UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

April 24, 2019

Byron B. Rooney
Davis Polk & Wardwell LLP
byron.rooney@davispolk.com

Re: MasterCard Incorporated
Incoming letter dated February 7, 2019

Dear Mr. Rooney:

This letter is in response to your correspondence dated February 7, 2019 concerning the shareholder proposal (the "Proposal") submitted to MasterCard Incorporated (the "Company") by Susanna L. Hoffs and Matthew Joseph Roach Jr. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponents' behalf dated March 8, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/ cf-noaction /14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Sanford J. Lewis
sanfordlewis@strategiccounsel.net

April 24, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: MasterCard Incorporated
Incoming letter dated February 7, 2019

The Proposal requests that the Company report on its global median gender pay gap, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In our view, the Proposal does not seek to micromanage the Company to such a degree that exclusion of the Proposal would be appropriate. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it does not appear that the Company's public disclosures compare favorably with the guidelines of the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Lisa Krestynick
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

SANFORD J. LEWIS, ATTORNEY

Via electronic mail
March 8, 2019
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Mastercard Regarding Gender Pay Equity
on behalf of Susanna L. Hoffs & Matthew Joseph Roach Jr.

Ladies and Gentlemen:

Susanna L. Hoffs & Matthew Joseph Roach Jr. (the "Proponents") are beneficial owners of common stock of Mastercard (the "Company"). Arjuna Capital has submitted a shareholder proposal (the "Proposal") to the Company on their behalf. I have been asked by the Proponent to respond to the letter dated February 7, 2019 ("Company Letter") sent to the Securities and Exchange Commission by Byron B. Rooney of Davis, Polk & Wardwell LLP. In that letter, the Company contends that the Proposal may be excluded from the Company's 2019 proxy statement.

I have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the relevant rules, it is my opinion that the Proposal must be included in the Company's 2019 proxy materials and that it is not excludable under Rule 14a-8. A copy of this letter is being emailed concurrently to Mr. Rooney.

SUMMARY

The Proposal, entitled Gender Pay Equity, begins by reciting the impacts of the gender pay gap on the economy, and women, including their underrepresentation in leadership due to the difficulty of retaining their participation, as well as the related impacts on stock performance and emerging public policy risks based on the efforts of states and countries like the United Kingdom to close the gender pay gap.

The resolved clause of the Proposal requests a report on the Company's global median gender pay gap, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information. The resolved clause further defines the gender pay gap, citing to the Organization for Economic Cooperation and Development (OECD), as the difference between male and female median earnings expressed as a percentage of male earnings.

The Proposal's supporting statement describes a report adequate for investors to assess the Company's strategy and performance by explaining that such a report would include the

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percentage global median pay gap between male and female employees across race and ethnicity, including base, bonus, and equity compensation.

The Company Letter claims the Proposal should be excluded because it deals with matters related to the Company's ordinary business and impermissibly seeks to micromanage. However, the Proposal addresses a recognized, significant policy issue of discrimination, has a clear nexus to the Company, and does not micromanage by probing too deeply into the Company's management, and therefore is not excludable under Rule 14a-8(i)(7).

In particular, the Company asserts the Proposal imposes specific methods to implement complex policies, by defining "pay gap", specifying the metric ("median") and inclusion of "race and ethnicity," and the factors which should be included (base, bonus, and equity compensation), in addition to associated policy, reputational, competitive and operational risks, and risks related to recruiting and retaining female talent.

However, the Proposal sets forth a reporting request based on commonly understood mechanisms for reporting the gender pay gap, as the reporting of the median gender pay gap is the most commonly utilized metric for representing this issue. Further, the Company's current reporting alone likely presents a misleadingly rosy picture of the gender pay gap among its employees, such that it provides an inadequate indicator for investor review of the Company's performance through a gender lens. It is appropriate, and not micromanagement, for a shareholder proposal to request the disclosure of reasonable metrics that are consistent with public and investor interest. Therefore, the Proposal is not excluded pursuant to Rule 14a-8(i)(7).

In addition, the Company Letter asserts that the Proposal is substantially implemented. However because the Company does not report the median pay gap as requested by the Proposal, it meets neither the guidelines nor the essential purpose of the Proposal and therefore the Proposal is not excludable pursuant to Rule 14a-8(i)(10).

THE PROPOSAL

Gender Pay Equity

Whereas: The World Economic Forum estimates the gender pay gap costs the economy 1.2 trillion dollars annually. The median income for women working full time in the United States is 80 percent of that of their male counterparts. This disparity can equal nearly half a million dollars over a career. The gap for African American and Latina women is 60 percent and 55 percent. At the current rate, women will not reach pay parity until 2059,

United States companies have begun reporting statistically adjusted equal pay for equal work numbers, assessing the pay of men and women performing similar jobs, but mostly ignore *median* pay gaps. The United Kingdom now mandates disclosure of median gender pay gaps. And while Mastercard reported a 22.5 percent median hourly pay gap and 42.2 percent median bonus pay gap for its United Kingdom operations, it has not published median information for its global operations.

Mastercard reports that women earn 99.1 percent of the compensation received by men on a statistically adjusted equal pay basis, including base salary, bonus and stock. Yet, that statistically adjusted number alone fails to consider how discrimination affects differences in opportunity. In contrast, median pay gap disclosures address the structural bias that affects the jobs women, hold, particularly when men hold most higher paying jobs.

Women account for 39 percent of our company's global workforce, 30 percent of senior management and 21 percent of our board. Actively managing pay equity "is associated with higher current female representation at the professional through executive levels and a faster trajectory to improved representation."

Research from *Morgan Stanley, McKinsey,* and *Robeco Sam* suggests gender diverse leadership leads to superior stock price performance and return on equity. *McKinsey* states, "the business case for the advancement and promotion of women is compelling." Best practices include "tracking and eliminating gender pay gaps."

Public policy risk is of concern, not only in the United Kingdom, but in the United States as well. The Paycheck Fairness Act pends before Congress. California, Massachusetts, New York, and Maryland have strengthened equal pay legislation. The Congressional Joint Economic Committee reports 40 percent of the wage gap may be attributed to discrimination.

Resolved: Shareholders request Mastercard report on the company's *global median* gender pay gap, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.

The gender pay gap is defined as the difference between male and female *median* earnings expressed as a percentage of male earnings (Organization for Economic Cooperation and Development).

Supporting Statement: A report adequate for investors to assess company strategy and performance would include the percentage *global median* pay gap between male and female employees across race and ethnicity, including base, bonus and equity compensation.

BACKGROUND

The gender pay gap is present across our society and no industries or geographies are immune. The median income for women working full-time in the United States is reported to be 80% of that of their male counterparts, or about $10,470 a year.[1] This disparity can add up to nearly half a million dollars over the course of a career. Disturbingly, the gap for African American and Latina women gapes wider at 62% and 55% respectively.[2] And at the current rate of change, women will not reach pay parity until 2059.[3] This is not only bad for women, it is bad for the economy, and it's bad for investors. PwC's 2018 Women in Work Index estimates the gender pay gap costs the economies of the Organization for Economic Cooperation and Development (OECD) countries $2 trillion annually.[4]

As reported in Forbes, "*What You Need To Know About Gender Lens Investing*" Bhakti Mirchandani, January 3, 2019:

> Increasingly discussed in asset management firms and the financial press alike, gender lens investing is one of the most rapidly growing segments of sustainable investing. Specifically, gender lens investing is an investment thesis that seeks to turn the abstract idea of an investment's benefit to women into a functional investment strategy. It integrates gender-based factors into investment decisions with goals ranging from enhancing risk-adjusted returns to driving gender equality.
>
> The basis of the investment thesis is manifold. Studies show that greater gender diversity on boards is a predictor of long-term value creation and lower stock price volatility and that European firms with a larger share of women in senior positions have significantly higher returns. The limited access of women-run businesses to capital is also well documented—just 3% of venture capital funding was raised by female CEOs. In addition, the International Finance Corporation (IFC) estimates a $320 billion financing gap for female entrepreneurs in formal sector small and medium enterprises in developing countries alone; naturally, the global total across firm sizes and including the informal sector is larger. According to the law of diminishing returns, where capital is scarce, returns to that the capital should generally be greater than where capital is plentiful.

