



Associate General Counsel
Global Business Operations

June 28, 2010

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Attention: OTS—2010-0008

Re: Proposed Supplemental Guidance on Overdraft Protection Programs

Visa Inc. ("Visa") very much appreciates this opportunity to comment on the Office of Thrift Supervision ("OTS") proposed Supplemental Guidance on Overdraft Protection Programs (the "Proposed Supplemental Guidance").

Visa is a global payments technology company that connects consumers, businesses, financial institutions and governments, enabling them to use digital currency instead of cash and checks.¹ Of particular relevance to the Proposed Supplemental Guidance, U.S. financial institutions issue to their customers Visa debit cards carrying one or more of the following branded debit marks: Visa, Visa Electron, Interlink and PLUS®. Visa -- through operating regulations, technical standards, the Visa brand and a global service infrastructure providing transaction authorization, clearing and settlement, and risk management services -- supports Visa-related payment transactions throughout the world.

Visa would like to take this opportunity to comment on two aspects of the Proposed Supplemental Guidance that raise issues relating to the technical capabilities of the Visa network. The fact that Visa is not commenting on other aspects of the Proposed Supplemental Guidance should not be interpreted as expressing any support or opinion on these other aspects.

The Proposed Supplemental Guidance incorporates and reiterates the current OTS Best Practice that when consumers attempt to withdraw, transfer or otherwise access funds made available through an overdraft protection program (other than by check), a savings association should alert

¹ Visa does not issue cards, extend credit or set rates and fees for consumers. Cardholder relationships belong to Visa's network of financial institution clients and are managed by them.

consumers that completing the transaction will trigger an overdraft protection fee. The savings association also should give consumers an opportunity to cancel the attempted transaction. 78 Fed. Reg. 22681, 22682 (April 29, 2010).

When a Visa debit (or Visa credit or prepaid) cardholder initiates a transaction with a merchant or at an ATM with his/her Visa card, the Visa network generally requests authorization for that transaction from the card issuer. The card issuer determines whether to authorize the transaction based on a variety of factors specific to each issuer, including potentially for Visa debit card transactions the amount of available funds in the cardholder's deposit account, available lines of credit or other funds not maintained in the deposit account that are available to pay for the transaction in question (such as funds available in a linked account), and any available overdraft protection. As discussed below, in some cases the authorization is provided or declined without issuer involvement, such as for transactions in amounts under specified thresholds or where the issuer utilizes another entity to process authorizations for it in certain circumstances. If the authorization request is approved, the merchant or ATM completes the Visa card transaction with the cardholder, and the completed transaction is then submitted to the Visa network for clearing and settlement.² If the authorization request is declined, the merchant or ATM does not complete the Visa card transaction and the cardholder will need to complete the transaction through other means.

The response to the authorization request is either an approval for the full or in certain instances a partial amount of the transaction or denial of authorization for the transaction. An approval does not indicate the underlying source of funds or account, or most importantly for the Proposed Supplemental Guidance, whether the transaction would access funds made available through an overdraft protection program covered under the Proposed Supplemental Guidance. As a result, it is not currently feasible given the capabilities of the Visa network for the Visa debit (or Visa credit or prepaid) cardholder to be advised by the merchant or ATM prior to completion of the Visa card transaction whether the transaction will access funds made available through an overdraft protection program or will trigger an overdraft protection fee.

It would in Visa's view be prohibitively expensive to implement for the Visa network the capability to alert Visa cardholders that completing their Visa card transaction will trigger an overdraft protection fee. While Visa's authorization coding conceivably could be revised to include unique approval message codes for use by issuers, Visa and other network participants indicating to the merchant whether the approved transaction will trigger an overdraft protection fee, this would be a small fraction of the expense involved with implementing this capability for the Visa network. Issuers would be required to revise their authorization processes, programs and procedures, which must provide responses to authorization request almost instantaneously, to ascertain and identify in their authorization response whether the approved transaction would trigger an overdraft protection fee. This would be particularly problematic in those situations discussed below where the authorization is provided automatically for transactions below a certain dollar amount or the issuer utilizes a third party to provide authorization responses. Acquiring banks, the processors and other service providers used by merchants and ATM owners

² The issuer is obligated to settle with Visa for a Visa card transaction for which authorization has been approved, regardless of whether the cardholder pays the issuer for that transaction.

to process authorization responses also would need to revise their processes, programs and procedures to accommodate the new authorization responses for authorized transactions that would trigger an overdraft protection fee. And perhaps most significantly, merchants and ATMs would be required to communicate this authorization response to the cardholder. This would require not only new software for the merchant terminal or ATM, but potentially in certain instances new hardware. Also, merchants would be required to train check out staff on the implications of these new authorization responses, explain the authorizations to the cardholder and provide the cardholder the opportunity to cancel the transaction, resulting in slower check out processes and lost sales for merchants. Additional complications would be raised for transactions with non-U.S. merchants, who along with their non-U.S. acquiring banks, processors and service providers are not subject to U.S. law, including the Electronic Fund Transfer Act, Regulation E and related overdraft protection rules.

