local and state governments. In addition, TPCA associate members represent all of the diverse fields associated with the petroleum distribution system and convenience store industry. The majority of businesses in our industry are small businesses and I am glad to share with you my views on how these businesses will be impacted by the recently passed reforms to debit card interchange fees.

TPCA is also a member of the Merchants Payments Coalition (MPC). The MPC is a group of more than 20 national and 80 state trade associations representing retailers, restaurants, supermarkets, drug stores, convenience stores, gasoline stations, theater owners, on-line merchants and other businesses that accept debit and credit cards. MPC 's sole mission is securing a more competitive and transparent card system that works better for consumers and merchants alike. The coalition's member associations collectively represent about 2.7 million locations and 50 million employees. These merchant associations account for more than 60 percent of the non-automotive card based transaction volume in the United States.

The Durbin amendment, which became law as part of the Wall Street Reform bill, is incredibly important to the small businesses in the TPCA and in many other industries throughout the nation. These fees, which are currently unfair and anticompetitive, hurt these businesses and hurt our customers. The Durbin amendment is an important first step in dealing with these negative impacts.

My testimony today will address several major points. First, I will describe the current competition policy problems with the swipe fee system in the United States. Second, I will detail the impact caused by these problems. Third, I will discuss how the Durbin amendment helps to address those problems. Finally, I will address some of the myths that have at times been raised in the context of this issue in order to set the record straight.

I. The Problem with Swipe Fees

There is broad international consensus that swipe fees pose unacceptable anti-competitive, anti-consumer antitrust problems. Indeed, after many years of study and debate, regulators from Australia, the European Commission, Spain, New Zealand, Hungary and others

have reached this conclusion and taken action. The most egregious problems these countries and many in America have found are described below.

A. Centrally Setting the Fees

Swipe fees collectively deprive businesses that accept credit and debit cards as well as consumers of the benefits of competitive market forces because they are centrally set by Visa and by MasterCard. These two companies have been found by the U.S. Court of Appeals for the Second Circuit to have market power under the antitrust laws both individually and collectively.[1] Each of the two credit card giants decides upon a schedule of default fees for the banks that issue their cards to charge for transactions. Note that these fees are not charged by Visa and MasterCard themselves. Instead, they are fees that banks that are supposed to be competing with one another charge – and some of those banks sit on the boards of Visa and MasterCard to help decide the fees they and their competitors will charge.

That is a profound problem. Banks including Bank of America, JP Morgan Chase, Citi, Wells Fargo/Wachovia and others compete with one another in the other aspects of their businesses. Yet when it comes to swipe fees, they collectively agree to charge the same schedule of fees. The result is just what you would expect to happen if another industry did the same thing. If, for example, the members of TPCA all agreed to charge the same prices for gasoline as their competitors, we would all expect the price of gasoline to be much higher than a competitive market would produce. Our antitrust policy prohibits this type of central price-fixing because it takes away the primary benefit of our economic system – the incentive for competitors to try to gain market share through price competition.

This activity cannot be excused because Visa and MasterCard have changed their corporate form. Until a few years ago, both Visa and MasterCard were simply associations of their member banks. Even they realized, however, that setting prices for their association members created potentially serious legal liabilities. So, they both became corporations offering their shares to the public. This change, however, was nothing more than an attempt to put form over substance. Each company still serves as the price-setting body for its member banks (including member banks that sit on the boards of the companies and participate in the price-setting). The change in corporate form does not change the reality – the banks agree to let the major credit card giants fix their prices for them.

The fact that the card companies say their rate schedules are "default" rates and that banks are free to depart from them is little more than rhetorical posturing. There is no incentive for banks to depart from the schedule of inflated fees that their competitors follow and we are not aware of such departures. In fact, retailers have been told many, many times by their bankers that the bankers cannot depart from the agreed upon rate schedule. As with other price-fixing examples, the banks know that they are better off sticking to the collective pricing rather than departing from it.

B. Rules that Hide the Fees

[1] *United States v. Visa USA, Inc.*, 344 F.3d 229 (2d Cir. 2003).

The major card companies not only centrally set prices, but they establish the rules for the credit and debit card systems. These rules include a series of complementary provisions that serve to hide fees in the cost of goods and services that consumers pay and insulate the fees from competitive pressures.

Perhaps the most egregious of these rules prohibits merchants from giving a pricing advantage to one card company's products over another one's. This could be done, for example, through giving consumers a discount to use Visa rather than MasterCard or the other way around. Both Visa and MasterCard prohibit merchants from doing this.[2] If a merchant runs afoul of this rule, the risk is the imposition of large fines (often $5,000 per day) or cutting off the merchant's ability to accept these cards.

The impact of these rules is that no card company has any incentive to reduce its fees. The reason companies reduce prices is to get more customers, but Visa and MasterCard make sure that the consumers who decide what card to use cannot get a benefit from reduced fees and that any fee reduction then will have no impact on transactions or market share. This is just like if Coca-Cola and Pepsi, to take one example, were to tell stores that they could never have a sale and price their competitor's products lower than their own. With that rule in place, how many discounts do you think we would see for Coke or Pepsi? The answer is none and prices would steadily rise as a result. That is just what we face here and it is one key leg of the table artificially propping up swipe fee prices.

The card companies have related rules that make it very difficult for merchants to give their customers other types of discounts. Discounts for cash, checks and debit cards, for example, might bring some market pressures to bear on the size of interchange fees. But Visa and MasterCard both prohibited these types of discounts or imposed byzantine sets of rules regarding the way merchants can display any such discounts. The rules at times contradicted state consumer protection laws and forced merchants to decide to either violate the Visa/MasterCard rules or violate state law. The result, as the card companies know well, was that merchants typically chose a third option – don't give any discounts because it is not worth the risk.

In the past, merchants have quickly backed down from the Visa/MasterCard threats about discounting, but a controversy over their heavy-handed tactics made its way into the press in California a few years ago. Visa threatened a couple of gas station owners – including a single store operator – if they continued to offer cash discounts. And, in that instance, Visa instructed the station owners that they should display their prices and discounts in a way that would violate California law. When asked about this by the publication *Oil Express*, Visa spokeswoman Rhonda Bentz reacted in a way that is incredibly revealing of Visa's hubris and the way it treats merchants. She said, "It's great if they have a contract with the state, but they don't. They have a contract with Visa and if they don't want to abide by that contract, they shouldn't have signed it." The *Oil Express* article from April 23, 2007 is included with this testimony as Exhibit 1.

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[2] *See* Visa U.S.A. Operating Regulations 5.2.D.2; MasterCard Rules 5.9.1.

California Weights and Measures Director Dennis Johannes saw Visa's tactics for what they were. He said Visa was "heavy handed" and noted, "They probably don't want dual pricing because it discourages the use of their credit card." Of course, that is precisely the type of market pressure that our system depends on to keep prices down. If Visa doesn't want people to be discouraged from using their cards, they should lower their prices rather than threatening merchants who offer cash discounts.

As I discuss below, the Durbin amendment should provide some relief on this front by prohibiting the card companies from preventing discounts for the use of cash, checks or debit cards. It is our hope that this new law will allow an effective marketplace to develop such that fees can be subject to some market forces.

Yet another rule that helps erase any semblance of competition requires that merchants accept every single type of Visa or MasterCard no matter how high the fees are for that card – or accept no cards at all. The upshot of this rule is that when new cards come into the market, the card companies do not need to seriously consider whether the prices they set will cause people not to take the card. To take the soft drink example again, when companies come out with a new flavor of Coke or Pepsi, those companies need to think about the price point and whether merchants will carry the new product and consumers will buy it. If the price is too high, then the product won't be successful. If they had a rule saying that every store had to buy all of their products no matter the price or be prohibited from carrying any of their products that would raise the problem of product tying under the antitrust laws. But Visa and MasterCard both have this type of rule. The origin of this rule was well-intentioned – that merchants treat different bank issuers of cards in the same way and not refuse a consumer's card because the bank was unfamiliar to the merchant. This rule, however, has gone beyond all reasonable bounds and no longer just ensures that bank issuers are treated fairly. It now prohibits merchants from taking any action to protect themselves against rapidly escalating fees on newly issued card products.

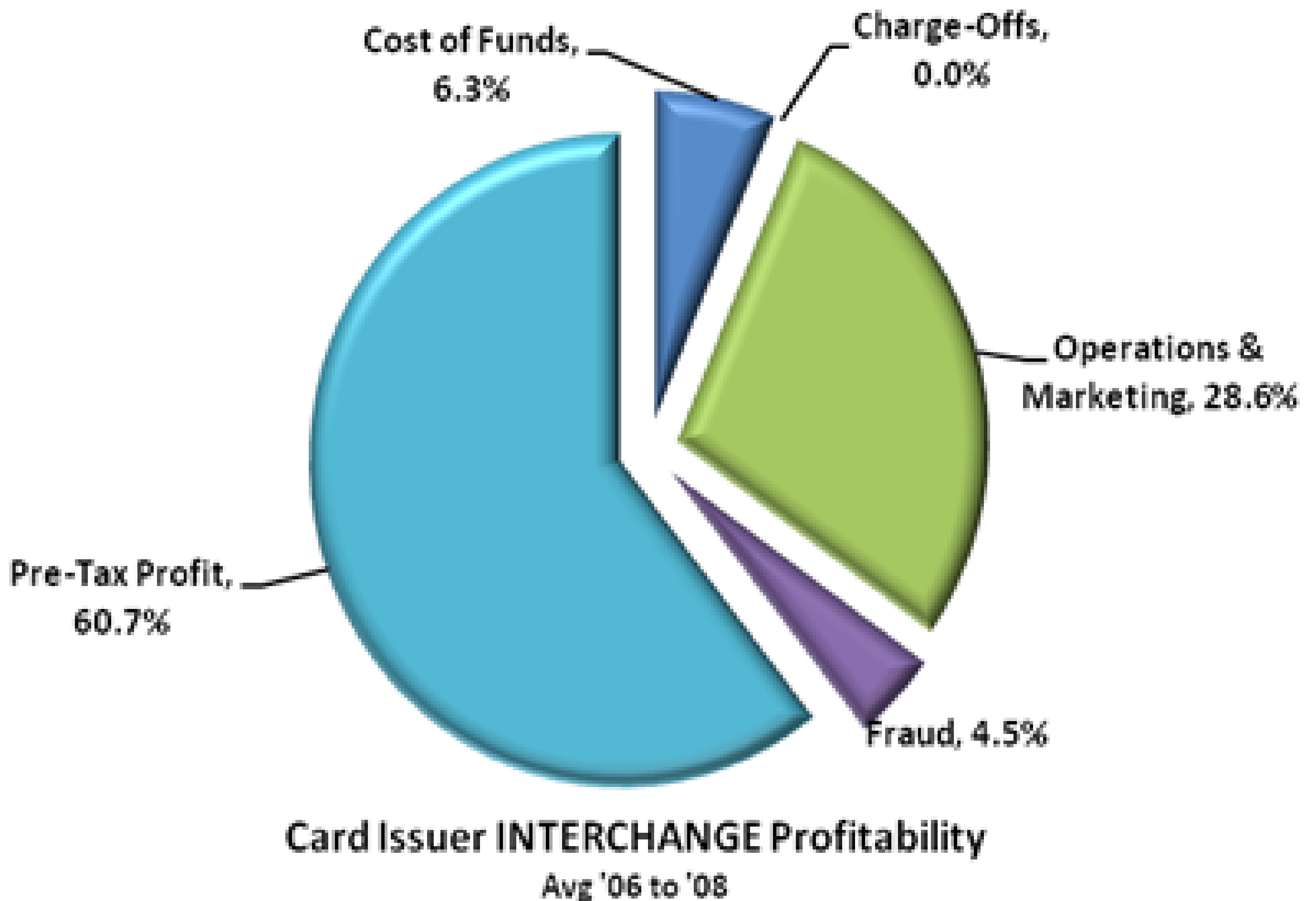
II. The Impact of Swipe Fees

A. The Impact on Business

For petroleum retailing and convenience store businesses, swipe fees are their second highest operating expense after labor. That means swipe fees cost these businesses more than rent on their stores, utilities, and other overhead. Retail profit margins are very, very narrow. The retail sector of the economy is highly competitive and if costs go down for those businesses, then their prices go down. Retail profit margins are consistently narrow in the United States. Exhibit 2 to this testimony includes charts from Fortune magazine comparing the profitability of different U.S. industries for each year from 2006 through 2009. There isn't a single category for retail, but they have numbers for "Specialty retail", "Food and Drug Stores" and "Automotive retailing" -- these cover large parts of the retail industry. The numbers show that each of these industries consistently rank near the bottom of all industries in terms of profitability and have very stable profit margins each year (many other industries are lower in particular years but fluctuate more). Specialty retail, for example, is between 3.2 and 4.0 percent profitability every year since '06. Specialty retail is about the most profitable sector of the retail industry. Food and drug stores are between 1.5 and 2.6 percent profitability each year. Automotive is less than that.