In 2014, Arjuna Capital launched an investor effort to close the gender pay gap when it filed a proposal with technology firm, eBay. Arjuna asserted that managing pay parity is essential to improving diversity in leadership and therefore corporate performance. Based on research from leading management consulting firms, Arjuna made the business case that if companies can successfully attract and retain female talent through a commitment to equal pay, companies can move more women into positions of leadership and realize the performance benefits such diverse leadership affords. In 2015, the eBay proposal went to a vote of shareholders for the first time. The

[1] https://iwpr.org/publications/gender-wage-gap-2017-race-ethnicity/
[2] https://iwpr.org/publications/gender-wage-gap-2016-earnings-differences-gender-race-ethnicity/
[3] https://iwpr.org/publications/gender-wage-gap-2016-earnings-differences-gender-race-ethnicity/
[4] https://www.pwc.co.uk/services/economics-policy/insights/women-in-work-index.html

proposal asked the company to "report the percentage pay gap between male and female employees, policies to improve performance, and quantitative reduction targets." And while the 2015 vote garnered a modest 8% of shareholder support as an "emerging" investor issue, the following year, in 2016, investor support grew six-fold, to 51%, and eBay's CEO committed to pay parity the day of the vote.

Growing legislative initiatives and media coverage helped make 2016 a watershed year for investor and corporate action regarding gender pay equity. Out of nine shareholder proposals Arjuna put before major tech firms, six were withdrawn for corporate commitments to disclose information and close the gender pay gap. The momentum generated from the shareholder campaign led top proxy advisory firms like Institutional Shareholder Services (ISS) and Glass Lewis to recommend voting in favor of these proposals, leading to majority vote at eBay. By year end, seven out of nine technology firms took substantial action to address gender pay equity through "equal pay for equal work" disclosures. And gender pay equity moved from the category of "emerging" issue to "competitive" issue, as investors judged progress on the issue as critical to companies' ability to attract and retain top talent. 2016 also saw the gender pay gap narrow for the first time since the Great Recession, illustrating incremental progress in the U.S.

The effort has continued to grow with approximately 33 resolutions filed between 2014 and the 2018 proxy season. Ten different investor entities have engaged with at least 47 companies, resulting in almost 70 resolutions since the first resolution vote at eBay in 2015. The shareholder campaign has further expanded its outreach through productive dialogues with companies without the need for shareholder resolutions.

This proxy season, Arjuna Capital has filed 12 proposals on behalf of the firm and clients with financial services and technology firms focused, again, on gender pay equity, but highlighting the need for not only statistically adjusted "equal pay" disclosures, but "median pay" disclosures as well. As of January 16th, Citigroup became the first U.S. company to disclose its median gender global pay gap of 71% and U.S. minority pay gap of 93% along with its global equal pay disclosure of 99%. This disclosure was a natural global extension of the UK median pay numbers published in 2018, to which many U.S. firms, including Citibank, and Bank of America, responded.

Adjusted vs Median Pay Gaps

The gender pay gap is defined as the difference between male and female median earnings expressed as a percentage of male earnings according to the Organization for Economic Cooperation and Development.

To date, U.S. companies have taken first steps to approach the issue of gender pay equity by measuring "equal pay," that is pay through the lens that men and women holding like jobs, with like seniority, like performance, and/or like geography, should be paid equally for their work. Many U.S. companies report "adjusted equal pay gaps," which include compensation data statistically adjusted for factors such as job category, seniority, and geography. At least13 U.S.

companies report gender pay gap percentages in the vicinity of 99% to 99.9%. Five companies report they have achieved 100% equal pay, including Apple, Intel, Microsoft, Alphabet, and Starbucks. Four additional companies committed to publish their pay gap numbers by the end of 2018.

However, a different picture is presented when analysis is conducted regarding median pay gaps. Reporting of median pay gaps depicts a profile of the relative compensation of men and women across a workforce, including the relative representation of women in executive and leadership positions. Inclusion of median pay gaps is an essential addition to understanding the gender pay gap in a comprehensive manner.

Median pay gap disclosures are currently required by regulatory mandate of U.K. operations. Prior to Citigroup's January 16th announcement, no companies had reported both adjusted and median global pay gap numbers. Adding these metrics establishes a benchmark through which investors can track progress in narrowing the gap over time and whether companies are moving women into higher paying jobs and leadership positions. Only through comprehensive reporting will corporations be accountable to investors and employees alike, and able to fully manage gender inequity.

The Business Case for Tracking Gender Pay Equity

A host of research illustrates the business case for gender pay equity, including greater diversity. Diverse leadership is correlated with multiple performance benefits from more innovation to "radical innovation," better risk management, higher profit margins, stronger Return on Equity (ROE), and better stock price performance.

A report published January 2019 from the Harvard Business Review[5] was based on a study of a group of companies in the wake of a new Danish law that required employers with more than 35 employees to report their gender pay gaps. They found that, over five years, the companies that had to disclose the information shrunk their gaps; wage disparities of those that did not have to report did not improve. The report authors noted:

> …. we have just conducted the first empirical study on the impact of mandatory wage transparency. That study's results suggest that disclosing disparities in gender pay does in fact narrow the gender wage gap. It also can:
>
> Increase the number of women being hired, indicating that the supply pool of female employees increases as gender pay transparency improves.
>
> Increase the number of female employees being promoted from the bottom of the

[5] Bennedsen, Morten, Elena Simintzi, Margarita Tsourtsoura and Daniel Wolfenzon, "Research: Gender Pay Gaps Shrink When Companies Are Required to Disclose Them," 1/23/2019, https://hbr.org/2019/01/research-gender-pay-gaps-shrink-when-companies-are-required-to-disclose-them?

> hierarchy to more senior positions.
>
> Lower companies' overall wage bills, largely by slowing down the growth of male wages.

In its coverage of the Harvard Business Review study as well as recent developments at Citigroup, Fortune[6] magazine notes:

> Citigroup last week made a blunt admission that's rare among U.S. corporations. It revealed that, on the whole, women at the firm globally earn 29% less than men. In the U.S., Citi said minority employees earned 7% less than non-minorities.
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> ***
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> In going public with the figures, of course, Citi introduced itself to criticism that tighter-lipped companies shield themselves from. So why make the disclosure?
>
> Perhaps most importantly, there was shareholder pressure to do so.
>
> Last year, Arjuna Capital convinced Citi—along with Bank of America and Wells Fargo—to reveal pay gap data after arguing for more information on compensation. When Citi released an "adjusted" pay gap that revealed that men and women with the same job title, education, and experience earned roughly the same pay, Arjuna filed a shareholder proposal that Citi report its a median firm-wide gender pay gap in a more straightforward fashion.
>
> The resulting 29% figure is "an ugly number on the surface," Citigroup CEO Michael Corbat admitted in a Bloomberg interview on the outskirts of the World Economic Forum in Davos, Switzerland on Tuesday.
>
> "But you really have to get below it; you can't fix it until you get below it and until you acknowledge what it is," he said.
>
> What the median gap revealed, Corbat said, is not an imbalance at the firm in terms of female representation. In fact, the bank is more than 50% female overall. What gap did show, however, was an "imbalance at the senior job and leadership level," Corbat said. Men populate high-paid roles; women are concentrated lower on the corporate ladder, where pay is less.
>
> "You're not going to fix that overnight; you're not going to fix that by hiring externally, and you're not going to simply fix it organically," he said. Instead, the bank has set a goal of upping representation at its assistant vice president to managing director tiers to 40% female and 8% African American in the U.S. by the end of 2021.

