

5. Draft Variation to the Standards

The Board proposes to vary the Standards titled *Standard No. 2, Merchant Pricing for Credit Card Purchases* and *The 'Honour All Cards' Rule in the Visa Debit and Visa Credit Card Systems* and the *'No Surcharge' Rule in the Visa Debit System*. The proposed variations are marked in the Draft Standards, as set out in Attachments 1 and 2.

The variations relax the current Standards to allow scheme rules to impose a limit on surcharge levels. Specifically, the variations provide that neither the rules of a designated card scheme nor any participant in the scheme may prohibit a merchant from recovering part or all of the reasonable cost of acceptance by the merchant charging fees or surcharges to credit cardholders. The effect of the variation is that scheme rules may limit surcharges to a reasonable cost of acceptance, but are not able to prevent merchants from fully recovering their costs. The varied Standards also provide that the merchant cannot be prohibited from applying different surcharges for different card types, either across card schemes or within a card scheme. That is, as is the case under the current Standards, the merchant can choose to differentially surcharge, including within a card scheme, if desired. While the Board recognises that there are practical constraints to applying differential surcharging within a scheme, the Board wishes to make it clear that merchants should not be prevented by schemes or acquirers from doing so.

The Board also recognises that this variation does not explicitly prohibit the practice of blended surcharging across card schemes. However, given that the variation allows scheme rules to limit surcharges to the cost of acceptance, under such rules any blended surcharge would be limited to the lowest cost of card acceptance, ensuring that blended surcharging is not also associated with excessive surcharging for lower-cost card schemes. Further, to the extent that blended surcharges are set at the cost of acceptance of the lower-cost scheme, the variation is likely to discourage the practice of blended surcharging because the merchant will not be recovering its acceptance costs overall.

Given that under the Draft Standards schemes will have the ability to impose a limit on surcharges through their rules, the provisions that currently allow a merchant to voluntarily agree with its acquirer to limit the size of any surcharge to the fees incurred by the merchant will be redundant. The variation to the Standards will therefore remove this provision.

Paragraph 10 of each of the Draft Standards defines the merchant's cost of acceptance to include, but not necessarily be limited to, the applicable merchant service fee. The cost can be determined by reference to:

- i. the cost to the merchant of the particular card transaction;
- ii. the average cost to the merchant of acceptance of all credit cards (Visa Debit cards, for the Visa Debit Standard) of all types issued under the scheme; or
- iii. the average cost to the merchant of acceptance of a subset of credit cards (Visa Debit cards, for the Visa Debit Standard).

The effect of this clarification is that the merchant will still be able to recover its costs of card acceptance from a cardholder in any way it chooses. That is, merchants may choose to recover their costs of card acceptance by applying: a different surcharge for each different card type; a single surcharge rate for all credit cards (or Visa Debit cards, for the Visa Debit Standard) for a particular scheme; or some combination, such as one rate for 'standard' card transactions and another rate for 'premium' card transactions. Merchants may also apply a surcharge on either an *ad valorem* or a flat-fee basis.