

February 7, 2025

VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 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 National Legal and Policy Center (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2025 Annual Meeting of Shareholders (the “**2025 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 2025 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff’s online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2025 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

THE PROPOSAL

The Proposal states:

Resolved: Shareholders request the Board of Directors’ Human Resources and Compensation Committee to consider eliminating discriminatory DEI and ESG goals from compensation inducements.

REASONS FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.

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The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal.

A. Rule 14a-8(i)(10) Background.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Staff has stated that the purpose of this rule is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” See Exchange Act Release No. 34-20091 (Aug. 15, 1983); Exchange Act Release No. 34-12598 (July 1976). The Commission has also 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 consistently found that “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.* (1991). The Staff has permitted exclusion of a proposal 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, e.g., *Kyndryl Holdings, Inc.* (Apr. 22, 2024); *McDonald’s Corp.* (Apr. 3, 2024); *Best Buy Co., Inc.* (Apr. 22, 2022); *Salesforce.com, Inc.* (Apr. 20, 2021); *Apple Inc.* (Dec. 17, 2020); *Wal-Mart Stores, Inc.* (Mar. 25, 2015); and *Exelon Corp.* (Feb. 26, 2010).

The Staff has also recently concurred with the exclusion on substantial implementation grounds of proposals related to a company’s compensation policies. See, e.g., *Exxon Mobil Corp.* (Mar. 20, 2024) (proposal requesting the company amend its recoupment policy to cover additional misconduct and negligence, where the company already maintained such policies and provisions); and *Amgen Inc.* (Apr. 3, 2024) (same). In particular, the Staff has found that proposals involving factors and metrics for companies’ executive compensation-related policies, practices and procedures may be excluded as being substantially implemented where the companies have already evaluated and disclosed such metrics. See, e.g., *Visa Inc.* (Oct. 11, 2019) (proposal recommending that the compensation committee reform the company’s executive compensation philosophy to include social factors to enhance the company’s social responsibility where the company had disclosed such factors in its sustainability report); *Dunkin’ Brands Groups, Inc.* (Mar. 6, 2019) (proposal requesting a report on the feasibility of integrating sustainability metrics into the company’s compensation program where the company had addressed the proposal’s essential objective through disclosures); and *eBay Inc.* (avail. Mar. 29, 2018) (proposal requesting a report assessing the feasibility of integrating sustainability metrics into the performance measures of the CEO where the company had already made the assessment and incorporated such measures).

B. The Company Has Substantially Implemented the Proposal.

The Company believes that the Proposal may be excluded pursuant to Rule 14a-8(i)(10) because it has fulfilled the essential objective of the Proposal, which is for the Company to “consider eliminating” the Company’s metrics for incentive compensation related to “DEI and ESG goals.” The supporting statement in the Proposal makes clear that the focus of the Proposal is the “ESG modifier under our bonus plan that impacts compensation for all bonus-eligible employees based on our performance against carbon emissions, financial inclusion and gender pay goals” and that this same ESG modifier “is included in executive compensation.” The Proposal explicitly equates the Company’s ESG modifier as the “DEI and ESG goals from compensation inducements” that is the subject of the resolution in the Proposal. Below we demonstrate how the Company, through the Human Resources and Compensation Committee (the

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“Committee”) has fulfilled the essential thrust of the Proposal given that the Committee has “considered” these goals through multiple years in its assessment of the Company’s compensation program, with those considerations reflected by the changes that the Committee has continuously made to the “DEI and ESG goals.”

The Committee is responsible for reviewing and approving corporate goals and objectives relevant to the CEO and other executive officers’ compensation, including annual and long-term performance objectives and compensation or benefit plans.¹ As disclosed in the Company’s 2024 Proxy Statement,² the Committee annually reviews and approves the primary elements of the Company’s executive compensation program, which consist of base salary, annual incentive and long-term incentive compensation. The Company’s executive compensation program is designed to support its strategic objectives and to attract, motivate and retain the Company’s executives, who are critical to its long-term success. The executive compensation program is based upon and designed to address three core principles: (i) align the long-term interests of the Company’s executives with shareholders, (ii) pay for performance, and (iii) pay competitively.

Annual incentive awards for the Company’s executive officers are granted under the Senior Executive Annual Incentive Compensation Plan (the “**SEAICP**”). Under the SEAICP, each executive officer’s final bonus payout is determined based on (i) the Company’s corporate score, and (ii) each officer’s individual performance factor.