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[6] Zillman, Claire, "'It's an Ugly Number:' CEO Michael Corbat on Why Citi Revealed the Pay Gap Data Few Banks Want to Share," 1/23/19, www.fortune.com/2019/01/23/citi-ceo-michael-corbat-pay-gap/

* * *

Mercer finds managing pay equity "is associated with higher current female representation at the professional through executive levels and a faster trajectory to improved representation."

McKinsey states, "the business case for the advancement and promotion of women is compelling."[7] McKinsey identifies best practices for increased female representation including "tracking and eliminating gender pay gaps."[8] MSCI has found gender diverse leadership teams led to a 36.4% improvement in return on equity.[9]

ANALYSIS

I. The Proposal does not micromanage, and therefore is not excludable pursuant to Rule 14a-8(i)(7).

The Company Letter asserts that the Proposal micromanages by seeking disclosure of specific metrics. Even though the subject matter of the Proposal touches on matters related to ordinary business (employment), the focus of the Proposal on the gender pay gap transcends the ordinary business exclusion. The Staff has found that where a proposal's subject matter involves ordinary business, it may transcend the ordinary day-to-day business matters threshold when they regard a significant policy issue.[10] The Staff has frequently found issues involving employment, specifically those dealing with leveling the playing field for employees, to transcend the ordinary business exclusion. In *Citigroup Inc.* (February 2, 2016), the shareholder proposal requested the company prepare a report demonstrating it does not have a gender pay gap. The Staff was unable to concur that the company may exclude the proposal under Rule 14a-8(i)(7), even though Citigroup argued the gender pay gap is excludable as ordinary business because it relates to employment and compensation matters. In *ExxonMobil Corporation* (March 18, 2015), the company also unsuccessfully argued for the exclusion of a proposal under rule 14a-8(i)(7) where the proposal requested the company report to shareholders the percentage of women at specified compensation percentiles. There, as in Citigroup, the Staff was unable to concur that the company could exclude the proposal on the basis of rule 14a-8(i)(7), as the heart of each of those proposals went to discrimination in gender compensation.

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[7] https://www.mckinsey.com/business-functions/organization/our-insights/promoting-gender-parity-in-the-global-workplace

[8] https://www.mckinsey.com/business-functions/organization/our-insights/promoting-gender-parity-in-the-global-workplace

[9] Research from Catalyst and McKinsey indicates that men and women think, lead, and solve problems differently, and that a diversity of approaches leads to more innovation and better financial results. https://www.catalyst.org/system/files/why_diversity_matters_catalyst_0.pdf https://www.mckinsey.com/featured-insights/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth The Journal of Innovation-Management Policy & Practice found that "gender diversity within research teams fosters novel solutions leading to radical innovation in the company and in the market." García, C.(2012) Gender diversity within R&D teams: Its impact on radicalness of innovation. Innovation-Management Policy & Practice, June 2013. 15 (2), 149

[10] Cracker Barrel Old Country Stores, Inc. Release No. 34-40018 (May 21, 1998)

Furthermore, in both *Walmart* (April 3, 2002) and *Newell Rubbermaid, Inc.* (February 21, 2001), the Staff did not find those companies could exclude a Proposal addressing the "glass ceiling" based on Rule 14a-8(i)(7). In each case, the proposal was similar to the one presented here by the Proponents, in that it called for a report based in part on gender and related earnings. Also, in *Citigroup Inc.* (February 2, 1999) the Staff concluded that a proposal requesting a report on an employment issue regarding equality in the workforce based on affirmative action policies and programs may not be omitted based on Rule 14a-8(i)(7). The Staff came to the same conclusion in *R.R. Donnelley & Sons Company* **(**January 6, 1999) request the Board of Directors undertake a pay equity study to ascertain whether *all* women and minority employees are paid equitably relative to men and non-minorities performing similar jobs with comparable skills not excludable under Rule 14a-8(i)(7), where the proposal in question also focused on gender and pay, in that it requested the Board conduct a study to determine equitable pay between women and minority employees, compared with men and non-minorities employees.

There are numerous additional employment related cases where the Staff did not find them to be excludable under 14a-8(i)(7), often in the face of micromanagement claims including: *OGE Energy Inc.* (February 24, 2004) (request that company amend its equal employment opportunity policy to explicitly prohibit discrimination based on sexual orientation and take steps to substantially implement that policy); *National Fuel Gas Company* (November 18, 1999) (request that Board of Directors create, appoint, and direct a committee to issue a plan to eliminate the impact of discrimination in employment at the company and its subsidiaries by increasing minority employment to reflect the demographic makeups of the customers, populations and places of business served); *Oracle Corporation* (August 15, 2000) (request to implement employee labor practices and standards in China); *General Electric Company* (February 10, 2015) (request that Board of Directors make all possible efforts to increase activity on a list of equal opportunity principles identified in the proposal); *Wendy's International, Inc.* (February 10, 2005) (request that the Board issue a sustainability report to shareholders using Global Reporting Initiative's Sustainability Reporting Guidelines, which include labor and employment matters, as well as employee compensation); *Pacific Gas and Electric Company* (January 21, 1997) (request to have shareholders vote on a resolution regarding the company's Chief Executive Officer's and the Directors' stance on the California Civil Rights Initiative, Proposition 209).

Notably, the Company in its response, does not argue the gender pay gap is not a significant policy issue for the Company. Instead, the Company's argument is that the proposal micromanages by its focus on this metric and the other requested elements of the report. This is a fatally flawed argument, since the metric in question is the principal lens through which the social policy issue of the gender pay gap is most commonly articulated, and the elements requested in the report constitute reasonable details.

Putting the issue of micromanagement in the context of Commission Guidance

The Commission in its 1998 Release - the most recent and authoritative Commission-level statement regarding the application of micromanagement - made it clear that requests regarding methods and timelines can be acceptable:

> …. in the Proposing Release we explained that one of the considerations in making the ordinary business determination was the degree to which the proposal seeks to micro-manage the company. We cited examples such as where the proposal seeks intricate detail, or seeks to impose specific time-frames or to impose specific methods for implementing complex policies. Some commenters thought that the examples cited seemed to imply that all proposals seeking detail, or seeking to promote time-frames or methods, necessarily amount to ordinary business.
>
> We did not intend such an implication. *Timing questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul of these considerations* [emphasis added].

Accordingly, to apply the micromanagement doctrine consistent with the 1998 Release, if the proposal addresses a significant policy issue that is significant for the company, the appropriate questions for assessing micromanagement appear to be:

- Are large differences at stake between the company's approach and the proposal?
- Does the proposal contain reasonable details?

We believe the evidence demonstrates compellingly that there are large differences at stake and that it is practical for shareholders to weigh in on the details included in the Proposal. As we have noted above, the Proposal is consistent with a long line of related prior proposals on employment, diversity and discrimination that the Staff has considered in light of the 1998 Release's criteria, and which have not been found to not be excludable under Rule 14a-8(i)(7). The proposals were not excludable despite company claims asserting ordinary business or micromanagement, because, as in the present Proposal, they were directed toward the company's strategic responses and goals and at a level of detail that was practical for shareholder consideration.

Numerous proposals also have survived micromanagement challenges despite extensive and detailed requests for disclosure, and over the issuer's objections that the company is already disclosing the information it views as appropriate and adequate for its investors. As one example, matters of management of cyber risk have been subject to extensive and specific requests for disclosure. In *Express Scripts Holding Corporation* (March 7, 2018) the company asserted that the proposal micromanaged and was excludable under Rule 14a-8(i)(7) where the proposal, citing current concerns about corporate cybersecurity, asked the Board of Directors to: . . . review and publicly report (at reasonable cost, in a reasonable timeframe, and omitting proprietary and confidential information) on its cyber risk and actions taken to mitigate that risk. The Resolution explained further in the supporting statement that a report adequate for investors to assess practices should include: aspects of business or operations that give rise to material cybersecurity risk; the extent to which the company outsources functions that have material cybersecurity risks, descriptions of those functions and how the company addresses those risks; a description of cyber incidents experienced by the company that are individually or in the aggregate material, including a description of the costs and consequences; risks related to cyber incidents that remain undetected for an extended period; a description of relevant insurance coverage; compliance, regulatory or contractual obligations related to cyber risk; certification to widely recognized standards; and how cybersecurity risks are reflected in financial statements. The Resolution added that the report should address the scope and frequency of the Board's oversight of cyber risks. Despite these extensive details, the Staff rejected the claim that the proposal micromanaged.

