July 22, 2011

Via Electronic Mail (submitted via Federal e-rulemaking portal)
Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551.

Re: Regulation E; Docket No. R–1419; RIN 7100–AD76,

Dear Ms. Johnson:

This comment letter is submitted by Visa Inc. ("Visa") in response to the Board of Governors of the Federal Reserve System's ("Board") request for comment on its proposed amendments to Regulation E to implement Section 1073 of the Dodd-Frank Act on Remittance Transfers (the "Proposed Rule").[1] Section 1073 of the Dodd-Frank Act adds a new Section 919 to the Electronic Funds Transfer Act ("EFTA") providing for disclosures, error resolution procedures and cancellation and refund rights for consumer transactions initiated in the United States by consumers for transmission of funds to Recipients located outside the United States. The Proposed Rule would revise Regulation E, which implements the EFTA, and the official staff commentary to the regulation ("Commentary") to carry out the new statutory protections. Although the Proposed Rule was issued by the Board, final rules on remittance transfers will be implemented by the Consumer Financial Protection Bureau ("Bureau") following the designated transfer date of the Board's rulewriting authority under the EFTA, or July 21, 2011. Visa appreciates the opportunity to comment on this important matter and submits these comments on the Proposed Rule with respect to the Visa Money Transfer service (the "VMT Service").

Visa supports the purpose of Section 919 of the EFTA to provide consumers new protections with respect to their use of remittance transfer services, including enhanced transparency regarding the terms of the services and error resolution rights. We believe that Section 919 as enacted primarily contemplates traditional "closed-loop" systems in which the remittance transfer provider has control over all fees and rates applicable to a transfer and the customers on both sides of a remittance are the customers of the "closed-loop" system. The VMT Service, however, is an open-loop system that differs from conventional and well understood methods of remittance transfers in important ways that cannot be reconciled with the approach set forth in the Proposed Rule. In particular, Visa is concerned that certain of the disclosure requirements in the Proposed Rule, if finalized, would present severe operational

[1] 76 Fed. Reg. 29902-62 (May 23, 2011).

challenges that would significantly limit Visa's ability to offer the service and potentially deny consumers an important and valuable competitive alternative to traditional remittance transfer services.

As discussed in more detail below, Visa believes that certain aspects of the Proposed Rule could be modified in a manner consistent with the language and intent of Section 919 that would facilitate the ability of Visa and its client financial institutions to continue to offer the VMT Services in compliance with the disclosure requirements set forth in the statute. Visa further believes that the comments set forth below provide robust and appropriate alternatives to certain disclosure requirements and error resolution and cancellation issues that could be applicable for the VMT Service (and other similar remittance transfer systems) and that will help preserve greater consumer choice and continued competition in remittance transfer services.

Visa further submits for the Bureau's consideration that after review of these comments, a follow-up meeting between the Bureau's staff members who will be responsible for drafting the final rule and Visa could be helpful in providing an opportunity for further discussion regarding the unique features, benefits and operational aspects of the VMT Service and how Visa and its financial institution clients can comply with the Proposed Rule. In short, an interactive dialog could help to ensure that Visa client financial institutions can continue to offer the VMT Service to consumers and that those consumers will be well served in using the VMT Service in accordance with the Dodd-Frank Act.

Introduction

As the operator of the largest retail electronic payment system in the world, Visa plays a pivotal role in advancing payment products and technologies worldwide to benefit its more than 15,500 participating financial institutions and the hundreds of millions of consumers who own over 1.9 billion Visa-branded cards in over 200 countries and territories around the world. These cards may be used to make purchases at tens of millions of merchants that accept Visa-branded cards and to obtain cash through over 1.8 million ATMs as well as at branches of participating financial institutions. In 2010, customers of financial institutions used the Visa system to make 71 billion transactions totaling over $5.2 trillion.

Given Visa's global role in consumer payments, Visa has a strong interest in promoting the use of the Visa system to provide a secure, reliable, efficient and cost-effective means by which U.S. consumers may transmit funds to recipients outside the United States. Visa developed the VMT Service to enable Visa's client financial institutions to provide a highly cost-effective remittance transfer service that utilizes the efficiencies, convenience, security and reliability of the Visa system for the benefit of both consumers and the regulated financial institutions that utilize Visa to provide payment and cash disbursement services to consumers. Through the VMT Service, Visa client financial institutions can utilize the operational advantages of the Visa system currently in place to provide a competitive alternative to traditional remittance transfer services for the hundreds of millions of Visa account holders around the world. Visa believes that the VMT Service will set the bar globally for advantageous

consumer remittance transfer services in the near-term. Over time, rapidly evolving advances in consumer payments, such as mobile capabilities, will be automatically available to consumers who use the VMT Service to send and receive remittance transfers as they are adopted by Visa client financial institutions and merchants. In these ways, the VMT Service offers opportunities for improved, cost-effective and secure remittance transfer services to consumers that are simply not available from the options that are currently offered today. Visa submits that the Bureau can avoid the unintended consequences of eliminating for consumers a valuable competitive alternative in the remittance sector without departing from the statutory mandates of the Dodd-Frank Act. Visa's comment describes the VMT Service, focusing in particular on features addressing the consumer protection provisions of the Proposed Rule. Visa also suggests certain modifications and clarifications to the Proposed Rule to illustrate how the VMT Service would be able to comply with Section 919.

Visa Money Transfer Service

How it Works

The VMT Service utilizes VisaNet for remittance transfers, the same highly automated infrastructure that is used to provide Visa consumer payment and ATM transaction services globally. The VMT Service also utilizes Visa's existing contractual structure comprising thousands of agreements between Visa and its regulated client financial institutions that provide card-issuing and merchant acceptance services to consumers as well as those institutions' existing agreements with Visa account holders and merchants.

Importantly, the VMT Service relies on the existing contractual relationships that govern the card issuer-to-account holder relationship between recipients and the recipient institutions. The recipient's existing Visa account and the terms and conditions of the recipient's agreement with her or his Visa issuer govern the cardholder's receipt of funds from the VMT Service, determine the currency in which funds will be made available in the account by the issuer and set the recipient's expectations with regards to amount of funds that will be available for use.

In a typical VMT Service program, a Visa client financial institution will act as a remittance transfer provider for its customers. A consumer (the "Sender") instructs a Visa client financial institution (the "Originator") to send funds to a designated recipient's (the "Recipient") Visa cardholder account held by a Visa client financial institution (the "Recipient Issuer"). The VMT Service is available on both domestic and cross-border transactions. The Sender can fund a money transfer using any means allowed by the Originator, including cash, a bank account, or a Visa account (i.e., it is an "any funding source to a Visa card" model). Once funding for the money transfer is approved, the Originator sends a Visa transaction called an Original Credit Transaction ("OCT") to the Recipient Issuer through VisaNet to credit the Recipient's account. The Recipient Issuer is required to make funds available in the Recipient's account within two days of receipt of the OCT. If the Recipient Issuer participates in the VMT Service's Fast Funds program, the funds must be made available within 30 minutes of receipt of the OCT. The Recipient may then use the funds in accordance with the terms and conditions of the pre-existing

Visa card or account agreement between the Recipient and the Recipient Issuer. The relationships of the parties and flows of funds in the VMT Service are shown in the diagram in Appendix A.

Benefits to Senders

The VMT Service provides a wide range of benefits to Senders and Recipients in comparison to traditional consumer remittance transfer services. The VMT Service makes transfers quick and easy to millions of potential Recipients worldwide who have an eligible Visa card. The VMT Service Sender benefits include:

- **Cost**—Visa's vast scale and low operating costs applicable to the OCT transactions permit participating Originators to provide a highly competitive service to Senders.[2]

- **Convenience**—Since a Recipient is only required to have an eligible Visa account to receive a money transfer, Senders can send money to Visa cardholders in nearly every country around the world (except sanctioned countries or countries with restrictions on remittance transactions) without requiring that the Recipient set up a separate money transfer account, pick up the funds from an office or wait for the funds to be delivered. The funds can be accessed instantly by the Recipient as soon as they settle into the Recipient's account through use of his or her Visa card.

- **Multiple Channel Support**—Senders can send funds using any preferred channel (e.g., bank branch, Internet, mobile, ATM). A Sender is not inconvenienced with visiting an agent location or constrained by certain business hours.

- **Security**—The VMT Service offers a reliable and trusted way to send and receive funds providing Senders with a fully electronic service that is traceable and auditable. Visa guarantees settlement of OCTs between the Originator and the Recipient Issuer, so that the financial strength of the entire Visa system backs every consumer remittance transfer just as it does for payments to merchant acquirers. In addition, Senders are not endangered by having to carry large amounts of cash to the remittance provider's office.

- **Flexible Funding Options**—Senders can fund money transfers from a Visa or any card account accepted by the Originator, a bank account, or cash.

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[2] It should be noted, however, that Visa licensee institutions independently set fees for their Visa services without guidance from Visa.

