

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re CURRENCY CONVERSION FEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

: MDL Docket No. 1409
: M 21-95
:
: PLAINTIFFS' NOTICE OF
: FILING OF SUPPLEMENTAL
: MATERIALS RELATING TO
: MARCH 31, 2008 HEARING
: CONCERNING FINAL
: APPROVAL OF PROPOSED
: CLASS ACTION SETTLEMENT

At the March 31, 2008 fairness hearing, the Court will address, among other matters, Plaintiffs' motion for final approval of the proposed class action settlement of this matter. Among the issues that Plaintiffs anticipate will be addressed at the hearing are: the algorithm for Option 2 claims; the status of the claims and requests for exclusion submitted to date; and whether the volume of claims to date will require proration due to an over-subscription to the fund.

To assist the Court with its consideration of these issues, Plaintiffs respectfully submit the following materials: (i) two memoranda prepared by Analysis Research Planning Corporation ("ARPC") describing the proposed algorithm and anticipated values for Option 2 claimants; (ii) the affidavit of Edward J. Radetich, Jr. addressing the status of claims and requests for exclusion from the class submitted to date; (iii) materials pertaining to the proration of class member claims; and (iv) a form of proposed order granting final approval of the class action settlement containing a revised list of class members who have opted-out of the class. These materials are discussed in more detail below.

I. The Algorithm: Analysis of Base Case and Alternate Scenarios

ARPC is developing the algorithm that will generate estimates of typical foreign transaction spending by United States cardholders using a Visa-, MasterCard- or Diners Club-branded card. The algorithm will be used to calculate the value of the Option 2 claims. To date, ARPC has prepared a base case scenario and alternate scenarios describing an expected typical Option 2 refund amount, subject to any necessary proration. This information is summarized in two ARPC memoranda, dated March 6, 2008 and March 17, 2008, which are attached, respectively, as Exhibits A and B.

Option 2 allows claimants to request a refund based on their answers to a few simple questions. The algorithm or formula that is currently in development will calculate refunds using four primary factors:

1. Number of days of travel
2. Purpose of travel
3. Typical daily foreign transaction spending for each purpose of travel
4. Estimated total foreign transaction spending

The algorithm or formula multiplies the number of travel days for each designated purpose of travel times the typical daily spending for that purpose to reach a total amount for each purpose of travel and then adds each of these different amounts together to reach the estimated total foreign transaction spending.

The source for estimated number of days of travel is the Option 2 claims. Option 2 asks claimants to consider any trips that they took outside the United States during the Class Period and to provide an estimate of the total number of days they spent outside of the U.S. during those trips.

The sources for estimates of purpose of travel are travel/tourism surveys and the Option 2 claims. Government agencies in the United States, Canada, and Mexico conduct surveys on foreign travel by U.S. residents. The surveys for overnight travelers ask for the major purpose of travel. Reports from those surveys estimate the percentage of people who travel for each of the four purposes listed in the Option 2 form. Survey respondents report patterns of travel similar to Option 2 claimants. The algorithm procedure calculates an estimated number of travel days for each travel purpose for each Option 2 claimant.

The primary sources for estimates of typical daily foreign transaction spending are the government travel/tourism surveys described above. Published reports based on the surveys include estimates of average and/or median daily spending while out of the United States. These typical spending amounts are usually reported for each travel purpose.

The algorithm or formula is the primary source for total spending estimates. For each

claimant, the algorithm estimates the number of travel days (Factor 1) for each purpose of travel (Factor 2), multiplies the number of days by the typical daily spending for that purpose (Factor 3), and adds the amounts. The result is the estimated total foreign transaction spending.

This procedure can also take other factors into account, such as the difference between median and average spending estimates or the amount of spending that may have occurred using credit cards other than MasterCard, Visa, or Diners Club.

