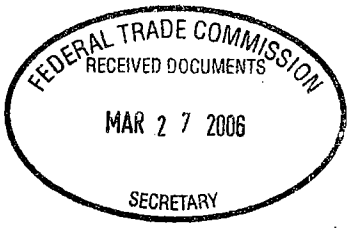
VISA

March 27, 2006



Russell W. Schrader
Senior Vice President
Assistant General Counsel

By Electronic Delivery

Federal Trade Commission
Office of the Secretary
Room 135-H
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: CardSystems Solutions, Inc., File No. 0523148

Ladies and Gentlemen:

This comment letter is submitted on behalf of Visa U.S.A. Inc. in response to the proposed consent agreement issued by the Federal Trade Commission ("FTC") concerning the FTC's allegation that CardSystems Solutions, Inc. ("CardSystems") failed to employ reasonable and appropriate security measures to protect credit and debit card information that CardSystems stored on its computer network in connection with processing payments for merchants. Visa appreciates the opportunity to comment on this important issue.

The Visa Payment System, of which Visa U.S.A.[1] is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. In calendar year 2005, Visa U.S.A. card purchases exceeded a trillion dollars, with over 510 million Visa cards in circulation. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of Visa's member financial institutions and their hundreds of millions of cardholders.

Visa Supports the FTC's Data Security Efforts

Visa applauds the FTC for its ongoing efforts relating to data security. It is essential that all entities that maintain or have the ability to access sensitive personal information about consumers establish and maintain adequate safeguards to protect that information, and thereby protect consumers from harm.

As the leading consumer electronic commerce payment system in the world, Visa considers it a top priority to remain a leader in developing and implementing technology, products and services that protect consumers from the effects of information security breaches.

[1] Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

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As a result, Visa has long recognized the importance of strict security procedures in order to protect information relating to the cardholders of Visa's members, and thereby to protect the integrity of the Visa system as a whole.

Visa's Data Security Initiatives

Strong security measures and a consumer-focused approach to protecting sensitive information and reducing consumer risk are inherent in the Visa system. For example, Visa has established a zero liability standard for cardholders for unauthorized purchases involving Visa-branded payment cards. As a result, cardholders are not responsible for unauthorized purchases on their Visa cards.

In addition, Visa has developed a number of procedures and policies to help prevent the use of cardholder-related information for fraudulent purposes, such as the Cardholder Information Security Program ("CISP"). CISP applies to all entities, including payment processing firms, that store, process, transmit or hold Visa cardholder data; CISP covers, regardless of whether they operate through brick-and-mortar stores, mail and telephone order centers or the Internet. CISP, which was developed to make sure that the customer information of Visa's members is kept protected and confidential, includes provisions for monitoring compliance and establishes sanctions for failure to comply.

Visa was recently able to integrate CISP into the common set of data security requirements used by various credit card organizations without diluting the substantive measures for information security already developed in CISP. Visa supports this new, common set of data security requirements, known as the Payment Card Industry Data Security Standard ("PCI Standard"), and believes that compliance with CISP and the PCI Standard will not only help protect cardholder-related information, but also will assist merchants in avoiding enforcement efforts like that brought against CardSytems.

Visa also uses sophisticated neural networks that flag unusual spending patterns for fraud and block the authorization of transactions where fraud is suspected. In addition, when cardholder-related information is compromised, Visa notifies card issuers and puts the affected card numbers on a special monitoring status. If Visa detects any unusual activity in that group of card accounts, Visa again notifies the card issuers, to allow the issuers to pursue a process of investigation and, where appropriate, card reissuance.

Visa continues to work with key players from financial institutions, consumer advocacy groups, the government and the merchant community to provide needed education and to ensure maximum cooperation in data security efforts. For example, Visa hosted a summit on data security, entitled "Cardholder Security in the New Electronic Payments Age," in Washington, DC in October 2005, which brought together key players from various industries, law enforcement, consumer protection organizations and government to address data security threats. The summit covered a range of issues, including: reducing the threat of data compromises; protecting customer information; fighting fraud and identity theft; and helping identity theft victims.

Security Programs Should be Risk-Based

Visa applauds the risk-based approach used in the proposed consent agreement. In the context of data security, a one-size-fits-all approach is unworkable. Information security programs should be risk-based and entities should tailor programs to the specific characteristics of their businesses; in addition, they should regularly assess possible threats to their customer information systems.

When assessing the risk associated with a breach, it also is important to distinguish between the different types of sensitive information and the different types of fraud, and to vary the response according to the type of fraud possible under the circumstances. Identity theft is commonly confused with account fraud. For example, identity theft results from the stealing of a consumer's personal identification information, like name and Social Security number, in order to create an identity using that information to open a new account in that consumer's name. However, the consumer would not face a significant risk that fraudulent transactions will be made on the consumer's existing accounts because this information is not usually sufficient to access such accounts. If a breach occurs with respect to sensitive personal identification information, an affected consumer can take several steps to prevent or mitigate the effects of true identity theft resulting from the breach. For example, the consumer can place an initial fraud alert on his or her credit file in order to alert creditors that an identity thief may attempt to open a fraudulent account in the consumer's name, which also triggers the duty of creditors to verify an applicant's identity and confirm that the application is not the result of identity theft. The consumer also may wish to monitor his or her credit report to determine whether an identity thief has opened any fraudulent accounts.