Similarly, in *Exxon Mobil Corporation* (March 19, 2014) the company argued that the proposal requesting a detailed list of items regarding hydraulic fracturing and environmental and community impacts could be omitted pursuant to Rule 14a-8(i)(7) as micromanaging the company's ordinary business operations. Despite the detailed requests of the proposal, the Staff declined to allow exclusion on the basis of Rule 14a-8(i)(7).[11]

The circumstances of the Company are neither unique, nor a compelling argument for finding that the Proposal micromanages

The Company letter asserts that the Proposal is engaging in micromanagement in seeking reporting on the global median pay gap, citing its massive global reach of "more than 75 countries" where operates and enormous employee-base size of "over 14,000 employees", that thereby would entail an "overwhelming" level of detail requiring the "consideration of a multitude of difficult factors and management judgment" in order to determine the *median* of each gender. The Company also describes its uncertainty regarding how to report on the gender pay gap across race and ethnicity, as well as the specific elements included in evaluating compensation. The Company lastly explains the challenge of providing the report at a reasonable cost.

Regarding the Proposal's focus on the Company's median global gender pay gap, the focus on the

[11] The proposal requested the Board of Directors to report to shareholders using quantitative Indicators by December 31, 2014, and annually thereafter, the results of company policies and practices, above and beyond regulatory requirements, to minimize the adverse environmental and community impacts from the company's hydraulic fracturing operations associated with shale formations. Proponents suggest in the supporting statement that the report address, at a minimum, and on a regional basis or by each play in which the company operates:
- Percentage of wells using "green completions;"
- Methane leakage as a percentage of total production;
- Percentage of drilling residuals managed in closed-loop systems;
- Goals to eliminate the use of open pits for storage of drilling fluid and flowback water, with updates on progress;
- Goals and quantitative reporting on progress to reduce toxicity of drilling fluids;
- A system for managing naturally occurring radioactive materials;
- Numbers and categories of community complaints of alleged impacts, and their resolution;
- A systematic approach for reporting community concern statistics upward within the company.

median is consistent with a long line of shareholder proposals seeking disclosure consistent with investor-relevant metrics. In this instance, the median pay gap represents a key performance indicator that market-leading analysts and organizations have identified as appropriate for disclosure to investors.

In contrast to the median gender pay gap metric, the Company's strategy on the gender pay gap, as articulated in the Company Letter, page 5, is to ensure "equal pay for equal work". For instance, the Company notes that its approach to gender pay equity is not best addressed by the median gender pay gap metric, but by "other metrics that provide similar information as requested in the Proposal," namely data about its gender pay equity. In this instance, *similar* is not at all *equivalent*.

On its website,[12] the Company describes its approach to ensuring gender pay equity by articulating an internal process:

> …we have a framework in place for annually examining pay practices. All roles in our organization are reviewed and benchmarked to the external market on an annual basis. We also assess compensation decisions for potential pay disparities by gender, among other things. If disparities are found and not explained in an acceptable manner, appropriate responsive action is taken. Furthermore, we offer employees multiple channels to raise pay disparity concerns, such as the employee's manager, our Ethics Helpline, our Employee Relations team or the Law Department.
>
> This year, to further support and enhance our process, we have also retained a third party to validate our assessments, and this will become a part of our annual process.

The Company, by noting that it gathers pay equity data internally and maintains departments where employees can raise their concerns, avoids external accountability on the pay equity outcomes. In contrast, the Proposal's requested metric (which requires quite a bit less statistical maneuvering than "equal pay" to calculate) addresses a broader issue, combining the problem of disparities in pay, with the shortage of promotional opportunities and higher paying jobs for women within the Company. It has long been the case that proposals can request such market-leading, relevant metrics. By distinction, the Proposal does not impose specific actions on the company that would constitute micromanagement, which would be the analogous situation for many of the micromanagement exclusion decisions cited by the Company.

Leading experts and advocates in the field believe this ratio is the single most telling way of parsing this issue in a manner that is comparable from company to company. For instance, a report by the American Association of University Women (AAUW) notes regarding the gender pay gap:

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[12] https://www.mastercard.us/en-us/about-mastercard/who-we-are/diversity-inclusion.html

The Simple Truth about the Gender Pay Gap

The **gender pay gap** is the gap between what men and women are paid. Most commonly, it refers to the median annual pay of all women who work full time and year-round, compared to the pay of a similar cohort of men. Other estimates of the gender pay gap are based on weekly or hourly earnings, or are specific to a particular group of women.

$$\text{EARNINGS RATIO} = \frac{\text{WOMEN'S MEDIAN EARNINGS}}{\text{MEN'S MEDIAN EARNINGS}}$$

$$\text{2017 EARNINGS RATIO} = \frac{\$41{,}997}{\$52{,}146} = 80\%$$

No matter how you analyze it, the gender pay gap is real, persistent, and harmful to women's economic security.

The Company claims it would be too difficult to determine race and ethnicity on a global basis for purposes of gathering data for the report in the Proposal, explaining the differing constructs of race across nations. As the Company noted in page 4 of its letter, the Staff has previously found a Proposal requesting that a company demonstrate no racial or ethnic pay gap exists did not engage in micromanagement in *Walmart Inc.* (April 11, 2018). The proposal in that case stated:

> "RESOLVED: Shareholders request Walmart prepare a report, omitting proprietary information and at reasonable cost demonstrating that the company does not have any racial or ethnic pay gaps. For purposes of this Proposal, a *racial or ethnic pay gap* exists when (i) one or more particular jobs or statuses (e.g., management, part--time work) are disproportionately occupied by persons of a particular racial or ethnic group, compared to the composition of the workforce as a whole; or (ii) persons of one racial or ethnic group are compensated differently from persons of another racial or ethnic group performing the same job under the same job description, with the same experience and level of performance." [Emphasis added.]

While the Company endeavors to draw a contrast with this decision to the present one by claiming the proposal in *Walmart Inc.* covers "only a small portion" of the report requested in the Proposal and that it did not ask for the reporting of median gender pay gap across race and ethnicity on a global basis, the central thrust in that proposal was to evaluate pay gaps across racial and ethnic lines.[13] Furthermore, similar to the Company here, Walmart argued its vast global operations and number of employees would make an analysis "particularly expansive", but the Company's 14,000 total employees operating in 75 countries pale in comparison to Walmart's approximately "800,000 in twenty seven countries outside the United States", in addition to the 1.3 million employees domestically.[14] Similarly, scale and global reach would not seem to preclude the reporting of risks related to recruiting and retaining female talent, nor the reporting on the risks included in the Proposal, as the Company claims.[15]

Yet despite size and global footprint, in January 2019, Citigroup, which operates in 160 countries with 204,000 employees released the median gender pay gap data requested by investors, in addition to a minority pay gap analysis for its US employees. Similarly, on the issue of race/ethnicity, US domiciled peer companies have previously released racial pay gap metrics for US minority employees. Of note, the Proposal itself does not dictate how to report across race and ethnicity, as that is a decision left to management.

The Company further claims including base, bonus, and equity compensation in the pay gap analysis adds to its complexity, however, each of these payment structures determine what employees are ultimately paid and are indispensable for purposes of developing a complete report. Including all three components of compensation in gender pay equity disclsoures has become best practice among peers in the technology and financial services industry.