- **Speed**—Senders can send funds to Recipients quickly, with conventional posting to the Recipient's account within two days after the Recipient Issuer receives the OCT or as quickly as 30 minutes if the Recipient Issuer participates in Visa's Fast Funds service.

- **Simplicity**—Senders can conduct money transfers by providing the Recipient's Visa account number instead of obtaining and remembering bank account numbers, routing codes and other related information.

Benefits to Recipients

Without leaving home or even going online, Recipients have the proceeds of a VMT Service remittance posted to their Visa account automatically. Recipient benefits include:

- **Convenience**—A Recipient only needs an eligible Visa account to receive money transfers—there is no need to open, maintain, and track a separate account for VMT transactions. Also, the Recipient automatically receives a record of the transaction as an entry in his or her Visa account statement.

- **Ease of Use**—With funds delivered straight to their Visa account, Recipients are not required to take any action upon receipt of a VMT Service remittance transfer. There is no need to go in person to pick up the funds or fill out lengthy forms. There is nothing else a Recipient must do other than use her or his Visa card in the customary manner.

- **Accessibility**—Recipients can use their Visa card to access the remittance transfer funds at Visa merchant locations worldwide, including on the Internet and with other merchants who do not accept cash or checks such as for car rentals, or withdraw the funds at an ATM—no other steps are needed. Recipients are also able to receive funds in locations which may not otherwise be served by a remittance transfer provider or agent location.

- **Efficiency and Security**—The VMT Service eliminates the need for Recipients to handle, store, and protect cash, or to cash or deposit a check.

Compliance with the Proposed Rule

In finalizing the Proposed Rule, Visa recommends that the Bureau include modifications and clarifications that will take into account the unique legal structure and operational features of the VMT Service, and other similar remittance services, that will permit the VMT Service to continue to be offered as a competitive alternative to traditional remittance transfer services while still meeting the consumer protection goals of the Dodd-Frank Act. These clarifications consist of accommodations for the Visa system to provide similar relief to that afforded to institutions that send remittances through the international wire transfer system or the Federal

Reserve System's own international ACH system. As is the case for institutions using those alternative systems, certain operational and legal structures applicable to the VMT Service will require that financial institutions offering the service for their cross-border consumer remittance transfers meet disclosure and error correction requirements in ways that do not fit within the tightly prescribed means required by the Proposed Rule. As explained below, the modifications to the Proposed Rule that Visa is suggesting would be consistent with the plain language and intent of 919 and would require less reliance by the Bureau on interpretive authority to extend the regulation's requirements beyond the statutory language. Additionally, as explained further below, because of the inconvenience and delay that will be caused to the large majority of Senders and Recipients, Visa suggests that the Bureau re-assess the proposed provisions regarding cancellation and refund rights as it would apply to VMT and similar remittance transfer services. In all, we believe that Visa's proposals will better serve consumers using the VMT Service or other similar remittance transfer services by providing consumers the protections afforded by the Dodd-Frank Act while enjoying the convenience, security, reliability and cost-effectiveness of remittance services made possible by the VMT Service. We have included proposed revised wording in the Appendix B to this letter to implement the suggested modifications be made to Regulation E and the accompanying Commentary.

I. Disclosures

As described above, many of the substantial advantages that the VMT Service brings to consumers are made possible by Visa's highly automated and extensive network for credit and debit card transactions. Of equal and perhaps greater importance, these advantages are facilitated by existing cardholder relationships that Recipients have with their respective Recipient Issuers. The assumption underlying many of the provisions of the Proposed Rule, however, do not readily take into account the client relationships and the technology and organizational structure of the Visa system that supports the VMT Service. The same is true for other remittance transfer services operated over similar network systems. In particular, several disclosures of exchange rates, fees and taxes imposed by parties other than the Originator that would be required to be given to Senders at the time of the transaction by the Originators, are not feasible for the VMT Service to disclose in the manner prescribed by the Proposed Rule. As explained below, some of the Board's disclosure proposals would require disclosure to Visa, to the Sender's Originator and to the Sender of confidential matters between designated Recipients and their Recipient Issuers. Accordingly, Visa proposes certain modifications and clarifications that will meet the disclosure goals and requirements of the Dodd-Frank Act while respecting the confidentiality of the Recipient's Visa account. Importantly, Visa believes that its proposals are consistent with the statutory language of the remittance provisions of the Dodd-Frank Act.

A. Currency Exchange Rates

The Proposed Rule requires that the exact exchange rate that will be applied to a specific remittance transaction must be disclosed to the Sender both before the Sender has paid for the transfer and in the receipt. [12 C. F. R. 205.31(b)(1)(iv) and (b)(2)(i)] The Proposed Rule also requires disclosure of the Transfer Amount, i.e., the amount that will be transferred to the

Recipient "in the currency in which the funds will be transferred," applying the disclosed exchange rate to the principal amount of the transfer. [12 C.F.R. 205.31(b)(1)(i) and (b)(2)(i)] For reasons further explained below, although the Originators acting as remittance transfer providers can disclose both the exchange rate "used by the remittance transfer provider" and the resulting Transfer Amount based on that exchange rate, the Originators cannot and should not be required to make disclosures or estimates of currencies, exchange rates, fees, or taxes that may be subsequently applied by the Recipient Issuer and the resulting "Total to Recipients." [12 C.F.R. 205.31(b)(1)(v)-(viii)] In the alternative, Visa suggests a disclosure that would inform Senders that "The total amount and currency to be made available to your recipient may vary from the Transfer Amount due to the account currency, exchange rates, fees, taxes and other terms and conditions that are applied to the transfer in accordance with the Recipient's cardholder agreement."

In the VMT Service, as with all Visa transactions, the exchange rate "used by the remittance transfer provider" is the rate that the Originator uses to calculate the amount that must be transmitted to the Recipient Issuer using the currency designated by the Recipient Issuer for transactions to its account holders. That designated currency in VMT Service terminology is the "transfer currency." Often the transfer currency is the same currency which is applicable to the given cardholder's account, i.e., the "account currency". In some limited instances, the transfer currency may be a different currency than the account currency because the account currency will be unknown to Visa or other Visa client financial institutions, including the Originator (i.e., in Step 4 of Appendix A the transfer currency would be U.S. Dollars and in Step 5 the Recipient Issuer may convert the U.S. Dollars to Nicaraguan Cordobas which may be the Recipient Issuer's account currency). However, it is feasible for the Originator to disclose to the Sender prior to a VMT remittance transfer the exchange rate it will use to convert the remittance amount into the transfer currency. In order to make this disclosure, the Originators will look up the transfer currency of the Recipient Issuer. With knowledge of that currency, the Originator can determine what exchange rate it will use to convert the Sender's currency into the transfer currency. The VMT Service offers Originators two options for converting currencies from the Sender's currency to the Recipient Issuer's transfer currency, where the two currencies differ. An Originator may either (i) make a currency conversion to the transfer currency itself using an exchange rate that it determines independently, or (ii) allow VisaNet to do the currency conversion to the Recipient Issuer's transfer currency using VisaNet's wholesale exchange rates.[3] In both cases, the Originator, acting as the remittance transfer provider in the terminology of the Act and the Proposed Rule, can disclose the Transfer Amount and the exchange rate that will be applied to the transaction in the currency in which the funds will be transferred, as

[3] Visa has the capability to convert over 150 currencies and supports 19 settlement currencies. Visa can provide wholesale FX rates because of the large volumes of currencies purchased. VisaNet converts currencies in the normal course of its automated daily net settlement process, which calculates the amounts due from and to every financial institutions arising from all of its Visa transactions for the day. The VMT Service transactions are not processed separately in this global clearing and settlement calculation. All currency conversions are made according to one currency conversion rate matrix; the same rates that apply to all purchase and ATM transactions for the day will apply also to OCTs that affect the VMT Service remittances.

required by EFTA Section 919(a)(2)(A)(iii) and 12 C.F.R. 205.31(b)(1)(i),(iv) and (b)(2)(i). The exchange rates disclosed by the Originator and used to calculate the resulting Transfer Amount will be the exact rate "used by the remittance transfer provider" as required under Section 919(a)(2)(A)(iii),and not an estimate. An example of such a disclosure based on Model Form A-30 is shown in Appendix C.