Account fraud, on the other hand, involves the misuse of an existing account, but does not necessarily involve the risk of true identity theft. The risk of consumer harm for account fraud is significantly different than the risk of harm from identity theft, because of the meaningful consumer protections that apply to account fraud, like Visa's neural networks and Visa's zero liability policy. If a consumer's sensitive account information is acquired without authorization, the consumer would not face the risk of true identity theft because this information is not sufficient to open a new fraudulent account in the consumer's name.

Therefore, the mechanisms to prevent and respond to the different types of fraud should be tailored to match the risk of consumer harm. This is supported by recent findings by ID Analytics, Inc. in its "National Data Breach Analysis" ("Analysis"). One of the key findings in the Analysis, for example, is that because data breaches vary considerably, it is necessary to classify data breaches in terms of data type. In addition, the Analysis found that account level breaches, where a consumer name and account number are the two most sensitive elements of compromised data, do not result in true identity theft.

In connection with previous proposed consent agreements, Visa requested that the FTC clarify that all failures to encrypt information do not result in a failure to take reasonable and appropriate security measures to protect information. Visa expressed concerned that the FTC's complaint, coupled with the consent agreement, could suggest that encryption of all information

is necessary to adequately protect that information. While the encryption of information under particular circumstances offers significant protection, we encouraged the FTC to clarify that it was not suggesting that all information must be encrypted in all situations. In response, the FTC clarified in a letter sent to Visa that the failure to encrypt information does not in itself establish a failure to maintain reasonable policies and procedures to safeguard information; the FTC clarified that the overall security procedures, taken together, must be reasonable. Similarly, Visa supports the risk-based approach taken in this proposed consent agreement that clarifies that the practices "taken together" failed to provide reasonable and appropriate security. Policies and procedures should be risk-based and, thus, when considered in the context of an institution's overall security program, should depend on the nature of the business, the sensitivity of the information, likely threats involving that information, and other similar risk factors.

Moreover, as the FTC addresses future security breach incidents, we encourage the FTC to be mindful that the selection of appropriate corrective efforts can and should vary depending upon the types of information and fraud involved, and the risks associated with such fraud. More specifically, in assessing the type and amount of risk and the appropriate efforts to address that risk, the FTC should consider whether there is, in fact, a significant threat of consumer harm. As part of this assessment, the FTC might consider, for example, whether it is possible to determine that sensitive account information was actually taken or whether there is, in fact, a significant risk that the loss of a laptop computer or a computer tape containing account information will lead to account fraud. A stolen laptop that is quickly recovered before the thief has time to compromise information, or a lost computer tape returned by a finder, or presumed destroyed, poses little, if any, risk of harm.

Both Consumers and Card Issuers Should be Protected from Harm

Visa believes that it is important that the FTC fully appreciate that card-issuing institutions, as well as consumers, are harmed by such security breach incidents and that both consumers and card-issuing institutions should be protected from harm. Specifically, Visa's zero liability policy provides significant protection for Visa cardholders against fraud on their existing accounts due to information security breaches. Because financial institutions that are Visa members do not impose the losses for fraudulent transactions on their cardholders, these institutions and, in some cases, the merchants that honor Visa cards, are the ones that incur most of the costs resulting from such fraudulent transactions.

These costs are largely in the form of direct dollar losses from credit that will not be repaid. In most of these transactions, the fraud losses are borne by the card issuer, although in some telephone and Internet transactions, some of those costs may be passed back to the acquiring bank or the merchant that participated in a fraudulent transaction. Card issuers also incur costs in opening replacement accounts and in reissuing replacement cards. In order to protect its members from these costs, Visa aggressively protects the customer information of its members.

Nevertheless, it is important to understand that in relative terms, security breaches have resulted in minimal transaction fraud involving Visa-branded accounts, due in large part to Visa's sophisticated neural networks and other anti-fraud programs. These Visa anti-fraud programs protect both card-issuing financial institutions and their cardholders.

As a policy matter, we were surprised to see that in the proposed consent agreement, the FTC has not required civil penalties and did not seek funds for consumer redress. Visa understands that there is often significant potential liability in private litigation for losses related to a breach. However, we believe that the FTC should look at the totality of the circumstances and impose civil money penalties in cases where such penalties are appropriate. Even if it is not financially feasible for an entity to pay civil money penalties at the time of a consent decree, it remains possible that an entity may become profitable and/or that it may violate part of its ongoing responsibilities pursuant to the consent decree; therefore, the FTC should consider imposing civil money penalties, but conditioning those penalties upon future events.

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Once again, we appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel