

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000549-101

DATE: November 4, 2014

BY: THE HONOURABLE CHANTAL CORRIVEAU, J.S.C.

9085-4886 QUEBEC INC.
Petitioner

v.

VISA CANADA CORPORATION
and
MASTERCARD INTERNATIONAL INCORPORATED
and
BANK OF AMERICA CORPORATION
and
BANK OF MONTREAL
and
BANK OF NOVA SCOTIA
and
CANADIAN IMPERIAL BANK OF COMMERCE
and
CAPITAL ONE FINANCIAL CORPORATION
and
CITIGROUP INC.
and
FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC
and
NATIONAL BANK OF CANADA INC.
and

ROYAL BANK OF CANADA
and
TORONTO-DOMINION BANK
Respondents

JUDGMENT

Introduction

[1] On December 17, 2010, the Petitioner filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the "Motion for Authorization") against Respondents Visa Canada Corporation and MasterCard International Incorporated.

[2] On March 30, 2012, the Petitioner amended the Motion for Authorization to include Respondents Bank of America Corporation, Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Capital One Financial Corporation, Citigroup Inc., Fédération des caisses Desjardins du Québec, National Bank of Canada Inc., Royal Bank of Canada, and Toronto-Dominion Bank (the "Amended Motion for Authorization") on behalf of the following class:

"all residents in Quebec who, during some or all of the period commencing March 28, 2001 and continuing through to the present (the "Class Period"), accepted as a method of payment for the sale of a good or service Visa (the "Visa Class Members") or MasterCard (the "MasterCard Class Members") credit cards pursuant to the terms of merchant *agreements, or any other group to be determined by the Court;*"

[3] The Amended Motion for Authorization alleged, *inter alia*, that the Respondents were imposing significant anti-competitive restrictions on merchants to prevent them from encouraging customers to use lower-cost methods of payment and from declining to accept certain Visa and MasterCard credit cards with high fees.

[4] It is alleged that the result of such conduct caused the charging to the Visa and MasterCard Class Members of credit card processing fees and associated costs at a supracompetitive rate.

[5] On March 28, 2011, May 13, 2011, December 14, 2012 and January 24, 2013, four proposed class proceedings were initiated against the same Respondents alleging

substantially the same allegations in the provinces of British Columbia, Ontario, Alberta, and Saskatchewan¹.

[6] On June 13, 2012, this Court granted the Petitioner's Motion to Suspend until June 21, 2013 to allow the motion for certification² to proceed in the province of British Columbia³, on the condition that the Petitioner provide regular scheduled updates to the Court.

[7] Two additional class proceedings were commenced (the "MLG Proceedings"), namely:

- a) On July 12, 2012, The Crown & Hand Pub Ltd. commenced a proposed class proceeding in the Court of Queen's Bench of Saskatchewan under docket number 1206 of 2012 (the "Crown & Hand Action") against the same Respondents and alleging substantially the same allegations; and
- b) On July 13, 2012, 1023926 Alberta Ltd. commenced a proposed class proceeding in the Court of Queen's Bench of Alberta under docket number 1203 10620 (the "1023926 Alberta Action") against the same Respondents and alleging substantially the same allegations.

[8] There was no competing action filed in the province of Quebec⁴.

[9] On August 16, 2013, following negotiations between Class Counsel and Respondent Bank of America Corporation (the "Settling Respondent"), these parties reached a settlement agreement to fully and finally settle all claims asserted against the Settling Respondent in or related to the present Class Action.

[10] The settlement agreement was amended on July 7, 2014 (the "BofA Settlement Agreement")⁵.

[11] The BofA Settlement Agreement applies to persons who are members of the following classes:

¹ In the Supreme Court of British Columbia under court file number VLC-S-S-112003, in the Ontario Superior Court of Justice under court file number 11-426591, in the Court of Queen's Bench of Alberta under court file number 1203-18531, and in the Court of Queen's Bench of Saskatchewan under docket number 133 of 2013.

² "Certification" is the term used in the rest of Canada for authorization.

³ Court file number VLC-S-S-112003.

⁴ *Hotte c. Servier Canada inc.*, 1999 CanLII 13363 (QC CA); *Schmidt c. Johnson & Johnson inc.*, 2012 QCCA 2132.

⁵ Exhibit R-1.

Quebec MasterCard Settlement Class

"all Quebec resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Master Card Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment."

Quebec Visa Settlement Class

"all Quebec resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal person established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment."