1. Visa's Suggested Modification to the Disclosure Rules Better Serves Consumers Using the Visa Money Transfer Service.

Visa believes that the Originators should not be required to disclose to Senders "Other Fees," "Other Taxes," exchange rates, and the resulting "Total to Recipients, "in the currency in which the funds will be received," as would be required by proposed 12 C.F.R. 205.31(b)(1)(v), (vi) and (vii).[4] As explained above, these currencies, exchange rates and fees are not those determined by or known to the Originator acting as a remittance transfer provider for the Sender. Instead, Visa recommends that, for the reasons explained below, the Bureau recognize that Originators in addition to disclosing the Transfer Amount, will meet their compliance responsibilities by providing an alternative disclosure to the Sender prior to paying for the transfer and in the transfer receipt: "The total amount and currency to be made available to your Recipient may vary from the Transfer Amount due to the account currency, exchange rates, fees, taxes and other terms and conditions that are applied to the transfer in accordance with the Recipient's cardholder agreement." (See Appendix B to this comment letter, proposed 12 CFR 205.21(b)(1)(vii)), Visa believes that the recommended disclosure more appropriately recognizes the unique structure of the VMT Service and other similar remittance transfer services while also falling within the statutory language of Section 919, as discussed below.

The VMT Service differs importantly from most other consumer money transfer services in that the funds are made available to Recipients as credits to pre-existing Visa accounts. The Visa account might be a deposit account accessed by a Visa debit card, a personalized reloadable Visa prepaid card or an open-end credit account accessed by a Visa credit card. The Recipient Issuers i.e., the card issuers, are free to determine account currencies, exchange rates and fees on these products without guidance from Visa. Unlike the traditional model where the disbursing agents are under contract with the remittance transfer provider that may specify the exchange rates and fees applicable, the Recipient Issuer's terms are not controlled by or known to the Originator or Visa. Again, in the traditional closed-loop model the consumers on either end of a remittance are the

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4 As evidenced by Appendix C, the VMT Service is capable of disclosing the Transfer Amount in both the currency provided by the Sender and in the transfer currency which the Recipient Issuer has chosen to receive within VisaNet. As stated above, there are instances, however, when the transfer currency is different from the Recipient's account currency. Nonetheless, we believe a disclosure of the Transfer Amount in the currency provided by the Sender and in the transfer currency selected by the Recipient Issuer complies with EFTA Section 919(a)(2)(A)(i)-(iii).

customers of the traditional remittance provider; in the VMT Service the Sender and the Recipient are the customers of the Originator and Recipient Issuer, respectively, and not Visa. There are no other intermediary parties that may impose fees on the Sender or the Recipient, since the funds are transferred directly from the VMT Service Originator to Visa and then to the Recipient's issuer.[5]

The Visa system and its agreements with its client financial institutions recognize that terms and conditions of the Recipient's Visa account agreement with the Recipient Issuer constitute the relationship between those two parties, including fees and exchange rates applicable to the account. It is not accurate to assume that each Recipient Issuer's cardholder agreements are largely standardized, since each of the thousands of issuers may offer several different types of accounts that are accessed by Visa cards. It would be unprecedented in the Visa system to require participating client financial institutions to disclose their pricing and other terms and conditions of their customer agreements to Visa and other Visa client financial institutions. Such requirements would be unacceptable to financial institutions participating in the Visa system and would most likely cause them to decline to participate in the VMT Service. In any event, maintaining an up-to-the minute reporting requirement of all changes to these terms for all issuers in the Visa system that would be available on a real-time basis to the Originators is not feasible.

Visa further submits that any requirement that these terms and conditions of the Recipient's Visa account, such as the account currency and the exchange rates and fees, applicable to the account, be disclosed to Visa, the Originator and to the Sender would have the unfortunate and unintended consequence of intruding into the Recipient's privacy. Moreover, because the account currency, exchange rates, fees and taxes applicable to the Recipient's Visa account are disclosed, known by, and accessible to the Recipient, Visa believes that the disclosures to the Sender of "Other" fees, taxes and the resulting "total to Recipient," are not as important in the context of the VMT Service, or other similar remittance transfer services, as compared to a traditional transfer service where the disbursing agents have no relationship with the Recipient. The Recipient knows what proceeds to expect from a transmission of a certain amount expressed in the transfer currency for their account based on the Visa account agreement and the disclosures provided by the Recipient Issuer to the Recipient. If an individual Recipient believes that it is important for the Sender to know some or all of the relevant confidential terms of the Recipient's account agreement, the Recipient can communicate those terms to the Sender on a case-by-case basis without the necessity of rules, mandating exposure of Visa cardholders' confidential personal information to potentially any Visa client financial institution that may act as an Originator. While the Dodd-Frank Act in its remittance transfer provisions does not directly provide rights to Recipients or

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[5] Normal transaction processing fees that will apply to the Sender institution and Recipient institution, in practice, are not passed on directly to consumers on a per transaction basis but are operating costs may be taken into account when the institutions set their respective customer pricing.

address privacy concerns, Visa submits that it is unnecessary to interpret the Dodd-Frank Act as requiring intrusion into the privacy of Recipients by requiring disclosure of their Visa account terms.

Furthermore, as a matter of competition law, we do not think it advisable for the Bureau to require or for Visa, as a global payment system operator, to require the regular exchange of consumer pricing information among potentially competing financial institutions. That would be the effect of requiring the Recipient Issuers to disclose to the Originators their fees and exchange rates in order to disclose those items to the Senders.[6]

2. Provisions for Estimates Are Not Appropriate to the VMT Service and Would Result in Misleading Disclosures.

The Dodd-Frank Act and the Proposed Rule have included some limited provisions for estimates to be given to consumers by insured institutions and in countries where the local laws or method of the payment system do not permit determination of exchange rates and fees at the time of the Sender's remittance transfer.[7] These exceptions and estimates are not appropriate in the VMT Service. The alternative disclosures suggested by Visa address legal concerns such as the competition concerns and the contractual rights and expectations of participants in the VMT Service. These concerns cannot be solved by investments in technology infrastructure or changes in contracts or rules, no matter how much time passes or the size of investments in technical enhancements. This is why Visa submits that, as applied to the VMT Service, the disclosures of the exchange rates, fees and taxes applicable to the remittance transfer provider and the resulting Transfer Amount should be sufficient to meet the actual statutory requirements and implementing rule, as discussed below.

Moreover, in the VMT Service, the methodologies prescribed by the Proposed Rule for making estimates would yield highly misleading disclosures to the Senders. This is because the terms and conditions of the Recipient's Visa account may include exchange rates that bear an undefined relationship to published exchange rates or those set by national governments.[8] Because of the great diversity among potential Recipient Issuers to which the VMT Service remittances may be sent, it is unlikely that an Originator would have past transactions that would accurately predict "other" fees that would apply to a transaction and since the fees imposed by Recipient Issuers are not controlled by contract with the Originator (or Visa), they could be changed at any time

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[6] While we have not researched the issue yet, we expect that such a requirement may be in conflict with competition law of foreign jurisdictions as well.

[7] EFTA Sections 919(a)(4) and (c); 12 C.F.R. Sections 205.32(a), (b)

[8] Where exchange rates are set by governmental authority in a Recipient country, of course, the remittance transfer may be subject to those legal requirements as well in addition to the constraints arising from the structure of the VMT Service.

without the knowledge of the Originator. It should also be noted that "other" fees may be fees that are sometimes charged, or sometimes not, depending upon balances, whether finance charges are being imposed, etc., making prediction by the Sender even less viable. Therefore any estimate of fees based on history is not feasible and likely to be inaccurate. It would pose a serious disservice to consumers using the VMT Service to require "disclosure" of these inaccurate estimates, which would always be inaccurate.

For these reasons, Visa suggests that the Bureau apply the disclosure requirements as expressed in the language of the Dodd-Frank Act to the VMT Service or similar remittance transfer services to recognize explicitly that the Originators will not be required to disclose the currency exchange rates that may be applied to the transaction by the Recipient Issuer (if converting from a transfer currency to a different account currency) or the resulting proceeds made available in the Recipient's account "in the currency in which the funds will be received." Instead, Visa suggests that the Bureau may appropriately balance consumers' privacy and competition interests and Dodd-Frank disclosure requirements by recognizing that the Originators, in addition to disclosing the Transfer Amount, will meet their compliance responsibilities by giving Senders the alternative disclosure suggested by Visa. Visa submits that the Bureau can reach this result without variance from the statutory language.

3. Visa's Suggested Modifications to the Disclosure Rules Are Consistent with the Statutory Language.

Visa's suggestion for this alternate disclosure would not require the Bureau to adopt provisions that are inconsistent with Section 919. In addition to the sound policy and practical reasons for this alternative disclosure, it is important to recognize that the changes suggested by Visa would fall within the actual statutory language when it is applied to the VMT Service. The Act requires, in EFTA Section 919(a)(emphasis added):

> ''(2) DISCLOSURES.—Subject to rules prescribed by the Board, a remittance transfer provider shall provide, in writing and in a form that the Sender may keep, to each Sender requesting a remittance transfer, as applicable to the transaction—
>
> ''(A) at the time at which the Sender requests a remittance transfer to be initiated, and prior to the Sender making any payment in connection with the remittance transfer, a disclosure describing—
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> ''(i) the amount of currency that will be received by the designated Recipient, using the values of the currency into which the funds will be exchanged;

> "(ii) the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and
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> "(iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer, to the nearest 1/100th of a point....."