The Company additionally claims asking the Company to provide median pay gap information as defined by the OECD as "the difference between median earnings of men and women relative to median earnings of men," and the OECD's noting that types of earnings matter, indicates micromanagement. However, as discussed above, this definition as it relates to the median gender pay gap, is the leading and most relevant metric in evaluating this issue.

As we approach "Equal Pay Day" in the United States on April 2nd of 2019, we can reflect that that day is chosen in line with the most common definition of the gender pay gap, median pay, and based on Census statistics. According to the National Committee on Pay Equity:[16]

> **The next Equal Pay Day is Tuesday, April 2, 2019. This date symbolizes how far into the year women must work to earn what men earned in the previous year.**
>
> Equal Pay Day was originated by the National Committee on Pay Equity (NCPE) in 1996 as a public awareness event to illustrate the gap between men's and women's wages.
>
> Since Census statistics showing the latest wage figures will not be available until late

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[13] The Company also claims to draw a distinction by stating Walmart Inc. addressed equal pay, however, equal pay is not addressed in Walmart directly, nor is it relevant to this analysis as it pertains to a large, global-operating company's ability to report on the gender pay gap across ethnic and racial lines. See: Company Letter, p. 4.

[14] *Walmart Inc.* (April 11, 2018). Letter to SEC dated January 29, 2018.

[15] Company Letter, p.4.

[16] https://www.pay-equity.org/day.html

> August or September, NCPE leadership decided years ago to select a Tuesday in April as Equal Pay Day. (Tuesday was selected to represent how far into the next work week women must work to earn what men earned the previous week.)
>
> Because women earn less, on average, than men, they must work longer for the same amount of pay. The wage gap is even greater for most women of color.

The disclosure requested by the Proposal contains reasonable details, and therefore it does not micromanage and is not excludable under Rule 14a-8(i)(7).

II. The Proposal has not been substantially implemented, and therefore is not the excludable pursuant to 14a-8(i)(10).

The Company claims that its existing reporting substantially implements the Proposal. In order for a Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), the actions in question must compare favorably with the guidelines and essential purpose of the Proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company's particular policies, practices, and procedures compare favorably with the guidelines of the proposal. *Texaco, Inc.* (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed *both* the proposal's guidelines and its essential objective. See, e.g., *Exelon Corp.* (Feb. 26, 2010). Thus, when a company can demonstrate that it has already taken actions that meet most of the guidelines of a proposal and meet the proposal's essential purpose, the Staff has concurred that the proposal has been "substantially implemented." In the current instance, the Company has substantially fulfilled *neither* the guidelines nor the essential purpose of the Proposal, and therefore the Proposal cannot be excluded.

The Proposal requests the Company produce a report on the its global median gender pay gap, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information. The Resolved clause defines the gender pay gap, citing to the Organization for Economic Cooperation and Development (OECD), as the difference between male and female median earnings expressed as a percentage of male earnings.

The Proposal's supporting statement describes a report adequate for investors to assess the Company's strategy and performance by explaining such a report would include the percentage global median pay gap between male and female employees across race and ethnicity, including base, bonus, and equity compensation.

The essential purpose as reflected in the language and the context of the Proposal is to determine the median gender pay gap—"median" being the key term, as it is the most useful and relevant metric in evaluating the gender pay gap, and by extension, womens' underrepresentation in leadership and the difficulty of retaining their participation.

The guidelines require at a minimum that the report include the percentage global median pay gap between male and female employees across race and ethnicity, including base, bonus, and equity compensation.

The Company's actions, including its existing internal policies, and limited equal pay reporting, do not fulfill the essential purpose and guidelines. The Company claims it has substantially implemented the Proposal through the use of "other metrics" that provide "similar information". It references its equal pay data and states "for every $1 earned by men women earned $0.991" for equal performance at the same level…"

While "equal pay" data is related to gender, in the absence of median figures substantial implementation of the Proposal is not possible. Economists from the University of California, Berkeley have explained how median wages are a superior unit of measurement when evaluating growing wage inequality:[17]

> ….since the idea of the ranking is to capture wages paid for the typical set of tasks associated with each occupation, arguably one would want to rank occupations by their median wage to ensure that the occupational rankings are not distorted by atypical wages within occupations.

As such, the "median" gender pay gap is commonly used in evaluating the gender pay gap. The Institute for Women's Policy Research, described as "the leading think tank in the United States applying quantitative and qualitative analysis of public policy through a gendered lens[18]" consistently uses the median wage gap in its studies, including a recent report on "The Gender Wage Gap: 2017; Earnings Differences by Gender, Race, and Ethnicity."[19] Similarly, the United States Census utilizes median figures when reporting the Female-to-Male earnings ratio.[20] The essential purpose of the Proposal is to report on this valuable metric. By merely providing general statistics and its "equal pay" data, and compliance with related state legislation, the Company fails to meet the essential purpose of the Proposal.

Accordingly, the Proposal requests reporting on a relevant metric that is not reflected in the Company's current reporting. This is a top-level request and does not constitute micromanagement.

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[17] ASSESSING THE JOB POLARIZATION EXPLANATION OF GROWING WAGE INEQUALITY Lawrence Mishel John Schmitt Heidi Shierholz Presented at the Labor Economics Seminar at the University of California, Berkeley March 7, 2013

[18] https://iwpr.org/about/our-mission/

[19] https://iwpr.org/publications/gender-wage-gap-2017/

[20] https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-263.pdf. Page 9.

The Company also claims it has substantially implemented the Proposal by acknowledging and considering how discrimination affects "differences in opportunity."[21].Acknowledgment of the gender pay gap issue in the Company's Sustainability Report ("…women are not represented equally or fairly.[22]") serves to illustrate the Company awareness of the issue, but does not demonstrate the Company has met the Proposal's guidelines. The Company's Gender Equity Report and Sustainability Report also fall short here in that they only report the percentages of women generally that are hired by the Company, and the percentage of women holding senior positions, but do not even address wages directly or as it relates womens' race or ethnicity, and therefore do not substantially implement the Proposal.

Furthermore, the Company claims it has substantially implemented the Proposal by its existing framework to assess compensation disparities by gender and taking "appropriate responsive action.[23]" This describes a largely internally conducted process whereby employees can turn to the Company's "Ethics Helpline," but does not meet the guidelines of the Proposal because this information is far from the data it requires.

The Company also claims it already reports on the risks that gender pay gaps pose to recruitment and retention in its Form 10-K.[24] The Company explains it will discuss in its 10-K for the year ended 2018 its focus on "building an inclusive culture" and it will include a risk factor for failing to attract a "diverse workforce." Such risk reporting, however, does not address policy and reputational risk, and while it touches on competitive and operational risks, it fails to address gender entirely despite this being the central focus of the Proposal.

The Company additionally claims it already reports on risks because it has internal diversity programs and a Global Diversity and Inclusion Council, and the board reviews recruitment initiatives.[25] However, while these may describe responsive steps taken to address risks to the business, the Company does not show that there is any risk reporting generated.

None of the Company's actions meet the guidelines or essential purpose of the Proposal, and therefore the Proposal is not substantially implemented pursuant to Rule 14a-8(i)(10).

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2019 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action

[21] Company Letter p. 5
[22] Company Letter p. 6
[23] Company Letter p. 6
[24] Company Letter p. 7
[25] Company Letter p. 7

letter request. If you have any questions, please contact me at 413 549-7333 or sanfordlewis@strategiccounsel.net.

Sincerely,

Sanford Lewis

cc: Byron B. Rooney

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February 7, 2019

VIA Email

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Mastercard, Incorporated, a Delaware corporation (the "**Company**" or "**Mastercard**"), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), we are filing this letter with respect to the shareholder proposal (the "**Proposal**") submitted by Arjuna Capital (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2019 Annual Meeting of Shareholders (the "**2019 Proxy Materials**"). The Proposal and related correspondence is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the "**Staff**") will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2019 Proxy Materials. In accordance with Rule 14a-8(j), this letter is being filed with the Securities and Exchange Commission not less than 80 days before the Company plans to file its definitive proxy statement.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and any related correspondence via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from the 2019 Proxy Materials. This letter constitutes the Company's statement of the reasons it deems the omission of the Proposal to be proper.

