



DIVISION OF
CORPORATION FINANCE

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

April 22, 2022

Ning Chiu
Davis Polk & Wardwell LLP

Re: Mastercard Incorporated (the "Company")
Incoming letter dated February 4, 2022

Dear Ms. Chiu:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Employees' Retirement System of Rhode Island for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the board conduct an evaluation and issue a report within the next year describing if and how the Company intends to reduce the risk associated with the processing of payments involving its cards and/or its electronic payment system services for the sale and purchase of untraceable firearms, including "Buy, Build, Shoot" firearm kits, components, and/or accessories used to assemble privately made firearms known as "Ghost Guns."

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 transcends ordinary business matters.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Randy Rice
Employees' Retirement System of Rhode Island

February 4, 2022

Re: Shareholder Proposal Submitted by Employees' Retirement System of Rhode Island

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Ladies and Gentlemen:

On behalf of Mastercard Incorporated, a Delaware corporation (the "**Company**"), 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 Employees' Retirement System of Rhode Island (the "**Proponent**") for inclusion in the proxy materials the Company intends to distribute in connection with its 2022 Annual Meeting of Shareholders (the "**2022 Proxy Materials**"). The Proposal 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 2022 Proxy Materials.

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 2022 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:

RESOLVED: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how MasterCard Inc. (MasterCard or "The Company") intends to reduce the risk associated with the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of untraceable firearms, including "Buy, Build, Shoot" firearm kits, components and/or accessories used to assemble privately made firearms known as "Ghost Guns".

REASON FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7), because the Proposal deals with matters related to the Company's ordinary business operations.

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because the Proposal Deals With Matters Related to the Company's Ordinary Business Operations.

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 policy underlying the ordinary business exception is based on two central considerations: (i) that "[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 'micromanage' 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." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"); see also Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L").

1. The Proposal relates to the sale and purchase of particular products and services.

With respect to this first policy consideration, the Staff has repeatedly concurred that proposals related to a company's decision to sell or distribute specific products or services are generally excludable under Rule 14a-8(i)(7), even if such products or services are deemed controversial. In *Wal-Mart Stores, Inc.* (Mar. 20, 2014), aff'd and cited in *Trinity Wall Street v. Wal-Mart Stores, Inc.* 792 F.3d 323 (3d Cir. 2015), the Staff permitted the exclusion of a proposal requesting board oversight to determine whether the company should sell certain products, namely guns equipped with high-capacity magazines, noting that "[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)." In *Kroger* (Apr. 7, 2016), the Staff provided the same rationale in permitting exclusion of a proposal requesting a board policy to ban the sale of semi-automatic firearms and accessories at all company owned and operated stores. See also *The Home Depot, Inc.* (Mar. 21, 2018) (proposal requesting the company stop selling glue traps because of their harm to mice and danger to other wildlife and human health); *Walgreens Boots Alliance, Inc.* (Nov. 7, 2016, recon. denied November 22, 2016) (proposal requesting that the board prepare a report assessing the financial risk of continued sales of tobacco products); *Amazon.com, Inc.* (Mar. 27, 2015) (proposal requesting the company disclose reputational and financial risk arising from the sale of products that implicated mistreatment of animals); *Rite Aid Corp.* (Mar. 24, 2015) (proposal requesting board oversight to determine whether the company should sell certain products that may endanger public safety); *Dillard's, Inc.* (Feb. 27, 2012) (proposal requesting the board develop a plan to phase out the sale of fur from raccoon dogs).

Each of the proposals in *Wal-Mart* and *Kroger* requested that a general retailer adopt a policy related to its decision-making process around the sale of particular kinds of guns. For such retail stores that sell hundreds of thousands of products throughout the United States, decisions relating to what products and services to offer for sale are matters central to their ordinary business operations. Similarly, the Proposal requests that the Company prepare a report describing if and how the Company intends to reduce the risk associated with the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of untraceable firearms, including "Buy, Build, Shoot" firearm kits, components and/or accessories used to assemble privately made firearms known as "Ghost Guns." The underlying subject matter of the Proposal is the Company's operation of its payment processing services relating to the sale and purchase of particular products.