Preliminary estimates suggest that Option 2 electronic filers report a median of about 80 days outside of the U.S. during the Class Period (Factor 1). However, a relatively small number of claimants report hundreds or thousands of travel days. A preliminary estimate of purpose of travel (Factor 2) suggests that about 20% of Option 2 travel days are spent visiting friends or relatives, 40% on vacation, 30% on business, and 10% for other purposes. Preliminary estimates of typical daily foreign transaction spending (Factor 3) suggest a range of overall spending that could be between \$59 and \$96 a day, with a typical spending total (Factor 4) that could be between \$5,200 and \$7,400.

The ARPC memoranda contain a base case and alternate scenarios that are derived from data considered by ARPC. Specifically, ARPC examined sample data of cardholder foreign transactions provided by the Bank Defendants; actual claims data provided by the Claims Administrator, including both Option 2 and Option 3 claim data; and travel and tourism statistics gathered by the United States Department of Commerce, Statistics Canada and Mexico's Ministry of Tourism.

Analyzing these data, ARPC developed a base case scenario reflecting the expected typical foreign transaction spending patterns of an Option 2 claim. *See Exhibit B at 6.* The base case scenario reports information for each of the four categories of purpose of travel, as contained in the

Option 2 claim form,¹ and for each category it shows the expected number of travel days, the typical amount (using an average) of foreign transaction spending by travelers in that category, and the expected typical total of foreign transaction spending by an Option 2 claimant. *See id.* The total of the four categories would be used to determine the refund amount (using a 1% foreign transaction fee). *See id.* In the base case scenario, the expected typical refund amount, before proration, for an Option 2 claim is \$72.40 (or 1% of \$7,240). *See id.*

The base case scenario, however, should be refined to address two important factors: (1) the impact of very large Option 2 claims, *i.e.*, claimants reporting hundreds or thousands of days of travel;² and (2) the use of other payment forms, such as travelers checks or non-Network Defendant-issued cards (*e.g.*, American Express). ARPC has calculated additional illustrative alternative scenarios that modify the base case scenario to account for these factors.

There are two alternative scenarios that address the impact of outlier claims, in particular, very large claims, on the calculation of typical foreign transaction spending patterns that the algorithm is designed to model. The first alternative uses median spending figures for the four travel

¹ The Option 2 Claim Form directs class members to indicate the purpose for their foreign travel during the class period. There are four categories of “travel purposes”: (1) traveling on business; (2) visiting friends or relatives (or “VFR”); (3) vacation or leisure; and (4) other. For each category, class members must choose between “never”, “rarely”, “sometimes”, “often” and “mostly”. Based on the responses to these categories, the algorithm will ascribe a percentage (out of a hundred percent) for the reported categories for a class member. *See generally* Exhibit B at 3-5. The number of days provided by the class member would then be apportioned across these percentages and the applicable rate of foreign transaction spending would be applied to generate a total amount of foreign transaction expenditures for that class member – the base case scenario prepared by ARPC being a “typical” example of the value of an Option 2 claim using this method. *See id.* at 6.

² Based on its analysis of a sample of approximately 100,000 of the Option 2 claims provided by the Claims Administrator, ARPC estimates that approximately 10% of Option 2 claims report more than a year’s worth (>365 days) of foreign travel during the class period. *See* Exhibit B at 6.

categories, rather than average spending figures that are used in the base case scenario, to reduce the impact of outlier claims. *See* Exhibit B at 7 (Table of Per-Day Foreign Transactions – Surveys). A second alternative, which may be used in conjunction with the data for median spending, lowers the value of the estimated foreign transaction spending as the number of days of travel crosses certain thresholds (the “tier approach”). *See* Exhibit A at 2-3. For example, this alternative would recognize 100% of the value of the estimated foreign transaction spending for the first 100 days reported (*i.e.*, days 1-100); 50% for the next 100 hundred days (*i.e.*, days 101-200); 25% for the next 300 hundred days (*i.e.*, days 201-500); and 10% for all days over 500 days (*i.e.*, days 501+).³ *See id.*