THE PROPOSAL

The Proposal states:

> **BE IT RESOLVED** Shareholders request Mastercard report on the Company's *global median* gender pay gap, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information. The gender pay gap is defined as the difference between male and female *median* earnings expressed as a percentage of male earnings (Organization for Economic Cooperation and Development).

The Company believes that the Proposal may be properly omitted from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(7) because it impermissibly seeks to micromanage the Company and Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.

REASONS FOR EXCLUSION OF THE PROPOSAL

1. The Company may omit the Proposal pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations by impermissibly seeking to micromanage the Company.

A. Background.

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company's ordinary business operations. The general policy underlying the "ordinary business" exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at annual shareholders meetings." Exchange Act Release No. 34-40018 (May 21, 1998). This general policy reflects two central considerations: (i) "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" and (ii) the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

Although the Staff has stated that a proposal generally will not be excludable under Rule 14a-8(i)(7) where it raises a significant policy issue (Staff Legal Bulletin 14E (October 27, 2009)), even if a proposal involves a significant policy issue, the proposal may nevertheless be excluded under Rule 14a-8(i)(7) if it seeks to micromanage the company by specifying in detail the manner in which the company should address the policy issue. See *EOG Resources, Inc.* (February 26, 2018) (proposal requesting EOG adopt company-wide, quantitative, time-bound GHG emissions reduction targets and issue a report was excludable for micromanaging despite EOG's acknowledgment that the proposal touched on the significant social issues of environmental sustainability and climate change); *Walgreens Boots Alliance, Inc.* (November 20, 2018) (proposal requesting that stock buybacks adopted by the board not become effective until approved by shareholders was excludable for micromanaging by substituting shareholder approval for board decision-making in a complex matter); and *Amazon.com, Inc.* (January 18, 2018) (proposal requesting that Amazon list certain efficient showerheads before others on its website and describe the benefits of these showerheads was excludable for micromanaging by mandating a specific order of product placements without regard for the business judgment of management). The casting of a proposal as a request for a report, rather than a request for a specific action, does not mean that the proposal does not seek to micromanage the Company, and the focus will be on the underlying subject matter of the report. See *Ford Motor Company* (March 2, 2004) (proposal requesting the preparation and publication of scientific report regarding the existence of global warming or cooling was excludable "as relating to ordinary business operations" despite recognition that global warming is a significant policy issue)**.**

B. The Proposal seeks to micromanage the Company by imposing specific methods to implement complex policies.

The Proposal seeks to micromanage the Company by asking the Company to issue a report on the Company's global median gender pay gap, as specifically defined by the OECD, including associated policy, reputational, competitive and operational risks, and risks related to recruiting and retaining female talent. The Proposal indicates that the report should include the percentage of global median pay gap between male and female employees across race and ethnicity, including base, bonus and equity compensation.

Staff Legal Bulletin 14J ("**SLB 14J**") (October 23, 2018) indicates that a proposal inappropriately micromanages a company where the proposal involves intricate detail or seeks to impose specific time frames or methods for implementing complex policies. The Proposal imposes specific methods for implementing complex policies relating to gender pay gap. The Proposal asks the Company to report on the complex issue of gender pay gap and the recruitment and retention of female talent on a global basis by micromanaging (a) which particular definition of "pay gap" should be used – that of the OECD; (b) how specifically that gap should be measured – the median between male and female employees across race and ethniticy; (c) what should be included in that measurement (i.e., base, bonus and equity complensation); and (d) that this report should also include "associated policy, reputational, competitive and operational risks, and risks related to recruiting and retaining female talent." Much of this analysis would involve intricate and challenging judgments that do not lend themselves to shareholder review.

Global median gender pay gap. The Company operates in more than 75 countries and has over 14,000 employees. Reporting median pay gap on a global basis would require an overwhelming amount of detail. The Company must determine the median female and male employee in each country, which would require assessing the pay of each employee and then finding the median of each gender. As has been evident during compliance with the SEC's pay ratio rules, finding one median employee on a global basis already represents the consideration of a multitude of difficult factors and management judgment.

The global median pay gap across race and ethnicity. Given the size of its global operations, it is unclear how the Company could even begin to report gender pay gap by different race and ethnicity across each country, or even on a global basis. Race and ethnicity as a construct in the U.S. is different than as understood in other countries, especially the notion of the difference between the two concepts of race and ethnicity. In the U.S., for example, there is a perception of a majority group and several discrete minority groups as recognized by the U.S. Census, so the divisions of race and ethnicity can be along a few broad categories consistent with the Census. This is not how most other countries globally consider the same issues. This simplistic imposition of a U.S.- centric paradigm by the Proposal would impose on the Company the specific method of trying to figure out how race and ethnicity would be determined in each country in addressing the complex policy of gender pay gap. It would also require employees to self-identify their race and ethnicity as well – which could be extremely challenging and difficult to navigate country-by-country, and may also require a determination about the scope of the relevant privacy laws in each jurisdiction to ask for this information.

The global median pay gap across race and ethnicity, including base, bonus and equity compensation. To add to the complexity, the Proposal wants the Company to include in its pay gap analysis specific elements of compensation that include base salary, bonus and equity compensation. Bonus in particular can include a multitude of different pay schemes across job types that varies across countries, making it intricate and problematic for the Company to determine for this purpose.

The gender pay gap as defined by the OECD. The Proposal references the gender pay gap as defined by the Organization for Economic Cooperation and Development ("**OECD**"). The gender wage gap, according to the OECD, is defined as the difference between median earnings of men and women relative to median earnings of men. As recognized by the OECD,[1] the way the pay gap is measured makes a signficiant difference in the reporting ("When it comes to measuring the size of the gender pay gap, the type of earnings used (hourly, weekly, monthly, or annual earnings) matters – a lot."). For example, data based on monthly earnings is much higher than the gap based on hourly earnings. Asking the Company to provide median pay gap information as particularly defined by the OECD is another indication that the Proposal micromanages the Company.

Reporting of multiple risks, including policy, reputational, competitive and operational, as well as risks related to recruiting and retaining female talent. The Proposal also asks the Company to report on multiple risks related to both gender pay gap and the recruitment and retention of female talent. Since the Company operates on a global scale, these risks would need to be assessed separately by all 75 countries in which the Company has employees, by job category and by reasons for the gap.

Given the specific methods prescribed in the Proposal, the request that the report should be prepared at "reasonable cost" represents a challenge. The Proposal clearly imposes specific methods to address the complex issue of median gender pay gap.

We recognize that the Staff declined to find that a proposal asking for a racial and ethnic pay gap proposal micromanaged the company in *Walmart Inc.* (April 11, 2018). The proposal in that letter covers only a small portion of the report requested in the Proposal. It did not ask for reporting of median gender pay gap across race and ethnicity on a global basis, and it did not include the request for base, bonus and equity compensation information. It also did not ask for reporting of the multiple potential risks resulting from a gender pay gap.

The "pay gap" as described in that proposal is much more like questions of equal pay since that proposal defined the gap to be persons performing the same job under the same job description, with the same experience and level of performance. The "pay gap" as described in the Proposal is comparatively more complicated because it addresses differences in pay regardless of reasons, such as job type or experience.

2. The Company may omit the Proposal pursuant to Rule 14a-8(i)(10) as it has been substantially implemented and its practices, policies and procedures compare favorably to the Proposal.