Mastercard is a technology company in the global payments industry that connects consumers, financial institutions, merchants, governments, digital partners, businesses and other organizations worldwide, enabling them to use electronic forms of payment instead of cash and checks. The Company makes payments easier and more efficient by providing a wide range of payment solutions and services using its

family of well-known and trusted brands, including Mastercard®, Maestro® and Cirrus®. The Company operates a multi-rail payments network that provides choice and flexibility for consumers and merchants. Through the Company's unique and proprietary core global payments network and additional payment capabilities, the Company switches (authorizes, clears and settles) payment transactions and enables automated clearing house transactions (both batch and real-time account-based payments) and account-to-account payments. The Company also provides integrated value-added services, which include, among others, cyber and intelligence solutions to allow all parties to transact easily and with confidence, as well as other services that provide proprietary insights, drawing on the Company's principled use of consumer and merchant data. The Company's franchise model sets the standards and ground-rules intended to balance value and risk across all stakeholders and allows for interoperability among them. The network itself is quite complex: There are many different players and providers who may be involved in transactions, including financial institutions with whom the Company has a direct relationship; merchants with whom the Company does not have a direct relationship; network enablement providers; affiliate or reseller programs; technology partners involved in specific types of activities (e.g., digital wallets); and so forth. Each participant may also have various lines of business and operate across different geographies or show up in the Company's network in multiple ways. To help manage risks within the network, the Company's franchise management team uses a combination of expanded registration requirements, risk assessments, stakeholder engagement, technology and cross-industry relationships in an effort to monitor and address potential violations of the Company's rules and of the law and to develop and maintain appropriate network standards. The Company also considers the role of advocacy, education and partnerships when addressing potential risks in the system. When the Company does identify problematic actions or allegations, either through its own efforts or as a result of referrals from others, the Company endeavors to investigate and work with relevant participants to take appropriate action.

Given the Company's complex payments processing business, decisions around the particular products and services that are available for sale and purchase through its processing of payments involving its cards and/or electronic payment system services, are fundamental to management's ability to run the Company and involve foundational management questions regarding, among other things, privacy and the operation of the franchise model itself. Management also regularly reports on these aspects of its business to the Board of Directors of the Company – and any relevant Board Committee - including privacy, the franchise model and matters of interest to various stakeholders. Because the Proposal relates to the Company's role in processing payments relating to the sale and purchase of particular products, a topic that the Staff has consistently found to be a matter of ordinary business that cannot, as a practical matter, be subject to shareholder oversight, the Company believes the Proposal may be properly omitted from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7).

The Commission has stated that a proposal requesting the publication of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the company. See Exchange Act Release No. 20091 (Aug. 16, 1983). Staff Legal Bulletin No. 14H (Oct. 22, 2015), which was issued by the Staff to clarify its views on the scope and application of Rule 14a-8(i)(7) in light of *Wal-Mart*, reaffirms that the analysis of the ordinary business exception “should focus on the underlying subject matter of a proposal's request for board or committee review regardless of how the proposal is framed.” Although the Proposal is phrased in terms of preparing a report, including the evaluation of certain risks, this framing does not change the underlying subject matter of the Proposal—the processing of payments relating to the purchase and sale of certain products and services, a matter that is fundamental to the Company's ordinary business operations.

2. The Proposal Does Not Transcend the Company's Ordinary Business Operations.

A proposal will generally not be excludable under Rule 14a-8(i)(7) if it raises a significant policy issue. However, the Staff has indicated that even a proposal relating to social policy issues may be excluded if it does not "transcend the day-to-day business matters" discussed in the proposal. 1998 Release; see also Staff Legal Bulletin No. 14E (Oct. 27, 2009).

The Staff has declined to concur in the exclusion of a shareholder proposal requesting that a gun manufacturer's board prepare a report on the company's policies and procedures related to gun violence. See, e.g. *Sturm, Ruger & Co.* (Mar. 5, 2001). Although the Proposal's supporting statement references the risks to society that are posed by gun violence, the Proposal is distinguishable from *Sturm* and other proposals that the Staff has found to implicate social policy issues because the Company, like the companies in *Wal-Mart* and *Kroger* (where the Staff permitted exclusion), is not involved in the manufacturing of the firearms that the Proposal references. The Proposal is consistent with *Wal-Mart* and *Kroger*, and therefore the Company believes it may be properly excluded from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(7).

CONCLUSION

For the reasons set forth above, we believe that the Proposal may be excluded from the Company's 2022 Proxy Materials pursuant to Rule 14a-8(i)(2) and Rule 14a-8(i)(10). The Company respectfully requests the Staff's concurrence with its decision to exclude the Proposal from its 2022 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action to the SEC if it so excludes the Proposal.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this request. Please do not hesitate to call me at (212) 450-4908 or ning.chiu@davispolk.com.

Respectfully yours,



Ning Chiu

Attachment

cc w/ att: Janet McGinness, Mastercard

Randy Rice, Employees' Retirement System of Rhode Island

MasterCard Inc.