This language clearly and reasonably focuses on fees, taxes and exchange rates that will be utilized by the remittance transfer provider. Clause (A)(i) refers to the "values of the currency into which the funds will be exchanged." The Board has interpreted clause (A)(i) to require the disclosure of currency exchange rates utilized by parties "other" than the remittance transfer provider. However, clauses (A)(ii) and (iii) of the same sentence specifically refer to fees charged by the remittance transfer provider and exchange rates used by the remittance transfer provider. There is no mention in the statute of such fees, taxes and exchange rates charged by "other parties."[9] It would be illogical to assume that the non-specific clause (A)(i) refers to an exchange rate different than the exchange rate that is specified later in the same sentence. As explained above, in the context of the VMT Service, the Originator "uses" the exchange rate that is designated by the Recipient Issuer for clearing and settlement through VisaNet.

The Proposed Rule expressly recognizes that the proposed disclosure requirements expand the disclosures required by the Dodd-Frank Act. For example, the Proposed Rule cites the Board's (now the Bureau's) powers of interpretation under EFTA Section 904(a) in going beyond the statutory requirements to require disclosure of the total of the transaction and the transfer amount.[10] Similarly the Proposed Rule acknowledges that whereas the statute requires disclosure of exchange rates and fees used by the remittance transfer provider, the Proposed Rule would include disclosures of exchange rates, fees and taxes imposed by parties "other than the remittance provider."[11] Nonetheless, for the reasons expressed above, it appears inappropriate to apply the Bureau's interpretive authority under EFTA Section 904(c) to expand explicit statutory language in a manner that would compromise other consumer protection interests in ways that the statute itself does not require, however wide the scope of that authority.[12] Visa submits instead that for the reasons explained above, the interests of consumers using the VMT Service, or other similar remittance services, would be better served if the Bureau (a) applies the statutory language to Originators to require that an Originator disclose the exchange rates that it uses to

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[9] Section 1073 of the Dodd-Frank Act, in EFTA Section 919(g)(3), defines the term 'remittance transfer provider' to means "any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; . . ."

[10] 76 Fed. Reg. 29912 (May 23, 2011)

[11] *Ibid.*

[12] The application of the statutory language to traditional consumer remittance transfer systems may indeed support the disclosure of the exchange rates, fees and taxes imposed on the Recipient by the remittance transfer provider's local disbursement contractor if those exchange rates and fees are established in the contract between the remittance transfer provider and the disbursing party. Those are not matters that are privately arranged by the Recipient and do not involve any disclosure of pricing information to competing remittance transfer providers.

convert the transfer amount into the currency designated by the Recipient Issuer for clearing and settlement through VisaNet (the transfer currency); and (b) exercises its interpretive powers under Section 904(a) to permit the disclosures suggested by Visa in Appendix B to substitute for the Board's proposed disclosures in §§205.31(b)(1)(v)-(vii) which would otherwise require the remittance transfer provider's knowledge and disclosure to the Sender of the confidential terms of the Recipient's cardholder agreement.

B. Fees and Taxes Imposed by the Remittance Transfer Provider

The Proposed Rule would require disclosure of any fees and taxes imposed on the transaction by the remittance provider to be disclosed "in the currency in which the funds will be transferred." [12 C.F.R. 205.31(b)(1)(ii)(emphasis added) and (b)(2)(i)] Visa notes that as described above, the transfer currency in many cases will be a currency other than U.S. dollars. However, in almost all cases the Sender will fund the entire amount transfer in US dollars, including the applicable fees and taxes. There might be a few instances in which a Sender would tender and an Originator is able to accommodate tenders in a currency other than U.S. dollars. Therefore it would not be meaningful to disclose to the Sender the amount of fees and taxes to be imposed by the remittance transfer provider in any currency other than the currency that is tendered by the Sender. Visa believes that this is the result intended in the Proposed Rule, but suggests that it would be helpful to financial institutions acting as Originators if the Bureau would confirm in the Commentary that the Proposed Rule refers to disclosures in the currency tendered by the Sender. Accordingly, Visa suggests that the Bureau also confirm that the disclosure of the "Total" amount of the transaction required by sections (b)(1)(iii) and (b)(2)(i) may also be in the currency in which the Sender will fund the transaction. This comment would seem to apply to all remittance transfer providers, not just those using the VMT Service. Corresponding wording changes to the commentary provisions pertinent to Sections 205.31(b)(ii) and (iii) are shown in Appendix B.

C. Fees and Taxes Imposed by Other Parties and "Total to Recipient"

The Proposed Rule would also require disclosure of any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated Recipient. [12 C.F.R. 205.31(b)(1)(vi) and (b)(2)(i)] Similar to the underlying account currency and exchange rates applicable to the conversion of a VMT remittance transfer, the fees charged to Recipients for the VMT Service remittance transfers by the Recipient Issuer are also determined pursuant to the agreement that governs the Recipient's Visa card account. Because the Recipient has a pre-existing agreement for the card account, the Recipient has access to terms regarding what fees, if any, will be applied to credits received. For the reasons explained above regarding disclosures of exchange rates that might be used by a Recipient Issuer for conversion of the VMT Service remittances into the cardholder's account currency, Visa suggests that the Bureau modify the requirements in §205.31(b)(1)(vi) and (b)(2)(i) to permit Originators of the VMT Service transactions to omit disclosures of fees that are imposed by the Recipient's card issuer, i.e, persons other than the provider. As above with

respect to exchange rates, Visa suggests that the Bureau exercise its authority under EFTA Section 904(c) to permit the alternative disclosure suggested by Visa above.

With respect to taxes, these are also not known, calculable or capable of being estimated by the sending institution. Since for the reasons stated above, the exchange rate and fees that may be imposed by the Recipient Issuer are not known to and should not be disclosed to Visa, the Originator or the Sender, it is not possible to disclose the taxes that would apply to the transfer that are applicable to the Recipient's issuer.

Accordingly, Visa suggests that the Bureau also modify the requirements in section (b)(1)(vi) and (b)(2)(i) pursuant to its authority under EFTA Section 904(c) to permit Originators of VMT Service transactions, or other similar services, to omit disclosures of taxes that are imposed upon the Recipient Issuers and may be passed on to the Recipient. Specifically, Visa suggests that the final rule permit Originator using the VMT Service and other similar services to disclose in the alternative, that the amount of proceeds of the remittance that are made available in the Recipient's account may be subject also to taxes on the transaction that are passed on to the Recipient by the Recipient Issuer in accordance with the Recipient's cardholder agreement. This is included in the alternative disclosure suggested by Visa in Appendix B.

The Proposed Rule would also require that sending institutions disclose "[t]he amount that will be received by the designated Recipient, in the currency in which the funds will be received, using the term ''Total to Recipient'' or a substantially similar term." [12 C.F.R 205.31(b)(1)(vii) and (b)(2)(i)] Since the Originator may not be able to determine the amount of the proceeds to the Recipient in the currency that may be used by Recipient Issuers (if the transfer currency is different from the account currency) or the fees and taxes applicable under the Recipient's cardholder agreement, the Originator cannot disclosure this total. Furthermore, proceeds to the Recipient are credited to the Recipient's Visa account and as such will be subject to the confidential terms and conditions of the account agreement and conditions in the account that may require application of funds received to prior, unsatisfied obligations in the account. That would result in less than the disclosed amount actually being added to the Recipient's "open to buy" in a credit account or made available to the Recipient in the form of increased available balance in a deposit account. For example, on a credit card account, if the account is in a past-due condition when the proceeds are received, the terms and conditions of the account may require that the funds first be applied to fees and the past due amount. Likewise, in a deposit account that is in an overdraft condition when the funds are received, applicable terms and conditions may require that they be applied to reduce the overdraft and to unpaid fees. These terms and conditions of the Recipient's account and the condition of the account, while known to the Recipient, are not known to the Originator and should not be the subject of disclosure to the Originator or the Sender even if there were a systematic way to make such information known to the Originator and Sender in the course of each VMT Service transaction. The condition of the account may be regarded by Recipients as information even more sensitive than the terms and conditions. In any event, amounts applied in such manner to satisfy obligations of the Recipient should be considered to be proceeds received. We do not believe that the statute intended to produce a different result. Therefore, for this additional reason the Originator should not be

required to disclose to the Sender the Total to Recipient as proposed in 12 C.F.R. 205.31(b)(1)(vii) and (b)(2)(i). Corresponding language reflecting such modifications is shown in Appendix B.