[12] The Petitioner and the Settling Respondent have agreed to the terms of the BofA Settlement Agreement, the whole subject to the approval of this Court, and without any admission of liability whatsoever by the Settling Respondent and for the sole purpose of resolving the dispute between these parties.

Authorization

[13] The Settling Respondent consents to the authorization of the present Motion as a class proceeding for settlement purposes only, which consent shall be withdrawn should the BofA Settlement Agreement not be approved by the Court⁶.

[14] This Judgment, including the authorization of the class action against the Settling Respondent and the definitions of the Quebec MasterCard Settlement Class and the Quebec Visa Settlement Class, the Class Period and the Common Issue, is without prejudice to any position a Non-Settling Respondent may take in this or in any other proceeding on any issue, including the issue of whether the Quebec Proceeding should be authorized as a class action as against the Non-Settling Respondents. For greater certainty, this Judgment is not binding on and shall have no effect on the continuing proceedings as against the Non-Settling Respondents.

⁶ *Communication Méga-Sat inc. c. LG Philips LCD Co. Ltd.*, 2013 QCCS 5592; *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866; *Option Consommateurs c. Infineon Technologies, a.g.*, 2012 QCCS 6405.

[15] Where the respondent consents to the authorization of a class action for settlement purposes only, the criteria set forth at article 1003 C.C.P. must still be met⁷.

[16] Under reserve of the rights of the Settling Respondent and the Non-Settling Respondents, the Amended Motion for Authorization dated March 30, 2012, the Exhibits in support thereof and the Affidavit of the Petitioner dated October 6, 2014 justify granting the present Motion in accordance with the criteria set forth at article 1003 C.C.P. for settlement purposes only.

[17] The Petitioner and the Settling Respondent have agreed to seek authorization for the following identical, similar or related question of law or fact, namely:

Did BofA conspire with others to fix, maintain, and increase or control Interchange Fees paid by Merchants who accepted payment by Visa Credit Cards or Master Card Credit Cards in Canada during the Class Period?

[18] The facts alleged seem to justify the conclusions sought⁸.

[19] The composition of the group makes the application of article 59 or 67 C.C.P. difficult or impractical because:

- a) Potential Group Members are dispersed across Quebec;
- b) Given the costs and risks inherent in an action before the Courts, people could hesitate to institute an individual action against the Settling Respondent;
- c) Individual litigation of the factual and legal issues raised would increase delay and expenses to all parties and to the Court system.

[20] The Petitioner, who is requesting to obtain the status of representative declares that it will fairly and adequately protect and represent the interest of the Class Members since Petitioner declares that the:

- a) Is a Class Member;
- b) Was instrumental in instituting this class action and engaging counsel with experience in class actions;

⁷ *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Schachter c. Toyota Canada inc.*, 2014 QCCS 802; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534.

⁸ Articles 7 and 1457 of the *Civil Code of Québec*, LRQ, c C-1991, and sections 36, 45, 46 (1), and 61 (from the period of March 23, 2001 to March 11, 2009) of the *Competition Act*, RSC 1985, c C-34

- c) Provided its attorneys with relevant information and instructed them to proceed with the present proceedings;
- d) Ensured that the class members would be kept up-to-date through its attorneys' website;
- e) Participated in the settlement negotiations and provided input to its attorneys, ultimately instructing its attorneys to sign the BofA Settlement Agreement;
- f) Has a good understanding of what this class action is about and what the settlement provides to class members;
- g) Has performed its responsibilities as the representative of the class and it will continue to do so insofar as the proposed settlement is concerned;
- h) Has acted in the best interests of the Class Members;
- i) Has not indicated any possible conflict of interest with the Class Members.

Class Notice

[21] In accordance with the BofA Settlement Agreement and with the Plan of Dissemination (Schedule D to the Settlement Agreement)⁹, the Pre-Approval Notice will be published in the following manner:

- a) English language notices in two (2) high-circulation national daily newspapers – The Globe and Mail, national edition (English), and the National Post, national edition (English);
- b) There are also two (2) high-circulation daily newspapers proposed for the province of Quebec alone: La Presse (French) and The Gazette (English);
- c) English and French language notices, as appropriate, in seven (7) mass market national industry magazines – the Retail Council of Canada's Canadian Retailer Magazine, the Retail Council of Canada's Weekly e-Newsletter, the Canadian Convenience Stores Association's C-Store Life, the Canadian Restaurant and Foodservices News, the Grocery Business Magazine; the Canadian Business (Profit Report) - E-News; and the Canadian Business / PROFIT;

⁹ Exhibit R-4.