This means that regardless of conditions in the economy the competition across retail businesses is such that revenues can never exceed costs by much – whether costs are rising or falling. Exhibit 3 to this testimony is National Retail Federation data. This tracks just large retail companies and finds profit margins between 2 and 4 percent – bearing out Fortune's numbers.

The difference between the narrow profit margins of the retail industry and the huge profit margins for banks on interchange is dramatic. The chart below shows that the profit margins on interchange are more than 60% based on data from *Cards & Payments*.



These fees continue to escalate and business owners do not have a way to control them. They can take action to deal with utility costs, they can negotiate their rent and labor costs, but they can't deal with these cost increases. The inability to go to a competitor to get a better deal is simply devastating. In fact, economists with the Kansas City Federal Reserve have found that merchants cannot realistically refuse to accept Visa and MasterCard even though interchange costs far exceed any benefits those merchants receive by accepting cards.[3] While the card

[3] "A Puzzle of Card Payment Pricing: Why are Merchants Still Accepting Card Payments?," Fumiko Hayashi, December 2004.

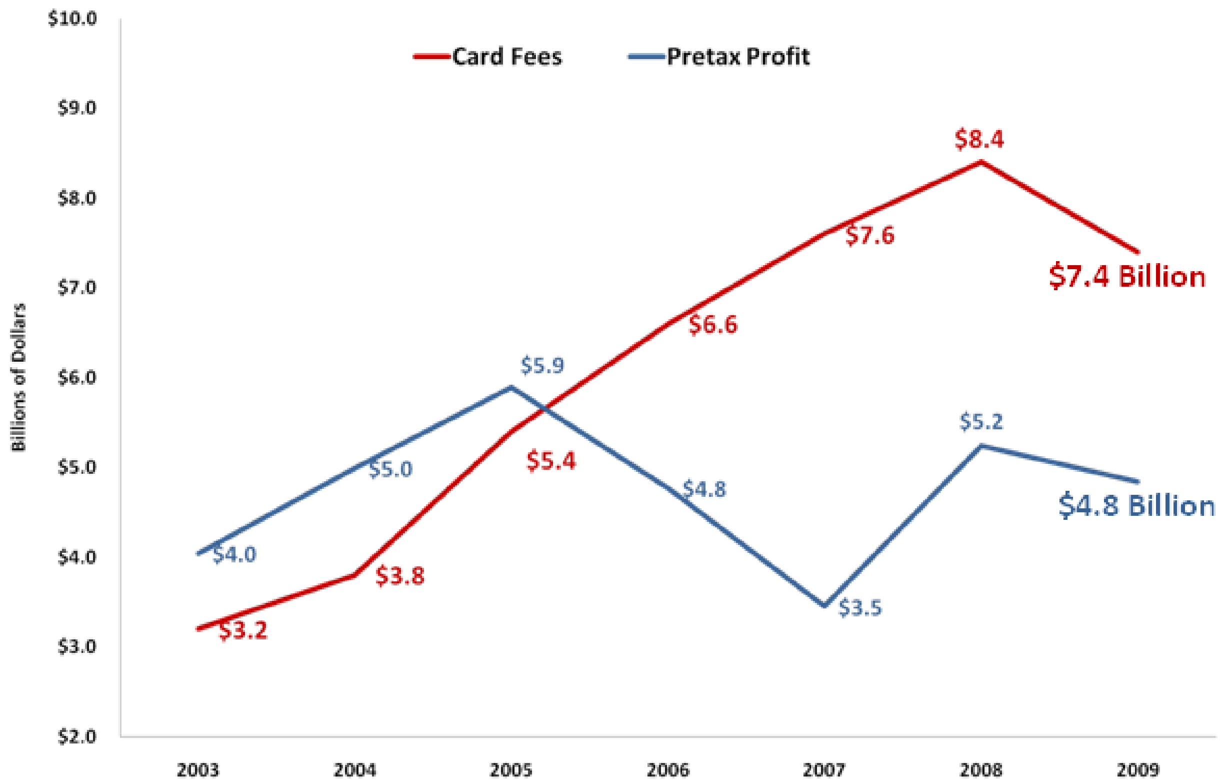
companies sometimes argue that merchants could stop accepting cards, the cards are so dominant now that that is not realistic. Visa, in fact, is promoting itself as "currency" in its marketing. Telling merchants they don't have to take cards, then, is like telling them they can refuse to take cash. While theoretically possible in some niche businesses, it is generally not realistic.

The dramatic jump in card rates – both in dollar terms and in terms of the rates charged – takes its toll on merchants. According to the Government Accountability Office (GAO) this is not just due to more people using cards but is the result of Visa and MasterCard increasing their fees. GAO wrote, "Visa and MasterCard officials told us that their average effective interchange rates applied to transactions have remained fairly constant in recent years when transactions on debit cards, which have lower interchange fee rates, are included. **However, our own analysis of Visa and MasterCard interchange rate schedules shows that the interchange rates for credit cards have been increasing and their structures have become more complex,** as hundreds of different interchange fee rate categories for accepting credit cards now exist."[4] Let's be clear about this, GAO concluded that what Visa and MasterCard told them about their rates remaining flat was false.

The increases in the rates set by Visa and MasterCard, along with increased card usage, has led to a huge increase in fees paid by merchants. The chart below shows how those fees have grown over time for the convenience store industry and shows industry profits per year as well. It is not a coincidence that as the amount of card fees jumped past the amount of profits the industry made, profits fell. Some of those profits have recovered and the fees dipped some for the first time in years due to the recession last year, but the fact that fees have been more than profits for 4 years in a row demonstrates the difficulties these fees cause for business. With the recession there was also a shift to more debit usage. The card companies must have seen that shift too because on April 16 they put into effect a 30 percent increase in debit fees.

[4] "Credit Cards: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges," GAO-10-45, Nov. 19, 2009 ("GAO Report") at 14 (emphasis added).

Card Fees and Pre-Tax Profits in the Convenience Store Industry



And these fees hit small businesses the hardest. While the card companies like to talk about the large retailers that might be helped by policy solutions to deal with swipe fees, the current system that they defend gives large retailers a decided competitive advantage over small businesses. The GAO found, "Merchants with large volumes of card transactions generally have lower interchange fee rates. Visa categorizes some merchants into three tiers based on transactions and sales volume, with top-tier merchants receiving the lowest rate."[5] That simply should not be. Unlike situations in which product needs to be manufactured and delivered to stores, there are no cost savings that justify better deals for large merchants.

These out of control fees disadvantage the U.S. economy. Interchange fees in this country are among the highest in the industrialized world as shown by the chart below.

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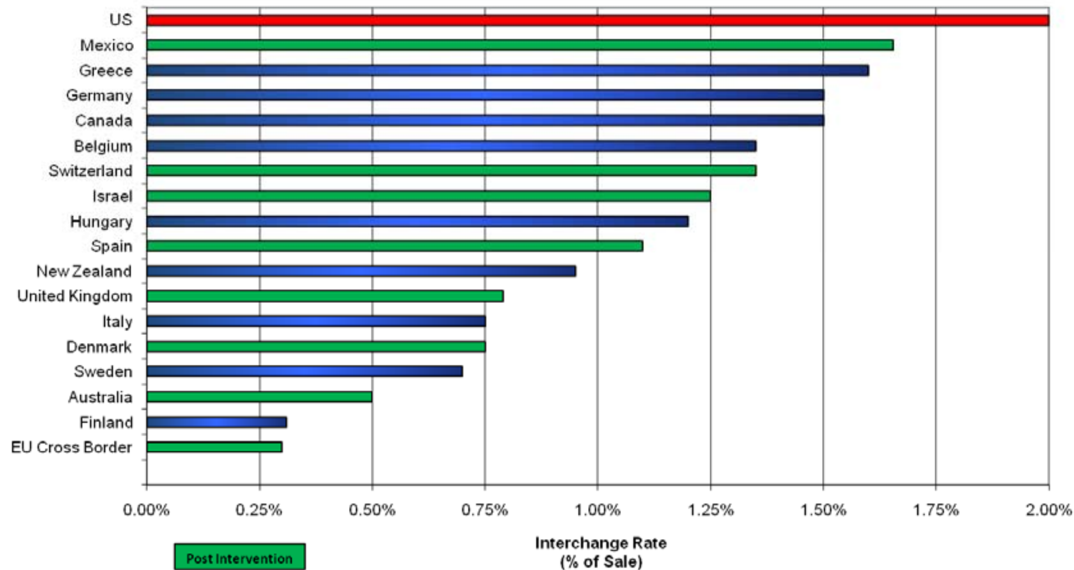
[5] GAO Report at 10.



It is interesting to note that while some countries with lower interchange rates have taken action to deal with these fees, several countries that have done nothing pay lower rates than Americans do. The reason for that is straightforward. The two major card companies have such dominant market power here that they can engage in the anticompetitive practices that I have described without fear of too many merchants leaving the network.

B. The Impact on Consumers

The impact of anticompetitive swipe fees on consumers is dramatic. American consumers pay inflated prices for virtually everything they buy because of these fees. And they pay these funds without even knowing it. Consumers never get a disclosure from their card issuer telling them any swipe fees are charged – not to mention how much they are. This is the card companies' model. By hiding their fees they can keep charging more and consumers won't notice. Last year, the Hispanic Institute studied this phenomenon. They found that the business model by which fees are embedded in retail prices without disclosure combined with the rewards that some cardholders get leads to a regressive transfer of wealth from low income consumers to high income consumers. This regressive wealth transfer is more than $1 billion every year.[6] And this did not even take into account the 27 percent of U.S. families who do not even have credit cards – but are still paying inflated prices due to interchange.[7]

[6] "Trickle Up Wealth Transfer: Cross-subsidization in the payment card market," The Hispanic Institute, November 2009 at 5.

[7] Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin, February 2009, at 46.

Retailers are not the only ones who have come to the conclusion that swipe fees hurt consumers. John Blum testified on behalf of the National Association of Federal Credit Unions (NAFCU) before the Antitrust Task Force of the House Judiciary Committee on May 15, 2008. In his written testimony he said, "Further, interchange is a cost that retailers can and do pass onto their customers in the final price of the goods and services they sell."[8] It appears then that NAFCU agrees with the Hispanic Institute – consumers are paying interchange fees right now, but the fees are hidden in the price of goods and services those consumers buy.

The card companies have strenuously argued that if anything at all happens to reduce swipe fees, then other fees paid by consumers will increase and consumers will be in a worse position than they are today. This is false. In fact, the European Commission's Directorates for Competition and Financial Services jointly conducted a comprehensive study into the European payment card industry in general, and Visa and MasterCard in particular. The Commission found no evidence to support the card systems' arguments in favor of benefits to consumers of the high fee levels associated with the existing interchange fee mechanism. In particular, the Commission rejected arguments that lower interchange fees to merchants would result in higher fees to consumers:

> There is no economic evidence for such a claim. Firstly, the inquiry's data suggests that in most cases card issuers would remain profitable with very low levels of interchange fees or even without any interchange fees at all. Secondly, the international card networks have failed to substantiate the argument that lower interchange fee would have to be compensated with higher cardholder fees The evidence gathered during the inquiry rather suggests that the pass-through of higher interchange fees to lower cardholder fees is small. Consumers already pay the cost of the interchange fee without knowing it. This cost is now hidden in the final retail price and is therefore non-transparent.

Similarly, the Australian experience has refuted claims that decreases in interchange fees would undercut the viability of card systems. In fact, after several years' experience with reduced interchange fees, the Australian central bank has concluded that card issuers have responded to lower merchant fees by offering consumers a choice: Low cost cards with low interest rates and fees and no rewards, and rewards cards with higher interest rates and annual fees.

Indeed, this resulting *price competition* is precisely the outcome the card systems feared: For example MasterCard had complained to the Australian Reserve Bank about having its members forced to compete on price:

> MasterCard does not disagree that there is, at present, strong competition amongst issuers of credit cards. Such competition has been enhanced by the fact that, at present, issuers have been able to recover eligible costs…. One distinct characteristic of the product

[8] Testimony of John Blum, Vice President of Operations of Chartway Federal Credit Union, before the House Judiciary Committee Antitrust Task Force, May 15, 2008 at 8.

offerings in recent times, however, has been the increase in the number of "low cost" credit card offerings. While MasterCard believes that it is beneficial for there to be "low cost" credit card products being offered, it also believes that, with the common benchmark interchange fee, in the future there will be fewer "fully featured" credit card offerings and the competition between issuers will be based on increasingly homogeneous "low cost" credit card offerings.