Additionally, because these fees and taxes and the Total to Recipient cannot be disclosed to the Sender, Visa suggests that the Commentary in Supplement I include a clarification to 12 C.F.R 205.31(b)(1)(v) and (b)(2)(i) that the disclosure of the Transfer Amount, i. e., "The amount in paragraph (b)(1)(i) of this section in the currency in which the funds will be received by the designated Recipient, but only if fees or taxes are imposed under paragraph (b)(1)(vi) of this section...." will also not apply to remittance transfers sent via the VMT Service or similar remittance services, if the alternative disclosure proposed by Visa is provided to Senders. Similarly, Visa suggests that the Official Staff Interpretations to 12 C. F. R. 205.31(b)(1)(vi) and (vii) and (b)(2)(i) be revised to include clarification that acknowledges that for the VMT Service transfers to a Visa card account using the VMT Service or similar remittance transfer services, the disclosure of fees and taxes imposed by parties other than the provider and the Total to Recipient will not be required. Corresponding language incorporating these changes is shown in Appendix B.

D. Summary of Disclosure Requirements Applicable to the VMT Service Originators

Originators, acting as remittance transfer providers, will disclose the actual exchange rates, fees and taxes imposed by the remittance transfer provider as required by the statute. With respect to fees, taxes and currency exchange rates imposed by third parties, which are not expressly required by Section 919 to be disclosed, Visa has proposed a disclosure that appropriately respects the confidentiality of the Recipient's cardholder agreement with the Recipient Issuer and the Recipient's account condition. Such a notice also better serves consumers by avoiding disclosure of estimated amounts that may be misleading or confusing and which cannot be accommodated by the VMT Service. Instead, Visa believes that in utilizing the VMT Service for cross-border transfers, the Sender and Recipient may well be in communication regarding the terms of the Recipient's account and can make such disclosures privately between themselves as they individually consider appropriate, without mandating wide-scale, systematic intrusion into their private matters and without the systematic disclosure of competitively sensitive information among competing financial institutions. For example, the Recipient can inform the Sender that they need to send more funds in order to ensure that the Recipient has the intended amount available for purchases or cash withdrawal. Alternatively, if the VMT Service does not provide a competitive service for whatever private reasons the Recipient may have, including unfavorable account terms, she or he can instruct the Sender to use alternative means for the transfer.

For the reasons discussed above, Visa suggests modifications to the proposed rule to –

- Require Originators to disclose in the pre-payment disclosure and in the receipt only the Originator's exchange rates, fees and applicable taxes applied to calculate the transfer amount, and the transfer amount so calculated.

- Confirm that disclosure of fees and taxes applied by the Originator may be stated in the currency in which the fees and taxes are paid by the Sender instead of in the currency in which the funds will be transferred.

- Permit Originators to alternatively make a pre-payment disclosure which would inform the Sender that the Recipient Issuer may use exchange rates and impose fees and taxes that may affect the proceeds that are ultimately made available in the Recipient's cardholder account in lieu of disclosures regarding the fees, exchange rates, or other terms applied by parties other than the remittance transfer provider which are not expressly mandated by the statute.

Corresponding modifications to the Proposed Rule and Official Staff Interpretations are shown in Appendix B.

II. Error Correction Procedures and Remedies

A. Definition of Differences in the Amounts Made Available to Recipients as Errors

The Proposed Rule would define among "errors," "[t]he failure to make available to a designated Recipient the amount of currency stated in the disclosure provided to the Sender under § 205.31(b)(2) or (b)(3), unless the disclosure stated an estimate of the amount to be received in accordance with § 205.32" [12 C.F.R. 205.33(a)(1)(iii)] As discussed above, Visa has recommended an alternative disclosure with respect to currency exchange rates, and fees and taxes imposed by parties other than the remittance transfer provider applicable to certain specified circumstances. Therefore, Visa suggests that this definition of "error" be amended to similarly exclude differences between the transfer amount and the total received by the Recipient when the Originator has provided the alternate disclosure Visa is proposing to be included in Section 205.31(b) (1)(vii).

Visa also requests, for the reasons discussed above, clarification in the official staff Commentary that funds transmitted through the VMT Service that are applied to previous unsatisfied obligations existing in the Recipient's card account and thus reduces the amount available to the Recipient would not cause the disclosure of "total to Recipient" pursuant to 12 C.F.R. 205.31(b)(1)(vii) to be considered inaccurate. Similarly, Visa suggests that the Official Staff Interpretations to 12 C.F.R. 205.33(a)(1)(iii) be modified to confirm that discrepancies in the amount of local currency made available to the Recipient resulting from such application of funds by the Recipient Issuer in accordance with the terms and conditions of the Recipient's cardholder agreement will not be considered "errors."

Wording to implement these changes to the regulation and Official Staff Interpretations are shown in Appendix B.

B. Potential for Duplicative Recoveries When Remittances Are Funded by Card Transactions

The Board acknowledges that for transactions funded by a card or other revocable payment, the Sender may assert remedies against both the card issuer and the remittance provider. The Proposed Rules state that a Sender may not have duplicate remedies. However, the Proposed Rule would not necessarily allow the remittance transfer provider to delay a remedy past the time when the Originator might receive a chargeback of a transaction through the card systems. The Proposed Rule states that nothing in this regulation would prevent a card issuer from "reversing" a credit to the cardholder's account; the notice materials do not discuss how the remittance transfer provider who provides a timely refund would know whether the Sender has or will assert a cardholder billing error under Federal Reserve Regulation Z, for example, or conversely, how the card issuer would know that the Sender had received a refund from the remittance transfer provider.

One scenario that could result in such a duplicative recovery would occur when a Sender that used a credit card to fund a transfer and then subsequently asserts an error against the remittance transfer provider for "funds not received." The Proposed Rule would require a refund within one business day or as soon as reasonably practicable if the provider determines there was an error and receives the Sender's request for the refund. In some cases, the Sender may still have time under Regulation Z to claim the same refund against the funding card issuer for a billing error (goods or services not received), which allows the Sender sixty days from the first periodic statement on which the erroneous charge occurs within which to assert an error. In this case, the discrepancy between Regulation Z time frames and the error resolution time frames in the Proposed Rule could potentially permit the Recipient to obtain duplicative recoveries.

This issue would not be limited to remittance transfer providers using the VMT Service; it would affect all remittance transfer providers accepting cards for funding consumer cross-border transfers. This double exposure could prevent remittance transfer providers from accepting cards or other payment devices covered by Regulation Z or Regulation E for funding of remittance transfers, which poses significant inconvenience for consumers, particularly those who wish to initiate transactions over the Internet. Visa suggests a modification to 12 C.F.R.205.33(c)(1) that would allow a remittance transfer provider to delay providing monetary remedies for transactions funded by card transactions until the expiration of the Sender's issuer's chargeback rights under network rules for the funding transaction.

III. Cancellation and Refund Rights

The Proposed Rule would allow a Sender to rescind a transaction within one business day after payment so long as the funds have not been picked up by the intended Recipient or deposited in the Recipient's account. If a valid notice of cancellation is given within these timeframes, the Sender must be given a full refund. [12 C.F.R. 205.34(a)-(b)] The Board based the Proposed Rule on information and views received in its outreach efforts, stating "[T]he Board understands that some remittance transfer providers permit a sender to cancel a remittance

transfer and obtain a full refund of all funds tendered at any time so long as the transfer has not been picked up in the foreign country by the recipient or deposited into the recipient's account."[13] However, the Board acknowledges that users of the international ACH and international wire transfers cannot cancel transactions once sent and therefore would likely wait until the expiration of the cancellation period to send a remittance. Similarly, Originators using the VMT Service cannot recover funds sent to an institution even if they have not been credited to a Recipient Issuer for the benefit of a Recipient. In the VisaNet payment system used by the VMT Service, the Originator becomes committed to settling a VMT Service transaction immediately upon the electronic receipt of the Recipient Issuer's authorization message. This "single message" system is the same that is used for ATM transactions and PIN debit transactions. Therefore, to protect themselves from double payments, Originators would also have to wait until the cancellation deadline has passed before a transmittal could be sent. Moreover, this would effectively prevent the VMT Service from offering the Fast Funds service that promises to deliver funds to the Recipient's account within thirty minutes from conclusion of the Sender's transaction with the Originator from being offered. It would greatly disadvantage Senders and Recipients to delay normal delivery by a whole day or more even when the Fast Funds option is not used.

The delay would also frustrate the Originator's ability to provide accurate information about the exchange rate that would be used to convert the tendered amount into the transfer currency. Originators will use Visa's "FX Inquiry Service" at the time of the Sender's transaction to determine the rate that will actually be applied to OCTs submitted in the current VisaNet processing cycle. This will allow Originators to disclose the exchange rate that will actually be used only if the transfer is not delayed. If the Originator cannot use the information available through the FX Inquiry Service, the Originator will have to use a more expensive rate in order to avoid the risk that the actual rate will be higher or discontinue the VMT Service.

