



DIVISION OF
CORPORATION FINANCE

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

April 23, 2025

Ning Chiu
Davis Polk & Wardwell LLP

Re: Mastercard Incorporated (the "Company")
Incoming letter dated February 7, 2025

Dear Ning Chiu:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors conduct and evaluation and issue a report within the next year assessing how the Company's affirmative action initiatives impact its risks related to actual and perceived discrimination on the basis of protected categories under civil rights law.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11). In our view, the Proposal does not substantially duplicate the proposal submitted by SEIU Master Trust.

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/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Stefan Padfield
National Center for Public Policy Research

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 the National Center for Public Policy Research (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 of Mastercard Incorporated conduct an evaluation and issue a report within the next year, at reasonable cost and excluding confidential information, assessing how the Company’s affirmative action initiatives impact Mastercard’s risks related to actual and perceived discrimination on the basis of protected categories under civil rights law.

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)(11) because the Proposal substantially duplicates an earlier proposal submitted to the Company by another proponent that the Company intends to include in its 2025 Proxy Materials.

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On December 18, 2024, before the December 21, 2024 date upon which the Company received the Proposal, the Company received a proposal from SEIU MasterTrust (the “**Prior Proposal**”). See Exhibit B.

The Prior Proposal, which the Company intends to include in its 2025 Proxy Materials, states:

RESOLVED: Shareholders of Mastercard Inc. (“Mastercard”) urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) that assesses and produces recommendations for improving the racial impacts of the company’s policies, practices, products, and services, above and beyond legal and regulatory matters. A report on the audit, prepared at a reasonable cost and omitting confidential/proprietary information, should be published on the company’s website.

The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because the Proposal Substantially Duplicates Another Proposal Previously Submitted To the Company By Another Proponent That Will Be Included In the Company’s Proxy Materials For the Same Meeting.

A. Rule 14a-8(i)(11) Background.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting.” The Commission has stated that “the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (November 22, 1976).

The Staff has previously determined that similar proposals are substantially duplicative where, as in *Ford Motor Company* (Feb. 19, 2004), “the terms and the breadth of the two proposals are somewhat different, [but] the principal thrust and focus are substantially the same.” Thus, a proposal may be excluded as substantially duplicative of another proposal despite differences in scope and despite the proposals requesting different actions. See, e.g., *The Walt Disney Company* (Jan. 31, 2024) (proposal requesting that the Company consider listing on the Company website any recipient of at least \$10,000 of direct contributions, which succeeded a prior proposal with a higher disclosure threshold amount and requiring less specific disclosure of the contributions); *McDonald’s Corporation* (Apr. 3, 2023) (proposal requesting a report detailing lobbying procedures which succeeded a prior proposal that used some different words and did not request information about payments to certain tax-exempt organizations but otherwise shared the principal thrust and focus of the latter proposal); and *Amazon.com, Inc.* (Apr. 6, 2022) (proposal requesting a third-party audit on workplace health and safety with specific details, which succeeded a prior proposal requesting an independent audit and report of the working conditions and treatment of warehouse workers).

The Staff has also noted that where one proposal incorporates or encompasses the elements of a later proposal, the subsequent proposal may be excluded. See, e.g., *Pfizer Inc.* (Feb. 28, 2019) (proposal requesting annual disclosure of the company’s policy governing grassroots lobbying, which succeeded a similar prior proposal accompanied by a different supporting statement); *Duke Energy Corporation* (Feb. 19, 2016) (proposal requesting a review of the company’s lobbying-related activities, which succeeded a similar prior proposal with a different stated purpose for the proposal); and *Bank of America Corporation* (Mar. 14, 2011) (proposal requesting a special report to shareholders on the company’s mortgage servicing options, foreclosure mitigation efforts and foreclosure processes, which succeeded a similar prior proposal using different terminology).