Resolved: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year (at reasonable cost, omitting proprietary information) describing if and how MasterCard Inc. (MasterCard or “The Company”) intends to reduce the risk associated with the processing of payments involving its cards and/or its electronic payment system services for the sale and purchase of untraceable firearms, including “Buy, Build, Shoot” firearm kits, components, and/or accessories used to assemble privately made firearms known as “Ghost Guns”.

Supporting Statement: In addition to the health and safety risk to society, gun violence has a negative financial effect both in the short and long term, as it suppresses productivity and economic activity, destabilizes communities, and reduces business confidence.

Companies have an important and constructive role to play in ensuring their activities do not contribute to community violence.

Technological advances have also made it easier for unlicensed persons to make firearms at home from standalone parts or weapon parts kits. Sellers of “Ghost Gun” kits advertise that their products are meant to be built into operable firearms with no serial number, records, or background check.

“Ghost Guns” are routinely seized from individuals who are prohibited by law from possessing firearms. When made for personal use, “Ghost guns,” are not required to have a serial number, making it difficult for law enforcement to determine where, by whom, or when they were manufactured, and to whom they were sold or otherwise distributed.

From January 1, 2016, through December 31, 2020, there were approximately 23,906 suspected “Ghost Guns” reported to the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as having been recovered by law enforcement from crime scenes, including 325 homicides or attempted homicides, which includes students who were killed during mass school shootings.¹

The growing number of “Ghost Guns” is alarming to law enforcement officials across the country. The Baltimore Police Department reported that in 2020, 29 of the 126 “Ghost Guns” seized were from people who were too young to legally possess a firearm.² The ATF Los Angeles Field Division has stated that 41% of their cases involve “Ghost Guns”.³

MasterCard receives payment for the use of its services and profits from its partnership with acquiring banks and the “Ghost Gun” retailers they support.

Given the risks associated with the nature of the untraceable firearms business, as investors we are concerned that the continued use of MasterCard credit cards and/or its electronic payment system services

¹ <https://www.federalregister.gov/documents/2021/05/21/2021-10058/definition-of-frame-or-receiver-and-identification-of-firearms>

² <https://foxbaltimore.com/news/local/bpd-discusses-startling-spike-in-untraceable-ghost-guns>

³ <https://abc7.com/ghost-guns-california-gun-laws-kits/5893043/>

to facilitate the sale of firearm kits, components, and/or accessories used to assemble “Ghost Guns”, present regulatory, reputational, legal, and financial risks to investors.

Therefore, we urge the Board and management to assess The Company’s policy related to untraceable firearm transactions and report to shareholders on how it manages risks related to these transactions.



State of Rhode Island
Office of the General Treasurer
State House – Room 102
Providence, Rhode Island 02903

Seth Magaziner
General Treasurer

February 15, 2022

Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Via e-mail at shareholderproposals@sec.gov

Re: Request by Mastercard Corporation to omit the proposal submitted by the Employees' Retirement System of Rhode Island

To Whom It May Concern,

Pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, the Employees' Retirement System of Rhode Island ("Proponent") submitted a shareholder proposal (the "Proposal") to Mastercard Incorporated, ("Company" or "Mastercard").

The Proposal states:

RESOLVED: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how Mastercard Inc. (Mastercard or "The Company") intends to reduce the risk associated with the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of untraceable firearms, including "Buy, Build, Shoot" firearm kits, components and/or accessories used to assemble privately made firearms known as "Ghost Guns".

In a letter to the Division dated February 4, 2022 (the "No-Action Request"), the Company stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders. Mastercard argues that it is entitled to exclude the Proposal "because the Proposal deals with matters related to the Company's ordinary business operations".

As discussed more fully below, the Company has not met its burden of proving its entitlement to exclude the Proposal and respectfully request that Mastercard's request for relief be denied.

Mastercard has attempted to recast the proposal and the request made therein.

The Company incorrectly relies on Rule 14a-8(i)(7) which allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to a company's ordinary business operations.

In its February 4, 2022 letter, Mastercard inaccurately cites central considerations of Rule 14a-8(i)(7):

- (i) *that “[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”*

Per the “RESOLVED” clause, our proposal does not request that Mastercard make any changes to the day-to-day operations of the company. Our proposal straightforwardly requests information on how the company will reduce the risk associated with the processing of payments for the sale and purchase of untraceable firearms,

Mastercard incorrectly cites two unrelated shareholder proposals, in which shareholders requested that the respective company adopt specific policies:

1. Kroger (Apr. 7, 2016)
This proposal requested that the board adopt a policy ban on the sale of semi-automatic firearms and accessories at all company owned and operated stores.
2. The Home Depot, Inc. (Mar. 21, 2018)
This proposal requested that the company stop selling glue traps because of their harm to mice and danger to other wildlife and human health.