1 https://read.oecd-ilibrary.org/social-issues-migration-health/the-pursuit-of-gender-equality_9789264281318-en#page158

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission has stated that "substantial" implementation under the rule does not require implementation in full or exactly as presented by the proponent. See *Exchange Act Release No. 34-40018* (May 21, 1998, n.30).

The Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has substantially implemented, and therefore satisfied the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail or exercised discretion in determining how to implement the proposal. See *Exxon Mobil Corporation* (March 23, 2018) (permitting exclusion of a shareholder proposal requesting that the company issue a report describing how the company could adapt its business model to align with a decarbonizing economy because the information requested in the report was already available in two published reports describing the company's long-term outlook for energy and how the company would position itself for a lower-carbon energy future); *Ford Motor Company* (February 22, 2016) (permitting exclusion of a shareholder proposal requesting that the company adopt a policy disclosing the gender, race/ethnicity, skills and experiences of each board nominee because the information requested to be disclosed was already available in a chart disclosing the aggregate gender and minority status of the company's directors in its sustainability report, and the company's proxy materials describe the specific qualifications required of board nominees as well as each current director's actual skills and experiences as it relates to those qualifications); and *Walmart Inc.* (March 25, 2015) (permitting exclusion of a shareholder proposal requesting an employee engagement metric for executive compensation because a "diversity and inclusion metric related to employee engagement" was already included in the company's management incentive plan). "[A] determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices, and procedures compare favorably with the guidelines of the proposal." See *Texaco, Inc.* (March 28, 1991) (permitting exclusion on substantial implementation grounds of a proposal requesting that the company adopt the Valdez Principles because the company had already adopted policies, practices and procedures regarding the environment).

As the Company reported in its 2017 Gender Equity Report (the "**Gender Equity Report**"), it is committed to creating an environment that is enhanced by the diverse insights and perspectives of its global workforce, which is at the core of its inclusion and diversity strategy. The Company has substantially implemented the request in the Proposal through the use of other metrics that provide similar information as requested in the Proposal. The importance of diverse insights leading to an "inspired workforce" is also one of the cornerstones of the Company's sustainability report (the "**Sustainability Report**").[1]

The Company provides data about its gender pay equity. The Company is committed to the principle of equal pay for equal work. The Company discloses in both its Gender Equity Report and the Sustainability Report that as of October 2017, for every $1 earned by men, women earned $0.991 for equal performance at the same level, and intends to update and disclose this analysis annually.

The Company acknowledges and considers "how discrimination affects differences in opportunity." The Proposal indicates that the Company's report on equal pay alone fails to consider

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1 https://www.mastercard.us/content/dam/mccom/global/aboutus/Sustainability/mastercard-sustainability-report-2017.pdf.

"how discrimination affects differences in opportunity." The Company's Sustainability Report recognizes the issue, by stating that "[h]alf of the world's population is female, but across companies and industries, women are not represented equally or fairly." The Company has policies and procedures in place to consider women for opportunities in recruitment of its workforce. As discussed in the Gender Equity Report, the Company recruits from gender diverse candidate slates, and hiring managers must start from diverse slates. In 2017, the Company reported in the Gender Equity Report that 83% of hiring slates had at least one female candidate, and as a result, 40% of the Company's global hires and 55% of the Company's global university hires were women.

The Company is "[a]ctively managing pay equity." The Proposal states that management of pay equity is necessary to ensure higher representation of women in the workforce at the "professional through executive levels." The Company is committed to the principle of equal pay for equal work and explicitly provides statistics on equal pay. As described in the Gender Equity Report, the Company also has a framework in place for annually examining pay practices, and compensation decisions are assessed for potential pay disparities by gender, including by an outside third party annually. In addition to monitoring for equal pay, the Company monitors and discloses the representation of women at Mastercard. The Company discloses in its Gender Equity Report the percentage of women in its global workforce as well as the percentage of women holding senior executive positions within the Company globally. In its Sustainability Report, the Company discloses the number of minority employees in the U.S. workforce as well as the percentage of those employees who hold senior positions. The Gender Equity Report also discloses information about career development efforts, including the percentage of women globally who received lateral or upward promotions.

The Company tracks and eliminates gender pay gaps. The Proposal states that "best practices" includes tracking and eliminating gender pay gaps. As noted above, the Company has taken proactive action to find, remedy and close the gap for women so that they are paid equally for equal performance at the same level. Employees have multiple channels to raise pay disparity concerns, including through the Ethics Helpline. Responsive action is taken as appropriate if gaps are found. The Company also discloses, in its Gender Equity Report, key metrics to facilitate transparency on its progress toward building a gender and race/ethnicity pipeline, including specific statistics on senior leadership, general workforce population, recruitment and development.

The Company has gender-diverse leadership. The Proposal states that gender-diverse leadership is important for financial performance. Women currently make up 25% of the Company's board of directors, and as disclosed in its Gender Equity Report and Sustainability Report, 30% of the senior management at the Company in 2017. The Sustainability Report also notes that 43% of the Board had diverse backgrounds in that year. The Company focuses on providing women with numerous opportunities for promotion and advancement in order to increase representation at the leadership level, which is described below.

The Company advances and promotes women. The Proposal states that there is a "business case" for advancing and promoting women. The Company agrees and has reported on its progress in this regard. According to the Gender Equity Report, 39% of the Company's global workforce is female. In 2013, women made up 26% of senior management, which increased to 30% in 2017. The Company created a global female leadership development program to identify its next generation of female talent and to ensure these women have the necessary skills to take on broader roles within the organization – whether through intensive workshops, career moves or other means. The

Company reports that 39% of the global female workforce received a lateral or upward promotion in 2017.

To ensure the growth of a diverse pipeline of future leaders, the Company works with student programs that hire and support junior talent, which includes Women in Technology, Girls4Tech and LaunchCode. The Sustainability Report details many of the Company's gender and race/ethnicity initiatives.

The Company complies with existing state equal pay legislation. The Proposal indicates the public policy risk posed by a gender pay gap is a concern, because several states have strengthened equal pay legislation. The Company complies with all such applicable legislation.

The Company reports on the risks that gender pay gaps pose to recruitment and retention. The Proposal asks that the report discuss the risks that a gender pay gap would have on "recruiting and retaining female talent." The Company fully recognizes that the absence of diversity is a risk to its business, and that the ability to cultivate an environment for all employees that respects their individual strengths, views and experiences is critical to its success.

In the Form 10-K for the year ended 2018, the Company's disclosure in its business section will discuss the importance of the having the skills, experience, integrity and mindset of a talented workforce, which has led the Company to attract and retain top talent from diverse backgrounds and industries by building an inclusive culture. The 10-K will also include a risk factor regarding the adverse consequences of being unable to attract, hire and retain a qualified and diverse workforce. The risk factor will explain that, given the competitive nature of the market, the Company's performance depends on the talents and efforts of its employees, especially in technology and other skill areas significant to its business. Failure to attract and retain employee talent could harm the Company's business and results.

The Company is deeply focused and committed to ensuring women receive opportunities and are paid fairly. The Company's board of directors reviews the Company's initiatives on recruiting and retaining talent. The board discusses the metrics that measure the Company's goals and its progress. The Nominating and Corporate Governance Committee has been actively involved in the Company's efforts to provide transparency on its gender pay equality, including the reports referenced above. As discussed in the Sustainability Report, the Company's Chief Inclusion Officer drives the Company's existing inclusion and diversity programs while developing new programs that support its efforts to find, recruit, develop and retain talent. The Company recognizes that failure to make these efforts poses numerous risks to its business, and consequently conducts extensive outreach to maintain and increase the diversity of its workplace, including by partnering with leading business organizations, universities and events. The Company's diversity website states clearly: The stature of Mastercard's Global Diversity and Inclusion Council ("**GDIC**") reflects the value that the Company attaches to diversity. It acts as a board of directors for the Company's Global Diversity Office, providing direction to ensure that the strategy is embedded throughout the organization. Chaired by the CEO, the GDIC has members drawn from all of the Company's business regions: North America; Latin America/Caribbean; Europe; Asian/Pacific; and Middle East and Africa. It meets six to eight times a year to evaluate different programs, partnerships and other proposals that are presented as potential means of enhancing shareholder value.