In all, the one-day delay would prevent sending institutions from using the VMT Service to provide services competitive on a time-to-delivery basis with other, non-bank services that have provided for recourse to the recipient institution within the one-day time frame. However, such arrangements allowing recourse to the recipient institution would also disadvantage the large majority of recipients, since such recourse rights would likely cause the recipient institution to delay the funds availability to the recipient until the recourse period expires. This perceived protection would benefit only the relatively few consumers who change their minds about a remittance, while the delay required by the one business day cancellation period will automatically harm every other sender and recipient in those systems where a payment order or instruction is final upon send. This does not seem a fair allocation of harm.

Based on the foregoing, Visa suggests that the Bureau exercise its authority to determine that providing cancellation rights to a relatively few senders would greatly disadvantage all other senders and recipients and instead, the better option is to require sending institutions to disclose

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[13] 76 Fed Reg 22933.

prior to the sender's paying for a remittance that once the sender signs the remittance transaction, it cannot be canceled. Visa also suggests that the Bureau include "failure to cancel a transaction on request of the Sender that is made after the transfer agreement is signed" among the examples of situations that do not give rise to "errors" under 12 C.F.R. 205.33(a). See also Visa's suggested changes in Appendix B.

Alternatively, if the Bureau believes that the statute requires that at least a short window be provided for cancellation regardless of the method used to send a remittance transfer, then Visa suggests that the time period be shortened to one hour and those consumers who wish to utilize a faster funds transmittance method be allowed to waive the cancellation rights upon receipt of a written disclosure that in order to expedite transmission of the funds, they are giving up the right to cancel the transfer and receive a full refund.

Conclusion

Visa fully supports the general consumer protection goals included in Section 919 of the EFTA and the Proposed Rule. Visa's guidance to sending institutions has included disclosures similar to those included in the Dodd-Frank Act and the Proposed Rule since the inception of the VMT Service. These consumer protections will strengthen the industry by providing consumers confidence and greater satisfaction with remittance services. The modifications and clarifications to the Proposed Rule that Visa suggests will provide the VMT Service customers all of the benefits envisioned by the Dodd-Frank Act. As explained above, the modifications to disclosure requirements suggested by Visa would implement the actual language of the Dodd-Frank Act more closely than the Board's proposal, which would amplify the statutory language through the exercise of interpretive powers that are granted to the Board, and now the Bureau, in the Electronic Funds Transfer Act. Visa emphasizes that the modifications to disclosure requirements suggested by Visa are based in part on consumers' interests in confidentiality of cardholder agreements and Recipients' financial affairs and the protections provided for such confidentiality by the diverse legal regimes that apply to the VMT Service transactions. Visa's suggestions are also based on constraints arising from competition laws and regulations in numerous jurisdictions, which provide important consumer protection by preserving competition. Thus we believe that Visa's proposals strike a balance between equally important consumer interests in consumer protection, competition and privacy in a way that fully complies with the statutory mandate. The modifications and clarifications suggested by Visa derive also from substantial operational constraints that would prevent compliance with the Proposed Rule as it is written. Visa makes its suggestions in the belief that the alternatives offered better serve consumers who use the VMT Service than the proposed requirements. Visa suggests that the Bureau adopt the suggested modifications to enable consumers to continue to realize the substantial benefits offered by the VMT Service discussed above.

Please feel free to contact either me (650.432.1225 or aandrews@visa.com) or our outside counsel on this matter, Stan Koppel (415.856.7284 or stankoppel@paulhastings.com) with any questions that you may have about these proposals. As noted above, given the importance of these recommended modifications to Visa client institutions and the complexity of the issues, Visa would welcome the opportunity to meet with the Bureau's staff to provide

further detail and supporting information about the VMT Service and to follow up on any aspects of this letter.

Sincerely,

Amanda Andrews
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Amanda Andrews, Esquire
Senior Business Operations Counsel
Visa Inc.

Appendix A

Visa Money Transfer Description

How it Works

The diagram shows the basic transaction flow and participants.

Step 1: Transaction Initiation—Originators can offer their money transfer program through various channels including Internet/online banking, bank branch, ATM/unattended kiosk, phone banking, and/or mobile device. The Originator is responsible for obtaining the Sender's information, such as name and address. The Sender accesses the Originator's VMT Service through one of the Originator's channels. The Sender provides the Originator with the money transfer instructions including the Recipient's Visa account number and the money transfer amount.

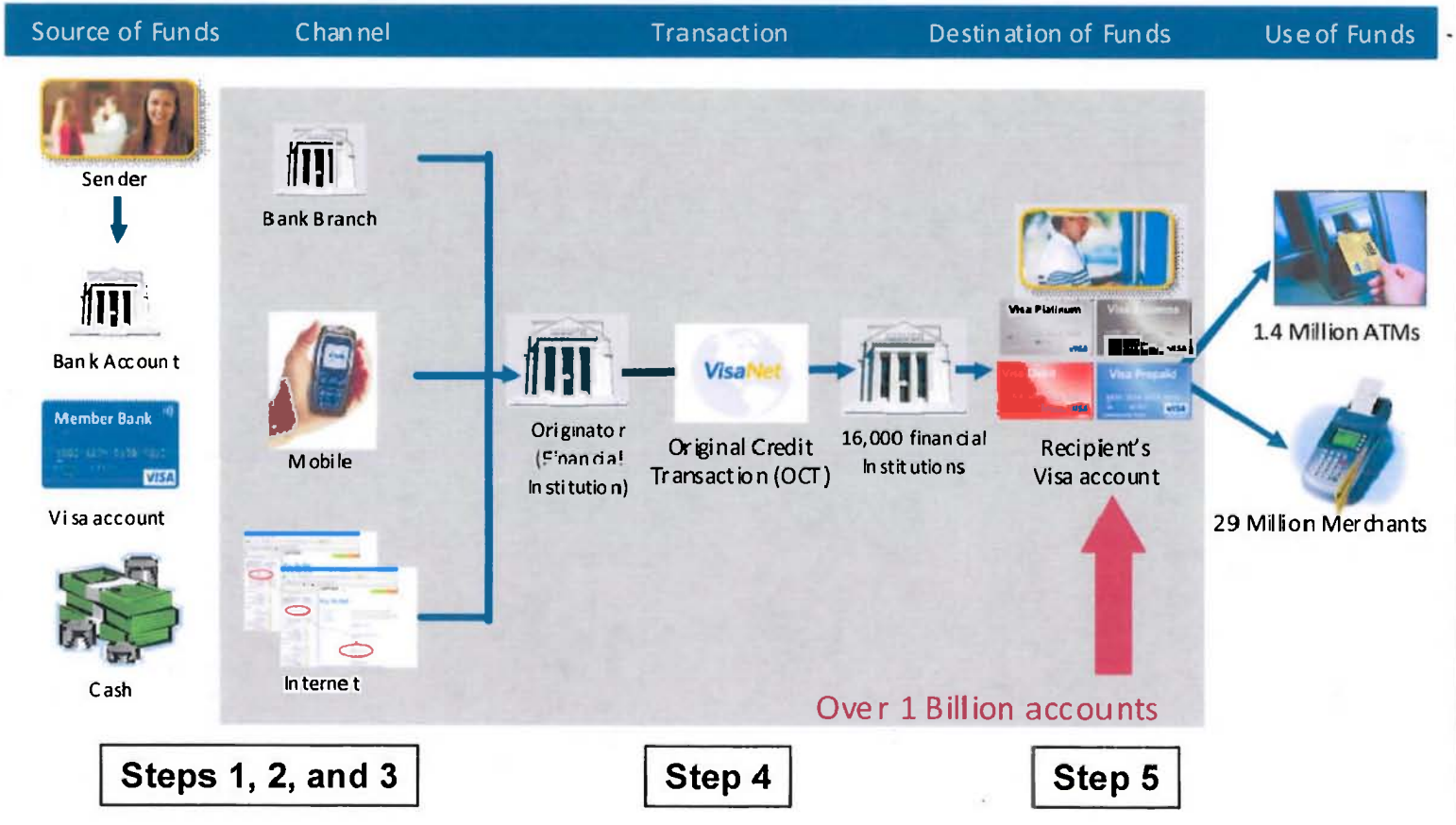
Step 2: Transaction Screening—The Originator performs the required local regulatory checks on the Sender and/or Recipient. For example, the Originator should validate the Sender's data using its "Know Your Customer" (KYC) procedures and perform the applicable sanctions, anti-money laundering and anti-terrorist financing screening on both the Sender and Recipient. The Originator should also screen transaction details against its internal risk and compliance requirements, such as value and velocity limits for monitoring of suspicious transaction activity. Originators must also screen Sender and Recipient against relevant watch list(s) in their jurisdictions as required by local law or regulation prior to submitting a money transfer transaction.

Step 3: Money Transfer Funding—The Sender can fund the money transfer using any funding source enabled by the Originator, such as cash, a bank account, or a Visa account. When funded from the Sender's account, the Originator checks for availability of funds in the Sender's account (e.g., direct deposit account (DDA), Visa account) and then debits the account for the money transfer amount plus any applicable fees. If a Visa account is used to fund the money transfer, the Originator should send an Account Funding Transaction ("AFT") to the Sender's issuer through VisaNet. The Sender's issuer uses the AFT to check the availability of funds in the Sender's account, authorizes the debit of the Sender's account for the money transfer amount plus any applicable fees, and responds to the Originator.

