



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

November 14, 2006

Interpretive Letter #1075
December 2006
12 USC 24(7)

Subject: Retention of MasterCard stock

Dear []:

Earlier this year, [] (“Bank”) received 1,354 shares of Class B stock and one share of Class M stock of MasterCard, Inc., as a result of that company’s initial public offering (“IPO”). You have inquired if it is permissible for the Bank to retain these shares. This is to confirm that retention of these shares is permissible.

Facts

MasterCard¹ provides a variety of services in support of the credit card, debit card, and related payment programs of its member financial institutions. MasterCard provides its financial institution members with information and transaction processing services including authorization, clearing, and settlement of transactions, and establishes and enforces rules and standards surrounding the use of the MasterCard payment card system.

In June 2002, MasterCard reorganized into a holding company structure. The operating entity, MasterCard International (“MCI”), became a subsidiary of a holding company, MasterCard, Inc. Ownership of MasterCard, Inc. stock was restricted to the regulated financial institutions who were members of MCI. Thus, MasterCard remained a membership organization but the member financial institutions now controlled it indirectly through ownership of the holding company stock.

On May 25, 2006, MasterCard, Inc. completed an IPO of its stock and became a publicly-traded company listed on the New York Stock Exchange.² Prior to the IPO all existing shareholders of

¹ As used in this letter, the term “MasterCard” refers to the MasterCard payment system in general. Where necessary for clarity, specific corporate entities are identified as such.

² For a detailed description of this transaction, *see generally* MasterCard, Inc., Amendment No. 8 to SEC Form S-1 Registration Statement, May 23, 2006 (“2006 Registration Statement”), available on MasterCard web site, <http://cfn.10kwizard.com/cgi/convert/pdf/MASTERCARDINCS1A.pdf?pdf=1&repo=tenk&ipage=4185885&num=-2&pdf=1&xml=1&odef=8&dn=2&dn=3>.

MasterCard, Inc. — that is, the financial institution members of MCI — received 1.35 shares of new Class B stock plus one share of new Class M stock for each share of their old MasterCard, Inc. stock. New MasterCard, Inc. Class A stock was issued for public trading. Class A shares are reserved for the general public; no member or former member of MCI, and no member of a competing payment card system, may beneficially own any share of Class A common stock. Class B stock may be held only by a financial institution member of MCI, or certain MasterCard insiders. Therefore, a nonmember financial institution cannot acquire Class B stock.

Class M stock is also restricted to financial institution members of MCI. Class M shares are not transferable and each member may own only one share. Class M shares have no economic rights either to dividends or to distribution of assets in case of liquidation, are not convertible to any other class, and have only limited voting rights. Class M shareholders have the right to elect up to three directors (but not more than 25 percent of all directors) of MasterCard, Inc., and the right to vote on certain fundamental corporate changes.

As a result of the IPO, the financial institutions that previously owned all of the shares of MasterCard, Inc. now own all of its Class B and Class M stock but only 44 percent of its equity; the public, Class A shareholders own 56 percent. Class A and Class B shares have the same economic rights, *e.g.*, to dividends, but Class A shares are voting and Class B shares are nonvoting. Currently, Class B shares may be bought and sold only among Class B shareholders. However, beginning on the fourth anniversary of the IPO, *i.e.*, May 25, 2010, Class B shares will be convertible to Class A shares in order to sell those shares. Class B shareholders will not be able to convert their shares to Class A and then retain them; once converted, the Class A shares must be sold to an eligible Class A purchaser.

Institutions that join MasterCard in the future will receive one share of Class M stock³ but they will not receive any Class B shares because ownership of such shares is no longer a condition of membership.

Legal Analysis

Although national banks generally may not purchase shares of stock for investment purposes, the OCC has long held that national banks may make equity investments without violating 12 U.S.C. § 24(Seventh) when the purchase of stock is 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.⁴ The Bank's ownership of MasterCard stock prior to

³ However, the Class M shares eventually will be retired. 2006 Registration Statement, *supra* note 2, at 134-36, 138-39.

⁴ *See, e.g.*, Interpretive Letter No. 543, *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (Feb. 13, 1991) (purchase of stock in a corporation providing information on the government securities market; ownership of the stock would be useful to the investing bank's business as a primary dealer in U.S. government securities); Interpretive Letter No. 421, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988) (confirming authority of a national bank to purchase shares of Government Securities Clearing Corporation in order to obtain clearing services); Interpretive Letter No. 380, *reprinted in* [1988-

the IPO clearly fell within this line of precedent because ownership of stock was necessary in order to issue MasterCard payment cards and receive MasterCard's payment-related services.

Now the issue presented is whether the Bank may continue to hold the Class B and Class M stock of MasterCard, Inc., which it received as a result of the IPO. The OCC has previously addressed this same type of question in connection with certain life insurance companies that have changed from mutual to stock ownership in recent years. National banks are allowed to purchase life insurance, and some of them had purchased insurance from mutual insurance companies that later converted to stock ownership. As policyholders the banks were entitled to receive shares of stock in the converting companies on a *pro rata* basis based upon the amount of insurance coverage they had. The OCC concluded that these banks could retain the shares of stock they received in these insurance companies. The receipt of the stock was found to be a byproduct of the bank's permissible purchase of life insurance protection. However, retention was subject to OCC examiners finding no safety and soundness problem with the holding.⁵

The same analysis should be applied here. Your bank and others that received Class B and Class M stock of MasterCard, Inc. in the IPO did not purchase these shares; they were received automatically as a byproduct of the permissible activity of owning shares of stock of MasterCard, Inc. at a time when stock ownership was required in order to be a member of MasterCard and receive its services.

Therefore, the Bank may retain the Class B and Class M shares of MasterCard, Inc. that it received in the IPO, provided that your OCC examiner determines that this does not raise safety and soundness concerns.⁶

I trust that this has been responsive to your inquiry. If you have further questions, please feel free to contact me at (202) 874-5300.

Sincerely,

/s/

Christopher C. Manthey
Special Counsel
Bank Activities & Structure Division

1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,604 (Dec. 29, 1986) (purchase of shares of an options clearing corporation in order to obtain options clearing services).

⁵ Interpretive Letter No. 905, *reprinted in* [2000-2001 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-424 (Jan. 29, 2001); Interpretive Letter No. 901, *reprinted in id.* ¶ 81-420 (June 29, 2000).

⁶ This letter does not address whether an existing member of MasterCard may acquire additional Class B shares to supplement its current holdings, or whether Class B and Class M shares may be acquired by national banks that become members of MasterCard in the future.