The Committee considered and first determined to include metrics related to the Proposal’s references to the “DEI and ESG goals” as noted above in the supporting statement, including ESG matters and gender equality in the SEAICP for the 2021 fiscal year (the “**2021 SEAICP**”). The Company added an ESG modifier as part of the corporate score, assessing (i) adding new entrants to the digital economy (financial inclusion), (ii) closing the gender pay gap, and (iii) operational carbon neutrality, weighted 40%/40%/20%, respectively (the “**2021 ESG Modifier**”).³ As explained in the Company’s 2022 Proxy Statement which incorporates these metrics and in the Company’s 2023 ESG Report, with respect to (i) above, the Company has been focused on helping to build a more “financially inclusive and sustainable digital economy,” including providing commercial solutions for the unbanked and underserved and bringing women-run businesses into the digital economy.”⁴

In the following year, the Committee revisited and considered ESG and gender equality goals in the SEAICP for the 2022 fiscal year (the “**2022 SEAICP**”), and expanded them to apply to all employees. The Committee determined to eliminate the operational carbon neutrality metric from the 2021 ESG Modifier and replace it with two environment-based metrics measuring performance against the Company’s goals of reducing Scope 1 and 2 carbon emissions, as well as supplier engagement responsiveness to reporting to the Carbon Disclosure Project survey and disclosing greenhouse gas emissions information. The Committee changed the ESG modifier for the 2022 SEAICP to assess (i) the number of individuals

¹ Available at https://s25.q4cdn.com/479285134/files/doc_downloads/2025/01/2024-HRCC-Charter-FINAL-WEBSITE-1013568-3.pdf.

² See the 2024 Proxy Statement from pg. 62 (available at https://s25.q4cdn.com/479285134/files/doc_financials/2023/AR/mastercard2024proxystatementdef14a.pdf).

³ See the 2021 Proxy Statement from pg. 56 (available at [https://s25.q4cdn.com/479285134/files/doc_financials/2020/ar/380180\(4\)_4_Mastercard_NPS_WR.pdf](https://s25.q4cdn.com/479285134/files/doc_financials/2020/ar/380180(4)_4_Mastercard_NPS_WR.pdf)) and the 2022 Proxy Statement from pg. 67 (available at https://s25.q4cdn.com/479285134/files/doc_financials/2022/AR/2022-Proxy-Statement.pdf).

⁴ See the 2022 Proxy Statement on pg. 6 and 67 (available at https://s25.q4cdn.com/479285134/files/doc_financials/2022/AR/2022-Proxy-Statement.pdf) and the 2023 ESG Report on pg. 56 (available at <https://www.mastercard.com/news/media/2d5bdnfp/mastercard-esg-sustainability-report-2023.pdf>).

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newly connected to the digital economy (financial inclusion), (ii) closing the gender pay gap, (iii) percent reduction in Scope 1 and 2 greenhouse gas emissions, and (iv) percent response in supplier engagement on climate matters, weighted 40%/40%/10%/10%, respectively (the “**2022 ESG Modifier**”).⁵

Finally, for the 2023 fiscal year, the Committee revisited, considered and determined to change the targets and amend the weighting of the ESG Modifier in the SEAICP for the 2023 fiscal year (the “**2023 SEAICP**”) to 35%/35%/15%/15%, respectively, for the metrics reported above under the 2022 ESG Modifier (the “**2023 ESG Modifier**”).⁶

The continuous changes to the “DEI and ESG” goals noted in the Proposal since the 2021 SEAICP demonstrates that the Company has fulfilled the essential objective of the Proposal to “consider” these goals. The Committee’s process of considering whether to add, retain, amend or eliminate the ESG modifier in the SEAICP is also summarized below:

	Goals Covered by the Proposal	Weight	Target
2021 ESG Modifier as part of 2021 SEAICP	Financial inclusion	40%	+85 million to +95 million
	Closing the gender pay gap	40%	+0.01 to +1.0 ppt
	Operational carbon neutrality	20%	Achieve carbon neutrality
2022 ESG Modifier as part of 2022 SEAICP	Financial inclusion	40%	+85 million to +95 million
	Closing the gender pay gap	40%	+0.01 to +1.0 ppt
	Percent reduction in Scope 1 and 2 greenhouse gas emissions	10%	38%-43%
	Supplier engagement in climate-related matters	10%	68%-72%
2023 ESG Modifier as part of 2023 SEAICP	Financial inclusion	35%	+75 million to +85 million
	Closing the gender pay gap	35%	+0.25 to +1.25 ppt
	Percent reduction in Scope 1 and 2 greenhouse gas emissions	15%	43%-48%
	Supplier engagement in climate-related matters	15%	78%-82%

⁵ See the 2022 Proxy Statement from pg. 67 (available at https://s25.q4cdn.com/479285134/files/doc_financials/2022/AR/2022-Proxy-Statement.pdf) and the 2023 Proxy Statement from pg. 65 (available at https://s25.q4cdn.com/479285134/files/doc_financials/2022/AR/Mastercard-proxy-courtesy-PDF.pdf).

⁶ See the 2024 Proxy Statement from pg. 62 (available at https://s25.q4cdn.com/479285134/files/doc_financials/2023/AR/mastercard2024proxystatementdef14a.pdf).

