



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS

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November 29, 2007

“A”

“B”

DCU Interpretive Letter I-07-06

Re: Conditions of approval for “B” ownership of MasterCard Class A shares

Dear “A”:

Question presented

“B” regulatory compliance officer, “C”, contacted the Division of Credit Unions (“DCU”) by e-mail, requesting guidance regarding the conversion of certain Class B shares of MasterCard stock, received by “B” as participation in MasterCard’s initial public offering, to Class A shares. Our understanding is that Class A shares are publically-traded and have market value, unlike Class B shares, and that the shares were received as a byproduct of “B” contractual relationship with MasterCard.

We are treating this request as a written application under RCW 31.12.436(11) and WAC Chapter 208-436, for authorization to own the Class A stock. Absent such authorization, state-chartered credit unions are generally not permitted to own common stock.

Determination

“B” is approved to convert Class B shares of MasterCard to Class A shares, and may exercise its contractual rights in MasterCard shares. This approval is subject to the following conditions:

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1. The Board of Directors must approve receipt of equity and non-equity interests in MasterCard, including the conversion to Class A shares. RCW 31.12.436.
2. The ability to transact the shares is controlled by the terms of the contractual arrangement between “B” and MasterCard. The credit union may retain both Class A and Class B shares, or the credit union may sell all or part of them. DCU examiners will verify the terms of any sale.
3. The credit union may not add to the number of shares it receives contractually under the restructuring by purchasing or otherwise acquiring more shares.
4. The credit union’s stock investment is limited to the MasterCard shares that are the subject of this letter, because RCW 31.12.436 prohibits investment in most stocks.
5. 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 MasterCard stock is no longer a “safe and prudent” practice or is inconsistent with state or federal law, it may revoke or modify the 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

It is our understanding that, when MasterCard went public in 2006, financial institutions with existing contractual relationships in MasterCard were granted Class B shares. These shares were not purchased by “B” as an investment.

“B”

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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 MasterCard. Participation in a business relationship with credit card issuers is important to many credit unions' ability to provide needed services to members and compete in the financial services market. Further, credit unions do not do business with MasterCard 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.

In a similar situation, both the DCU and the NCUA have recently issued advisory opinions allowing credit unions to receive and retain stock under the Visa restructuring plan. See DCU Interpretive Letter I-07-05 and 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, and with our decision regarding the ownership of Visa shares, we conclude that the ownership of MasterCard shares by a Washington state-chartered credit union, as conditioned above, is a byproduct of permissible credit union business activity and, therefore, authorized as long as the conditions are met.

Please contact the DCU if you have questions regarding this issue.

Sincerely,

Linda K. Jekel
Director of Credit Unions

cc: "C"