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NEW YORK | WASHINGTON

October 15, 2009

VIA FIRST CLASS MAIL, ELECTRONIC MAIL AND ECF

Special Master Robin M. Wilcox
459 Columbus Avenue, #603
New York, New York 10024

Re: *In re Visa Check/MasterMoney Antitrust Litigation, CV-96-5238 (JG)(JO)*

Dear Special Master Wilcox:

On September 29, 2009, Lead Counsel sought final approval of the payment of \$2,840,000 in “Break-up Fees” to the “Bankers” – Barclays Capital Inc. (“Barclays”) and Citigroup Global Markets Inc. (“Citigroup”) – retained in connection with the securitization of the remaining settlement account payments from MasterCard International Incorporated (“MasterCard”) (the “MasterCard Securitization”). See Exhibit 1. On October 1, 2009, the Court denied Lead Counsel’s application, without prejudice, and directed Lead Counsel to explain why the engagement letter with the Bankers provides for an increase in the “Break-up Fees” in the event that the Bankers distribute an “Offering Document” and begin marketing the securities. See Exhibit 2. For the reasons set forth below, Lead Counsel hereby renews its September 29, 2009 application for Court approval of the payment of the Break-up Fees to the Bankers.

The Engagement Letter

In the January 12, 2009 engagement letter between Lead Counsel and the Bankers (the “Engagement Letter”), the Bankers were retained as “exclusive co-Placement Agents, Joint Structuring Agents, Joint Bookrunning Managers and Joint Arrangers” in connection with the MasterCard Securitization. See Exhibit 3 at 1. The Engagement Letter was approved by the Court on March 10, 2009. See Exhibit 4.

Section 8 of the Engagement Letter, entitles the Bankers to certain “Break-up Fees” in the event the securitization did not proceed because MasterCard prepaid its obligations. That section provides in relevant part:

In the event that MasterCard prepays its obligations . . . on a discounted basis agreed to by [Lead Counsel], each of the [Bankers] shall be entitled to a payment in an amount equal to

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\$333,000. Such payment is payable on the closing date of such prepayment.

In the event that the [Bankers] have distributed an Offering Document to potential investors and are marketing the Securities, and during such marketing effort MasterCard prepays its obligations on a discounted basis agreed to by [Lead Counsel], each of the [Bankers] shall be entitled to a payment in an amount equal to \$1,420,000 . . . payable on the closing date of such prepayment. (Each amount identified in this paragraph and the preceding paragraph is referred to herein as a “Break-up Fee” and collectively as the “Break-up Fees”.) The payment of all Break-up Fees shall be subject to final approval by the Court.

See Exhibit 3 at 5-6. In addition, Section 7 of the Engagement Letter entitles the Bankers to reasonable expenses. See *id.* at 5.

The structure and amount of the Break-up Fees in the Engagement Letter are consistent with those set forth in Lead Counsel’s previously Court-approved May 2006 engagement letters with Deutsche Bank Securities Inc. and Bear Stearns & Co. Inc. as underwriters for the MasterCard Securitization. See Exhibit 5 (paragraph 8 of each annexed engagement letter annexed thereto).

The Break-Up Fees

As the Court is aware, on July 1, 2009, Lead Counsel and MasterCard entered into a “Prepayment Agreement” whereby MasterCard agreed to pay \$335,000,000 by September 30, 2009, in full satisfaction of all of its payment obligations to Plaintiffs.¹ See Exhibits 6. The MasterCard Securitization was expected to close by the end of July and considerable efforts had already been expended by the Bankers documenting and marketing the transaction. MasterCard’s initial prepayment offer was not made until June 16, 2009, after the Offering Document – the Private Placement Memorandum, dated June 3, 2009 – was distributed to investors. MasterCard, having been advised of such distribution, itself requested a copy. By the time MasterCard ultimately made its prepayment offer, the Bankers had already:

- Agreed on the structure of the transaction;
- Completed and distributed the Private Placement Memorandum to approximately 50 potential investors;
- Produced a financial model and funds flow;

¹ That Prepayment Agreement was approved by the Court on August 21, 2009. See Exhibit 7.

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- Reviewed and agreed on legal documentation;
- Participated in discussions with Standard & Poor's; and
- Mobilized the sales force and undertaken extensive discussion with investors over a 2-week period.

In light of the above, and consistent with the Engagement Letter, Barclays and Citigroup have submitted invoices to Lead Counsel totaling \$1,421,826.00 and \$1,420,247.28, reflecting their respective Break-up Fees, plus expenses. *See* Exhibit 8.

"Break-up Fees" are standard in the industry and are designed to compensate a financial institution for work that it completed in connection with an engagement of services in the event that the issuer (in this case, Lead Counsel, as binding representative and agent of the Plaintiff Class) elects to terminate the engagement or enters into a similar transaction with another party. It is typical for engagement letters to include this protection, which ensures that financial institutions do not devote valuable resources to a transaction only to have the issuer terminate the engagement or use the work product as leverage to secure another transaction via a third party. Such protection is particularly appropriate where that risk is easily identifiable in advance of commencing work. Structured transactions, such as the MasterCard Securitization, generally require significantly longer lead time and more work by the Bankers, as placement agents. The "Break-up" compensation for a structured transaction, therefore, is typically tied to certain milestones including: (i) the initial rating agency presentation, (ii) the completion of offering materials and documentation, and (iii) approaching investors with an investment offer. As each milestone is achieved, it is customary for the fee to increase, with the final milestone, the launch of the offering to the investors by the Bankers, typically resulting in the highest Break-up Fee.

With respect to the MasterCard Securitization, the Break-up Fee provision and structure was an especially important term negotiated by the Bankers in light of the possibility of MasterCard prepaying its obligations under MasterCard's Settlement Agreement with the Plaintiffs and thereby terminating the proposed securitization at any point in the process. Termination after the launching of the transaction, as occurred here, presents significant reputational risk for the Bankers. The fee structure, therefore, included a simplified two tiered Break-up Fee, which increased from \$333,000 to \$1,420,000 in the event that MasterCard elected to prepay the obligations at a discount after an Offering Document was distributed to investors. Not only had the transaction documentation been essentially completed and the Private Placement Memorandum distributed to investors, but the Bankers incurred the costs and risks associated with going to market with a transaction that ultimately failed to close. Because the Bankers negotiated protections into the Engagement Letter in the event that very circumstance materialized, Lead Counsel respectfully submits that they are entitled to the benefit of that bargain.

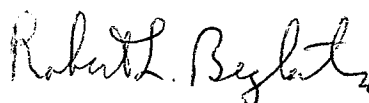
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Conclusion

Accordingly, given that the Bankers distributed an Offering Document to potential investors and were marketing the securities at the time of MasterCard's prepayment offer, Lead Counsel respectfully requests final approval from the Court to pay the Bankers' invoices for their respective Break-up Fees, plus expenses, from the Settlement Fund in accordance with the terms of the Engagement Letter.

Respectfully submitted,



Robert L. Begleiter

Enclosures

cc: George W. Sampson, Esq. (*via electronic mail*)
Co-Lead Counsel for the Plaintiffs

Bret Ganis, Esq.
Legal Counsel for Barclays Capital Inc.

Jane S. Chwe, Esq.
Legal Counsel for Citigroup Global Markets Inc.

Exhibit 1

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September 29, 2009

VIA HAND DELIVERY AND ECF

The Honorable John Gleeson
United States District Court Judge
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: **Visa Check/MasterMoney Antitrust Litigation (CV-96-5238)(JG)(JO)**

Dear Judge Gleeson:

Lead Counsel is writing to seek final approval of the payment of "Break-up Fees" owed to the "Bankers" – Barclays Capital Inc. ("Barclays") and Citigroup Global Markets Inc. ("Citigroup") – retained in connection with the securitization of the remaining settlement account payments from MasterCard International Incorporated ("MasterCard"). Sections 8 of the January 12, 2009 engagement letter between Lead Counsel and the Bankers (see Exhibit A)¹ provides that:

[i]n the event that the [Bankers] have distributed an Offering Document to potential investors and are marketing the Securities, and during such marketing effort MasterCard prepays its obligations on a discounted basis agreed to by [Lead Counsel], each of the [Bankers] shall be entitled to a payment in an amount equal to \$1,420,000 . . . payable on the closing date of such prepayment. (Each amount identified in this paragraph and the preceding paragraph is referred to herein as a "Break-up Fee" and collectively as the "Break-up Fees".) The payment of all Break-[u]p Fees shall be subject to final approval by the Court.

Section 7 of the engagement letter also entitles the Bankers to reasonable expenses.

Barclays and Citigroup have submitted invoices to Lead Counsel totaling \$1,421,826.00 and \$1,420,247.28, reflecting their respective Break-up Fees. Subject to final approval by the Court, these amounts are due on September 30, 2009, the closing date for the prepayment from

¹ The Court approved the engagement letter by an Order dated March 10, 2009. See Exhibit B.

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September 29, 2009
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MasterCard. Accordingly, Lead Counsel requests final approval from the Court to pay the attached invoices from the Settlement Fund.

Respectfully submitted,


Robert L. Begleiter

Attachments

cc: Special Master Robin Wilcox, Esq. (*via email*)

EXHIBIT A

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Robert L. Begleiter
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March 5, 2009

PRIVILEGED AND CONFIDENTIAL

BY ECF

The Honorable John Gleeson
United States District Court Judge
For the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Visa Check/MasterMoney Antitrust Litigation, (CV-96-5238)(JG)(JO)

Dear Judge Gleeson:

Lead Counsel respectfully submits for the Court's approval the attached engagement letter (the "Agreement") entered into between Lead Counsel and underwriters Barclays Capital Inc. ("Barclays") and Citigroup Global Markets Inc. ("Cit") (collectively, the "Underwriters"), attached as Exhibit A. Under the terms of the Agreement, the Agreement is effective only after Court approval. Lead Counsel hereby requests that approval.

This Agreement was entered into for the purpose of securitizing the MasterCard International Inc. ("MasterCard") Net Settlement Fund (the "Settlement Fund"). In accordance with Section 11 of the August 16, 2005 Amended Plan of Allocation for the Settlement Fund (the "Amended Plan") and as a result of the process described below, Lead Counsel believes that it may be in the best interests of the Class Claimants (i.e. those Class Members who filed approved claims) to securitize the Settlement Fund. Once the securitization of the Settlement Fund is complete, Lead Counsel anticipates securitizing the Visa U.S.A. Inc. ("Visa") Net Settlement Fund.

The Settlement Agreements in this case require Visa and MasterCard to make installment payments to their respective Settlement Funds Accounts (as defined in the Settlement Agreements) through December 22, 2012. As discussed in the Amended Plan at Section 11.2, in

The Court previously approved the engagement letters of Deutsche Bank Securities Inc. and Bear Stearns & Co. Inc. to act as underwriters in the securitization of the Net Settlement Funds in this case. See August 29, 2006 Order. As described more fully below, these two engagement letters are no longer in force, and Lead Counsel therefore requests the Court's approval of this Agreement as a substitute for the previously approved engagement letters. This Agreement is identical in most parts to those terms set forth in the previously approved engagement letters.

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a securitization, the unpaid installments due to each Settlement Fund Account would be assigned to a trust or other entity (each, an "Issuer"). Separate Issuers would be created for the Visa securitization and the MasterCard securitization. The Underwriters, hired by Lead Counsel and acting as underwriters on behalf of each Issuer, will structure the securities to be issued by each Issuer and to be sold to investors.² The securities will be secured by the right to the Settlement Fund resulting from future payments by MasterCard to the Settlement Fund Account. The goal of this structuring will be to convert the MasterCard obligations into securities that will be treated as market instruments, thereby maximizing the proceeds to Class Claimants.

If successful, this securitization would result in Class Claimants being paid upfront by the purchasers of these securities for the stream of payments that MasterCard is required to make through 2012. Since these securities represent a claim on the future payments to be made by MasterCard, they will be sold at a discount to the face value of the Issuer's holdings (i.e., the sum of future installments). The discount will be determined based on then-current interest rates, market conditions and other factors related to MasterCard's creditworthiness.

Replacement of Bear Stearns with Barclays and Cit

On August 29, 2006, the Court approved the engagement letters of Deutsche Bank Securities Inc. ("Deutsche Bank") and Bear Stearns & Co. Inc. ("Bear Stearns") to act as underwriters in the securitization of the Net Settlement Funds in this case. See August 29, 2006 Order. In March 2008, Deutsche Bank terminated its engagement as underwriter.

In May 2008, JP Morgan Securities Inc. ("JP Morgan") acquired Bear Stearns and assumed all obligations under the previously approved engagement letter. Following receipt of a preliminary rating indication from Standard and Poor's ("S&P") in June 2008, Lead Counsel intensified its efforts to complete the structuring of the securitization with the Bear Stearns team that was in the process of being integrated into JP Morgan. In September 2008 JP Morgan informed Lead Counsel that as part of its realignment after acquiring Bear Stearns, JP Morgan was no longer interested in pursuing the securitization unless Lead Counsel agreed to increase JP Morgan's potential fees substantially from the amount originally agreed upon in the engagement letter with Bear Stearns. In the view of Lead Counsel, increasing the fees was not in the best interests of Class Claimants, and the engagement letter with JP Morgan was terminated.

Following JP Morgan's termination, Lead Counsel interviewed three potential banks and selected Barclays and Cit as the replacement underwriters for the securitization. Lead Counsel has agreed with the Underwriters on fees that are similar to those in the engagement letter with Bear Stearns that has already been approved by the Court.

² The offer of the securities will be made pursuant to an exemption from the Securities Act of 1933, either Rule 144A under that Act or Section 4(2). Thus, the Underwriters technically will not be "underwriters" for '33 Act purposes nor will the placement of the securities be an "underwriting."