B. The Proposal Substantially Duplicates a Prior Proposal.

The principal thrust and focus of both the Proposal and the Prior Proposal are essentially the same, with the Prior Proposal being broader in scope and encompassing the request in the Proposal, as demonstrated below:

	Proposal	Prior Proposal
Scope	<ul style="list-style-type: none"> Asks the Board to conduct an evaluation to assess the Company's "affirmative action initiatives" and issue a report. 	<ul style="list-style-type: none"> Asks the Board to oversee a third party audit that assesses the "racial impacts" of the Company's "policies, practices, products and services" and issue a report.
Purpose	<ul style="list-style-type: none"> Identify the risks related to "actual and perceived" racial discrimination (discrimination on the basis of "protected categories under civil rights law"). 	<ul style="list-style-type: none"> Identify the risks of how the Company's policies, practices and products may be posing economic risks to the Company, including "risks losing access to key growth markets."
Focus	<ul style="list-style-type: none"> Based on the examples used, the focus involves the Company's aspirations with respect to increasing more equal access to opportunities. 	<ul style="list-style-type: none"> The focus broadly encompasses all of the stakeholders addressed in the Proposal, which would be reviewed as part of the assessment if the Prior Proposal is implemented. The Prior Proposal references relationships with employees, partnerships within the community and customers, as well as stakeholders to include any interested parties that would have perspectives and viewpoints regarding the Company's policies and practices in this area.
Benefits	<ul style="list-style-type: none"> Benefits involve the potential of reduced litigation and related expenses, citing to court cases that implicate employment decisions and third party contracts with vendors through grant opportunities. 	<ul style="list-style-type: none"> Benefits encompass "organizational benefits" through employment decisions, as well as relationships with third parties through "partnerships."
Costs	<ul style="list-style-type: none"> Potential costs to the Company of continuing without conducting the assessment could include allegations of engaging in discriminatory practices through the Company's "affirmative action" practices. 	<ul style="list-style-type: none"> Similarly, cites as multiple types of costs to the Company of actions, or failure to take actions, related to "racial equity, diversity and inclusion."

Davis Polk

Both the Proposal and the Prior Proposal include concerns for the Company's reputation as a large provider of financial services and the impact that negative publicity could have on the Company's operations and its investors. In addition, both of the assessments requested in the Proposal and the Prior Proposal would be used to provide guidance to executives and others at the Company as they evaluate race-based policies and practices.

The Prior Proposal covers the same subject as the Proposal but with a broader scope, and therefore subsumes and incorporates the Proposal, which addresses a subset of issues covered by the Proposal. If the Company implemented the Prior Proposal, it would fulfill the principal thrust and focus of the Proposal.

CONCLUSION

Because the Proposal substantially duplicates the Prior Proposal, the Company believes that the Proposal may be excluded from its 2025 Proxy Materials pursuant to Rule 14a-8(i)(11).

Respectfully yours,



Ning Chiu

Attachment

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

Stefan Padfield, National Center for Public Policy Research

Proposal

Affirmative Action Risks

RESOLVED:

Shareholders request the Board of Directors of Mastercard Incorporated conduct an evaluation and issue a report within the next year, at reasonable cost and excluding confidential information, assessing how the Company's affirmative action initiatives impact Mastercard's risks related to actual and perceived discrimination on the basis of protected categories under civil rights law.

SUPPORTING STATEMENT:

In 2023, the US Supreme Court ruled in *SFFA v. Harvard* that discriminating on the basis of race in college admissions violates the equal protection clause of the 14th Amendment.¹ As a result, the legality of corporate affirmative action programs was called into question² and thirteen Attorneys General warned that *SFFA* implicated corporate affirmative action programs.³

In 2024, those implications widened when the Supreme Court ruled in *Muldrow v. City of St. Louis* that Title VII of the Civil Rights Act protected against discriminatory job transfers.⁴ The ruling lowered the bar for employees to successfully sue their employers for discrimination,⁵ and is therefore likely to lead to an increase in discrimination claims.

Finally, the Eleventh Circuit recently held that a company that offered grants only to minority entrepreneurs violated the Civil Rights Act's prohibition against race-based contracts in *American Alliance for Equal Rights v. Fearless Fund*.⁶ Requiring vendors and other business partners to implement affirmative action initiatives similarly discriminates on the basis of race.

