



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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September 10, 1984 84-10

Ms. Claudia B. Wilkinson
Fulbright & Jaworski
Bank of the Southwest Building
Houston, Texas 77002

Dear Ms. Wilkinson:

This is to acknowledge receipt of your letter dated August 30, 1984 in which you pose several questions and request interpretations by this office of how the various relevant provisions of Article 5069, V.T.C.S. apply or do not apply to the fact situations set out in your inquiry. Although the result is a somewhat lengthy reply, it seems to me that the most accurate manner of response to your questions is to quote a portion of your letter which sets out the fact situation upon which your questions are based and then respond to those questions. Therefore, a portion of your letter is as follows:

"The interpretations requested in this letter are based upon the following fact situation. A state or national bank (the 'Bank') issues debit cards to customers (the 'Depositors'), upon request, pursuant to an agreement (the 'Debit Agreement'). The Debit Agreement provides that the debit card may be used at certain automated teller machines (the 'ATMs') to withdraw money from certain designated deposit accounts, to transfer money between the deposit accounts, to make deposits to the deposit accounts and to inquire as to the balance in the deposit accounts. Not all transactions may be performed at each ATM which may be used by the Depositors. In addition, the Depositors may use a debit card at certain point of sale terminals to pay for goods or services purchased.

"Currently, the debit cards are marked with the logo of the particular proprietary card system. MasterCard, Inc. and Visa U.S.A., Inc. each promote a debit card system and trademark in addition to their credit card operations. Without describing their systems in



detail, a MasterCard or Visa debit card is similar to a MasterCard or Visa credit card in that a cardholder may use the card to purchase goods or services at merchant locations which honor MasterCard or Visa credit cards; however, when the charge arrives at the cardholder's bank for payment, it will be debited against a deposit account instead of an open-end credit account. The Bank plans to mark all of its debit cards with the appropriate MasterCard or Visa logo and to make the arrangements necessary to enable its cardholders to use their debit cards at merchant locations which honor MasterCard or Visa credit cards. When those arrangements have been completed, a Depositor will be able to use a debit card to purchase goods or services at a merchant location with an appropriate point of sale terminal and at a merchant location which accepts MasterCard or Visa Credit cards.

"The Debit Agreement does not provide for an extension of credit to the Depositor. If a Depositor has not made other arrangements with the Bank, any request by a Depositor at an ATM for a withdrawal which exceeds the balance of available funds in the deposit account will be refused.

"A Depositor with a checking or NOW account (collectively, the 'checking account') and a debit card agrees to pay certain fees to the Bank. Checking accounts are subject to a monthly service charge. The Depositor must pay an additional monthly service charge to have a debit card. Also, transaction fees are assessed for certain transactions made using a debit card. Depending upon where the withdrawal is made, a transaction fee may apply to a withdrawal made using a debit card and, as discussed below, that withdrawal may trigger an advance under an open-end line of credit. (The facts described in this letter apply to many banks. Each bank determines what types of fees and charges will be imposed upon its customers, so some of the banks may choose not to impose all of the described fees and charges.)

"As a separate product, the Bank offers an open-end line of credit which is governed by another agreement (the 'Credit Agreement'). The credit line is available to qualified customers who choose to have such a service. Under the terms of the Credit Agreement, a customer (the 'Borrower') may access the credit line in several ways. The credit line ordinarily is used as an overdraft line for a designated checking account. The Borrower also may access the credit line by specifically requesting that the Bank transfer funds from the credit line to the Borrower's designated checking account. Such a request may be made by telephone, by telex, in some other written form or in person.

"The Credit Agreement provides for funds to be advanced if a withdrawal from a specified checking account would result in an overdraft. The balance in the checking account would be used first, and, so long as the applicable credit limit would not be exceeded, funds would be automatically advanced from the credit line to the checking account to cover the withdrawal. This procedure would apply for withdrawals by check or by use of a debit card. Without manually examining the Depositor's statement the Bank cannot determine which type of withdrawal resulted in an advance of funds under the line of credit. If an ATM transaction and a check or other withdrawal are posted on the same day, there may be no conclusive method to determine which withdrawal triggered an advance under the credit line.

"The unadvanced portion of a Borrower's credit line is treated as funds which are available for withdrawal. If a Borrower inquires at the Bank or at an ATM as to the balance of the Borrower's checking account, the balance shown will be the total of the funds actually in the account plus the unadvanced portion of the credit line.

"According to the terms of the Credit Agreement, interest will be charged on the principal amount from time to time outstanding. The Credit Agreement is structured under Chapter 15.

"As another product which is separate from each of the debit card and credit line products, the Bank plans to develop and market a club membership. The club membership will entitle members to certain services. Currently, the Bank plans that the club membership will entitle customers to receive non-credit related services such as (a) discount buying via a toll-free telephone number using a catalog which will be mailed to the member, (b) discounts on airline tickets and hotel accommodations with a special toll-free telephone number for reservations, (c) other travel and tour discounts, (d) long distance telephone service discounts, (e) prescription drug discounts and (f) an accidental death insurance policy. Membership in the club will be conditioned upon payment of an annual fee.