Applying both the median spending and tier approach alternatives has three important benefits. First, the resulting algorithm model (using median figures rather than averages) will generate foreign transaction spending figures that more accurately represent typical foreign transaction spending patterns because the impact of outliers is reduced. Second, the potential for unjustified windfalls will be decreased for claimants reporting very high numbers of travel days abroad. Third, these alternatives account for the typical practice by individuals with lengthy overseas travel (*e.g.*, for hundreds or thousands of days) who make arrangements for lodging, which is the single largest travel expense, that is not paid using a general purpose card, as is the case for military personnel stationed at an overseas base, people staying with friends or family, students living in dormitories or similar housing while studying at a foreign university or school, and businessmen

³ ARPC has provided two illustrative examples of how the tier approach would affect the payment of Option 2 claims. *See* Exhibit A at 3. For example, employment of the tier approach, employing a scenario using a typical spending estimate of \$43.80 per claim, would reduce the estimated amount distributed from the Settlement Fund by more than \$80 million. *See id.* (Table 4). Approximately half of that reduction would come from the 10% of Option 2 claims for more than a year’s worth of travel days (> 365 days).

stationed abroad who rent apartments at company or personal expense which are characteristically paid by check or wire transfer.

The base case scenario should also be altered to account for foreign transaction spending using a payment method other than Visa-, MasterCard- or Diners Club-branded cards (referred to as “other cards”). The median typical foreign transaction spending for each of the four travel purpose categories is reduced when the algorithm model is adjusted to account for the use of travelers checks and other cards, *e.g.*, American Express cards. *See* Exhibit B at 7. With respect to other cards, ARPC offers two alternative scenarios for market share attributable to other cards: (i) a 16.5% other cards market share; and (ii) a 30% other cards market share.⁴ *See* Exhibit A at 1-2. For example, the typical foreign transaction spending for travel with the purpose of “Visiting Friends or Relatives” drops from a base case scenario level of \$48/day to \$32/day when using a median calculation of typical foreign transaction spending that excludes travelers checks and the conservative 16.5% market share for other cards. *Id.*

In sum, the base case scenario proposed by ARPC represents an initial assessment of the three sources of data (bank data, Option 2 and Option 3 claim data, and travel/tourism survey data) used to formulate an algorithm that will generate typical foreign transaction spending. Applying the alternative scenarios discussed above refines the base case scenario to more accurately reflect the

⁴ The 16.5% other cards market share alternative suggested by ARPC is an extremely conservative figure. Data obtained from The Nilson Report, an industry recognized authority reporting on general purpose cards, indicates that American Express’s share of the general purpose card market from 1996 through 2006 alone was not less than 19.5%, and when combined with Discover, their joint market share was not less than 25%. It is Class Counsel’s view that the 30% other cards market share is a more accurate estimate for the purpose of calculating Option 2 claims via the algorithm because it reflects the increased use of American Express cards – positioned as the traveler’s card of “choice” – by United States cardholders traveling abroad.

typical foreign transaction spending by class members. As a result, the expected typical refund value (at 1%) may be adjusted from a base case scenario of \$72.40 to an alternative scenario (median, excluding travelers checks, and with a 30% “other cards” share) of \$43.80. *Compare* Exhibit B at 7 *with* Exhibit A at 2. Finally, the tier approach may be applied to further adjust distributions to a small percentage of Option 2 claims reporting a very high number of travel days abroad, to reduce the possibility that these large Option 2 claims will receive an unjustified windfall.

II. Status of Claims Submissions

The Claims Administrator reports that it has received approximately 9,300,000 claims to date. *See* Radetich Aff. ¶ 4 (attached at Exhibit C). The following detail provides a breakdown of the claims received:

Electronic Claim Forms – Option 1	3,163,560
Electronic Claim Forms – Option 2	1,105,733
Electronic Claim Forms – Option 3	77,405
Estimated Paper Claim Forms – Option 1	3,601,851
Estimated Paper Claim Forms – Option 2	1,197,456
Estimated Paper Claim Forms – Option 3	63,856
Claim Forms Filed from the Original Mailing	<u>109,244</u>
Total Claim Forms Through 03/25/08	9,319,105

See id. (Electronic Claim Forms Option 3 includes three Agency/Company claims received).