That is precisely the result that would be best for consumers. Once the card companies in Australia stopped competing for market share by raising the fees their banks would earn (which the bank could in some small measure plow back into enticing rewards for consumers), they had to compete on interest rates in order to attract consumers directly. That is what Australian consumers really wanted and what they have been getting since their system was reformed. Interest rates on credit cards fell precipitously after the reforms and even though the overall rates in that country have fluctuated over time, the spread between their benchmark rates and the rates consumers get on their credit cards is consistently narrower than it was prior to Australia's reforms. U.S. PIRG and other consumers groups educate consumers that the most important thing to look at when evaluating cards is the interest rate. Once Australia took some of the confusing subterfuge out of the system by reducing the hidden fee-reward cycle, consumers there were able to focus on interest rates and get better rates.

III. The Durbin Amendment and Its Impact

A. Background on the Durbin Amendment

Understanding the current problems provides the necessary backdrop for analyzing the impact of the Durbin amendment. Let's first discuss what the Durbin amendment does. The amendment instructs the Federal Reserve to analyze the cost to issuing banks of authorizing, clearing and settling debit card transactions. Then, the Federal Reserve will need to write regulations to ensure that the interchange fees charged on debit transactions are reasonable and proportional to those costs. This should not be controversial. In competitive markets, prices are reasonable and proportional to costs because competition brings everyone down to that level. The Durbin amendment, then, makes up for the fact that there is no downward price competition currently for debit card interchange fees.

It is also worth noting that, in truth, there should not be any interchange fees on debit transactions at all. The check system in this country, for example, operates without interchange fees. Checks must clear at their face value rather than being discounted by an interchange amount. That was not always the case. Early in the last century, check transactions were discounted by a fee, but the Federal Reserve wrote rules to do away with those inefficient fees. What happened was that checks became more efficient payment mechanisms. Electronic checks – which is all debit cards are – should be similarly efficient and the Durbin amendment moves toward that goal.

There are some additional considerations that the Federal Reserve can make with respect to debit fees. It must, for example, write regulations regarding fraud prevention by card-issuing banks. Banks that want to follow those regulations to ensure that they prevent fraud in an

effective and efficient way will be able to ask the Federal Reserve for an adjustment to the debit interchange fees they receive to cover their costs of fraud prevention.

I want to take a moment here to discuss what is not covered by the Durbin amendment. The bank and credit union witnesses here today, for example, will not be regulated by the Federal Reserve on their debit card interchange fees. In fact, more than 99 percent of all banks and credit unions will not be regulated by the Federal Reserve. That is because the Durbin amendment only applies to financial institutions with $10 billion or more in assets. These institutions are giants. While they are the ones impacted by the Durbin amendment and the ones that merchants have regularly complained about, I want to point out to this Committee that this is now the 8th Congressional hearing focusing on the topic of interchange fees. In all of those hearings, not a single bank or credit union with assets of more than $10 billion has ever agreed to send to witness to testify. That is an incredible record of obfuscation and hiding the facts. The biggest banks can try to hide behind their smaller brethren, but I hope that this Committee, which focuses on small businesses, will see through that cynical strategy.

Why do small banks and credit unions care about the Durbin amendment when they are clearly and explicitly exempt from its debit fee regulations? There seem to be two reasons: one stated and one unstated. The stated reason is their concern that Visa and MasterCard will not allow them to continue to charge higher fees than the largest banks that are part of the Visa and MasterCard systems. These two card giants appear to be most responsive to their largest members so I can understand the initial appeal of that type of concern. What they don't acknowledge, however, is that raising interchange is the main point of competition between Visa and MasterCard. That backwards competition is the way that the two card giants compete to get banks to issue their cards. If either of those two giants reduces interchange for small banks, they will hand a tremendous market opportunity to the other company. That competition will give small banks and credit unions the protection they need to keep their high, over-inflated debit interchange fees. This stated reason for small bank concern, then, is unwarranted.

Even if it were true, however, it seems to me to be an odd criticism of the Durbin amendment. What it boils down to is the small banks complaining that they have ceded their ability to set their own fees to Visa and MasterCard and that those two companies have grown big and powerful under that system. So much so, that if Visa and MasterCard are not allowed to continue to set high fees unabated and rip off small businesses and consumers, those behemoths will turn that attention to the small banks that helped create them and harm the small banks. This would be like Dr. Frankenstein imploring townspeople to allow his monster to attack and pillage the town, for if the attack is prevented he might turn his ire back onto the good Doctor himself. I suspect that few of us would have much sympathy for such an appeal from Dr. Frankenstein.

The unstated reason for small banks and credit union complaints about the Durbin amendment is sunlight. Their current ability to fix prices with their competitors will now be held up to scrutiny so that the public can see just how egregious it is. They fear – and this I think is valid – that once the Federal Reserve shows people the costs and the way that all of us have been ripped off by centrally set fees for decades, people will want further reforms. This can and should happen. The passage of the Durbin amendment is a harbinger that the days of hidden fees

and related card industry tricks to profit from consumers and small businesses is coming to an end. This can and should be the result and we will see if it plays out that way.

The Durbin amendment does a couple of other things as well. It prohibits the practice that the card companies have engaged in recently of cutting exclusive deals with banks that issue debit cards. There are a number of networks through which debit transactions can be routed. These networks – companies like Pulse, Plus, NYCE, Shazam, and others – sometimes have their logos on the back of debit cards to show that that card's transactions can be run over their network. But the card companies have reached agreements with more and more banks to artificially limit the compatibility of their cards so that more transactions are forced through the networks owned by Visa or MasterCard. Visa owns the Interlink system and MasterCard owns Maestro. So, the Durbin amendment instructs the Federal Reserve to write regulations ensuring that debit transactions can be routed through at least two competitor networks and that merchants can choose which network to use so that those networks have incentives to engage in real price competition.

In addition, as noted previously, the Durbin amendment stops the card companies from preventing merchants from offering their customers discounts or other incentives for the use of cash, checks or debit cards. Such discounts have the potential to bring more price competition to this market and give customers the clear and explicit benefit of such price competition. It is possible that the card companies may try to put hurdles in the way of these discounts but we hope that they don't do that. Frankly, merchants should be able to have any type of discounts they want to have for any reason without interference from the credit and debit card industry. It is our hope that there are additional ways that discounts for our customers will be protected in the future.

Another thing that the Durbin amendment does is stop the card companies from threatening merchants that want to set a minimum transaction amount for their acceptance of a credit card. Some merchants do this today, but they are subject to large fines (and threats of such fines) if the card companies catch them doing it. Why does this occur? Well, interchange includes both a flat fee and percentage fee in its calculation. When a card is used for a small dollar purchase, then the flat fee can exceed the merchant's entire margin on the goods sold and result in a loss. In fact, on some items like newspapers, the flat fee can sometimes exceed the cost of the goods themselves. That can lead to the perverse scenario in which a merchant is actually better off giving away the product than taking payment on a credit card. Given this, it just makes sense to allow merchants to set an amount of up to $10 as a minimum for accepting a credit card payment rather than having a system that forces merchants to lose money on low dollar transactions.

B. Impact of the Durbin Amendment on Small Businesses

The impact of the reforms in the Durbin amendment will bring important benefits to small businesses, consumers and the economy as a whole. Interchange fees add a cost drag to nearly every sector of our economy. These unnecessary price increases depress economic activity. The comparison to money is an instructive one – and one that Visa makes in its advertising. Visa calls itself the currency of progress. Currency, unlike Visa cards, gives

recipients a known and exact value. A $5 bill is actually worth $5. Unfortunately, a $5 credit or debit card transaction is likely worth somewhere around $4.75. At each level of commerce money is taken out of the system and the "currency" itself is worth less than its face value.

Robert Shapiro, former Undersecretary of Commerce for Economic Development, issued a study this year and concluded that without the higher prices caused by fees above and beyond costs plus a reasonable rate of return, consumers would have an additional $26.9 billion to spend and the economy could add 242,000 jobs.[9] The Durbin amendment only covers debit cards – not credit cards – so the impact is not likely to be as great as Shapiro predicts, but the numbers are large. The Durbin amendment will plainly result in a large economic stimulus as these costs are taken out of the stream of commerce and the sale of goods and services throughout the economy is made more efficient.

Last week, for example, Bank of America released information showing that it charges $1.7 to $2.3 billion more in debit interchange fees than is reasonable. It expects the Federal Reserve regulations to reduce its revenues by that amount in the upcoming rulemaking. Frankly, I would expect that Bank of America underestimates how unreasonable its debit card fees are. We will find out if that is the case, but even if that is the right number, $2 billion in savings to small businesses and consumers from one bank's debit transactions alone will be a tremendous stimulus for all of us. My members are eager for that kind of stimulus.

When costs go down for businesses in our industry, consumer prices fall with it. That is the conclusion of every study to look at that question – including those by groups as different as the Department of Energy and the Hispanic Institute. Lower prices are good for us because they stimulate more sales. My members typically sell gasoline for about 15 cents more per gallon than they pay for it. They need to pay for their expenses out of that 15 cents and then hope to make a profit – which usually ends up being 1 or 2 cents per gallon. And, those numbers remain pretty consistent when gas prices are $2 or $3 or $4. That means we are better off with cheap gas – and more economic activity and sales. People have more to spend and buy more when prices are lower. In fact, when they have extra money they might even buy more in our stores. We look forward to the stimulus that the Durbin amendment should create and look forward to the Federal Reserve coming up with the rules necessary to make this possible.

IV. ADDRESSING THE MYTHS

Unfortunately, there are several myths that have obscured the debate of the unfair way in which the interchange system operates. I suspect that several Members of the Committee have heard these myths. In light of this, I would like to address some of the major ones and provide you with the facts.

Myth: *The Amendment will shift costs from big box stores to consumers.*

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[9] "The Costs of 'Charging It' in America: Assessing the Economic Impact of Interchange Fees for Credit Card and Debit Card Transactions," SONNECON and Consumer for Competitive Choice, Robert Shapiro and Jiwon Vellucci, February 2010.

Reality: There are some basic facts that should be noted that show this to be false.

- The GAO found that the current system actually hurts small businesses more than large businesses. Reform will actually help small businesses more than large businesses.
- Merchants are actually fighting to simply have the right to give their customers a discount.
- The fact that credit card giants prohibit merchants from giving consumers a discount for using a cheaper card brand (such as a Discover Card rather than a Visa) and prohibit merchants from giving discounts if they use a cheaper type of payment (like checks rather than credit) cannot be defended.
- Discounts for consumers are good things and the card giants only prohibit them to hide their fees so they can keep raising them without anyone noticing. It doesn't protect consumers at all.
- The GAO, Hispanic Institute and others have all concluded that consumers already pay the swipe fees set by the credit card industry. The Durbin amendment simply gives us all the chance to save that money in the future.

Myth: *This will push the risk of fraud onto financial institutions.*

Reality: It is worth keeping in mind that this claim admits, for the first time, that financial institutions do not currently cover the risk of fraud. While they often talk about their "payment guarantee", the ugly truth is that financial institutions push most of the risk of fraud onto merchants – and charge them huge fees at the same time. Unfortunately, this amendment does not change the card companies' rules that allow them to push most of the fraud risk onto merchants. All the Durbin amendment does is make sure fees on big bank debit cards will be reasonable and allows consumers to get discounts. It does not change the treatment of fraud.

Myth: *There is no stipulation in the amendment that stores will pass on cost savings.*

Reality: This baseless complaint has been systematically shown to have no merit. The Hispanic Institute published an economic report on interchange fees and wrote in a letter to Senators endorsing the Durbin amendment, "[W]**e found definitively through economic analysis of transaction and pricing data that consumers do currently pay interchange fees in the prices of the things they buy and when those fees are lower merchants' prices are correspondingly lower as well. This is proof, backed by economic data, that those who argue against reform by saying consumers will not benefit are wrong. Consumers will unequivocally benefit from reform."** Economics shows that in a functioning market, lower business costs will mean lower prices and higher costs will mean higher prices. The retail market in the United States is highly competitive and profit margins are extremely narrow (between 1 and 3%). When the major banks have on average a 60% profit margin on interchange, it might not be surprising to learn that they don't believe in market economics. But they cannot deny the reality that retail markets function and keep profit margins narrow. The Department of Energy, for example, conducted a study of retail gasoline pricing

and found that 100% of cost increases and 100% of cost reductions were passed through to consumers in gas prices.

