





2. The Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

## ORDER

### Definitions

For the purposes of this Order, the following definitions apply:

1. “Acquirer” means a business organization, Financial Institution, or an agent of a business organization or Financial Institution that has authority from an organization that operates or licenses a credit card system (e.g. VISA, Inc., MasterCard, Inc., American Express Company, and Discover Financial Services, Inc.) to authorize Merchants to accept, transmit, or process payment by credit card through the credit card system for money, products or services, or anything else of value. The EPS Respondents are not considered to be Acquirers.

2. “Additional Review Merchant” means any Merchant that:

a)

- b) Employing, soliciting, or otherwise causing or allowing a Merchant, or an employee, representative, or agent of a Merchant, to present to or deposit into the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant; or
- c) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a Merchant, when such access is not authorized by the Merchant Account agreement or the applicable credit card system.

6. "Credit Card Sales Draft" means any record or evidence of a credit card transaction.

7. "EPS Merchant" means any Person:

- a) Who obtains, directly or indirectly, from any EPS Respondent a Merchant Account; or
- b) To whom any EPS Respondent provides, directly or indirectly, Payment Processing services.

8. "Financial Institution" means any institution engaged in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)). An institution that is significantly engaged in financial activities is a Financial Institution.

9. "Fraud Monitoring" or "Risk Monitoring Program" means any program established to monitor or detect potentially fraudulent, illegal, or unauthorized Merchant transactions and activity by a credit card association (e.g., VISA, MasterCard, American Express, Discover), Acquirer, Financial Institution, or operator of a payment system. Such programs include any program established to monitor Chargebacks (including VISA's Merchant Chargeback Monitoring Program) or Chargeback Rates, reasons provided for Chargeback transactions (e.g., VISA's Merchant Chargeback Monitoring Program), fraudulent or unauthorized transactions (e.g., MasterCard's "GMAP Program," VISA's Risk Identification Service program), and Merchants classified or defined by VISA as high risk Merchants (however titled), including VISA's "High Brand Risk Merchant" program, as periodically revised or updated from time to time.

10. "Independent Sales Organization" or "ISO" means any Person that:
- a) Enters into an agreement or contract with a Payment Processor, Acquirer or Financial Institution to sell or market Payment Processing services to a Merchant;
  - b) Matches or refers Merchants to a Payment Processor or Acquirer for Payment Processing services, or that matches or refers a Payment Processor or Acquirer to Merchants for Payment Processing services; or
  - c) Is registered as an ISO or merchant service provider ("MSP") with VISA, MasterCard, or any credit card association.

11. "Merchant" means any Person engaged in the sale or marketing of any products or services or a charitable contribution, including any Person who applies for Payment Processing services.

12. "Merchant Account" means any account with an Acquirer or other Financial Institution, service provider, Payment Processor, ISO, or other entity that enables an individual, a business, or other organization to accept credit card, debit card, or check payments of any kind.

13. "Money Making Opportunity" means a business model in which a Merchant offers to sell, sells, promotes, or markets any product or service represented to enable consumers or to assist consumers in:

- a) Earning income through a work-from-home business opportunity;
- b) Obtaining training or education on how to establish a business or earn money or other consideration through a business;
- c) Obtaining employment for an upfront fee; or
- d) Obtaining government grants or other government income, benefits, or scholarships.

The term "Money Making Opportunity" does not include services provided by a school or pro3 (t)-1.1 ( 1 ntnot)-1\_isx (r)-4.o .1 (rg\_)3.1 (isx (r)-89tnoor (n)-/e-1.1 (h81.2 (a)1. not)-1.1h

14. “Outbound Telemarketing” means any plan, program, or campaign that is conducted to induce the purchase of products or services by use of one or more telephones, and which involves a telephone call initiated by a Person other than the consumer.

15. “Payment Processing” means transmitting sales transaction data on

19.





- 7) Misrepresenting the type of business engaged in by the Merchant, or the means of advertising, marketing, and sales used by the Merchant (i.e., whether the Merchant is engaged in Outbound Telemarketing); and

D. Provide Payment Processing services or acting as an ISO or Sales Agent for any Merchant that is listed on the MasterCard Member Alert to Control High-Risk Merchants (MATCH) list for any of the following reasons:

- 1) Excessive chargebacks,
- 2) Fraud,
- 3) Identification as a Questionable Merchant per the MasterCard Questionable Merchant Audit Program,
- 4) Merchant collusion,
- 5) Illegal transactions,
- 6) Credit Card Laundering, or
- 7) Identity theft.

## II.

### Screening of Additional Review Merchants

It is further ordered that Respondent , and Respondents' officers, agents, and employees, and those other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with offering Payment Processing services, must engage in reasonable screening of Additional Review Merchants to confirm each Additional Review Merchant's identity, and

B. Obtaining from each Additional Review Merchant:

- 1) A description of the nature of the Additional Review Merchant's business, including the nature of the products and services for which the Additional Review Merchant seeks Payment Processing services, and a description of the means of advertising, marketing, and sales used (i.e., Outbound Telemarketing, Internet sales);
- 2) The name(s) of the principal(s) and controlling Person(s) of the entity, and of Person(s) with a twenty-five percent (25%) or greater ownership interest in the entity;
- 3) A list of all business names, trade names, aliases or fictitious names, DBAs, websites, and identification numbers (such as taxpayer ID numbers) under or through which the Additional Review Merchant is marketing or intends to market the products and services for which the Additional Review Merchant seeks Payment Processing services;
- 4) Each physical address at which the Additional Review Merchant conducts business or will conduct the business(es) identified pursuant to subsection (1) of this Section II.B;
- 5) A list of all post6 (w53ador w)1dor wm9 (e )JTJ084e(m9l7S627.35d)3 (m97.354 -2



Review Merchant used Payment Processing services in the preceding three (3) months;

C.



- 5) Determine whether the Additional Review Merchant is engaged in any of the following unfair or deceptive acts or practices:
- a) Failing to clearly and conspicuously disclose the total cost to purchase, receive, or use, any products or services;
  - b) Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of products or services;
  - c) Failing to clearly and conspicuously disclose all material terms and conditions of an offer;
  - d) Misrepresenting, expressly or by implication, any material aspect of the









identities, or are engaged in or have been engaged in deceptive or unfair sales practices;

- 3) Has engaged in Credit Card Laundering or any tactics to evade any Fraud Monitoring or Risk Monitoring Program; or
- 4) Is or has been engaged in deceptive or unfair sales practices.

V.

Acknowledgments of the Order

It is further ordered that Respondents obtain acknowledgments of receipt of this Order:

A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after the issuance date of this Order, each Individual Respondent for any business that such Respondent, individually or collectively with



B. For 10 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

- 1) Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may

VII.  
Recordkeeping

It is further ordered that Respondents must create or receive, as applicable, certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Corporate Respondents in connection with offering or providing Payment Processing services, and each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all products or services sold that are related to the subject matter of the Order;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all EPS Merchant files and transactions, including Merchant Applications, underwriting documents, screening and monitoring records, investigation records and reports, bank verification records, processed transactions, and Chargeback transactions;
- D. Records of all consumer complaints concerning the subject matter of the Order, including Chargeback requests, Chargeback dispute documentation, and refund requests with respect to EPS Merchants, whether received directly or indirectly, such as through a third party, and any response; and
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VIII.  
Compliance Monitoring

It is further ordered that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.



the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

April J. Tabor  
Secretary

Seal:

Issued: 0 D \