- d) English and French language notices, as appropriate, in twenty (20) industry associations whose members accept Visa or MasterCard credit cards as a means of payment for goods or services for voluntary distribution to their membership – the Retail Council of Canada, the Canadian Federation of Independent Businesses (CFIB), the Retail Merchants Association of Canada (Ontario) Inc., the Canadian Restaurant and Foodservices Association, the Canadian Convenience Stores Association, the Canadian Federation of Independent Grocers (CFG), the Food and Consumer Products of Canada, the Canadian Association of Chain Drug Stores, the Tourism Industry Association of Canada, the Canadian Independent Petroleum Marketers Association, the Canadian Jewellers Association, Small Business Matters, the Canadian Wireless Telecommunications Association (CWTA), the Canadian Association of Home and Property Inspectors, the Canadian Parking Association, the Association of Universities and Colleges of Canada, the Automotive Retailers Association, the Canadian Deals and Coupons Association, the Canadian Cosmetic, Toiletry and Fragrance Association, and the Canadian Franchise Association;
- e) E-mail to all persons who signed up on Class Counsels' websites;
- f) Posting in English and in French on Class Counsels' websites;
- g) A Request to the CBA National Class Action Registry to post the notice online;
- h) Posting on the website <http://www.creditcardclassaction.com>; and
- i) The possibility of issuing a press releases on Canada Newswire;

Exclusions:

[22] Following publications of notices, and in application of the agreement, there will be an opting out process.

[23] Although the authorization and proposal settlement only concern BofA as respondent, petitioner and counsel for BofA have agreed to a single opting out process.

[24] A person who opts-out will cease to be a proposed member of the applicable class in the ongoing litigation against the Non-Settling Defendants.

[25] A person who does not opt-out of this settlement agreement will have the opportunity to opt-out of the continuing litigation against the Non-Settling Defendants if and when the continuing litigation is certified against some or all of those Non-Settling Defendants.

[26] Other respondent which continue to contest the class actions proceedings have not taken any position with regard to the certification in Quebec of the class actions toward BofA nor on the proposal single opting out process.

[27] The Court is satisfied that this single opting out process is valid in view of the price fixing allegations. A person who wants to be excluded from the settlement will only have to file the exclusion form once. A person who does not file an exclusion form may have the opportunity to do it later if and when future settlements take place or following a judgment on the merit to be rendered:

POUR CES MOTIFS, LE TRIBUNAL : WHEREFORE, THE COURT:

[28] **ACCUEILLE** la présente requête;

[28] **GRANTS** the present motion;

[29] **ORDONNE** que, pour l'application du jugement, les définitions énoncées à la Convention de règlement BofA, R-1, s'appliquent et y sont incorporées par renvoi;

[29] **ORDERS** that for the purposes of this judgment, the definitions contained in the BofA Settlement Agreement, R-1, shall apply and are incorporated by reference;

[30] **AUTORISE** l'exercice de ce recours collectif contre l'Intimée Bank of America Corporation pour les fins d'un règlement hors cour seulement, sous réserve des conditions de la Convention de règlement BofA, R-1, sans préjudice aux droits des défenderesses non-participant à la Convention de règlement BofA, R-1;

[30] **AUTHORIZES** the bringing of a class action against Respondent Bank of America Corporation for the purposes of settlement only, subject to the terms of the BofA Settlement Agreement, R-1, without prejudice to the rights of the Non-Settling Respondents;

[31] **ATTRIBUE** au requérant le statut de représentant du groupe ci-après décrit:

[31] **ASCRIBES** to the Petitioner the status of representative of the groups herein described as:

Les membres du groupe de la
Convention de règlement

Quebec MasterCard Settlement Class

"all Quebec resident persons who,

MasterCard du Québec

«tous les résidents du Québec qui, au cours de la période visée par le recours collectif, ont accepté d'être payés pour la fourniture de biens ou de services au moyen de cartes de crédit MasterCard conformément aux modalités des conventions de commerçant, à l'exception des personnes exclues et de toute personne morale de droit privé, de tout partenariat ou de toute association qui, entre le 5 octobre 2003 et le 5 octobre 2004, comptait sous sa direction ou son contrôle plus de 50 personnes qui lui étaient liées par contrat de travail.»

Les membres du groupe de la Convention de règlement Visa du Québec

« tous les résidents du Québec qui, au cours de la période visée par le recours collectif, ont accepté d'être payés pour la fourniture de biens ou de services au moyen de cartes de crédit Visa conformément aux modalités des conventions de commerçant, à l'exception des personnes exclues et de toute personne morale de droit privé, de tout partenariat ou de toute association qui, entre le 5 octobre 2003 et le 5 octobre 2004, comptait sous sa direction ou son contrôle plus de 50 personnes qui lui étaient liées par contrat de travail.»

during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment."