We recognize that in *Texas Instruments* (January 26, 2018), the Staff decided that the company in that letter had not substantially implemented a proposal related to a request to report on gender pay gap. However, that company had not provided any actual data regarding its pay equity, or any other data with respect to the difference in pay between women and men, which is different from Mastercard's reporting practice.

CONCLUSION

The Company requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2019 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at byron.rooney@davispolk.com or 212-450-4658. If the Staff does not concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Respectfully yours,

Byron B. Rooney

Attachment

cc w/ att: Janet McGinness, Mastercard

Natasha Lamb, Arjuna Capital

Exhibit A

Gender Pay Equity

Whereas: The World Economic Forum estimates the gender pay gap costs the economy 1.2 trillion dollars annually. The median income for women working full time in the United States is 80 percent of that of their male counterparts. This disparity can equal nearly half a million dollars over a career. The gap for African American and Latina women is 60 percent and 55 percent. At the current rate, women will not reach pay parity until 2059.

United States companies have begun reporting statistically adjusted equal pay for equal work numbers, assessing the pay of men and women performing similar jobs, but mostly ignore *median* pay gaps. The United Kingdom now mandates disclosure of median gender pay gaps. And while Mastercard reported a 22.5 percent median hourly pay gap and 42.2 percent median bonus pay gap for its United Kingdom operations, it has not published median information for its global operations.

Mastercard reports that women earn 99.1 percent of the compensation received by men on a statistically adjusted equal pay basis, including base salary, bonus and stock. Yet, that statistically adjusted number alone fails to consider how discrimination affects differences in opportunity. In contrast, median pay gap disclosures address the structural bias that affects the jobs women hold, particularly when men hold most higher paying jobs.

Women account for 39 percent of our company's global workforce, 30 percent of senior management and 21 percent of our board. Actively managing pay equity "is associated with higher current female representation at the professional through executive levels and a faster trajectory to improved representation."

Research from *Morgan Stanley, McKinsey*, and *Robeco Sam* suggests gender diverse leadership leads to superior stock price performance and return on equity. *McKinsey* states, "the business case for the advancement and promotion of women is compelling." Best practices include "tracking and eliminating gender pay gaps."

Public policy risk is of concern, not only in the United Kingdom, but in the United States as well. The Paycheck Fairness Act pends before Congress. California, Massachusetts, New York, and Maryland have strengthened equal pay legislation. The Congressional Joint Economic Committee reports 40 percent of the wage gap may be attributed to discrimination.

Resolved: Shareholders request Mastercard report on the company's *global median* gender pay gap, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.

The gender pay gap is defined as the difference between male and female *median* earnings expressed as a percentage of male earnings (Organization for Economic Cooperation and Development).

Supporting Statement: A report adequate for investors to assess company strategy and performance would include the percentage *global median* pay gap between male and female employees across race and ethnicity, including base, bonus and equity compensation.

Yonda, Kathryn

From:	Natasha Lamb <natasha@arjuna-capital.com>
Sent:	Wednesday, January 2, 2019 11:08 AM
To:	McGinness, Janet
Cc:	Yonda, Kathryn; Betsy Jaques
Subject:	Re: Mastercard : proposal

CAUTION: External email. Please do not click on links/attachments unless you recognize the sender.

Thank you, Janet,
Happy New Year,
Natasha

ARJUNA CAPITAL
ENLIGHTENED INVESTING

Natasha Lamb
MANAGING PARTNER / PORTFOLIO MANAGER

WWW.ARJUNA-CAPITAL.COM
natasha@arjuna-capital.com
978.704.0114

From: "McGinness, Janet" <Janet.McGinness@mastercard.com>
Date: Thursday, December 27, 2018 at 12:04 PM
To: Natasha Lamb <natasha@arjuna-capital.com>
Cc: "Yonda, Kathryn" <Kathryn.Yonda@mastercard.com>
Subject: Mastercard : proposal

Natasha,
This is to acknowledge receipt of the shareholder proposal dated December 18, 2018 relating to gender pay.
Thanks and happy new year,

Janet McGinness
Corporate Secretary

Mastercard
2000 Purchase Street | Purchase NY 10577-2509

ARJUNA CAPITAL
ENLIGHTENED INVESTING

December 18, 2018

VIA OVERNIGHT MAIL

ATTN: Janet McGinness, Corporate Secretary
Mastercard Incorporated
2000 Purchase Street
Purchase, NY 10577

Dear Ms. McGinness:

Arjuna Capital is an investment firm focused on sustainable and impact investing.

I am hereby authorized to notify you of our intention to lead file the enclosed shareholder resolution with Mastercard Incorporated on behalf of our clients Susanna L. Hoffs and Matthew Joseph Roach Jr. Arjuna Capital submits this shareholder proposal for inclusion in the 2019 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, Susanna L. Hoffs and Matthew Joseph Roach Jr hold more than $2,000 of MA common stock, acquired more than one year prior to today's date and held continuously for that time. Our clients will remain invested in this position continuously through the date of the 2019 annual meeting.

Enclosed please find verification of this position and letter from Susanna L. Hoffs and Matthew Joseph Roach Jr authorizing Arjuna Capital to undertake this filing on their behalf. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We would welcome discussion with Mastercard Incorporated about the contents of our proposal.

Please direct any written communications to me at the address below or to natasha@arjuna-capital.com. Please also confirm receipt of this letter via email.

Sincerely,

Natasha Lamb
Managing Partner
Arjuna Capital
1 Elm Street
Manchester, MA 01944

Enclosures

Gender Pay Equity

Whereas: The World Economic Forum estimates the gender pay gap costs the economy 1.2 trillion dollars annually. The median income for women working full time in the United States is 80 percent of that of their male counterparts. This disparity can equal nearly half a million dollars over a career. The gap for African American and Latina women is 60 percent and 55 percent. At the current rate, women will not reach pay parity until 2059.

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Supporting Statement: A report adequate for investors to assess company strategy and performance would include the percentage *global median* pay gap between male and female employees across race and ethnicity, including base, bonus and equity compensation.

November 29, 2018

Natasha Lamb
Managing Partner
Arjuna Capital
353 W. Main Street
Durham, NC 27701

Dear Ms. Lamb,

We hereby authorize Arjuna Capital to file a shareholder proposal on our behalf at Mastercard Incorporated (MA) regarding gender pay equity for the company's annual meeting in 2019.

We are the beneficial owners of more than $2,000 worth of common stock in Mastercard Incorporated (MA) that we have held continuously for more than one year. We intend to hold the aforementioned shares of stock through the date of the company's annual meeting in 2019.

We specifically give Arjuna Capital full authority to deal, on our behalf, with any and all aspects of the aforementioned shareholder proposal. We understand that our names may appear on the corporation's proxy statement as the filers of the aforementioned proposal.

Sincerely,

Susanna L Hoffs

Matthew Joseph Roach Jr

c/o Arjuna Capital
353 W. Main Street
Durham, NC 27701

charles SCHWAB

December 18, 2018

To WHOM IT MAY CONCERN:

Re: Susanna Hoffs & Matthew Joseph Roach Jr / ***

This letter is to confirm that Charles Schwab & Co. is the record holder for the beneficial owners of the account of above, which Arjuna Capital manages and which holds in the account *** *** 537 shares of common stock in Mastercard Incorporated (MA).*

As of December 18th, 2018, Susanna Hoffs & Matthew Joseph Roach Jr held, and have held continuously for at least one year, 537 shares of MA stock.

This letter serves as confirmation that the account holders listed above are the beneficial owners of the above referenced stock.

Sincerely,

Jonnalee Owens
Relationship Specialist/Advisor Services

Case ID # AM-2528922