Around the same time as *SFFA*, Starbucks was successfully sued for "reverse discrimination" with damages of \$25.6 million,⁷ and the risk of being sued for such discrimination is rising.⁸

Despite these obvious risks, Mastercard apparently continues to practice affirmative action in at least the following ways:

(1) Mastercard plans to "grow U.S. Black leadership at the vice president level and above at Mastercard by 50% by 2025, from 2020";⁹

(2) Mastercard plans to "invest \$500 million in Black communities";¹⁰

(3) Mastercard has "committed to increase our procurement with Black-owned businesses to \$100 million annually by 2025."¹¹

Dividing employees and other stakeholders on the basis of race, and then allocating benefits on that basis, may be deemed immoral, illegal, and a breach of duty. With 30,000-plus employees,² Mastercard likely has thousands of employees, job applicants, and other stakeholders who are potentially victims of this type of discrimination. If even only a fraction of them file suit, and only some of those prove successful, the cost to Mastercard could reach billions of dollars. Accordingly, it is imperative that Mastercard take action to assess the risks created by its affirmative action programs.

¹ <https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/>

² <https://freebeacon.com/democrats/starbucks-hired-eric-holder-to-conduct-a-civil-rights-audit-the-policies-he-blessed-got-the-coffee-maker-sued/>

³ <https://s.wsj.net/public/resources/documents/AGLetterFortune100713.pdf>

⁴ https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf

⁵ <https://www.skadden.com/insights/publications/2024/06/quarterly-insights/supreme-court-lowers-the-bar>; <https://www.dailysignal.com/2024/04/17/supreme-court-just-made-easier-sue-employers-dei-policies/>

⁶ <https://www.foley.com/insights/publications/2024/08/august-2024-recap-and-status-update-re-american-alliance-for-equal-rights-v-fearless-fund/>

⁷ <https://www.foxbusiness.com/features/starbucks-manager-shannon-phillips-wins-25-million-lawsuit-fired-white-donte-robinson-rashon-nelson>

⁸ <https://aflegal.org/america-first-legal-files-class-action-lawsuit-against-progressive-insurance-for-illegal-racial-discrimination/>; <https://aflegal.org/afl-files-federal-civil-rights-complaint-against-activision-for-illegal-racist-sexist-and-discriminatory-hiring-practices-and-sends-letter-to-activision-board-demanding-they-end-unlawful-dei-polici/>; <https://aflegal.org/america-first-legal-files-federal-civil-rights-complaint-against-kelloggs-warns-management-that-its-violating-fiduciary-duties/>

⁹ https://s25.q4cdn.com/479285134/files/doc_downloads/governance_docs/2024/04/mastercard-2023-esg-report.pdf

¹⁰ Id.

¹¹ Id.

¹² Id.

Prior Proposal

RESOLVED: Shareholders of Mastercard Inc. (“Mastercard”) urge the board of directors to oversee a third-party audit (within a reasonable time and at a reasonable cost) that assesses and produces recommendations for improving the racial impacts of the company’s policies, practices, products, and services, above and beyond legal and regulatory matters. A report on the audit, prepared at a reasonable cost and omitting confidential/proprietary information, should be published on the company’s website.

WHEREAS:

Racial equity audits engage companies in a process that may unlock value, uncover blind spots, and strengthen external relationships. Companies that have completed civil rights or racial equity audits have related organizational benefits from conducting these audits. Those benefits include:

- Identification of the gaps between a company’s self-perception and that of its key stakeholders,
- Development of new and additive partnerships and relationships within the community,
- Assessment of the needs of customers and employees, enabling proactive creation of support teams and committees,
- Guidance for diversity officers, human resources managers, and executives on appropriate next steps.

The best practices identified for completing these audits are:

- Select an independent person or firm with civil rights and racial justice expertise and adequate resources to complete the audit.
- Ensure that the audit comprehensively examines how policies, practices, and products ameliorate or exacerbate inequalities.
- Proactively identify and engage in outreach to a wide range of stakeholders, such as civil rights organizations, employees, and customers.
- Publish summary audit findings, recommendations, and progress reports with action plans with timelines to address identified issues.¹

Microsoft, Bank of America, Citigroup, and JP Morgan Chase, along with other companies, have conducted or have committed to conduct this type of audit.