Our Proposal simply seeks board-level disclosure on how it intends to manage risks related to processing payments related to untraceable firearms.

In its request for relief, Mastercard wrongly casts the Proposal as an attempt by shareholders to micromanage its operations. The company cites the following clause contained within Rule 14a-8(i)(7) as a reason to exclude the Proposal from its 2022 proxy statement:

“...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.”

With this proposal, shareholders are seeking additional information that would help us make an informed judgment regarding the quality of board oversight as it relates to the risks of the processing of payments for untraceable firearms.

Our Proposal aligns with guidance provided by SEC Staff Legal Bulletin No. 14L (CF)¹ which states, in part:

“Going forward, the staff will realign its approach for determining whether a proposal relates to “ordinary business” with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.

Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7).”

The proliferation of ghost guns has a broad, negative, societal impact, transcending “Ordinary Business” and meets the “significant social policy issue” threshold that Staff has articulated with this guidance.

As they are unserialized, ghost guns are, by design, nearly impossible to trace. They can be purchased without background checks, making them a popular weapon for people who intend to use them for criminal activity.

The United States Department of Justice reports that from January 1, 2016, through December 31, 2020, there were approximately 23,906 suspected ghost guns reported to the United States Bureau of Alcohol, Tobacco, Firearms and Explosives as having been recovered by law enforcement from crime scenes, including 325 homicides or attempted homicides, a number which tragically includes students who were killed during mass school shootings.²

In 2020, Rhode Island passed a comprehensive law that prohibits the manufacture, sale, transfer, purchase, and possession of ghost guns and undetectable firearms.³ An additional eight states (CA, CT, DE, HI, NV, NJ, NY, VA, WA)⁴, and the District of Columbia, have laws regulating ghost guns.

In November 2021, the U.S. Department of Justice proposed a rule that would require gun retailers to run background checks prior to selling kits that contain the parts necessary to make a gun. Additionally, gun kit makers would be required to include a serial number for certain parts found in firearm kits. The American Medical Association wrote to U.S. Attorney General Merrick Garland in support of the proposal and reiterated its position that gun violence is a “public health crisis”.⁵

¹ https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals#_ftn3

² <https://www.justice.gov/opa/pr/justice-department-proposes-new-regulation-update-firearm-definitions>

³ <https://www.ri.gov/press/view/38748>

⁴ <https://www.everytown.org/press/as-state-legislatures-across-the-country-pass-laws-to-regulate-ghost-guns-massachusetts-can-remain-a-national-gun-safety-leader-by-taking-action-on-pending-bills-heres-what-you-need-to-know/#:~:text=California%2C%20Connecticut%2C%20Hawaii%2C%20New,in%20recent%20years%20as%20well.>

⁵ <https://searchf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-8-19-Letter-to-Garland-re-Ghost-Guns-v2.pdf>

On February 3, 2022, the Biden administration announced the launch of a “National Ghost Gun Enforcement Initiative”⁶ which will increase training and collaboration to help bring cases against those who use ghost guns to commit crimes.

Law enforcement officials have directly asked Mastercard to take action to curb the purchase of ghost guns.

In a joint letter, dated February 7, 2022, Los Angeles District Attorney George Gacon, Los Angeles Chief of Police Michel R. Moore and Gene Harris, President of the Los Angeles County Police Chiefs’ Association, wrote to Mastercard Incorporated imploring the company to take actions to prevent the purchase of ghost guns.⁷ Beyond the sobering statistics cited in the letter is the horrifying impact of the proliferation of ghost guns.

For the reasons set forth above, Mastercard Incorporated has not satisfied its burden of showing that it is entitled to omit the Proposal. We respectfully request that the Company’s request for relief be denied.

My Office appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact my colleague Randy Rice, Senior Advisor, Policy and Communications, by e-mail at randall.rice@treasury.ri.gov or by phone at (401) 487-3258.

Sincerely,


Seth Magaziner

Attachment (2)

CC: Janet McGinness, Corporate Secretary, Mastercard
Ning Chiu, Davis Polk & Wardwell LLP

⁶ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/03/president-biden-announces-more-actions-to-reduce-gun-crime-and-calls-on-congress-to-fund-community-policing-and-community-violence-intervention/#:~:text=Launch%20a%20National%20Ghost%20Gun,ghost%20guns%20to%20commit%20crimes.>

⁷ <https://da.lacounty.gov/media/news/district-attorney-george-gasc-n-asks-credit-card-companies-halt-online-payments-ghost>