Myth: *The Federal Reserve will arbitrarily set a price.*

Reality: The Durbin amendment does not have government set fees. It simply gives the Federal Reserve authority similar to that it has for paper checks and for consumer credit card fees. The Federal Reserve will write regulations regarding what interchange fees are "reasonable and proportional" to the big banks' costs. It allows them to recover all of their costs and to make profits on it. The big banks just can't be unreasonable. In fact, the amendment does not require that debit fees go down. The banks assume their current fees are unreasonable (and we agree that they are), but if they were actually being reasonable today this would have no effect.

Myth: *Consumers wouldn't get notice of minimums or maximums.*

Reality: Every state in the nation regulates how merchants inform customers of their pricing and policies. The credit card giants consistently create rules to stop merchants from having any pricing that might give consumers a clue as to the existence and size of interchange fees. But this doesn't protect consumers, it keeps them deceived. Merchants should be able to inform consumers when interchange will make them lose money. Credit card companies should not be allowed to prevent that.

Myth: *Merchants could discriminate against credit union cards so the exemption would not be effective.*

Reality: The exemption from the debit provisions in the Durbin amendment means that 99% of banks (all but 86 of them in the entire country), 99% of credit unions (all but 3 of them in the country), and 97% of thrifts (all but 19 of them), will be exempt from Federal Reserve regulations that the amendment authorizes. This means exempted banks will not be required to alter their fee structure in any way from what it is today. Visa and MasterCard both have rules in place that prohibit merchants from treating cards differently based on the bank that issued them. There is simply no way that credit union cards could be disadvantaged.

This is a big bank issue. A mere 10 banks collect more than 80% of credit card interchange fees and more than 50% of debit card interchange fees. If this weren't a big bank issue, an exemption for 99% of the nation's banks would gut the amendment. Why is such a huge exemption possible? Because almost all of the interchange is collected by the top 1% of banks. A community bank board member testified before the House Judiciary Committee April 28, 2010 that interchange accounts for less than 1% of his bank's revenue and that that is typical for community banks. Community bankers testified the same way before the same Committee April 17, 2008 and said that interchange is not a main source

of revenue for community banks. According to figures from *Cards & Payments*, 60% of interchange fees are profits and, according to GAO, credit cards are the most profitable part of the banking business. That means the big banks are making huge, outsize profits at the expense of small business retailers with profit margins that average 1-3%.

Myth: *GAO said proving consumer benefit would be difficult.*

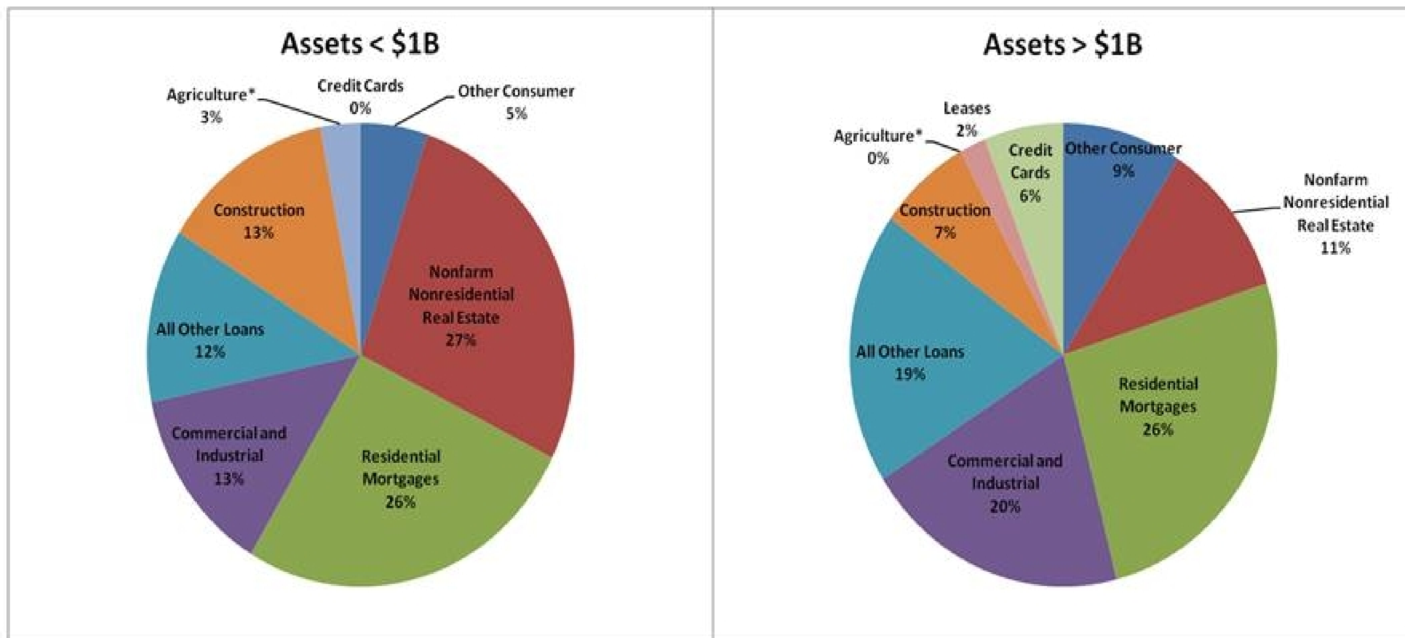
Reality: The GAO concluded that consumers are paying interchange fees right now through inflated prices. The Reserve Bank of Australia reported that consumers saved 1.1 billion Australian dollars due to their reforms and GAO reported on that finding. The only reason proof is difficult is that pricing can change rapidly and isolating the factors affecting it can be a challenge. But just as the Reserve Bank of Australia, the Department of Energy and the Hispanic Institute found – while difficult it is not impossible and market economics work such that savings do translate into lower prices for consumers.

Myth: *Small banks and credit unions will suffer if the interchange fee system is reformed.*

Reality: As noted, the Durbin amendment does not impose any regulation on the fees charged by small banks. They simply do not belong here today because the regulations will not cover them.

With that said, they don't have much interest in further reform of the system either – except to the extent that such reform will shake up a market that is not very good for them today. The current interchange fee system overwhelmingly benefits a very small number of very large banks. Only 10 large banks collect more than 80 percent of interchange fees. Let me make that clear. That's not the top 10 percent of banks – I am just talking about 10 banks. No one after those 10 banks even has 1 percent of the market. I have included as Exhibit 4 with this testimony the lists of market share in the credit card, PIN debit card, and signature debit card markets so you can see who gets interchange fees and in what proportions. Given the rhetoric around this issue, these numbers are likely to surprise you.

In fact, as the charts below show, small banks make almost no money from credit card issuing. This is a big bank business. Institutions with less than $1 billion in assets (which is a pretty large institution), do not even make 1% of their revenues from credit cards as shown below.



* OTS – supervised savings associations do not identify agricultural loans Source: FDIC, Quoted in American Banker, 3/20/09

I urge every Member of this Committee when they hear from small banks about this issue to make sure they get the answer to one simple question – what percentage of that small bank's total revenue comes from interchange fees. If they can't or won't answer that simple question, then it is hard to take their complaints seriously.

Small banks argue that they have higher costs for issuing cards and so they must be able to charge the same fees as their larger competitors. Of course, if that is true, then those larger competitors are making a huge windfall by fixing their prices with small banks. And clearly, as previously discussed, 60 percent profit margins certainly look like a windfall.

Myth: *The credit card system works fine now. There is no need for legislation.*

Reality: The current system is broken. Visa and its member banks fix interchange fees in violation of the antitrust laws. MasterCard and its banks do the same. The result is that interchange fees are rising fast and cost the U.S. economy $48 billion in 2008 alone. That is triple what the fees were in 2001.

Not only are the fees skyrocketing so that merchants and consumers pay too much, but these fees change the nature of the credit card business in a way that hurts consumers. As Georgetown Law Professor Adam Levitin observed in testimony before the House Judiciary Committee, the huge fee revenue the banks earn from credit card transactions taking place has created bad incentives. He testified, "The card industry's business model is the heart of the problem and

needs to change. Just as with subprime mortgages, the credit card business model creates a perverse incentive to lend indiscriminately and let people get into so much debt they can't pay it back."[10] Others have clearly observed this trend as well. For example, Acting Comptroller of the Currency Julie Williams said in March 2005, "Today the focus for lenders is not so much on consumer loans being repaid, but on the loan as a perpetual earning asset . . . it's not repayment of the amount of the debt that is the focus, but rather the income the credit relationship generates through periodic payments on the loan, associated fees, and cross-selling opportunities."[11] These changes mean that banks are less worried than they should be about consumers' welfare. It should be in the interest of banks for consumers to do well and be able to pay back credit card loans. But the huge fee income the banks generate through interchange and other means gives them another incentive – milk consumers for all they are worth and don't worry about the money getting paid back.

The bottom line is that abuse of consumers by banks will continue as long as they have the incentive to treat people that way. The abuses of consumers and using credit cards as predatory lending vehicles will continue until interchange fees are effectively reformed.

Myth: *Congress shouldn't reform interchange fees because merchants will just pad their profits.*

Reality: Representative Peter Welch made an insightful observation on this point when he spoke with Politico and noted that this is an odd argument because the credit card industry is essentially saying "let us keep ripping people off or someone else will." The role of Congress is to stop the card industry from engaging in rip-offs and then, if someone else is doing something wrong later, deal with that.

This argument also ignores the basic tenets of economics. Economics say that in the absence of a market failure higher business costs result in higher prices and lower business costs result in lower prices. The retail sector of the economy is highly competitive and if costs go down for those businesses, then their prices will go down. First, let's look at how consistently narrow retail profit margins are in the United States. Exhibit 2 to this testimony includes charts from Fortune magazine comparing the profitability of different U.S. industries for each year from 2006 through 2009. There isn't a single category for retail, but they have numbers for "Specialty retail", "Food and Drug Stores" and "Automotive retailing" -- these cover large parts of the retail industry. The numbers show that

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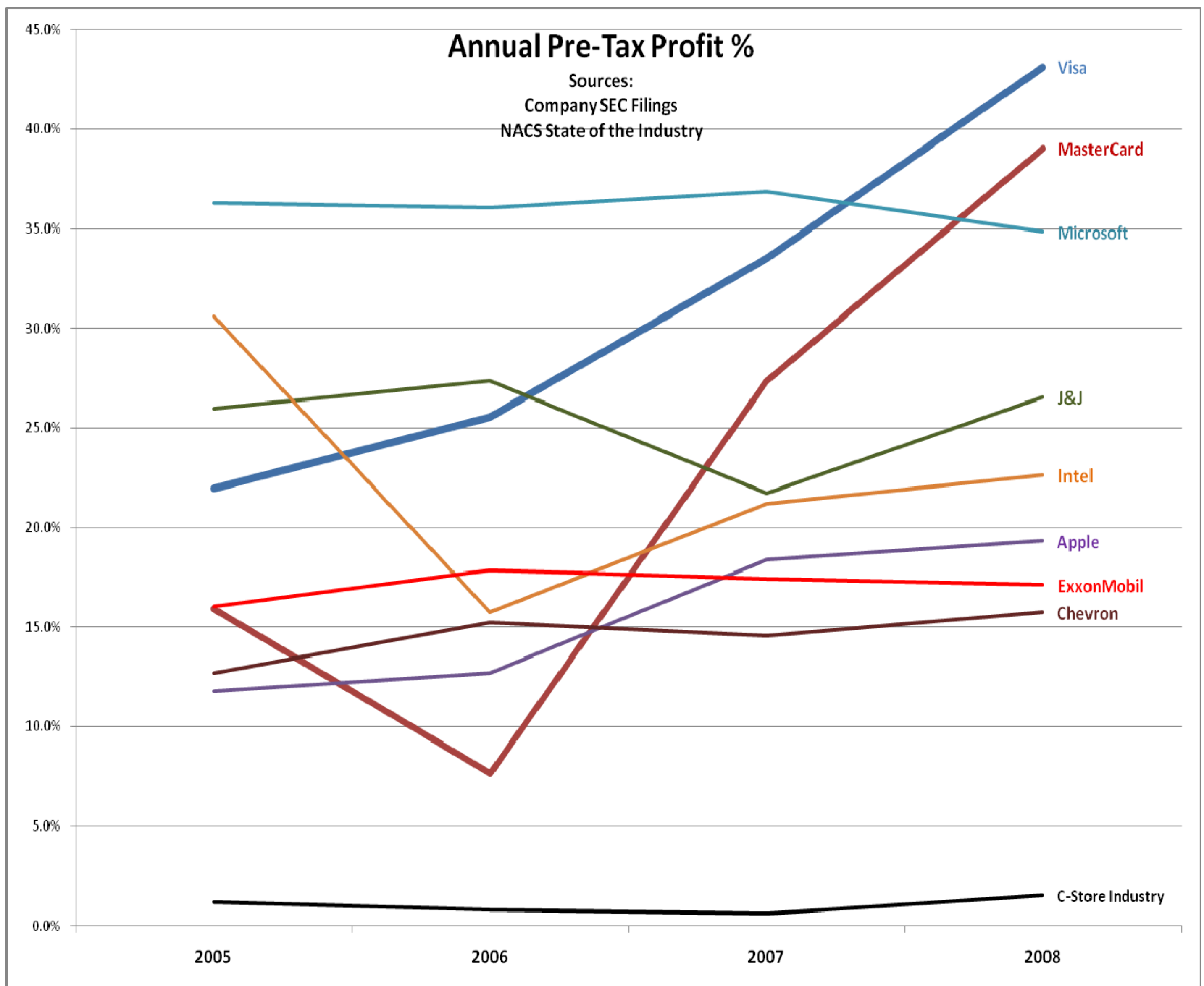
[10] Adam J. Levitin, Testimony before the House Judiciary Subcommittee on Commercial and Administrative Law, "Consumer Debt – Are Credit Cards Bankrupting Americans?" April 2, 2009.