Quebec Visa Settlement Class

"all Quebec resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal person established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment."

[32] IDENTIFIE aux fins de règlement, la question commune comme étant la suivante :

[32] IDENTIFIES for the purposes of settlement, the common issue as follows:

"Did BofA conspire with others to fix,

« La BofA a-t-elle comploté avec d'autres pour fixer, maintenir, augmenter ou contrôler les commissions d'interchange versés par les commerçants qui ont accepté d'être payés par cartes de crédit Visa ou MasterCard au Canada au cours de la période visée par les recours collectifs? »

maintain, increase or control Interchange Fees paid by Merchants who accepted payment by Visa Credit Cards or MasterCard Credit Cards in Canada during the Class Period?"

[33] **ORDONNE** que l'Audience d'Approbation du Règlement au Québec soit tenue à une date et à une heure à être déterminée, en salle 2.08 [ou toute autre salle d'audience, qui sera indiquée par avis affiché à l'extérieur de la salle d'audience 2.08] au palais de justice de Montréal, 1, rue Notre-Dame Est (l'« Audience d'Approbation du Règlement »), où cette Cour devra alors décider :

- a) s'il convient d'approuver la Convention de règlement BofA comme étant juste, raisonnable et dans le meilleur intérêt des Membres du Groupe du Québec;
- b) si la requête des Procureurs du Groupe relativement aux frais, débours et taxes applicables devrait être accordée; et
- c) toutes autres questions que la Cour peut juger appropriées;

[34] **DÉCLARE** que l'ensemble de la Convention de règlement BofA, R-1, (incluant son Préambule, ses Annexes et ses Amendements) (ci-après « la

[33] **ORDERS** that the Hearing for Settlement Approval in Québec is to be held on a date and at a time to be determined, in room 2.08 [or any other courtroom, which will be indicated by the posting of a sign outside of courtroom 2.08] at the Montreal Courthouse, 1, Notre-Dame Street East (the "Settlement Approval Hearing"), at which time this Court will be asked to decide:

- a) whether to approve the Settlement Agreement as fair, reasonable and in the best interests of the Québec Class Members;
- b) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted; and
- c) any other matters as the Court may deem appropriate;

[34] **DECLARES** that the BofA Settlement Agreement, R-1, in its entirety (including its Preamble, its Schedules, and its Amendments) (hereinafter "the BofA

Convention de règlement BofA R-1 ») fait partie intégrale du présent jugement;

Settlement Agreement R-1") is an integral part of this judgment;

[35] **APPROUVE** l'Avis de pré approbation essentiellement en la forme de l'avis joint comme l'Annexe « C » à la Convention de règlement BofA R-1 et ci-jointe comme R-3;

[35] **APPROVES** the Pre-Approval Notice substantially in the form as set forth in Schedule C to the BofA Settlement Agreement R-1 and attached hereto as R-3;

[36] **ORDONNE** que l'Avis de préapprobation soit publié et diffusé essentiellement en conformité avec le Plan de Diffusion joint comme annexe « D » à la Convention de règlement BofA R-1 et ci-jointe comme pièce R-4;

[36] **ORDERS** that the Pre-Approval Notice shall be published and disseminated substantially in accordance with the Plan of Dissemination as set forth in Schedule D to the BofA Settlement Agreement R-1 and attached hereto as Exhibit R-4;

[37] **ORDONNE** que la date et l'heure pour la tenue de l'Audience d'Approbation du Règlement soient indiquées dans l'Avis, bien qu'elles puissent être reportées par la Cour sans autre avis signifié aux Membres du Groupe, exception faite de l'avis qui sera affiché sur le site web du Règlement (le « site web du Règlement »);

[37] **ORDERS** that the date and time of the Settlement Approval Hearing shall be set forth in the Notice, but may be subject to adjournment by the Court without further publication notice to the Class Members other than such notice which will be posted on the settlement website (the "Settlement Website");

[38] **APPROUVE** la forme et le contenu du Formulaire de demande d'exercice du droit d'exclusion, comme étant l'Annexe « B » de la Convention de règlement BofA R-1 et la pièce R-5 de la présente;

[38] **APPROVES** the form and content of the Opt-Out Form, as Schedule B of the BofA Settlement Agreement R-1 and Exhibit R-5 herein;

