



Merchants and Consumers to Benefit From New Code of Conduct for the Credit and Debit Card Industry

by Patrick Gervais

Originally published in *Blaneys on Business* (September 2010) - [Read the entire newsletter](#)



Patrick is a member of the firm's corporate/commercial group, and has experience working on cross border share and asset purchases; securities law and corporate finance.

Patrick may be reached directly at 416.597.4891 or pgervais@blaney.com

A code of conduct creating new obligations for credit and debit card providers as well as payment card networks (for example, electronic payment systems) came into effect on August 16, 2010 (the "Code of Conduct").

The purpose of the new Code of Conduct is to ensure that merchants are fully aware of the costs of accepting credit and debit card payments and to allow merchants and consumers greater choice and flexibility of payment options. Credit and debit card providers will have greater disclosure obligations regarding interest rates, fees and payment options.

Although compliance with the Code of Conduct is voluntary, the federal government is prepared to introduce legislation to regulate the industry should the new Code of Conduct not be adopted by industry participants.

The credit and debit card industry had until May 17, 2010 to adopt the code and until August 16, 2010 to implement most of the changes. Payment card networks and acquirers have until February 17, 2011 to implement new disclosure requirements and card issuers will have up to May 17, 2011 to re-issue cards already in circulation that contravene new branding requirements.

The following are highlights of the new Code of Conduct:

No more preferential branding of payment networks

New branding rules require that payment networks available on cards be indicated in a clear manner and that there be no preferential branding of certain payment card networks. Payment networks must be equally branded with brand logos of the same size and in the same color schemes and on the same side of the card.

Debit and credit options can no longer co-reside on a same card

Given the different characteristics and costs associated with credit and debit accounts, new rules prohibit the issuance of a card offering both options. This new rule is meant to limit consumer confusion by creating a physical distinction between credit and debit cards.

New income and spending thresholds for premium cards

Premium cards with higher than average handling fees can only be targeted to individuals who meet specific spending habits or income levels and may only be given to consumers who apply for or consent to such cards. Premium cards will no longer be offered to consumers who do not meet minimum thresholds.

More information in monthly statements and merchant agreements

Payment card network agreements and monthly statements to merchants must now be presented in a more clear and simple manner. Monthly statements will include effective merchant discount rates for each type of payment card (the total fees paid by the merchant divided by the total sales), handling fees, the number and the volume of transactions for each type of transaction, the total amount of fees applicable to each rate and details of each fee. More information will enable merchants to better assess whether higher costs associated with certain payment networks are warranted.

New notice periods

Merchants must receive a minimum of 90 days notice of any rate or fee increase or the introduction of a new fee related to any payment card network and 180 days for any change to the fee structure, for example a fee per transaction replacing a monthly service fee. Merchants will be allowed to cancel their contracts without penalty should they choose not to accept fee increases.

Negative acceptance no longer permitted

Merchants will need to provide their express consent to any new product or service and merchants will not be obligated to accept new products or services.

More flexibility in network options

Payment card networks can no longer oblige merchants to accept both credit and debit card payments from the same payment card network. A merchant will be able to choose either a credit or debit payment option without being required to accept both options from the same payment card network.

Discounts depending on method of payment

Merchants will be allowed to offer discounts for different methods of payment as well as differential discounts among different payment card networks. For example, a consumer could be offered a discount when paying by debit card instead of credit card and another discount for using a certain electronic payment system such as tap-and-go over another. The goal of providing discounts for different payment methods and payment card networks is to foster competition among networks and card providers and benefit merchants and consumers.

The objective of the Code of Conduct is to provide consumers with more information regarding various payment schemes, the idea being that consumers who are aware of the fees associated with various payment mechanisms will choose the least expensive option, which will foster more competition within the payment card network and card industry.

The new Code of Conduct benefits merchants and consumers by increasing disclosure of costs associated with different payment options. However, compliance may prove challenging for the credit and debit card industry as it adapts to the new requirements and the strict timeline to implement change.

Should you wish to learn more about the new Code of Conduct and how it will affect your business or explore new opportunities in the credit and debit card industry, please contact a member of Blaney McMurtry's Corporate/Commercial Group. ■