[11] Remarks by Julie L. Williams, Acting Comptroller of the Currency, Before the BAI National Loan Review Conference, New Orleans, LA, March 21, 2005, at http://www.occ.treas.gov/ftp/release/2005-34a.pdf.

each of these industries consistently rank near the bottom of all industries in terms of profitability and have very stable profit margins each year (many other industries are lower in particular years but fluctuate more). Specialty retail, for example, is between 3.2 and 4.0 percent profitability every year since '06. Specialty retail is about the most profitable sector of the retail industry. Food and drug stores are between 1.5 and 2.6 percent profitability each year. Automotive is less than that. This means that regardless of conditions in the economy the competition across retail businesses is such that revenues can never exceed costs by much – whether costs are rising or falling. Exhibit 3 to this testimony is National Retail Federation data. This tracks just large retail companies and finds profit margins between 2 and 4 percent – bearing out Fortune's numbers.

To put this in perspective, let's look at the profit margins for some large U.S. corporations. Note that Visa's profit margins are more than 40 percent and MasterCard's are close. Microsoft comes close to them but many other household names don't. Some major oil companies are between 15 and 20 percent. And way down at the bottom, one retail industry – convenience stores – has about 2 percent profit margins. Now, the credit card industry has accused these retailers of ripping off their customers. This chart makes clear who is ripping off whom.



I would also note that the Department of Energy has studied how retailers that sell gasoline do or do not pass through costs into retail prices. They found that for both cost increases and cost decreases there is 100 percent pass through of costs into retail prices.[12] That means, without question, whether interchange fees increase or decrease, consumers will see those changes reflected in the cost of gasoline – for better or for worse.

[12] U.S. Department of Energy, "Gasoline Price Pass-through," by Michael Burdette and John Zyren, January 2003.

The Hispanic Institute studied this question in its report issued last November. It found that "the data shows that lower interchange fees result in lower prices for consumers and higher interchange fees result in higher prices for consumers."[13]

Myth: *There is no need for reform because merchants can already negotiate fees.*

Reality: This claim is purposely misleading. Merchants cannot negotiate interchange fees. They negotiate with their local bank or processor on their processing fees, but those processing fees are much smaller than the interchange fees merchants pay. In most cases, processing fees are only about 10% of what the merchant pays. They are an add-on to what the merchant pays in interchange. Interchange fees are much larger – the $48 billion paid in 2008 was more than all of the credit card fees charged directly to consumers combined. The interchange gets passed through to merchants and, ultimately, to consumers. Merchants also have no ability to shop for better interchange deals. Visa's banks all charge the same schedule of interchange fees and MasterCard's banks do the same. The result is that there is no competitive market for interchange fees – just price fixing.

Myth: *There is no need for reform because credit card fee rates have remained flat.*

Reality: This is simply false. As noted previously, GAO found, "Visa and MasterCard officials told us that their average effective interchange rates applied to transactions have remained fairly constant in recent years when transactions on debit cards, which have lower interchange fee rates, are included. **However, our own analysis of Visa and MasterCard interchange rate schedules shows that the interchange rates for credit cards have been increasing and their structures have become more complex,** as hundreds of different interchange fee rate categories for accepting credit cards now exist."[14]

The Kansas City Federal Reserve published a presentation on April 3, 2008 showing that average interchange fee rates rose from less than 1.3% to more than 1.6% between 1996 and 2005. And, according to Kansas City Federal Reserve economists, that rate is nearly 2% today. The American Banker on March 1, 2006 reported on Visa's "long-standing pattern of regular increases" in its interchange fees and said that "According to the credit card industry newsletter The Nilson Report, interchange rates for Visa and MasterCard International have risen steadily every year since 1997." At the same time, transaction volume has increased dramatically, so the absolute amount of interchange fees collected rose even more dramatically. And, credit card companies have consistently moved more cardholders to new corporate and rewards cards that carry higher interchange fee rates. While they sometimes don't change the rates for a given

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[13] "Trickle Up Wealth Transfer: Cross-subsidization in the payment card market," The Hispanic Institute, November 2009 at 6.

[14] GAO Report at 14 (emphasis added).

type of card – that doesn't matter if many of the people who had been using that card are now using a card with a higher rate. By moving people to rewards cards, the card companies continue to pretend that they don't raise rates even though the rates merchants pay for interchange consistently increase. The combination of all of these factors means that since 2001, the amount of interchange collected has tripled from $16 billion to $48 billion in 2008.

Myth: *There is no need for reform because merchants can simply stop accepting credit cards.*

Reality: Economists have found that due to the market power of Visa and MasterCard, this is not true. This argument would be like AT&T claiming in the 1980s that no one should worry about its monopoly because people could choose not to have a telephone. Accepting cards is essential for most businesses. The Kansas City Federal Reserve studied this issue in a 2004 report titled, "A Puzzle of Card Payment Pricing: Why Are Merchants Still Accepting Card Payments?" and concluded, "Only monopoly merchants who are facing an inelastic consumer demand may deny cards when the fee exceeds its transactional benefit. . . Merchant competition allows the network to set higher merchant fees. The network can always set higher merchant fees in more competitive markets. Moreover, in competitive markets the merchant fees in the long run may exceed the sum of the merchant's initial margin and the merchant's transactional benefit. . . . As long as the merchant fee does not exceed the level that gives merchants negative profits, merchants may have no choice but to continue accepting cards." The courts also agree that Visa and MasterCard both have market power which means they have the ability to raise their prices above what would be sustained in a competitive market.[15]

Myth: *Reform will hurt consumers and result in them paying higher fees.*

Reality: Policymakers around the world have found that reform has benefited consumers. In Australia, for example, the Reserve Bank of Australia reviewed the interchange reforms instituted there and concluded, "Overall, consumers are benefiting from this greater competition and lower merchant costs . . . one group of consumers clearly better off are those who regularly borrow on their credit cards. <u>They are now able to obtain a card with an interest rate of 10 to 13 per cent, rather than the 16 to 18 per cent payable on traditional cards</u>. For many consumers the resulting savings can run into hundreds of dollars per year . . . <u>Consumers who do not use credit cards at all are also benefiting from the reforms as they are paying lower prices for goods and services than would otherwise have been the case.</u> For many years, these consumers have helped subsidise the generous reward points of the credit card issuers through paying higher prices for goods and services. The reforms have helped unwind some of this subsidy."[16] The Reserve Bank of

[15] *U.S. v. Visa U.S.A., Inc.*, 344 F. 3d 229 (2d Cir. 2003).

[16] Payments System Board Annual Report, *Reserve Bank of Australia*, 2005 at 14.

Australia reconfirmed this view in 2008 when it wrote, "One issue that has attracted considerable attention since the reforms were introduced is whether the cost savings that merchants have received from lower merchant service fees have been passed on to consumers in the form of lower prices for goods and services than would have otherwise been the case. The [card] schemes argue that there has been no, or little, pass-through, while the merchants argue that the cost savings have been passed through. The Bank's estimate is that over the past year, these cost savings have amounted to around $1.1 billion . . . . Despite the difficulties of measurement, the Board's judgement remains that the bulk of these savings have been, or will eventually be, passed through into savings to consumers. This judgement is consistent with standard economic analysis which suggests that, ultimately, changes in business costs are reflected in the prices that businesses charge. A similar conclusion was reached by the House of Representatives Standing Committee on Economics, Finance and Public Administration when it considered the Bank's payments system reforms in 2006."[17]

The credit card industry has repeatedly stated, or perhaps threatened, that lower interchange fees will mean higher consumer credit card fees. This argument has been thoroughly researched and rejected. As noted previously, for example, the European Commission's Directorate of Competition reviewed this claim and found, "There is no economic evidence for such a claim. Firstly, the inquiry's data suggests that in most cases card issuers would remain profitable with very low levels of interchange fees or even without any interchange fees at all. Secondly, the international card networks have failed to substantiate the argument that lower interchange fee would have to be compensated with higher cardholder fees."

The flip-side of this argument proves its shallowness. Interchange fees in the United States have tripled since 2001 – have consumer credit card fees been cut by one-third? Absolutely not. Simply asking the question makes the absurdity obvious. In fact, consumer card fees have been rising too. Credit card fees are not a zero sum game in which the industry has a God-given right to a set amount of revenue – as they would like you to believe – but instead are a reflection of the card industry's insatiable hunger for fees aided by their unfair and deceptive practices in charging them.

Myth: *These reforms will make it more complicated for consumers. The current system works well for them.*

Reality: The current system fools consumers by hiding the large interchange fees that are built into the cost of their purchases. To quote a prominent consumer advocate, Ed Mierzwinski of U.S. PIRG, "Interchange fees are hidden charges paid by all Americans, regardless of whether they use credit, debit, checks or cash. These

[17] Reform of Australia's Payment System: Preliminary Conclusions of the 2007/2008 Review, *Reserve Bank of Australia,* at 23.

fees impose the greatest hardship on the most vulnerable consumers – the millions of American consumers without credit cards or banking relationships. These consumers basically subsidize credit card usage by paying inflated prices – prices inflated by the billions of dollars of anticompetitive interchange fees. And unfortunately, those credit card interchange fees continue to accelerate, because there is nothing to restrain Visa and MasterCard from charging consumers and merchants more."[18] In addition, consumer groups including the Consumer Federation of America, Consumer's Union, and Consumer Action have all submitted Congressional testimony criticizing the current system of interchange fees because it is not fair to consumers.

Economists with the Kansas City Federal Reserve Bank appear to agree with consumer groups on some of the problems with the current system for consumers. In a 2006 working paper titled "Payment Card Rewards Programs and Consumer Payment Choice," they wrote that "rewards programs and the accompanied merchant fee structure may work as tools that distribute income from low-income earners to high-income earners." That is, of course, just what the Hispanic Institute found in its study published last November.

In addition, the European Commission has found that interchange fees harm consumers. In December 2007, the Commission found MasterCard's multilateral interchange fee illegal and Competition Commissioner Neelie Kroes said that interchange "inflated the cost of card acceptance by retailers without leading to any advantage for consumers or retailers. On the contrary, consumers foot the bill, as they risk paying twice for payment cards. Once through annual fees to their bank. And a second time through inflated retail prices . . ." Kroes concluded that MasterCard's interchange "acts like a 'tax on consumption' paid not only on card users but also by consumers using cash and cheques."

Myth: *Interchange is needed to balance the two sides of the card market – consumers and merchants – so that the system is used by more people and better benefits everyone.*

Reality: This rationale has been firmly rejected. European regulators have investigated this claim in-depth and concluded that it is inconsistent with the facts and does not create an economic efficiency that makes up for the problems created by the lack of price competition between member banks in the setting of interchange fees.[19] Interchange is a charge imposed by Visa, MasterCard and their member banks – not a mystical balancing mechanism. When Australia moved to regulate rates (after Visa and MasterCard rejected attempts to address the antitrust problems with the system), the card associations argued that regulation would kill the card

[18] Testimony of Ed Mierzwinski before the House Judiciary Committee Antitrust Task Force, May 15, 2008.

[19] See December 19, 2007 Antitrust Ruling of the European Commission.

system. It hasn't happened. Card use is at an all-time high in Australia in spite of Visa and MasterCard's protestations and the banks are competing to offer consumers lower interest rates. Once reformed, the credit card system in the United States will continue to flourish.

Myth: *When Australia took regulatory action in this area it resulted in consumers paying more for credit cards and hurt the credit system.*

Reality: When Australia acted, MasterCard said it would mean the end of the credit card system in that nation. They were wrong. More consumers use more cards for less than ever before in Australia. In fact, rather than Visa and MasterCard competing to raise interchange fees so that banks will issue more of their cards, they have had to give consumers what they really wanted – lower interest rates on their cards. This interest rate competition has benefited consumers immensely. The only ones who don't like it are Visa and MasterCard (and their member banks) because they don't make as much on interchange fees and must now compete more thoroughly on the value they deliver to consumers. The Reserve Bank of Australia reviewed the interchange reforms instituted there and concluded, "Overall, consumers are benefiting from this greater competition and lower merchant costs . . . one group of consumers clearly better off are those who regularly borrow on their credit cards. <u>They are now able to obtain a card with an interest rate of 10 to 13 per cent, rather than the 16 to 18 per cent payable on traditional cards</u>. For many consumers the resulting savings can run into hundreds of dollars per year . . . <u>Consumers who do not use credit cards at all are also benefiting from the reforms as they are paying lower prices for goods and services than would otherwise have been the case.</u> For many years, these consumers have helped subsidise the generous reward points of the credit card issuers through paying higher prices for goods and services. The reforms have helped unwind some of this subsidy."[20] It should be noted that the credit card companies have funded studies that have a different view of the reforms in Australia. Merchants have funded their own studies, but we think the Reserve Bank's findings are the most authoritative source and urge everyone on the Committee to read them when making their judgments – and not listen to how they are characterized (and often mischaracterized) by others.

Myth: *Credit and debit cards provide a valuable service for merchants and consumers, but merchants do not want to pay a fair price for that service.*

Reality: Credit and debit cards do provide a service. Just as was the case with the old AT&T, the problem is that the interchange fee system now violates the antitrust laws and is so riddled with unfair rules that keep any competition from entering the system that it must be reformed. Under the Durbin amendment, there will still be interchange – it will just be charged in a system where debit fees will have to be reasonable and some small measure of competition and transparency will exist.

[20] Payments System Board Annual Report, *Reserve Bank of Australia*, 2005 at 14.

Of course, it does not touch credit card interchange and even on debit transactions, not only will there be interchange fees, but there will still be processing fees and merchants will have to pay any fees associated with maintaining their accounts at their local banks. And, of course, banks will still charge consumers an array of interest charges and fees. While the card industry may not like reform, they will continue to have many avenues to recover costs, compete, and make profits, but they will have to do so in a transparent system so that consumers and merchants have real choices about the payment services they use and the costs they incur.

Myth: *Banks need high interchange in order to recover the costs of fraud and guarantee payment to merchants.*

Reality: Economists with the Federal Reserve Bank of Kansas City have found that fraud costs are not a justification for over-inflated interchange fees. They wrote, "Card organizations have often argued that the reason why they impose proportional fees stems from the cost they bear from their "payment guarantee" service which insures merchants against customers who pay with cards without having sufficient funds. We argue that the cost of fraud and insufficient funding is negligible compared with fees at the range of 1% to 3% commonly imposed by brand name cards. For example, industry studies show that the average net fraud losses are around 0.05% for signature debit cards, which do not extend credit to card users."[21]

Even if banks issuing cards paid out more in fraud, however, that would not justify them charging the merchants for this. While the card companies claim that they guarantee payment to merchants, in reality this "guarantee" is nothing more than a promise to pay when they want to pay. Both Visa and MasterCard have pages and pages of rules for situations in which they can "chargeback" the amount of a transaction to the merchant. These chargebacks are so common that in actuality U.S. merchants absorb more of the cost of fraud each year than the banks that issue the cards. A 2009 study from LexisNexis in conjunction with Javelin Strategy & Research found that merchants absorb nearly ten times the cost of fraud that the banks absorb each year.[22]

One recent example demonstrates in microcosm why this is the case. Exhibit 5 to this testimony is a letter from the owner of the The Catch Seafood Tavern in Port Jefferson, New York to his representatives in Congress. It details his recent experience with the card companies. He had five chargebacks in a month that meant the bank took $78 in sales from him. He argued successfully that each chargeback was in fact a valid transaction and that he should get his money.

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[21] "Why Do Card Issuers Charge Proportional Fees?" Oz Shy and Zhu Wang, December 2008 at 3.

[22] 2009 LexisNexis True Cost of Fraud Study at 23.

Finally, the bank agreed with him, but charged him a fee of $15.50 per chargeback. So, he received his $78 but then was charged a total of $77.50 in fees. Obviously, this didn't amount to any kind of guarantee at all. This type of behavior is blatantly unfair, amounts to a license for the banks to take merchants' money, and happens frequently. It demonstrates another reason why large interchange fees cannot be justified and must be reformed.

Exhibit 1

Recognizing new tribes could mean new tax losses, marketers warn

Branded jobbers and truck stop marketers are pleading with Congress not to extend federal recognition to two Indian tribes without first ensuring a continued competitive marketplace for motor fuels and tobacco.

Rep. Jim Moran (D-VA) is pushing a bill to recognize the Rappahannock Indian and Thomasina E. Jordan tribes in Virginia. Federal recognition would confer sovereign status on the tribes, allowing them to take into trust some of Virginia's most populous counties.

Sovereign status also allows tribes to sell fuel and tobacco to members without remitting state tax, but some flout the rules by failing to collect taxes from non-tribal members too. The result has been huge revenue losses in some states. New York estimates it has lost nearly $4 billion in cigarette excise taxes alone since 1995, while Oklahoma believes state tobacco taxes are under-collected by roughly $4 million/mo.

"While the state loses tax revenue, many motor fuel marketers and truck stop operators are losing their livelihood and their ability to compete in the marketplace," say the Petroleum Marketers Assn. of America and the National Assn. of Truck Stop Operators.

In Virginia, state excise tax is 17.5cts/gal on gasoline and 18cts/gal on diesel. In 2005, the average gross margin for retailers was 15.1 cts/gal and 15.5cts/ gal, respectively. By failing to remit state taxes, Indian tribes gain a price edge that is greater than many retailers' gross margins, the groups said in an April 16 letter to Rep. Nick J. Rahall (D), chairman of the House Natural Resources Committee. Congress should add language to Moran's bill that would make federal recognition of the tribes conditional on their compliance with all state excise tax requirements, they say.

State won't intervene in dispute between Visa and marketers

Visa to marketers: If you don't like our rules, don't offer discount-for-cash

State regulators in California won't come to the rescue of marketers caught between obeying state standards on discount-for-cash pricing and demands by Visa that they drop the word 'credit' from price signs.

"As far as we're concerned, putting the word 'credit' on a price sign is appropriate, but as far as Visa telling marketers they can't do it, that's a civil matter between Visa and the marketers," says Dennis Johannes, the state's Weights and Measures director. "We have no authority to regulate Visa."

The state's posture leaves marketers in a Catch 22 situation. If they use the word 'credit,' Visa has said it may fine them and strip them of their right to take Visa cards. But if they adopt some of Visa's suggestions, such as leaving the 'credit' sign blank, they will be violating state standards, says Johannes.

Johannes believes that Visa is being "a little heavy-handed" on the issue. "They probably don't want dual pricing because it discourages the use of their credit card," he says. His only suggestion for marketers is that they seek a legislative change that will specifically require the use of the word 'credit' on signage.

Johannes is not alone in his suspicions of Visa's motives.

"Visa's goal is to get everyone to pay the higher, credit card price for fuel and they will twist and torture their rules if necessary to force consumers to do so," says Mallory Duncan, chairman of the Merchants Payments Coalition, a business group dedicated to fighting for lower card interchange rates.

Visa is not particularly sympathetic to the plight of marketers – the credit card giant says it is the marketers' fault for offering discount-for-cash in the first place.

"If the merchant wants to steer the consumer to discount for cash, then they have to do it within the context of Visa's rules," said Visa spokeswoman Rhonda Bentz. "It's great if they have a contract with the state, but they don't. They have a contract with Visa and if they don't want to abide by that contract, they shouldn't have signed it," she said.

"These merchants clearly want the consumer to pay with cash. Okay, then, they should just accept cash and not credit cards. But they want access to our 1 billion cardholders, and they want the reduced risk that comes with taking Visa, and they want the guaranteed payments. They just don't want to pay for it."

Visa threatened to fine Mom and Pop operator Mike Gharib's credit card processor $5,000 because he was using the word 'credit' on his price sign, as exclusively reported (OE 04/16). The processor, Petroleum Card Services, planned to pass the fine through to Gharib. Visa withdrew the threat after Oil Express raised questions on the issue. The company says Gharib is now "compliant" with its rules. Gharib has removed the word 'credit' and that part of his price sign is now blank, Oil Express sources say.

Visa's position is that the higher price next to the word 'credit' on signs implies that the customer is paying a surcharge for credit, which is against Visa rules. It wants marketers to substitute other terms, such as 'regular' or 'standard,' or just leave that part of the sign blank. Additionally, Visa says the word 'credit' does not take into account debit cards, which must be treated the same as cash sales under state regulations. Therefore, the signs are misleading to debit customers, too, says Bentz.

Asked why Visa should start objecting to the word 'credit' after its use on station signs for 26 years, Bentz says Visa received complaints from consumers who thought they were being surcharged for credit.

Johannes says consumers know debit transactions are the same as cash, and that the difference between the two forms of payment – cash and credit – is well-understood. Using the term 'standard' or 'regular' would confuse customers, and leaving the sign blank would violate state rules. Visa's other suggestions – 'non-cash' and 'base price' – would have to be studied, he says.

"'Non-cash' is probably something we would not pursue as being illegal but there are a lot of other enforcement people in this state, such as the district attorney, county officials, and state attorney general's office, and we don't speak for them."

Visa has also objected to the way some marketers handle debit card sales at the pump and there is a suspicion among some marketer groups that the company would like to force consumers to go into the station to sign for a debit card transaction. Visa receives higher fees for debit signature sales than it does for Personal Identification Number transactions, sources say.

Visa has told Auburn, Calif.-based marketer Nella Oil that its debit card sales at the pump violate Visa rules because those customers are not getting the cash or discount price.

When customers use a Visa debit card at the pump, they are required to enter a PIN. If they do not do so, the card processor treats the sale as a credit card transaction and the customer will pay the higher, credit price for fuel. Likewise, the marketer will pay the higher fees associated with credit card transactions, although the money will ultimately be debited from the customer's bank account.

Nella has decals on its pumps clearly warning customers that they must key in their PIN to get the debit price, and the state has approved that decal, a Nella exec says. Visa says that's not enough to ensure that customers receive their cash discounts. Nella had hoped to get its bank to segregate PIN debit purchases and block them at the pump, but has been told that is not possible. "So, we're back to square one," says Nella.

Actually, not quite – under the landmark Wal-Mart-Visa lawsuit settlement, Visa and MasterCard were barred from bundling their debit and credit cards together, so forcing merchants to accept debit cards whether they wanted to or not.

Nella can write to its card processor or bank and tell them that it no longer wishes to accept Visa debit cards, says an industry lawyer. This will cause the bank to shut off Nella's access to the Visa debit network. As a result, when a customer swipes his debit card the sale will be routed automatically to the regional debit network whose logo appears on the back of the Visa card – the Star network would be one such example. The Star system will not process the customer's sale until he inputs his PIN, so avoiding charging him the credit card price for fuel.

"What's so frustrating is that Visa and MasterCard have a duopoly in the market place and they're trying to put retailers in an untenable position in order to increase their leverage and revenues," says Duncan, with the Merchants Payments Coalition.

