Robert L. Begleiter
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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

> $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-[u]p 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.

- 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.

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

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

CONSTANTINE | CANNON

Robert L. Begleiter
Attorney at Law
212-350-2707
rbegleiter@constantinecannon.com

NEW YORK | WASHINGTON

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.

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

CONSTANTINE | CANNON

Robert L. Begleiter
Attorney at Law
212-350-2707
rbegleiter@constantinecannon.com

NEW YORK | WASHINGTON

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. ("Citi") (collectively, the "Underwriters"), attached as Exhibit A.[1] 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

[1] 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 PROFESSIONAL CORPORATION

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 Citi

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 Citi 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.

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[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."

Summary of the Engagement Letter Agreement

The attached Agreement describes the process by which securities, backed by the obligation of MasterCard to make payments into the Settlement Fund, are to be placed by private placement (whether under Rule 144A promulgated under the Securities Act of 1933 or Section 4(2) of the Securities Act of 1933). As noted above, the terms of the Agreement are substantially identical in most parts to those set forth in the engagement letters with Deutsche Bank and Bear Stearns previously approved by the Court.

Following is a summary of the major terms of the Agreement:

1. Compensation

The Agreement provides that the Underwriters are entitled to a Structuring Fee, a Placement Fee and a Break-up Fee. *See* Agreement at ¶ 8. As is customary in the securities industry, the Structuring Fee is to be paid to the Underwriters only in the case that the securitization is completed.

Structuring Fee: The Structuring Fee compensates the Underwriters for their efforts in "structuring" the conversion of the unpaid stream of payments into marketable securities by constructing the most efficient offering. The Underwriters seek to obtain a credit rating from S&P, to set the terms of the securities and to prepare the offering memorandum and other transaction documents.

If the securitization is completed (under Rule 144A or under Section 4(2) of the 1933 Securities Act) the Underwriters will be paid a total of 0.35% of the proceeds from the sale of the securitization securities.

Placement Fee: The Placement Fee compensates the Underwriters for their efforts in selling the securities to investors. The fees paid to the Underwriters will total 0.35% of the proceeds from the sale of the securitization securities.

In the previous engagement letters with Deutsche Bank and Bear Stearns, Lead Counsel agreed that if it "determines that it is unable to complete a Rule 144A securitization, and instead completes the securitization pursuant to Section 4(2), the total fees paid to the Underwriters will increase from 0.50% of the principal amount of the securities issued to 0.75%." Lead Counsel has been advised that it now appears that the securitization can be completed only as a Section 4(2) transaction. Therefore, total fees to the Underwriters have not changed, and in fact, have been slightly reduced.

Break-up Fee: The Break-up Fee compensates the Underwriters in the event that MasterCard elects to prepay its obligations (with the Court's approval), thus eliminating

the need for the securitization. If MasterCard prepaid its obligations prior to the Underwriters actually marketing the securities, the Underwriters would each be entitled to $1 million for their efforts. *There is no change in this fee from the previously approved engagement letter. In addition, Class Claimants are not obligated to pay Deutsche Bank or JP Morgan any break-up fees under the previous engagement letters or the current Agreement.*

2. Litigation Reserve Accounts

Lead Counsel has been informed that it is customary to indemnify underwriters in case of litigation related to the issuance of securitization securities. This indemnification usually is granted by the firm issuing the securities. Since this is not feasible in this case, Lead Counsel has negotiated three reserves to satisfy the Underwriters' concerns regarding potential litigation.

The Agreement specifies that upon successful execution of the securitization, $8 million be held in litigation reserve accounts to reimburse the Underwriters for any losses, claims, damages or liabilities, subject to certain conditions described therein. Lead Counsel also has agreed to grant a first priority security interest in the Litigation Reserve Account that is called for in the Amended Plan of Allocation. Finally, all deposits into the residual accounts also will be available in case of litigation. *See* Agreement at ¶6.

The former Agreement called for $12 million or two percent of the proceeds to be deposited into the Litigation Reserve Account. The current agreement increases the reserves to approximately $16 million and grants access to the existing Litigation account. These funds are owned by Class Claimants and are only used in the event of litigation.

3. Potential Conflicts

The Agreement obligates the Underwriters to implement its customary conflicts management procedures. *See* Agreement at ¶ 15.

This is not as strong as the previous Agreement, which barred any business with MasterCard without Lead Counsel's approval. Since the MasterCard IPO has taken place, Lead Counsel no longer views this as a necessary restriction.

4. Court Approval

As noted above, the Agreement is effective only after Court approval, as is the obligation to pay fees, expenses and compensation. *See* Agreement at ¶ 5.

The Agreement, which was negotiated at arms-length, is fair and in the best interest of Class Claimants. Lead Counsel respectfully requests that the Court approve the Agreement. This letter application and the Agreement are being posted on the *In re VisaCheck* website.

Respectfully submitted,

Robert L. Begleiter

Attachment

cc: Chip Lewis, Barclays Capital Inc.
Gerald F. Keefe, Citigroup Global Markets Inc.

EXHIBIT A

January 12, 2009

Constantine Cannon LLP
450 Lexington Avenue, 17th Floor
New York, NY 10017
Attention: Robert L. Begleiter, Esq.

Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Attention: George W. Sampson, Esq.