In addition, even if issuers' internal processes, programs and procedures and the Visa network's authorization coding could be modified to provide for the coding at the time of authorization of a card transaction that will trigger an overdraft protection fee on the cardholder's account, the batch nature of many issuers' deposit processing systems is such that the issuer cannot always tell at the time it approves authorization of a card transaction whether or not the card transaction will result in an overdraft in the cardholder's deposit account when the card transaction is settled. For example, while a cardholder may have a positive balance in his/her account at the time of the authorization of a card transaction, depending on when the settlement of that card transaction actually occurs (which may not be on the same day as the authorization), the intervening debits to that deposit account resulting from other cardholder transactions (e.g., checks drawn by the cardholder, cash withdrawn by the cardholder), and the intervening deposits to that deposit account and the availability of those deposits, the card transaction in question may or may not cause an overdraft to the cardholder's account at the time it is settled to the account. For those cardholders that have opted-in to the issuer's overdraft program pursuant to Regulation E, the issuer should not be prohibited from charging an overdraft fee for such a transaction, even though the issuer did not know, and could not have known, at the time it authorized the transaction that an overdraft would arise from the transaction.

For the foregoing reasons, Visa recommends that the Proposed Supplemental Guidance recognize that certain payments processes do not provide the capabilities to alert the consumer prior to completing a transaction that the completion of the transaction will trigger an overdraft protection fee.

The Proposed Supplemental Guidance also incorporates the current OTS Best Practice to promptly notify consumers of overdraft protection usage each time used. The Proposed Supplemental Guidance proposes to find that failing to do so, including failing to provide a consumer with the information necessary to return the account to a positive balance, is deceptive and violates the FTC Act prohibition against deceptive practices and the OTS Advertising Rule. The Proposed Supplemental Guidance further provides that "[w]here technologically feasible to do so, real time notification should be provided." 78 Fed. Reg. 22681, 22686-22687 (April 29, 2010).

As discussed above, the Visa network does not accommodate notification to the consumer by the merchant or ATM at the time of the Visa card transaction that the consumer will use or has used an overdraft protection program in connection with the transaction. Moreover, in certain instances, the issuer may not be aware at the time of the transaction that the transaction has resulted in use of the overdraft protection program. For example, certain transactions under pre-specified "floor limits," including transactions occurring at certain non-U.S. merchants, are automatically authorized by the Visa network without issuer involvement. Issuers do not learn of these small dollar transactions until after they are completed by the cardholder and are cleared and settled through the Visa network. Similarly, certain issuers may set their systems to automatically approve at least for certain cardholders certain small dollar transactions or transactions of a certain type. In these circumstances, the issuer will not necessarily be aware that the transaction resulted in use of an overdraft protection program until after the transaction has been completed by the cardholder and cleared and settled through the Visa network. Certain issuers use third parties in so-called "stand in processing" and other arrangements to respond to their authorization requests, for example when the issuer is not for whatever reason available to respond to the authorization request or in other circumstances. These third parties approve or decline authorization requests based on parameters established by the issuer, which may or may not include whether an overdraft protection program is available for the transaction. For transactions approved by these third parties, the issuer generally will not be aware at the time of the transaction that the transaction resulted in use of an overdraft protection program.

In light of the foregoing, Visa recommends that the Proposed Supplemental Guidance recognize that there may be a number of situations, in addition to technological feasibility, where the issuer will not be able to provide "real time" notification that a transaction has resulted in use of an overdraft protection program.

Visa very much appreciates this opportunity to comment on the Proposed Supplemental Guidance. If the OTS has any questions about this letter or Visa can otherwise be of further assistance to the OTS as it further considers the Proposed Supplemental Guidance, please do not hesitate to contact me, at 650-432-1228.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Miller", with a horizontal line underneath.

Alex Miller

cc: Kathryn Taylor