[39] **ORDONNE** que chaque membre du groupe qui désire s'exclure des groupes de la Convention de règlement et, par conséquent, ne pas être lié par la Convention de règlement BofA, soit tenu d'agir conformément à la Convention de

[39] **ORDERS** that each Class Member who wishes to opt-out of the Settlement Classes, and thus not be bound by the BofA Settlement Agreement, must do so in conformity with the BofA Settlement Agreement and with the Opt-Out Form, R-5, (Schedule B of the BofA Settlement

règlement BofA et au Formulaire de demande d'exercice du droit d'exclusion, R-5, (Annexe « B » de la Convention de règlement BofA R-1);

Agreement R-1);

[40] **DÉTERMINE** que l'échéance pour l'exercice du droit d'exclusion des groupes de la Convention de règlement, sera 60 jours après publication de l'Avis;

[40] **DETERMINES** that the deadline for opting out of the Settlement Classes will be 60 days after the Notice is published;

[41] **ORDONNE** que Epiq Systems soit provisoirement nommé Administrateur des exclusions aux fins d'aide à la publication de l'Avis, l'administration des griefs, les demandes d'exclusion, et tâches connexes et devra fournir aux procureurs des parties une copie de toutes des demandes d'exclusion valides reçues;

[41] **ORDERS** that Epiq Systems shall be provisionally appointed as Opt-Out Administrator for the purposes of assisting with the publication of the Notice, administration of objections, opt-out requests, and related tasks and that it shall provide counsel for all parties with copies of all valid opt-outs received;;

[42] **ORDONNE** qu'un exemplaire du présent jugement soit affiché sur les sites web des Procureurs du Groupe;

[42] **ORDERS** that a copy of this Judgment shall be posted on Class Counsels' websites;

[43] **ORDONNE** qu'une version traduite de la Convention de règlement soit disponible pour fins de consultation par les Membres du Groupe de règlement tel qu'indiqué dans l'Avis;

[43] **ORDERS** that a translated version of the Settlement Agreement be made available to Settlement Class Members as per the Pre-Approval Notice for consultation purposes;

[44] **DÉCLARE** que la version anglaise de la Convention de règlement constitue l'entente entre les parties et que dans l'éventualité d'un conflit quant à son interprétation ou son application, la version anglaise aura préséance sur la traduction française;

[44] **DECLARES** that the English version of the Settlement Agreement is the true agreement between the parties and shall prevail over the French translation in the event of any contradiction between the two;

[45] **DÉCLARE** que dans le cas de divergence entre les conclusions françaises et anglaises de ce jugement, la version française prévaudra;

[45] **DECLARES** that in the case of any discrepancy between the French and English conclusions of this judgment, the French version will prevail;

LE TOUT, sans frais.

THE WHOLE, without costs.


CHANTAL CORRIVEAU, J.S.C.

Me Jeff Orenstein
Me Andrea Grass
CONSUMER LAW GROUP INC.
Attorneys for the Petitioner

Reidar Mogerman
Camp Fiorante Matthews Mogerman
Attorneys for the Petitioner

Me Ariane Bisailon
Blake, Cassels & Graydon
Attorneys for the Respondent VISA CANADA CORPORATION

Me Sidney Elbaz
McMillan
Attorneys for Respondent MASTERCARD INTERNATIONAL INCORPORATED

Me Pascale Dionne-Bourassa
BDBL
Me Michael Eizenga
Bennett Jones LLP - Toronto
Attorneys for Respondent BANK OF AMERICA CORPORATION

Me Silvana Conte
Osler, Hoskin & Harcourt
Attorneys for Respondent BANK OF MONTREAL

Me Christopher Maughan
Borden Ladner Gervais
Attorneys for Respondent BANK OF NOVA SCOTIA

Me Yves Martineau
Stikeman Elliot
Attorneys for Respondent CANADIAN IMPERIAL BANK OF COMMERCE

Me Chanelle Charron-Watson
Woods
Attorneys for Respondent CAPITAL ONE FINANCIAL CORPORATION

Me Paule Hamelin
Gowling Lafleur Henderson
Attorneys for Respondent CITIGROUP INC.

Me Chantal Chatelain
Me Vincent de l'Étoile
Langlois Kronström Desjardins
Attorneys for Respondent FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC

Me Eric Lefebvre
Me Maya Angenot
Norton Rose
Attorneys for Respondent NATIONAL BANK OF CANADA INC.

Me Philippe Charest- Baudry
Fasken Martineau
Attorneys for Respondent ROYAL BANK OF CANADA

Me Mason Poplaw
McCarthy Tétrault
Attorneys for Respondent TORONTO-DOMINION BANK

Date of hearing: October 14, 2014

Annexe "C"
**Avis de certification et d'autorisation
de recours collectif et de l'audience en approbation
d'une entente de règlement**

Si vous avez accepté les cartes de crédit Visa ou MasterCard comme moyen de paiement pour des biens ou des services après le 23 mars 2001, vos droits pourraient être affectés par ce projet de règlement des recours collectifs nationaux avec Bank of America.

Les Recours Collectifs du Consortium de Cartes de Crédit

Des recours collectifs ont été entrepris en Colombie-Britannique (le "Recours CB"), Alberta, Saskatchewan, Québec et Ontario (collectivement, les "Recours Collectifs du Consortium de Cartes de Crédit") contre la Corporation Visa Canada ("Visa"), MasterCard International Inc. ("MasterCard") et certaines banques et institutions financières émettrices de cartes de crédit (les "Banques Émettrices"), alléguant que Visa et MasterCard ont comploté avec leurs banques émettrices et les Acquéreurs en fixant le montant des frais d'interchange et en imposant des règles limitant la capacité des commerçants à surcharger ou à refuser les cartes de crédit Visa et MasterCard à coûts plus élevés (un "Acquéreur" est une organisation ou une personne qui a conclu un contrat avec un commerçant pour la fourniture de services pour les cartes de crédit Visa ou les cartes de crédit MasterCard et facturant des Frais d'Escompte de Commerçants, y compris les frais d'interchange au Canada). Le 27 mars 2014, le Recours CB a été certifié en tant que recours collectif contre tous les défendeurs. Cette décision est actuellement en appel.

Le Règlement

Bien que la Corporation Bank of America et la Banque BofA Canada, anciennement la Banque MBNA Canada, filiale de la Corporation Bank of America (collectivement, "BofA"), nient toute responsabilité, elles ont conclu un règlement national avec les demandeurs (le "Règlement BofA"), sous réserve de l'approbation des tribunaux de la Colombie-Britannique, de l'Alberta, de la Saskatchewan, du Québec et de l'Ontario (les "Tribunaux"). BofA versera 7 750 000 \$CDA (le "Montant du Règlement") au profit des Membres du Règlement des Recours Collectifs (voir ci-dessous) et coopérera dans le cadre de la poursuite des recours contre les défendeurs ne réglant pas, en échange d'une quittance totale des réclamations contre elle et ses entités apparentées.

Si le Règlement BofA est approuvé, les Avocats du Consortium demanderont aux Tribunaux d'approuver la déduction de certains montants (collectivement, les "Dépenses Approuvées par les Tribunaux") du Montant du Règlement, y compris les coûts encourus pour la distribution de cet avis et les coûts encourus pour traiter les demandes d'exclusion, les commentaires et les objections (voir ci-dessous), de même que les honoraires d'avocats jusqu'à un maximum de 25% des montants recouvrés et les déboursés.

Comme les procédures en Recours collectifs du Consortium de Cartes de Crédit continueront contre les autres défendeurs, il est proposé que la balance du Montant du Règlement après la déduction de toutes les Dépenses Approuvées par les Tribunaux soit détenue en fiducie pour les Membres du Règlement des Recours Collectifs en attendant de nouveaux règlements ou des décisions qui pourraient justifier un effort de répartition ou la fin des Recours Collectifs du Consortium de Cartes de Crédit. À ce moment, un protocole de répartition sera créé et soumis aux Tribunaux pour approbation et un nouvel avis sera fourni aux Membres du Règlement des Recours Collectifs. Si vous souhaitez recevoir directement un avis relatif à tous les efforts de répartition, veuillez vous inscrire au <site d'inscription>, ou contacter l'un des Avocats du Consortium nommés ci-dessous.

Certification/autorisation de recours collectif pour fins de règlement

Afin de mettre en œuvre le Règlement BofA, les Tribunaux ont certifié/autorisé tous les Recours Collectifs du Consortium de Cartes de Crédit comme recours collectif contre la Corporation Bank of America (le "Défendeur Régulant") uniquement à des fins de règlement et ce, de manière distincte et en marge de la certification du Recours CB contre tous les défendeurs

Qui sont les Membres du Règlement des Recours Collectifs?