Gentlemen:

This letter agreement ("Engagement Agreement") confirms the engagement, pursuant to the terms and conditions hereof, by Constantine Cannon LLP ("Constantine") and Hagens Berman Sobol Shapiro, LLP ("Hagens Berman" and together with Constantine, the "Client"), solely in their capacity as Co-Lead Counsel for the Members of the Class (the "Plaintiffs' Class") in the Litigation (as defined below), of Barclays Capital Inc. ("Barclays") and Citigroup Global Markets Inc. ("Citi") as exclusive co-Placement Agents, Joint Structuring Agents, Joint Bookrunning Managers and Joint Arrangers (in such capacity, the "Joint Arrangers") in connection with the issuance in a transaction commonly referred to as a "securitization" by a special purpose corporation, trust or other entity (an "Issuer") of securities backed or secured by, or representing an interest in, obligations owing from MasterCard International ("MasterCard") to Plaintiffs' Class. The obligations arise under a settlement agreement of the *In Re: Visa Check/Mastermoney Antitrust Litigation* (the "Litigation") between the Plaintiffs' Class and MasterCard, under the terms of which settlement agreements MasterCard agreed, among other things, to pay to the Plaintiffs' Class $1.025 billion over ten years (the "MasterCard Obligations," or the "Settlement Assets").

The parties hereto agree as follows:

1. Securities. The securities to be issued by the Issuer are referred to herein as the "Securities", and the placement thereof (whether under Rule 144A promulgated under the Securities Act of 1933 ("Rule 144A"), Section 4(2) of the Securities Act of 1933 ("Section 4(2)") or other private placement) is herein referred to as the "Securitization". The Joint Arrangers and the Client, working together, shall determine the manner in which the Securities are issued and/or resold to investors (*i.e.*, under Section 4(2) or Rule 144A).

2. Joint Arrangers. Subject to the terms hereof, the Client hereby designates Barclays and Citi as exclusive co-Placement Agents, Joint Structuring Agents and Joint Bookrunning Managers in connection with the structuring and distribution of the Securities. It is contemplated that four $100 million outstanding MasterCard Obligations will be securitized and, in connection with the offering of the Securities, Barclays and Citi will be identified on the offering materials as Joint Lead Placement Agents and will be listed in alphabetical order from left to right on such offering materials. The Client agrees that no other Arranger other than Barclays and Citi will be engaged with respect to the Securitization. Each Joint Arranger will be entitled with respect to the Securitization to the (i) Structuring Fee and (ii) Placement Fee, and with respect to a prepayment of the MasterCard Obligations by MasterCard, a Break-up Fee as outlined in Section 8 below (and in such case no Structuring Fee or Placement Fee shall be paid to the Joint Arrangers).

This Engagement Agreement is not a commitment or agreement, express or implied, on the part of Barclays or Citi in any capacity, to purchase or place any of the Securities or to commit any capital. Notwithstanding any other provisions hereof, neither Barclays nor Citi shall have any obligation, express or implied, to act as a Joint Arranger, a Joint Bookrunning Manager, a Placement Agent or in any other capacity with respect to the Securitization if, in its sole judgment, it deems it inadvisable, impracticable or not in its business interest.

3. **Responsibilities.** The Joint Arrangers hereby accept the engagement and agree to:

a) advise and consult with the Client and Client's counsel regarding the structure of the Securitization contemplated hereby;

b) prepare, with the assistance of the Client and Client's counsel, any communications necessary to arrange for the Securitization, including presentations to the rating agencies, whether in the form of letter, circular, notice or otherwise (subject, in the case of presentations to the rating agencies, to the primacy of the Joint Arranger selected by the Client to be primary interface with the rating agencies);

c) assist the Client and Client's counsel in the preparation of an offering document (an "Offering Document") for the Securitization and the issuance of the Securities which will be drafted by Client's counsel and which will describe the Client, MasterCard, the Settlement Assets and the Securities;

d) advise the Client in the selection and terms of engagement of any necessary service providers to be engaged by the Client directly or in conjunction with the Securitization (e.g., trustee, servicer, etc.);

e) assist the Client in obtaining credit ratings on the Securities from one or more nationally recognized statistical rating agencies (collectively, the "Rating Agencies") in connection with the Securitization, including, but not limited to, the preparation of informational material;

f) advise the Client with respect to cash reserve accounts, financial guarantees, subordination, overcollateralization or other forms of credit enhancement, or a combination of the foregoing, if applicable;

g) assist the Client and Client's counsel in coordinating efforts to achieve timely and efficient documentation and closing of the Securitization;

h) serve as joint bookrunning managers (in such capacity, "Joint Bookrunning Managers") and/or Placement Agents in connection with the sale of the Securities for the Securitization, subject to, among other things, the conditions specified in Section 11 hereof; and

i) advise and assist the Client in any other matter reasonably requested by the Client to facilitate the closing of the Securitization.

4. **Cooperation; Information.** Client shall reasonably cooperate with the Joint Arrangers in their efforts to consummate the Securitization (the "Proposed Transaction"). Such cooperation shall include providing all relevant information relating to the Client, any Issuer and any affiliate thereof (collectively, the "Issuer Entities") and the Settlement Assets which any of the Joint Arrangers reasonably deem to be appropriate and providing the Joint Arrangers with reasonable access to the appropriate representatives, accountants, and other advisors of the Issuer Entities (collectively, the