"During the course of the Bank's efforts to market its various products, it is possible that advertising material may include information with respect to the availability of the debit card, overdraft protection and club membership services, including the suggestion that a customer or potential customer may want to obtain all of the services at once."

As mentioned in your letter request, in Letter Interpretations Numbers 83-6, June 27, 1983, and 83-9, July 13, 1983, questions were considered which were similar to those you pose here. In both of those letters consideration was given to fact situations in which the use of a bank debit card could upon occasion cause an advance of funds to checking accounts from previously established separate credit plans. We expressed our view that such transactions did not constitute "Credit Card Transactions" as defined in Article 5069 - 1.01(g), V.T.C.S. and/or that the described agreements did not constitute "Lender Credit Card Agreements" as defined in Article 5069 - 1.01(i), V.T.C.S. Our reasoning in reaching those results was based to a large extent on what we perceived to be the intent of the Texas Legislature in enacting Senate Bill 405 in 1983 and on the fact that debit cards were being used to access asset accounts rather than typical lender credit cards being used to directly access revolving credit accounts. The same approach has been employed in arriving at our responses to the questions considered in this reply.

As you know, Article 5069 - 15.02(f), V.T.C.S. provides that "No fees shall be charged to or collected from the customer in connection with an account subject to this chapter unless authorized by statute." The Credit Agreement described in your letter is subject to Chapter 15, and there is no statutory authorization in Chapter 15 for the fees described in your letter. The primary question to be resolved therefore is whether the proposed fees will be charged "in connection with an account" subject to Chapter 15. It is our opinion that the proposed fees would not be charged "in connection with an account" subject to Chapter 15 but rather are charged in connection with the debit card account or the checking account. Your specific questions and our responses thereto are set out below.

Question Number 1. "If a customer holds a debit card and a credit line, will the imposition of the monthly checking account service charge violate Art. 15.02(f) or any other applicable provision of the Texas Credit Code?"

Response to Question Number 1. No. The monthly checking account charge is assessed for the checking account service regardless of whether credit is extended by virtue of the credit plan and such charge is not, in our opinion, "in connection with" a Chapter 15 account.

Question Number 2. "If a customer holds a debit card and a credit line, will the imposition of the monthly debit card service charge violate Art. 15.02(f) or any other applicable provision of the Texas Credit Code?"

Response to Question Number 2. No. As in Question Number 1, the charge in question is assessed regardless of whether credit is extended and therefore is not, in our opinion, "in connection with" a Chapter 15 account.

Question Number 3. "If a customer holds a debit card and a credit line, will the imposition of transaction fees on debit card transactions violate Art. 15.02(f) or any other applicable provision of the Texas Credit Code?"

Response to Question Number 3. No. Our reasoning is the same as expressed in Responses Number 1 and 2.

Question Number 4. "If a customer holds a credit line and a club membership, will the imposition of the club membership fee violate Art. 15.02(f) or any other applicable provision of the Texas Credit Code?"

Response to Question Number 4. No. The credit line is separate from the club membership and is not a service received by joining the club. The annual fee charged for club membership is not charged in connection with the credit line and bank customers other than club members will have the credit line. Our response would probably not be the same if the credit line were one of the services obtained by virtue of paying the annual fee required for club membership.

Question Number 5. "If a customer holds a debit card, a credit line and a club membership, will the imposition of the club membership fee violate Art. 15.02(f) or any other applicable provision of the Texas Credit Code?"

Response to Question Number 5. No. As stated in Response Number 4, the club membership fee is not charged or assessed "in connection with" a Chapter 15 account. The credit line is not a feature of club membership and will be utilized by customers other than club members and some club members may not have the credit line.

Question Number 6. "Is any use of a debit card as described herein a 'Credit Card Transaction' as that term is defined in Art. 1.01(g)?"

Response to Question Number 6. No. The described use of the debit card does not constitute a "Credit Card Transaction" as defined in Article 1.01(g). Our reasons set out in Letter Interpretations Numbers 83-6 and 83-9 are applicable here.

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Question Number 7. "If a customer holds a debit card and a credit line, would the Credit Agreement be a 'Lender Credit Card Agreement' as that term is defined in Art. 1.01(i)?"

Response to Question Number 7. No. The credit line may be activated in several ways, one of which is by a debit to an asset account by use of the debit card. The fact that the debit to an asset account results in a transfer of funds to that account from the credit line does not make the underlying agreement a "Lender Credit Card Agreement" as that term is defined in Article 1.01(i).

The above responses are based upon the fact situation set out in your letter (not all of which is quoted here). For example, the monthly service charge on checking accounts applies to checking accounts both with and without credit lines. The monthly service charge in connection with the debit card is assessed without regard to whether the account accessible by the debit card is tied to an overdraft credit line. Any transaction fee assessed is made without regard to whether the account is tied to the credit line. The club membership charge is not connected to the credit line program and the credit line is not a feature of club membership. A club member may or may not also have a deposit account, debit card or credit line. The debit card, credit line and club membership are separate and independent of each other. A customer may have one, all or none of them.

In closing, I would again point out the responses given herein are related to the specific program being proposed. Variations from these facts might well cause the prohibition against other fees mandated by Article 15.02(f) to be applicable.

Sincerely,


Sam Kelley
Consumer Credit Commissioner