



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS

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November 21, 2007

“A”

DCU Interpretive Letter I-07-05

Re: Conditions of approval for receipt of Visa, Inc. “restructuring” stock

Dear “A”:

Question presented

Washington state-chartered credit unions “B” and “C” have requested guidance and made written application under RCW 31.12.436(11) and WAC Chapter 208-436 to obtain the approval of the Division of Credit Unions (“DCU”) to receive stock (as “equity participation”) under the terms of the Visa restructuring plan (VISA Proxy Statement-Prospectus, “the Proxy.”)¹

Determination

Credit unions “B” and “C” are approved to exercise their contractual rights to receive shares in Visa, Inc., as a byproduct of their membership in Visa U.S.A., and may receive the shares pursuant to the terms of the restructuring agreement (Proxy) subject to the following conditions:

1. The Board of Directors of the credit union must approve receipt of equity and non-equity interests in Visa U.S.A.. RCW 31.12.436.
2. The ability to transact the shares is controlled by the terms of the Proxy. It is our understanding that the shares will not be transferrable for at least three years from the date of completion of the Visa Inc. initial public offering (IPO), or the final resolution of certain litigation with Visa U.S.A. and Visa International, whichever is later. (Proxy, page vi).

¹ Each Washington state-chartered credit union wishing to participate in the Visa restructuring stock must make written application with the Division of Credit Unions. WAC 208-436-010. Applications will be approved, denied or conditioned per WAC 208-436-030 and WAC 208-436-060.

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3. The credit union may retain the shares, for voting purposes, or, after the shares become sellable, the credit union may sell all or part of them. DCU examiners will verify the terms of the sale.
4. The credit union may not add to the number of shares it receives contractually under the restructuring by purchasing or otherwise acquiring more shares.
5. The credit union’s stock investment is limited to Visa, Inc. because RCW 31.12.436 prohibits investment in most stocks.
6. The credit union will comply with NCUA Regulation 741.3(a)(2) by establishing an “additional special reserve for investments...beyond those authorized in the Act or NCUA Rules and Regulations.” The credit union shall “establish and maintain...an Appropriation for Non-conforming Investments in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established.” 12 C.F.R. §741.3(a)(2). This information will be entered in the 5300 report under “Investments Not Authorized by the FCU Act or NCUA Rules and Regulations.”

Note that if DCU later finds that having an interest in Visa U.S.A. or Visa Inc. is no longer a “safe and prudent” practice or is inconsistent with state or federal law, it may revoke or modify a credit union’s authority to have such an interest or to transact its shares. WAC 208-436-080.

Facts upon which the determination is based

Under the restructuring agreement, Visa International, Visa U.S.A., Visa Canada and Inovant LLC will be subsidiaries of Visa Inc. Credit unions with a membership interest in Visa U.S.A. will have both equity and non-equity interests in Visa U.S.A. (Proxy, page iv). The equity interest in Visa U.S.A. consists of voting rights and economic rights, which will convert into the right to receive shares in Visa Inc., upon the close of restructuring. (Proxy, page iv). The shares will be allocated to each financial institution member in a proportional manner, (Proxy, page vi), and will be converted into shares of class B common stock (Proxy, page vii). Selling or transferring Visa Inc. shares will be prohibited until the third anniversary of the completion of the IPO OR the “final resolution of the covered litigation,” whichever is later. (Proxy, page vi). The non-equity interest in Visa U.S.A. represents commercial and other rights and obligations in the Visa payments system. (Proxy, page iv). All of the terms and conditions of the transaction are contractual, between the Visa companies and their member financial institutions.

Rationale

Although state law generally prohibits credit unions from investment in common stock, in this situation the investment appears to be the indirect and unsolicited result of a contractual relationship between individual credit unions and Visa U.S.A. Participation in a business relationship with Visa is important to many credit unions’ ability to provide needed services to

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members and compete in the financial services market. Further, credit unions do not do business with Visa in order to receive stock. In this sense, ownership of shares was not sought by credit unions for “investment” purposes but, rather, was incidental to the normal course of credit union business.

The NCUA has recently issued an advisory opinion allowing federally-chartered credit unions to receive and retain stock under the Visa restructuring plan. NCUA Opinion 07-1022. In addition, the Office of the Comptroller of the Currency (OCC) recently allowed banks to receive shares of MasterCard, following its 2006 IPO. OCC Interpretive Letter #1075, December 2006, 12 U.S.C. 24(7). In its interpretive letter, the OCC reasoned that the receipt of MasterCard stock was “not for speculative or investment purposes but rather is intended to facilitate a bank’s participation in an otherwise permissible activity, or to enable the bank to receive needed services.” Consistent with the OCC’s reasoning, we conclude that the ownership of Visa Inc. shares by Washington state-chartered credit unions, as conditioned above, is a byproduct of permissible credit union business activity and, therefore, authorized as long as the conditions are met.

Due to the prospective nature of the receipt of the Visa Inc. shares and the technical nature of compliance with the above-listed conditions, additional questions may arise. Please contact the DCU if you have questions regarding this issue.

Sincerely,

Linda K. Jekel
Director of Credit Unions

cc: “A”
“B”
“C”