

# **WILLKIE FARR & GALLAGHER LLP**

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April 4, 2011

**Via FedEx**

John Read  
U.S. Department of Justice Antitrust Division  
Litigation III Section  
450 Fifth Street, NW  
Suite 4000  
Washington, DC 20530

Re: Product Validation Service

Dear John:

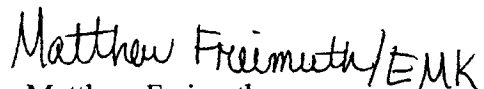
We write on behalf of MasterCard International Incorporated ("MasterCard") concerning the Product Validation Service that MasterCard intends to launch in August 2011, and to follow up on the Declaration of Brad Tomchek submitted in support of the United States' motion to enter the Proposed Final Judgment as to Defendants MasterCard International Incorporated and Visa Inc. MasterCard agrees that, if it were to modify or discontinue its Product Validation Service (through which MasterCard communicates to acquiring banks the MasterCard Product Code associated with a MasterCard card presented by a consumer or merchant at the point of sale) or impose or increase any fee to acquiring banks associated with the service, its action would constitute the adoption of a new practice (and thus constitute a "Rule") under Section II.15 of the Final Judgment.

MasterCard also agrees that, if it discontinues its Product Validation Service or imposes or increases any fee to acquiring banks associated with the service, it may be subject to Section IV of the Final Judgment. Specifically, MasterCard would be in violation of the Final Judgment if the United States presented facts sufficient to establish that MasterCard's action "directly or indirectly prohibits, prevents, or restrains any merchant in the United States" from engaging in any of the steering practices enumerated in Section IV.A.

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MasterCard makes the foregoing agreements solely with respect to the adoption, modification, discontinuance or pricing of the Product Validation Service described in the Declaration of Brad Tomchek. MasterCard takes no other positions and makes no further admissions regarding the interpretation of the Proposed Final Judgment beyond what is expressly stated herein, nor can this letter be used as evidence in any other potential dispute involving the interpretation of the Final Judgment.

Very truly yours,

  
Matthew Freimuth