Vous êtes un Membre du Règlement des Recours Collectifs si vous avez accepté les cartes de crédit Visa et/ou les cartes de crédit MasterCard comme moyen de paiement pour des biens ou des services et avez encouru des Frais d'Escompte de Commerçants, y compris les frais d'interchange au Canada depuis le 23 mars 2001. Tous les Membres du Règlement des Recours Collectifs sont touchés par cet avis, qu'ils aient ou non une réclamation ou réclamation potentielle contre BofA.

Audiences de l'Approbation du Règlement

Les audiences pour obtenir l'approbation du Règlement BofA, les honoraires d'avocats jusqu'à un maximum de 25% des montants recouvrés et les déboursés payables à partir du Montant du Règlement auront lieu le <date> à <heure CB> (Colombie-Britannique), <date> à <heure AB> (Alberta), <date> à <heure SK> (Saskatchewan), <date> à <heure QC> (Québec) et <date> à <heure ON> (Ontario). Toute personne peut assister aux audiences, mais si vous désirez faire des représentations à la Cour, veuillez informer l'Administrateur de Désengagement (Epiq Systems) *.

Si vous souhaitez fournir des commentaires écrits ou des objections concernant le Règlement BofA, vous devez les faire parvenir à l'Administrateur de Désengagement * dans les <7 jours avant la première audience relative à l'approbation du règlement>. Les commentaires ou objections seront fournis à la Cour pour considération et pour approuver ou rejeter le règlement BofA.

Droit de Retrait des Recours Collectifs

Si vous êtes membres visés par le Règlement des Recours Collectifs et que vous souhaitez participer au Règlement BofA et aux Recours Collectifs du Consortium de Cartes de Crédits, vous n'avez pas besoin de faire quoi que ce soit en ce moment.

Si vous êtes membres visés par le Règlement des Recours Collectifs et ne voulez pas participer au Règlement BofA ou aux Recours Collectifs du Consortium de Cartes de Crédit, vous devez vous exclure par écrit en remplissant une Demande d'exclusion (disponible au www.creditcardclassaction.com) et l'envoyer à l'Administrateur de Désengagement * par ♦. Si le Règlement BofA est approuvé, ce sera la seule occasion de vous retirer des Recours Collectifs du Consortium de Cartes de Crédit. Si vous ne vous retirez pas, et que le Règlement BofA est approuvé, vous serez lié par les résultats des Recours Collectifs du Consortium de Cartes de Crédit.

Si vous vous retirez, vous ne serez pas en droit de recevoir une somme du Règlement BofA ou tout autre règlement ou de bénéficier de tout jugement rendu dans le cadre des Recours Collectifs du Consortium de Cartes de Crédit.

POUR PLUS D'INFORMATIONS sur l'état des audiences d'approbation ou sur la façon de s'exclure des Recours Collectifs du Consortium de Cartes de Crédit, de commenter ou de s'objecter au Règlement BofA, ou pour consulter le Règlement BofA et une liste des autres définitions qui s'appliquent au présent avis, visitez le www.creditcardclassaction.com, qui sera périodiquement mis à jour avec des informations sur le processus d'approbation du Règlement BofA et les Recours Collectifs du Consortium de Cartes de Crédit.

* Pour les communications avec l'Administrateur de Désengagement, Epiq Systems contactez le <>, email <>, fax <> ou écrire au <adresse>.

Les AVOCATS DU CONSORTIUM peuvent être rejoint au info@creditcardclassaction.com et sont les suivants:

- Branch MacMaster LLP at (604) 654-2999 (Luciana Brasil)
- Camp Fiorante Mathews Mogerman at (604) 689-7555 (David Jones)
- Consumer Law Group (for Quebec residents) at 1-888-909-7863 x220 (Jeff Orenstein)

Cet avis est approuvé par les Tribunaux.

Schedule "B"
Credit Cards Class Actions Opt-Out Form

For the purposes of this Opt-Out Form, the following definitions apply:

"BofA Settlement" means the settlement agreement made as between the Plaintiffs in the Consortium Credit Card Class Actions and Bank of America Corporation, a copy of which is available at www.creditcardclassaction.com.

"Consortium Credit Card Class Actions" means the following five actions:

- *Watson v Bank of America Corporation et al*, SCBC No. VLC-S-S-112003 (Vancouver)
- *Bancroft-Snell et al v Visa Canada Corporation et al*, OSCJ No. CV-11-426591CP (Toronto)
- *9085-4886 Quebec Inc and Bakopanos v Visa Canada Corporation et al*, Superior Court of Quebec No. 500-06-000549-101 (Montreal)
- *Macaronies Hair Club and Laser Center Inc operating as Fuze Salon v BofA Canada Bank et al*, Alberta QB File No. 1203-18531 (Edmonton); and
- *Hello Baby Equipment Inc. v. BofA Canada Bank and others*, SK QB No. 133 of 2013 (Regina).