In a review of racial equity initiatives conducted by the non-profit corporate accountability-focused organization, *As You Sow*, Mastercard was the lowest ranked credit card company. Visa, American Express, and Discover were identified as having stronger actions related to racial equity, diversity and inclusion disclosure, and environmental justice.²

Within the U.S., racial inequity poses macroeconomic risks that depress returns for long-term diversified investors. According to a 2020 Citigroup study, racism and discrimination have cost the U.S. GDP \$16 trillion since 2000 and the U.S. economy could see a boost of \$5 trillion over the next five years if the U.S. were to address racial discrimination against African Americans.³

¹ <https://hiphopcaucus.org/major-u-s-civil-rights-and-racial-justice-organizations-call-on-corporations-to-account-for-racial-equity-and-civil-rights-audits/>

² <https://www.asyousow.org/our-work/social-justice/racial-justice/data-visualization>

³ <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/23/916022472/cost-of-racism-u-s-economy-lost-16-trillion-because-of-discrimination-bank-says>

In addition, Mastercard services customers across more than 210 countries and territories,⁴ and it is seeking growth in Asia Pacific, Middle East and Africa regions.⁵ It is essential that Mastercard be able to understand its societal impacts and relationships, or it risks losing access to key growth markets.

Quoting Mastercard's Vice Chairman and President of Strategic Growth, "The question becomes how we get from point A to point B without leaving people behind and without the profit motive crowding out a sense of equality in the journey."⁶ A racial equity audit would help Mastercard answer this important question.

⁴ <http://welcome.mastercard.com/pdf/MasterCard%20Corporate%20Story.pdf>

⁵ <https://www.sec.gov/ix?doc=/Archives/edgar/data/1141391/000114139124000022/ma-20231231.htm>

⁶ <https://www.mastercardcenter.org/>



February 15, 2025

Via Online Shareholder Proposal Form

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

Re: No-Action Request from Mastercard Incorporated Regarding a Shareholder Proposal by the National Center for Public Policy Research (“Proponent” or “NCPPR”)

Ladies and Gentlemen:

This correspondence is in response to the letter of Ning Chiu on behalf of Mastercard Incorporated (the “Company”) dated February 7, 2025, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits Proponent’s shareholder proposal (the “Proposal”) from its 2025 proxy materials for its 2025 annual shareholder meeting.

The Prior Proposal is a racial equity audit proposal. Far from being substantially similar to Proponent’s Affirmative Action Risks proposal, the two proposals are in direct conflict because one of the primary goals of a racial equity audit is to encourage corporations to engage in affirmative action in order to improve racial diversity, while the goal of the Affirmative Action Risks proposal is to discourage affirmative action due to the related legal and reputational risks. Besides the language of the Prior Proposal itself, which focuses on “racial inequity” and “improving ... racial impacts,” in addition to examining “how policies, practices, and products ameliorate or exacerbate inequalities,” the proposal’s proponent, SEIU, makes the pro-affirmative-action agenda clear in a post discussing how it uses proposals that “would require firms be audited by a third party” to advance its agenda of “pushing for racial diversity.”¹ Cf. Ron S. Berenblat and Elizabeth R. Gonzalez-Sussman, *Racial Equity Audits: A New ESG Initiative*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Oct. 30, 2021) (referencing “diversity” 26 times, including “ISS has stated that racial audits aren’t warranted because companies are ... improving the diversity and inclusion of its

¹ <https://www.seiu.org/blog/2021/4/seiu-and-change-to-wins-investment-funds-pushing-for-racial-diversity-in-financial-institutions>

workforces”) (internal quotation marks omitted)²; The American Association for Access, Equity and Diversity (AAAED), *WHAT IS AFFIRMATIVE ACTION?* (“Effective affirmative action programs also include internal auditing and reporting systems as a means of measuring the contractor's progress”)³.

The purpose of the substantially similar exclusion is to “eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” Exchange Act Release No. 12999 (November 22, 1976). Permitting the Company to exclude the Proposal would turn this purpose on its head, denying shareholders the opportunity to consider two proposal that take utterly divergent views of affirmative action. A plain reading of the proposals makes that clear, and the history of racial equity audits confirms this conclusion. The Staff should not reward the Company’s attempt to selectively elevate form over substance, and should instead permit shareholder democracy to operate as intended.

In conclusion, a copy of this correspondence has been timely provided to the Company. If I can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call me at (202) 507-6398 or email me at spadfield@nationalcenter.org.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

Sincerely,

A handwritten signature in black ink, appearing to read 'SPADFIELD', with a stylized, looping flourish at the end.

Stefan Padfield
Executive Director
Free Enterprise Project
National Center for Public Policy Research

cc: Ning Chiu

² <https://corpgov.law.harvard.edu/2021/10/30/racial-equity-audits-a-new-esg-initiative/>

³ https://www.aaaed.org/aaaed/About_Affirmative_Action_Diversity_and_Inclusion.asp