Exhibit 2

Top industries: Most profitable

RETURN ON REVENUES | RETURN ON ASSETS | RETURN ON SHAREHOLDERS' EQUITY

Industry Rank	Industry	2008 Profits as % of Revenues
1	Network and Other Communications Equipment	20.4
2	Internet Services and Retailing	19.4
3	Pharmaceuticals	19.3
4	Medical Products and Equipment	16.3
5	Railroads	12.6
6	Financial Data Services	11.7
7	Mining, Crude-Oil production	11.5
8	Securities	10.7
9	Oil and Gas Equipment, Services	10.2
10	Scientific, Photographic, and Control Equipment	9.9
11	Household and Personal Products	8.7
12	Utilities: Gas and Electric	8.7
13	Aerospace and Defense	7.6
14	Food Services	7.1
15	Industrial Machinery	6.9
16	Food Consumer Products	6.7
17	Electronics, Electrical Equipment	6.5
18	Commercial Banks	5.2
19	Telecommunications	5.1
20	Chemicals	5.0
21	Construction and Farm Machinery	5.0
22	Insurance: Life, Health (stock)	4.6

23	Information Technology Services	4.5
24	Computers, Office Equipment	4.3
25	Metals	3.9
26	Wholesalers: Diversified	3.5
27	Insurance: Property and Casualty (stock)	3.3
28	Specialty Retailers	3.2
29	General Merchandisers	3.2
30	Health Care: Pharmacy and Other Services	3.0
31	Packaging, Containers	3.0
32	Beverages	2.9
33	Engineering, Construction	2.7
34	Health Care: Medical Facilities	2.4
35	Health Care: Insurance and Managed Care	2.2
36	Petroleum Refining	2.1
37	Food and Drug Stores	1.5
38	Pipelines	1.5
39	Wholesalers: Health Care	1.3
40	Semiconductors and Other Electronic Components	1.0
41	Energy	0.9
42	Home Equipment, Furnishings	0.7
43	Food Production	0.6
44	Wholesalers: Electronics and Office Equipment	-0.3
45	Diversified Financials	-0.6
46	Motor Vehicles and Parts	-0.7
47	Insurance: Life, Health (mutual)	-3.0
48	Hotels, Casinos, Resorts	-4.5
49	Automotive Retailing, Services	-7.9
50	Forest and Paper Products	-9.6
51	Entertainment	-10.0
52	Real Estate	-13.4

53	Airlines	-13.5

Issue date: May 4, 2009

Top industries: Most profitable

RETURN ON REVENUES | RETURN ON ASSETS | RETURN ON SHAREHOLDERS' EQUITY

Industry Rank	Industry	2007 Profits as % of Revenues
1	Network and Other Communications Equipment	28.8
2	Mining, Crude-Oil Production	23.8
3	Pharmaceuticals	15.8
4	Medical Products and Equipment	15.2
5	Oil and Gas Equipment, Services	13.7
6	Commercial Banks	12.6
7	Railroads	12.4
8	Entertainment	12.4
9	Insurance: Life, Health (stock)	10.6
10	Household and Personal Products	10.2
11	Securities	10.1
12	Insurance: Property and Casualty (stock)	9.9
13	Real Estate	9.9
14	Scientific, Photographic, and Control Equipment	9.8
15	Financial Data Services	8.7
16	Food Services	7.9
17	Publishing, Printing	7.9
18	Utilities: Gas and Electric	7.9
19	Industrial and Farm Equipment	7.6
20	Electronics, Electrical Equipment	7.6
21	Hotels, Casinos, Resorts	7.3
22	Aerospace and Defense	7.2

23	Beverages	7.2
24	Chemicals	7.0
25	Internet Services and Retailing	7.0
26	Food Consumer Products	6.5
27	Telecommunications	6.4
28	Health Care: Insurance and Managed Care	6.2
29	Petroleum Refining	6.2
30	Computers, Office Equipment	6.0
31	Metals	5.5
32	Packaging, Containers	5.5
33	Home Equipment, Furnishings	5.3
34	Wholesalers: Diversified	4.3
35	Specialty Retailers	3.8
36	Information Technology Services	3.8
37	Energy	3.7
38	Airlines	3.6
39	General Merchandisers	3.5
40	Health Care: Medical Facilities	3.3
41	Pipelines	3.1
42	Engineering, Construction	2.8
43	Health Care: Pharmacy and Other Services	2.6
44	Food and Drug Stores	2.1
45	Wholesalers: Electronics and Office Equipment	1.6
46	Automotive Retailing, Services	1.1
47	Wholesalers: Health Care	1.1
48	Motor Vehicles and Parts	1.1
49	Food Production	1.0
50	Semiconductors and Other Electronic Components	0.6
51	Diversified Financials	-0.9
52	Homebuilders	-9.5

From the May 5, 2008 issue

Top industries

Most Profitable Industries: Return on Revenues

Revenues | Assets | Shareholder equity

Industry Rank	Industry	2006 Profits as % of Revenues
1	Mining, Crude-Oil Production	26.6
2	Pharmaceuticals	19.6
3	Commercial Banks	16.2
4	Financial Data Services	15.2
5	Network and Other Communications Equipment	14.0
6	Medical Products & Equipment	13.5
7	Railroads	13.1
8	Securities	12.4
9	Publishing, Printing	12.4
10	Insurance: P & C (stock)	11.8
11	Diversified Financials	10.9
12	Insurance: Life, Health (stock)	10.7
13	Entertainment	10.7
14	Internet Services and Retailing	10.5
15	Oil and Gas Equipment, Services	10.4
16	Household and Personal Products	9.2
17	Metals	8.0
18	Food Services	7.9
19	Semiconductors and Other Electronic Components	7.7
20	Petroleum Refining	7.3
21	Industrial & Farm Equipment	7.2
22	Homebuilders	7.1
23	Hotels, Casinos, Resorts	7.0
24	Utilities: Gas & Electric	6.8
25	Beverages	6.6

FORTUNE 500 Headquarters

COURTESY: GOOGLE MAPS

Click to enlarge
Show FORTUNE 500 Companies:
Top 50 | 25 Most profitable | Full list

What readers say...

- Everyone talks of America is a failing Democracy… WHAT? First...
- For those who have commented on Sam Walton's philosophy being...
- Now, consider this. WalMart no longer has Sam Walton running it.The...

Have your say

GALLERY

PHOTOS FROM COMPANY WEBSITES

Top 50

Wal-Mart retakes the No. 1 slot on the Fortune 500 this year. See where America's largest companies rank, and why.
See them all

GALLERY

26	Chemicals	6.6
27	Computers, Office Equipment	6.5
28	Electronics, Electrical Equipment	6.4
29	Apparel	6.3
30	Telecommunications	6.2
31	Food Consumer Products	5.9
32	Aerospace and Defense	5.9
33	Health Care: Insurance & Managed Care	5.8
34	Packaging, Containers	4.3
35	Wholesalers: Diversified	4.1
36	Health Care: Medical Facilities	3.9
37	Specialty Retailers	3.6
38	General Merchandisers	3.3
39	Health Care: Pharmacy and Other Services	2.8
40	Food & Drug Stores	2.6
41	Airlines	2.6
42	Energy	2.6
43	Information Technology Services	2.2
44	Engineering, Construction	1.7
45	Pipelines	1.7
46	Wholesalers: Food and Grocery	1.7
47	Wholesalers: Electronics and Office Equipment	1.4
48	Automotive Retailing, Services	1.2
49	Wholesalers: Health Care	0.9
50	Food Production	-0.7
51	Motor Vehicles & Parts	-1.4

From the April 30th, 2007 issue

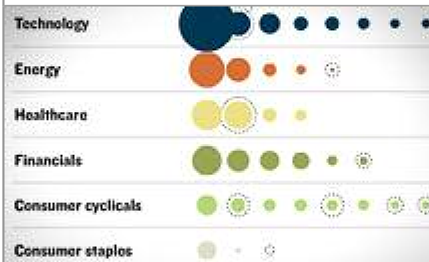
Note:
Due to slight differences in rounding, industry data online may not exactly match the FORTUNE 500 magazine version.

PHOTOS FROM COMPANY WEBSITES

Best employers

More than 35 companies are on both the 2007 Fortune 1000 and 100 Best Companies to Work For lists.
See them all

GALLERY



INTERACTIVE GRAPHIC BY MACAULAY CAMPBELL

Big deals

Last year saw the biggest buyout frenzy since 2000, as 42 Fortune 1,000 corporations were acquired. Who was part of the buyout binge?
See them all

Top industries

Most Profitable Industries: Return on Revenues

Industry Rank	Industry	2005 Profits as % of Revenues
1	Mining, Crude-Oil Production	29.9
2	Internet Services and Retailing	23.8
3	Commercial Banks	18.3
4	Network and Other Communications Equipment	15.8
5	Pharmaceuticals	15.7
6	Medical Products & Equipment	13.2
7	Securities	12.7
8	Railroads	12.5
9	Diversified Financials	12.4
10	Publishing, Printing	11.8
11	Household and Personal Products	11.1
12	Insurance: Life, Health (stock)	10.3
13	Homebuilders	9.9
14	Insurance: P & C (stock)	9.0
15	Oil and Gas Equipment, Services	8.7
16	Entertainment	8.4
17	Food Consumer Products	8.4
18	Electronics, Electrical Equipment	8.2
19	Food Services	8.0
20	Computers, Office Equipment	7.5
21	Health Care: Insurance & Managed Care	7.1
22	Hotels, Casinos, Resorts	6.8
23	Industrial & Farm Equipment	6.6
24	Apparel	6.5
25	Petroleum Refining	6.1
26	Utilities: Gas & Electric	6.0

27	Chemicals	5.8
28	Metals	5.6
29	Beverages	5.3
30	Information Technology Services	5.1
31	Aerospace and Defense	4.9
32	Health Care: Medical Facilities	4.6
33	Telecommunications	4.2
34	General Merchandisers	4.1
35	Specialty Retailers	4.0
36	Semiconductors and Other Electronic Components	3.9
37	Energy	3.0
38	Food Production	2.8
39	Health Care: Pharmacy and Other Services	2.8
40	Wholesalers: Diversified	2.3
41	Engineering, Construction	2.2
42	Wholesalers: Food and Grocery	2.1
43	Food & Drug Stores	1.6
44	Pipelines	1.4
45	Wholesalers: Electronics and Office Equipment	1.4
46	Wholesalers: Health Care	1.3
47	Automotive Retailing, Services	1.1
48	Motor Vehicles & Parts	1.1
49	Packaging, Containers	0.4
50	Airlines	-10.6

From the April 17th, 2006 issue

Exhibit 3

- **Retail industry profitability tends to average between 2 and 4 percent, a relatively low rate compared to profitability in other industries, such as manufacturing.**
- **Increased purchases during the holiday shopping season make the fourth quarter the most important quarter for retailers in terms of profitability.**
- **After steadily climbing for the last several years, retail industry profitability dropped slightly in 2007 to 3.02%.**

Table IV.7: Profitability of Large Retail Corporations,* 2003–2007 (NAICS Definitions, Millions of Dollars, and Percent)

	Profits After Income Taxes	Net Sales Receipts & Operating Revenues	Retail Profits as a Share of Sales
2003	**$45,364**	**$1,524,730**	**2.98%**
1st quarter	11,283	354,328	3.18
2nd quarter	9,656	364,426	2.65
3rd quarter	9,518	377,950	2.52
4th quarter	14,907	428,026	3.48
2004	**$53,186**	**$1,666,495**	**3.19%**
1st quarter	11,429	394,605	2.90
2nd quarter	13,572	405,436	3.35
3rd quarter	11,186	409,756	2.73
4th quarter	16,999	456,698	3.72
2005	**$56,281**	**$1,791,228**	**3.14%**
1st quarter	12,307	426,016	2.89
2nd quarter	13,154	441,328	2.98
3rd quarter	13,076	445,043	2.94
4th quarter	17,744	478,841	3.71
2006	**$63,174**	**$1,948,397**	**3.24%**
1st quarter	15,479	459,382	3.37
2nd quarter	13,827	477,908	2.89
3rd quarter	14,068	479,348	2.93
4th quarter	19,800	531,759	3.63
2007	**$62,344**	**$2,066,429**	**3.02%**
1st quarter	14,370	497,962	2.89
2nd quarter	17,648	512,116	3.45
3rd quarter	12,887	504,138	2.56
4th quarter	17,439	552,213	3.16

* Retailers with assets of $50 million and over.

Source: Derived from U.S. Department of Commerce, Bureau of the Census data.