Step 4: OCT—The Originator sends an Original Credit Transaction ("OCT") to the Recipient Issuer through VisaNet. The OCT transaction settles funds from the Originator to the Recipient Issuer through VisaNet; it does not draw funds from the Sender's account. The Originator's settlement to the Recipient Issuer is guaranteed by the Visa system.

Step 5: Funds Posting—The Recipient Issuer uses the OCT to post the money transfer funds to the Recipient's Visa account as soon as possible but no later than two business days after receipt of the OCT. Recipient Issuers participating in Fast Funds must make funds available to the Recipient within 30 minutes.

Visa Money Transfer Description



Appendix B

Visa's Proposed Revisions to Regulation E

and Official Staff Interpretations

12 C.F.R. Section 205, Subpart B

I. Disclosures

§ 205.31 Disclosures

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(b) ***Disclosure requirements*****—(1)** ***Prepayment disclosure.*** A remittance transfer provider must disclose to a sender, as applicable:

(i) The amount that will be transferred to the designated recipient, in the currency in which the funds will be transferred, using the term "Transfer Amount" or a substantially similar term;

(ii) Any fees and taxes imposed on the remittance transfer by the remittance transfer provider, **in the currency in which the fees and taxes will be charged to the sender, ~~funds will be transferred~~**, using the term "Transfer Fees," "Transfer Taxes," or "Transfer Fees and Taxes," or a substantially similar term;

(iii) The total amount of the transaction, which is the sum of paragraphs (b)(1)(i) and (b)(1)(ii) of this section, in the currency in which the sender will fund the transaction, using the term ''Total'' or a substantially similar term;

(iv) The exchange rate used by the provider for the remittance transfer, rounded to the nearest 1/100th of a decimal point, using the term ''Exchange Rate'' or a substantially similar term;

(v) The amount in paragraph (b)(1)(i) of this section in the currency in which the funds will be received by the designated recipient, but only if fees or taxes are imposed under paragraph (b)(1)(vi) of this section, using the term ''Transfer Amount'' or a substantially similar term, **provided that if the funds will be provided in the form of a credit to the recipient's pre-existing account through a payment network operator, the remittance transfer provider may instead provide the disclosure permitted in such circumstances by Section 205.31(b)(1)(vii)**;

(vi) Any fees and taxes imposed on the remittance transfer by a person other than the provider, in the currency in which the funds will be received by the designated recipient, using the term ''Other Transfer Fees,'' ''Other Transfer Taxes,'' or ''Other Transfer Fees and Taxes,'' or a substantially similar term, **provided that if the funds will be provided in the form of a credit to the recipient's pre-existing account through a payment network operator, the remittance transfer provider may instead provide the disclosure permitted in such circumstances by Section 205.31(b)(1)(vii)**.

(vii) The amount that will be received by the designated Recipient, in the currency in which the funds will be received, using the term ''Total to Recipient'' or a substantially similar term, **provided that if the funds will be provided in the form of a credit to the recipient's pre-existing account through a payment network operator, the remittance transfer provider may disclose instead "The total amount and currency to be made available to your recipient may vary from the Transfer Amount due to the account currency, exchange rates, fees, taxes and other terms and conditions that are applied to the transfer in accordance**

with the Recipient's cardholder agreement."

Supplement I to Part 205—Official Staff Interpretations

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Paragraph 31(b)(1)—Pre-Payment Disclosures

1. Fees and taxes. i. Taxes imposed by the remittance transfer provider include taxes imposed on the remittance transfer by a state or other governmental body. A provider need only disclose fees or taxes required by § 205.31(b)(1)(ii) and (vi), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees. See comment 31(b)–1. If both fees and taxes are imposed, the fees and taxes may be disclosed as one disclosure or as separate, itemized disclosures. **Disclosure of fees and taxes should be expressed in the currency in which they will be charged to the sender.**

ii. The fees and taxes required to be disclosed by § 205.31(b)(1)(ii) include

all fees and taxes imposed on the remittance transfer by the provider. For example, a provider must disclose a service fee and any state taxes imposed on the remittance transfer. In contrast, the fees and taxes required to be disclosed by § 205.31(b)(1)(vi) include fees and taxes imposed on the remittance transfer by a person other than the provider. For example, **except as provided below regarding credits to a pre-existing account through payment network operators,** a provider must disclose fees imposed by the receiving institution or agent at pick-up, fees imposed by intermediary institutions in connection with an international wire transfer, and taxes imposed by a foreign government. The terms used to describe the fees and taxes in § 205.31(b)(1)(ii) and (b)(1)(vi) must differentiate between such fees and taxes. For example, the terms used to

describe fees disclosed under § 205.31(b)(1)(ii) and (b)(1)(vi) may not both be described as ''Fees.'' **If the funds are to be provided to the Recipient in the form of a credit to the Recipient's pre-existing account through a payment network operator, the remittance provider is not required to disclose amounts of Other Fees and Other Taxes that are imposed pursuant to the Recipient's cardholder agreement if the remittance transfer provider makes the alternative disclosure set forth in § 205.21(b)(1)(vii). This alternative disclosure does not apply when remittances are transferred by international wire transfer or international ACH transactions, for which estimates may be provided pursuant to §205.32.**

2. Transfer amount. Sections 205.31(b)(1)(i) and (b)(1)(v) require two transfer amount disclosures. First, under § 205.31(b)(1)(i), a provider must disclose the transfer amount in the currency in which the funds will be transferred to show the calculation of the total amount of the transaction. Typically, funds will be transferred in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if funds will be transferred,

for example, from a Euro-denominated account, the transfer amount would be expressed in Euros. **If the funds are being provided in the form of a credit to the designated recipient's pre-existing account through a payment network operator, the transfer amount should be disclosed in the currency in which the funds will be transferred to the designated recipient's account issuer.**

Second, under § 205.31(b)(1)(v), a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, this second transfer amount need not be disclosed if fees and taxes are not imposed on the remittance transfer under § 205.31(b)(1)(vi). The terms used to describe each transfer amount should be the same. **If the funds will be credited to the designated recipient's account through a payment network operator, the remittance**

transfer provider is not required to disclose the transfer amount in the currency in which the funds will be credited to the account if the remittance transfer provider makes the disclosure required by Section 205.31(b)(1)(vii).

Paragraph 31(b)(1)(iv)—Exchange Rate

1. Applicable exchange rate for estimates. If the designated recipient will receive funds in a currency other than the currency in which it will be transferred, a remittance transfer provider must disclose an exchange rate **(which may be the exchange rate used to convert the funds into the currency in which the funds are transferred to the designated recipient's issuer by the remittance transfer provider if the funds are to be credited to the designated recipient's pre-existing account through a payment network operator).** An exchange rate that is estimated must be disclosed pursuant to the requirements of § 205.32. A remittance transfer provider may not disclose, for example, that an estimated exchange rate is ''unknown,'' ''floating,'' or ''to be determined.''

2. Rounding. The exchange rate used

by the provider for the remittance transfer is required to be rounded to the nearest 1/100th of a decimal point. However, an exchange rate need not be expressed to the nearest 1/100th of a decimal point if the amount need not be rounded. For example, if one U.S. dollar exchanges for 11.9483 Mexican pesos, a provider must disclose that the U.S. dollar exchanges for 11.95 Mexican pesos. However, if one U.S. dollar exchanges for 11.9 Mexican pesos, the provider may disclose that ''US$1 = 11.9 MXN'' in lieu of ''US$1 = 11.90 MXN.''

Paragraph 31(b)(1)(vi)—Fees and Taxes Imposed by a Person Other than the Provider

1. Fees and taxes disclosed in the currency in which the funds will be received. Section 205.31(b)(1)(vi) requires the disclosure of fees and taxes in the currency in which the funds will be received by the designated recipient.

A fee or tax required by § 205.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider should calculate the fee or tax to be disclosed using the exchange rate required by § 205.31(b)(1)(iv). For example, an intermediary institution in an international wire transfer may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient's account in Euros. Here, the provider would disclose the fee to the sender expressed in Euros, calculated using the exchange rate used by the provider for the remittance transfer. **If the funds are to be credited to the designated recipient's pre-existing account through a payment network operator, remittance providers are not required to disclose Other Fees and Other Taxes if the sender is given the disclosure set forth in § 205.32(b)(1)(vii).**

Paragraph 31(b)(1)(vii)—Amount Received

1. Amount received. The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect all charges that affect the amount received, including the exchange rate and all fees and taxes imposed by the remittance transfer provider, the receiving institution, and any other party in the transmittal route of a remittance transfer. The disclosed amount received must be reduced by the amount of any fee or tax that is imposed by a person other than the provider, even if that amount is imposed or itemized separately from the transaction amount. **If the funds are to be credited to the designated recipient's account through a payment network operator, the remittance provider is not required to disclose the total to recipient in the currency in which the funds are to be credited to the designated recipient's account if the remittance provider makes the**

alternate disclosure set forth in § 205.31(b)(1)(vii).