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Because the Company has already taken the steps necessary to meet the essential objective of the Proposal, the Company has substantially implemented and satisfied the essential objective of the Proposal.

CONCLUSION

Because the Company has substantially implemented the Proposal, the Company believes that the Proposal may be excluded from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(10).

Respectfully yours,



Ning Chiu

Attachment

cc w/ att: Adam Zitter, Corporate Secretary, Mastercard
Incorporated

Luke Perlot, National Legal and Policy Center

Proposal

Eliminate DEI and ESG Goals From Executive Pay Incentives

Resolved: Since the June 2023 U.S. Supreme Court decision in *Students for Fair Admissions v. Harvard College*,¹ hundreds of higher education institutions have shuttered their diversity, equity and inclusion (DEI) programs and positions.²

Consequently, “there has been a sharp uptick in litigation challenging corporate DEI programs and initiatives, alleging that they require unlawful employment and contracting decisions to be made on the basis of race, in violation of Title VII of the Civil Rights Act of 1964...”³

Corporate compliance lawyers now advise clients that “DEI initiatives and programs that are not open to all applicants or those that apply an explicit race- or gender-based focus will likely face continued and heightened scrutiny.” Also: “We also expect to see ongoing scrutiny of perceived hiring quotas and set asides, particularly those that may appear to be incentivized by bonuses for management or company leadership.”⁴

Further, “companies, and their management teams and boards, should be prepared for increased employment-related litigation including litigation that seeks to hold executive officers and directors personally liable for purported breaches of their fiduciary duties in connection with the corporation’s DEI policies.”⁵

Many corporations dramatically reduced or eliminated their DEI programs,⁶ and companies face retribution for their discrimination. For example, Starbucks was the subject of a \$28.3 million judgment after a former worker claimed she was fired for being white.⁷

Supporting Statement: Mastercard Inc. (“Mastercard” or “Company”) favors certain groups over others on the basis on immutable characteristics.

The Company’s “racial equity” goals include “initiatives to attract, grow and retain candidates from diverse backgrounds,” and an explicit target to increase black representation at the vice president level and above by 50%.⁸ The Company has also has a “Start Path in Solidarity program”⁹ focused on “women and people of color.”¹⁰

¹ https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf

² <https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei>

³ <https://www.wilmerhale.com/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa>

⁴ <https://www.skadden.com/insights/publications/2023/12/2024-insights/esg/the-supreme-courts-affirmative-action-opinion>

⁵ <https://corpgov.law.harvard.edu/2024/02/14/how-boards-should-be-thinking-about-the-supreme-courts-sffa-affirmative-action-decision/>

⁶ <https://nypost.com/2024/09/03/us-news/how-robbey-starbuck-is-prompting-brands-like-ford-to-ditch-dei/>

⁷ <https://www.cnn.com/2023/08/17/business/starbucks-payment-racial-discrimination-white/index.html>

⁸ <https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/mastercard-esg-sustainability-report-2023.pdf>

⁹ <https://www.mastercard.com/global/en/business/fintech/fintech-programs/startpath/for-startups/startpath-solidarity.html>

¹⁰ <https://www.mastercard.com/news/perspectives/featured-topics/fintech/supporting-underrepresented-fintech-founders-to-spur-innovation-and-growth/>

Mastercard includes an “ESG modifier under our bonus plan that impacts compensation for all bonus-eligible employees based on our performance against carbon emissions, financial inclusion and gender pay goals.”¹¹ This ESG modifier is included in executive compensation.¹²

These discriminatory initiatives leave Mastercard ripe for regulatory, reputational and litigation risk. Its attempt to cram DEI’s non-GAAP nature into the proxy statement’s compensation discussion demands either a legally dubious quota regime, or it fails SEC compliance.¹³ The Council of Institutional Investors’ general counsel stated that research shows “companies are engaging in an opportunistic use of non-GAAP earnings to justify higher executive pay.”

FTI Consulting advises there is a “heightened focus” on “litigation risk,” which “has transitioned from being merely an operational concern to becoming a strategic priority for the highest levels of corporate governance.”¹⁴

Resolved: Shareholders request the Board of Directors’ Human Resources and Compensation Committee to consider eliminating discriminatory DEI and ESG goals from compensation inducements.

¹¹ <https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/mastercard-esg-sustainability-report-2023.pdf>

¹² https://www.mastercardannualmeeting.com/media/feob5hra/426720-1-11_mastercard-2024_nps_workiva_wr.pdf

¹³ <https://tax.thomsonreuters.com/news/council-of-institutional-investors-again-urges-sec-to-close-loophole-on-non-gaap-in-executive-pay/>

¹⁴ <https://www.fticonsulting.com/insights/articles/de-risking-litigation-exposure-conflict-management-integral-business-administration>