Exhibit 4

Credit Card Interchange

Sources: Nilson, #918, #919, #923
Federal Reserve Bank of Kansas City

Rank	Issuer	% Interchange Market	Running Share
1	JPMorgan Chase	24.9%	24.9%
2	Bank of America	18.3%	43.2%
3	Citigroup	15.6%	58.8%
4	Capital One	6.4%	65.2%
5	U.S. Bank	4.9%	70.1%
6	Wells Fargo	3.2%	73.3%
7	HSBC	2.8%	76.1%
8	USAA Savings	2.0%	78.0%
9	Barclays	1.7%	79.7%
10	PNC Bank	0.9%	80.7%
11	Target	0.9%	81.6%
12	Advanta	0.8%	82.4%
13	First National	0.6%	83.0%
14	Navy FCU	0.4%	83.4%
15	GE Money	0.4%	83.8%
16	Nordstrom	0.4%	84.2%
17	Fifth Third Bank	0.3%	84.6%
18	RBS Citizens	0.3%	84.9%
19	SunTrust Bank	0.3%	85.2%
20	BB&T	0.3%	85.5%
21	Comdata	0.3%	85.8%
22	State Farm Bank	0.3%	86.1%
23	ICBA Bancard	0.3%	86.4%
24	Cabela’s WFB	0.2%	86.6%
25	Commerce Bank	0.2%	86.8%
26	TIB-The Ind. Bankers	0.2%	86.9%
27	Pentagon FCU	0.1%	87.1%
28	Town North Bank	0.1%	87.2%
29	First Hawaiian Bank	0.1%	87.3%
30	M&I Bank	0.1%	87.5%
31	BECU	0.1%	87.5%
32	First Premier	0.1%	87.6%
33	CompuCredit	0.1%	87.7%
34	Credit One Bank	0.1%	87.8%
35	First Citizens Bank	0.1%	87.9%
36	Columbus B&T	0.1%	88.0%
37	Zions Bancorporation	0.1%	88.0%
38	1st Financial Bank	0.1%	88.1%
39	UMB	0.1%	88.2%
40	Digital FCU	0.1%	88.2%
41	First Horizon	0.1%	88.3%
42	BMW Bank	0.1%	88.4%
43	Merrick Bank	0.1%	88.4%
44	Compass Bank	0.1%	88.5%
45	America First CU	0.1%	88.5%
46	TD Bank	0.0%	88.6%
47	RBC Centura	0.0%	88.6%
48	Silverton Bank	0.0%	88.7%
49	SchoolsFirst FCU	0.0%	88.7%
50	Suncoast Schools FCU	0.0%	88.8%

Credit Card Interchange - Continued

Rank	Issuer	% Interchange Market	Running Share
51	San Diego County CU	0.0%	88.8%
52	Golden 1 CU	0.0%	88.8%
53	Pa. State. Empl.	0.0%	88.9%
54	State Employees CU	0.0%	88.9%
55	Simmons First Nat'l	0.0%	88.9%
56	Redstone FCU	0.0%	89.0%
57	Wescom CU	0.0%	89.0%
58	VyStar CU	0.0%	89.0%
59	Arvest Bank Group	0.0%	89.1%
60	Intrust Bank	0.0%	89.1%
61	Randolph-Brooks FCU	0.0%	89.1%
62	Baxter CU (BCU)	0.0%	89.1%
63	First Tech CU	0.0%	89.2%
64	Delta Community CU	0.0%	89.2%
65	Tower FCU	0.0%	89.2%
66	Patelco CU	0.0%	89.2%
67	Farm Bureau Bank	0.0%	89.3%
68	Mission FCU	0.0%	89.3%
69	BancorpSouth	0.0%	89.3%
70	Wash. State Empl.	0.0%	89.3%
71	FirstMerit Bank	0.0%	89.3%
72	Affinity FCU	0.0%	89.4%
73	United Nations FCU	0.0%	89.4%
74	Mountain America CU	0.0%	89.4%
75	Arizona FCU	0.0%	89.4%
76	Police & Fire	0.0%	89.4%
77	GTE FCU	0.0%	89.4%
78	Alaska USA FCU	0.0%	89.5%
79	Mich. State Univ.	0.0%	89.5%
80	Citizens Equity First	0.0%	89.5%
81	Kinecta FCU	0.0%	89.5%
82	Bellco CU	0.0%	89.5%
83	Security Service FCU	0.0%	89.5%
84	Associated Bank	0.0%	89.5%
85	Travis CU	0.0%	89.6%
86	Virginia CU	0.0%	89.6%
87	State Empl. CU	0.0%	89.6%
88	Anheuser Busch CU	0.0%	89.6%
89	Tinker FCU	0.0%	89.6%
90	Hudson Valley FCU	0.0%	89.6%
91	Educa. Employ. CU	0.0%	89.6%
92	Alliant CU	0.0%	89.6%
93	Kern Schools FCU	0.0%	89.6%
94	Lockheed FCU	0.0%	89.6%
95	American Svgs. Bank	0.0%	89.7%
96	ESL FCU	0.0%	89.7%
97	Redwood CU	0.0%	89.7%
98	SAFE CU	0.0%	89.7%
99	South Carolina FCU	0.0%	89.7%
100	Municipal CU	0.0%	89.7%

Signature Debit Card Interchange

Sources: Nilson, #918, #919, #923
Federal Reserve Bank of Kansas City

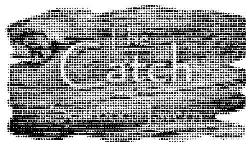
Rank	Issuer	% Interchange Market	Running Share
1	Bank of America	15.4%	15.4%
2	Wells Fargo V	12.1%	27.5%
3	JPMorgan Chase V/MC	9.7%	37.2%
4	U.S. Bank	2.9%	40.1%
5	PNC V	2.5%	42.6%
6	USAA	2.0%	44.6%
7	FIfth Third V/MC	1.7%	46.3%
8	TD Bank V	1.5%	47.8%
9	SunTrust V	1.5%	49.3%
10	Regions Bank	1.5%	50.8%
11	Citizens Bank	1.5%	52.3%
12	Citibank	1.4%	53.7%
13	Navy FCU	1.2%	54.9%
14	BB&T V	1.1%	56.0%
15	MetaBank V/MC/D	0.8%	56.8%
16	Capital One V/MC	0.8%	57.7%
17	TCF Financial V	0.8%	58.4%
18	M&T Bank V/MC	0.7%	59.1%
19	E*Trade Bank V	0.7%	59.8%
20	ICBA Bancard V/MC	0.6%	60.4%
21	Huntington Nat'l	0.6%	61.0%
22	KeyBank MC	0.6%	61.6%
23	Compass Bank V	0.6%	62.1%
24	Sovereign Bank V	0.5%	62.6%
25	HSBC MC 30	0.4%	63.0%
26	Bank of the West	0.4%	63.5%
27	State Empl. CU, NC	0.4%	63.9%
28	Harris N.A. MC	0.3%	64.2%
29	Zions Bancorp. V	0.3%	64.5%
30	Commerce Bank Mo.	0.3%	64.8%
31	Union Bank Calif.	0.3%	65.1%
32	Arvest Bank V	0.2%	65.3%
33	Comerica Bank V/MC	0.2%	65.5%
34	Town North V/MC	0.2%	65.8%
35	FirstBank Colo. V	0.2%	66.0%
36	Associated Bank MC	0.2%	66.2%
37	First Horizon V	0.2%	66.4%
38	M&I Bank V	0.2%	66.6%
39	BOK Financial V	0.2%	66.8%
40	Synovus V 39	0.2%	67.0%
41	FirstMerit Bank V	0.2%	67.2%
42	First Citizens N.C.	0.1%	67.4%
43	BECU MC 37	0.1%	67.5%
44	People's United	0.1%	67.6%
45	BancorpSouth MC 40	0.1%	67.8%
46	Desert Schools FCU	0.1%	67.9%
47	Suncoast Sch. FCU	0.1%	68.0%
48	SchoolsFirst FCU MC	0.1%	68.1%
49	The Golden 1 CU	0.1%	68.2%
50	The Bancorp Bank	0.0%	68.2%

PIN Debit Card Interchange

Sources: Nilson, #918, #919, #923
Federal Reserve Bank of Kansas City

Rank	Issuer	% Interchange Market	Running Share
1	Bank of America	13.4%	13.4%
2	Wells Fargo V	9.5%	22.9%
3	JPMorgan Chase V/MC	7.6%	30.5%
4	Regions Bank	1.4%	31.9%
5	PNC V	1.3%	33.2%
6	U.S. Bank	1.3%	34.5%
7	SunTrust V	1.2%	35.7%
8	TD Bank V	1.1%	36.9%
9	Citibank	1.1%	38.0%
10	BB&T V	0.9%	38.9%
11	USAA	0.8%	39.6%
12	Citizens Bank	0.7%	40.4%
13	ICBA Bancard V/MC	0.7%	41.1%
14	State Empl. CU, NC	0.5%	41.6%
15	Capital One V/MC	0.5%	42.0%
16	KeyBank MC	0.5%	42.5%
17	Compass Bank V	0.4%	42.9%
18	FIfth Third V/MC	0.4%	43.3%
19	Union Bank Calif.	0.4%	43.7%
20	Zions Bancorp. V	0.3%	44.0%
21	Bank of the West	0.3%	44.3%
22	Sovereign Bank V	0.2%	44.6%
23	Commerce Bank Mo.	0.2%	44.8%
24	BECU MC 37	0.2%	45.0%
25	First Horizon V	0.2%	45.2%
26	BancorpSouth MC 40	0.2%	45.3%
27	Desert Schools FCU	0.2%	45.5%
28	The Golden 1 CU	0.2%	45.7%
29	Arvest Bank V	0.2%	45.8%
30	Suncoast Sch. FCU	0.2%	46.0%
31	First Citizens N.C.	0.2%	46.2%
32	Comerica Bank V/MC	0.2%	46.3%
33	Huntington Nat'l	0.2%	46.5%
34	People's United	0.1%	46.6%
35	Harris N.A. MC	0.1%	46.8%
36	Associated Bank MC	0.1%	46.9%
37	SchoolsFirst FCU MC	0.1%	47.0%
38	M&I Bank V	0.1%	47.1%
39	Navy FCU	0.1%	47.3%
40	TCF Financial V	0.1%	47.4%
41	M&T Bank V/MC	0.1%	47.5%
42	Synovus V 39	0.1%	47.6%
43	HSBC MC 30	0.1%	47.7%
44	FirstMerit Bank V	0.0%	47.8%
45	Town North V/MC	0.0%	47.8%
46	BOK Financial V	0.0%	47.8%
47	FirstBank Colo. V	0.0%	47.8%
48	MetaBank V/MC/D	0.0%	47.8%
49	E*Trade Bank V	0.0%	47.8%
50	The Bancorp Bank	0.0%	47.8%

Exhibit 5



January 15, 2010

The Honorable Charles Schumer
The Honorable Kirsten Gillibrand
The Honorable Tim Bishop

To my Representatives in Congress:

I'm writing as a small business owner who has an opinion on almost everything. But, to avoid writing a book, the subject today is credit card fees being charged by the big banks to the small merchant. I know there's legislation pending on this issue. And I know there is a lot of negative consumer sentiment regarding banks. Perhaps my situation will help sway a few votes to the side of right.

In the past month there have been five occasions where banks have initiated charge backs against my account. Three of the incidents were because the cardholder claimed the card was stolen. The other two were initiated by the Bank of America because they *suspected* fraud... two transactions of identical amounts on the same day. (Not unusual in a bar when a customer orders the same round of drinks.) In all five transactions the money was deducted from my account before I had any communication from my card processor requesting verification of the charges. *The big banks took the money of the small merchant assuming guilt before innocence.*

Since I check my account on a daily basis, I notice the debits. I called to ask about the deductions and was told of the claims against me. In all cases, I immediately faxed the proof that all five transactions were approved by the banks and that I did nothing wrong. I have so far been credited for the first three; I'm waiting for the last two. They're very fast to take my funds, very slow to return them. I should also note that had I not called I would have to wait until I got the letters requesting my response. In three cases the letters arrived on December 24th requiring a response by December 23rd. Even I'm not that good that I can respond 24 hours ago to a request.

Now, you'd think it couldn't get any worse... but it does. I've lost the use of the money for a period of time. I've proved that I did nothing wrong and that all the charges were legitimate. I've been credited the money for three of the five transactions and am waiting for the last two. I am now charged $15.50 for each charge back as a fee. A total of $77.50 in fees for $78.00 in charges that I processed correctly and within the letter of agreement with the card processors!!! Mr. Schumer, Ms. Gillibrand, Mr. Bishop – this is ridiculous. I lose the use of my money for weeks, then I have to pay a fee of 100% to get it back.

I write to you today in the hopes that you can appreciate both my frustration with the situation and that you can see just how ludicrous it is. I am a small merchant who is trying to get by, trying to provide employment, trying to pay my bills. I feel that I'm being nickel and dimed and $77.50'd by companies that are trying to shore up their revenues before the new credit card legislation takes effect. I ask your help if you too see the inherent wrong in this situation.

Sincerely,

Marc Miller
Owner

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