II. Error Resolution

§ 205.33 Procedures for resolving errors.

(a) Definition of error—(1) Types of transfers or inquiries covered. For purposes of this section, the term error means:

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(iii) The failure to make available to a designated recipient the amount of currency stated in the disclosure provided to the sender under § 205.31(b)(2) or (b)(3), unless (a) the disclosure stated an estimate of the amount to be received in accordance with § 205.32 or **(b) if the sender was given the alternative disclosure as permitted in §205.31(b)(1)(vii)**;

Official Staff Interpretations

Section 205.33—Procedures for Resolving Errors

33(a) Definition of Error

1. *Incorrect amount of currency sent.* Section 205.33(a)(1)(i) covers circumstances in which a sender pays an amount that differs from the total transaction amount, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided under § 205.31(b)(2) or (b)(3). Such error may be asserted by a sender regardless of the form or method of payment tendered,

including when a debit, credit, or prepaid card is used to fund the transfer and an excess amount is paid. For example, if a remittance transfer provider incorrectly charged a sender's credit card account for $150 to send $120 to the sender's relative in a foreign country, plus a transfer fee of $10, and the provider sent only $120, the sender could assert an error with the remittance transfer provider for the incorrect charge under § 205.33(a)(1)(i).

2. *Incorrect amount of currency received—coverage.* Section 205.33(a)(1)(iii) covers circumstances in which the designated recipient receives an amount of currency that differs from the amount of currency identified on the disclosures provided to the sender, except where the disclosure stated an estimate of the amount of currency to be received in accordance with § 205.32. A designated recipient may receive an amount of currency that differs from the amount of currency disclosed, for example, if an exchange rate other than the disclosed rate is applied to the remittance transfer or if the provider fails to account for fees or taxes that may be imposed by the provider or a third party before the transfer is picked up by the designated recipient or deposited into the recipient's account in the foreign country. Section 205.33(a)(1)(iii) also covers circumstances in which the remittance transfer provider transmits an amount that differs from the amount requested by the sender. **However, if the sender was given the alternative disclosure as permitted by § 205.31(b)(1)(vii), an error has not occurred if part or all of the Transfer Amount is applied to pre-existing obligations in the recipient's account, since the recipient receives the benefit of the correct Transfer Amount**

to the extent that his or her obligations were satisfied.

3. *Incorrect amount of currency received—examples.* For purposes of the following examples illustrating the error for an incorrect amount of currency received under § 205.33(a)(1)(iii), assume that none of the circumstances permitting an estimate under § 205.32 apply (unless otherwise stated).

i. A consumer requests to send funds to a relative in Mexico to be received in local currency. Upon receiving the sender's payment, the remittance transfer provider provides a receipt indicating that the amount of currency that will be received by the designated recipient will be 1180 Mexican pesos, after fees and taxes are applied. However, when the relative picks up the transfer in Mexico a day later, he only receives 1150 Mexican pesos because the exchange rate applied by the recipient agent in Mexico was lower than the exchange rate disclosed on the receipt. Because the designated recipient has received less than the amount of currency disclosed on the receipt, an error has occurred.

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an amount of currency that will be received by the designated recipient, which does not reflect additional foreign taxes that will be imposed in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed on the receipt, an error has occurred.

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the

receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed on the receipt, an error has occurred.

iv. A consumer requests to send US$250 to a relative in India to an U.S. dollar-denominated account held by the relative at an Indian bank. Instead of the US$250 disclosed on the receipt as the amount to be sent, the remittance transfer provider sends US$200, resulting in a smaller deposit to the designated recipient's account than was disclosed as the amount to be received after fees and taxes. Because the designated recipient received less than the amount of currency that was disclosed, an error has occurred.

v. A consumer requests to send US$100 to a relative in Brazil to be received in local currency. The remittance transfer provider provides the sender a receipt that discloses an estimated exchange rate, other taxes, and amount of currency that will be received due to Brazilian law requiring that the exchange rate be set by the Brazilian central bank. When the relative picks up the remittance transfer, the relative receives less currency than the estimated amount disclosed to the sender on the receipt. Because § 205.32(b) permits the remittance transfer provider to disclose an estimate of the amount of currency to be received, no error has occurred unless the estimate was not based on an approach set forth under § 205.32(c).

vi. A consumer requests to send funds through a payment network operator to a relative in Mexico to be credited to the designated recipient's pre-existing card account. Upon receiving the sender's payment, the remittance transfer provider provides a receipt

indicating the Transfer Amount and also discloses "The total amount to be made available to your recipient may vary from the Transfer Amount due to exchange rates, fees, taxes and other terms and conditions that are applied to the transfer in accordance with the recipient's cardholder agreement." When the relative's account is credited for the transfer, a smaller amount is made available to the designated recipient than the Transfer Amount disclosed on the receipt. No error has occurred.

III. Cancellations and Refunds

§ 205.31 Disclosures.

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(b) Disclosure requirements—(1) Prepayment disclosure. A remittance transfer provider must disclose to a sender, as applicable:

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(viii) If the funds will be provided in the form of a credit to the recipient's pre-existing account through a payment network operator, the provider may also provide a notice to the sender that "A transfer transaction cannot be cancelled and no refund of any amounts paid will be provided when you sign the transfer agreement."

§ 205.34 Procedures for cancellation and refund of remittance transfers.

(a) *Sender right of cancellation and refund.* A remittance transfer provider shall comply with the requirements of this section with respect to any oral or written request to cancel a remittance transfer from the sender that is received by the provider **prior to transmittal of the funds. A remittance transfer provider is not required to cancel a transfer or refund any funds tendered if the sender was given a notice prior to payment for the transfer under § 205.31 (b)(1)(viii) that once the transfer request is signed by the sender, the transfer cannot be cancelled and no refund will be available to the sender.** ~~no later than one business day from when the Sender makes payment in connection with the remittance transfer if:~~

~~(1) The request to cancel enables the provider to identify the Sender's name and address or telephone number and the particular transfer to be cancelled;~~

~~and~~
~~(2) The transferred funds have not been picked up by the designated Recipient or deposited into an account of the designated Recipient.~~
(b) *Time limits and refund requirements.* A remittance transfer provider shall refund, at no additional cost to the sender, the total amount of funds tendered by the sender in connection with a remittance transfer, including any fees imposed in connection with the remittance transfer, within three business days of receiving a sender's **timely** request to cancel the remittance transfer.

Model Forms of Disclosure

Model Form A-36

Add bracketing language as an alternative in the paragraph entitled "What to do if You Want to Cancel a Remittance Transfer," as follows:

You have a right to cancel a remittance transfer and a refund of all funds paid to us, including any fees. In order to cancel, you must contact us at the [phone number or email address] above **within one business day of payment for the transfer [before you sign the remittance transfer agreement.]**

When you contact us, you must provide us with information to help us identify the transfer you wish to cancel, including the amount and the location where the funds were **to be** sent. We will refund your money within three business days of your request~~, so long as the money has not already been picked up or deposited in the Receipient's account~~.

Model Form A-37

Add bracketed language as alternative in the notice regarding cancellation, as follows: "You can cancel for full refund **within one business day of payment, unless the funds have not been picked up/deposited [only if you notify us before you sign the remittance transfer agreement**."]

Appendix C

Sample Disclosure of Exchange Rates Used by the VMT Service Remittance Transfer Providers

This sample disclosure is suggested by Visa to illustrate how Visa client financial institutions would comply with section 205.31(b)(1)(vi). It is based on Model Form A-30 included in the notice of proposed rulemaking. The example assumes that the Sender funds the remittance transfer in US dollars and is sending the remittance to a Recipient whose Visa issuer has designated to Visa that transfer to it through VisaNet should be denominated in "tempos."

ABC National Bank
1000 Any Street
Anytown, Anystate 12345

Today's Date 07/20/2011

Not a Receipt

Transfer Amount:	$100.00
Fees and taxes:	$10.00
Total	$110.00

You have requested that your remittance transfer be sent to your designated recipient's Visa account. Your recipient's Visa issuing financial institution has specified that amounts sent to it be transferred in: "tempos."
Our exchange rate today for tempos is:
US$1.00 = 24.61 tempos

Transfer Amount: T2,461.00

Your recipient's Visa account may be denominated in a currency other than tempos. The total amount and currency to be made available to your recipient may vary from the Transfer Amount due to the account currency, exchange rates, fees, taxes and other terms and conditions that are applied to the transfer in accordance with the recipient's cardholder agreement.