By completing and returning this Opt-Out Form as set out below, you are choosing:

- 1) **not** to take part in the BofA Settlement,
- 2) **not** to participate in the ongoing prosecution of the Consortium Credit Card Class Actions against the other defendants, AND
- 3) **not** to participate in any future settlements reached in the Consortium Credit Card Class Actions.

If you complete this Opt-Out Form you will not be bound by the BofA Settlement or the release in the BofA Settlement, but you will also not be entitled to share in any of the proceeds that may become available to merchants as part of the BofA Settlement, or as a result of the continued prosecution of the Consortium Credit Card Class Actions or future settlements.

In order to be effective, this form must be fully completed and sent to the Opt-Out Administrator at the address set out below, and must be postmarked no later than **DATE**. Opt-Out Forms received after **DATE** will not be accepted.

For more information on the BofA Settlement Agreement and the ongoing Consortium Credit Card Class Actions, please visit www.creditcardclassaction.com

Name of business*: _____ (required)

* Provide the name of the person or legal entity accepting Visa or MasterCard credit cards. This is probably the name listed on the statements you receive from your payment processor.

Name of payment processor: _____ (required)

Your name: _____ (required)

Your address: _____ (required)

Your telephone number: (____) ____ - ____ (required)

Your email address: _____ (optional)

Declaration:

I declare that I have legal authority to bind the business named above, and I wish to opt out of the BofA Settlement and of the ongoing Consortium Credit Card Class Actions. I understand that by submitting this Opt-Out Form I will not receive any benefits under the BofA Settlement but will not be bound by the BofA Settlement.

Signature

Date

Return completed Opt-Out Forms to:

<Epiq's info and designated recipient>

Schedule "B"
Legal Notice

If you entered into a merchant agreement between March 23, 2001 and continuing through to the present, your rights could be affected by the proposed national class actions settlement.

The Class Actions

Class action lawsuits were commenced in British Columbia, Alberta, Saskatchewan, Quebec and Ontario (the "Class Proceedings") against Visa Canada Corporation ("Visa"), MasterCard International Incorporated ("MasterCard") and banks which issue their credit cards ("Issuing Banks") alleging they conspired in setting the amount of and rules relating to merchant discount fees, including interchange fees.

The Settlement

Although Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, affiliate of Bank of America Corporation (collectively, "BofA"), deny liability, they have reached a national settlement with the plaintiffs, subject to approval of the courts in British Columbia, Alberta, Saskatchewan, Quebec and Ontario (the "Courts"). BofA will pay CAD \$7,750,000 for the benefit of the Visa and MasterCard Class members (as defined in the Class Proceedings) and provide cooperation that will assist with prosecuting the ongoing actions against the non-settling defendants in exchange for a full release of claims against it and its related entities.

Certification/Authorization as Class Proceedings for Settlement Purposes

The Courts have certified/authorized the actions as class proceedings against BofA for settlement purposes only.

Settlement Class Members

You are a settlement class member if you entered into a merchant agreement with an acquirer for the provision of Visa or MasterCard credit card services and incurred merchant discount fees, including interchange fees, in Canada between March 23, 2001 and continuing through to the present.

Opting Out of the Class Proceedings

If you fall within within the Settlement Class (as defined in the Class Proceedings) and wish to participate in the Class Proceedings, you do not need to do anything at this time.

- 2 -

If you fall within the Settlement Class and do not want to participate in the Class Proceedings, you must opt-out (exclude yourself) in writing at this time. The deadline to opt out of the class actions is ♦. No further right to opt-out will be provided in the Canadian Proceedings as it relates to the action against BofA.

Hearings to consider approval of the settlement with BofA, counsel fee and disbursements payable from the settlement amount will be heard on <date> at <BC time> (British Columbia), <date> at <AB time> (Alberta) , <date> at <SK time> (Saskatchewan), <date> at <QC time> (Quebec) and <date> at <ON time> (Ontario).

If you do not wish to participate in the Class Proceedings but wish to comment on or object to the settlement with BofA, you must do so by ♦.

FOR INFORMATION on the approval hearings or the settlement or on how to opt out of the Class Proceedings or object to the settlement with BofA, visit www.creditcardclassaction.com or call toll-free 1-800-689-2322 or email ♦.

Settlement class members should periodically monitor www.creditcardclassaction.com for updated information on the Class Proceedings. This notice is approved by the Courts.