In addition, the Claims Administrator has supplied 154 Agency/Company claim form discs at the request of class members who have not yet submitted a claim. *See id.* at ¶ 2.

III. Allocation in the Event of Over-Subscription to the Settlement Fund

In light of the volume of claims to date, Plaintiffs anticipate that proration of class members’ claims will be required. The data available to date (without the benefit of any auditing by the Claims Administrator or the removal of duplicate submissions) indicates that the Settlement Fund will be

oversubscribed, for the reasons detailed below.

First, there are a total of 6,765,411 Option 1 claims to date, which, when multiplied by \$25, represents a total face value for the Option 1 claims of \$169,135,275. Using the Claims Administrator's preliminary analysis of the face value of the Option 3 claims – without benefit of audit or the removal of any duplicate submissions – multiplied by 2%, yields a potential face value for the Option 3 claims of approximately \$128,615,500. (\$ 6,430,774,987 face value of Option 3 claims valued at 2% each). *See Radetich Aff.* at ¶ 7. Finally, the total number of Option 2 claims to date, multiplied by the lowest alternative provided by ARPC of \$43.80 for a typical Option 2 claim (*see Part I supra*) yields a total potential face value for the Option 2 claims of approximately \$100,879,678. (2,303,189 Option 2 claims valued at \$43.80 each). Based on these preliminary calculations, the total estimated claims against the Settlement Fund to date, which includes only three Agency/Company claims, would be approximately \$398,630,453. Accordingly, it appears certain that proration of class member claims will be required. *See Revised Plan of Administration and Distribution* ¶ 6(f) (attached as Exhibit D), approved by this Court's Order dated September 24, 2007; *see also* September 17, 2007 Joint Status Report at 8-9.

The proration procedure provides that claims will be pro-rated in three tiers. *See Exhibit D* ¶ 6(f). First, payments valued greater than \$225⁵ will be reduced on a pro-rated basis by up to 50%, but in no event will a payment be reduced below \$225 in the first tier reduction. Second, if the Net Settlement Fund is still oversubscribed, then the following types of payments will be reduced on a

⁵ At the time that the proration procedure was developed, the Claims Administrator's preliminary analysis of the value of the original claims then received indicated an average transaction value of approximately \$11,224. Based on this information, the average claim would be approximately \$225, assuming a 2% refund as transactions are subject to either a 1% or 3% recovery based on issuing bank and time period.

pro-rated basis: (i) payments that are valued less than or equal to \$225; and (ii) payments that were previously reduced under the first reduction by less than 50%. Under this “second tier” of proration, payments may be reduced up to 50%, but in no event below \$25. Finally, if after the first and second tier pro-rated reductions, the Net Settlement Fund remains oversubscribed, then all payments will be pro-rated, including the \$25 Option 1 claims.

If proration under all three tiers is necessary, a claim valued at \$400, for example, will be reduced under the first tier to \$225. Under the second tier, that payment will be further reduced to \$200 (50% of \$400). Finally, under the third tier, the \$200 payment will be reduced along with all other payments on a pro-rated basis.

In light of the Claims Administrator’s preliminary analysis of the face value of claims submitted to date, Plaintiffs anticipate that it will be necessary to use all three tiers of the proration procedure.

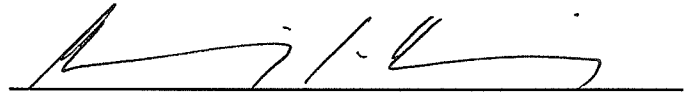
IV. Updated List of Requests for Exclusion from the Class

The Claims Administrator has continued to receive requests from class members for exclusion from the class. Some of these requests were filed late, while other requests were timely filed but delivered late by the United States Postal Service. Accordingly, Plaintiffs submit as Exhibit E the agreed form of Final Judgment and Order of Dismissal (filed on March 10, 2008), with a revised list of class members who have requested exclusion from the class, attached as “Exhibit A” to the proposed Final Judgment, which list is updated to include those class members whose requests for exclusion were timely postmarked but delivered late by the Postal Service.

DATED: March 28, 2008

Respectfully submitted,

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