



DIVISION OF
CORPORATION FINANCE

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

March 3, 2023

Ning Chiu
Davis Polk & Wardwell LLP

Re: Mastercard Incorporated (the "Company")
Incoming letter dated March 2, 2023

Dear Ning Chiu:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Legal and Policy Center (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its February 7, 2023 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Paul Chesser
National Legal and Policy Center

February 7, 2023

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 Legal and Policy Center (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2023 Annual Meeting of Shareholders (the “**2023 Proxy Materials**”). The Proposal is attached hereto as Exhibit A.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (Nov. 7, 2008), Question C, we have submitted this letter 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 with respect to the Proposal. This letter constitutes the Company’s statement of the reasons set forth herein. We have been advised by the Company as to factual matters set forth herein.

THE PROPOSAL

The Proposal states:

RESOLVED:

The shareholders request that Mastercard Incorporated (“Company”) provide a report, published on the Company’s website and updated semi-annually – omitting proprietary and private customer information and at reasonable cost – that specifies the Company’s policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government, or by any representative of a government of any individual state within the U.S.

This report shall also include an itemized listing of such requests, including the name and title of the government official making the request; the nature and scope of the request; the date of the request; the Company’s decision in response to the request; and a reason for the Company’s response.

BACKGROUND

The Company is a technology company in the global payments industry that connects consumers, financial institutions, merchants, governments, digital partners, businesses and other organizations worldwide. The Company offers payments products and services across this complex network with different players and providers who may be involved in transactions, including financial institutions; merchants; 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.

The Company's core network, across which transaction data about a particular transaction ("**transaction data**") flows, supports what is often referred to as a "**four-party payments network**" and for each transaction includes the following participants:

- "**account holder**" (a person or entity who holds a card or uses another device enabled for payment);
- "**issuer**" (the account holder's financial institution);
- "**merchant**" (the entity from who an account holder makes a purchase); and
- "**acquirer**" (the merchant's financial institution).

The Company does not issue cards, extend credit, determine or receive revenue from interest rates or other fees charged to account holders by issuers, or establish the rates charged by acquirers in connection with merchants' acceptance of the Company's products. In the case of core network transactions, account holder relationships belong to, and are managed by, the issuers. The issuers and acquirers are the Company's customers. Accordingly, transaction data, as well as data pertaining to the identity of the account holders making such purchases, is owned and controlled by the issuers who are the Company's customers, and not the Company itself.

In short, when account holders use their cards, the Company does not know who they are or what they purchased. For each transaction processed over the Company's network, the Company only sees the card number, the merchant's name and location, the date and amount of the transaction, the merchant category code (the "**MCC**") and other technical data elements relating to transaction processing technology. The MCC only identifies the primary business of the merchant and does not identify what items the account holder purchased. There is no other data available through the MCC. In practical terms, the Company has no way of ascertaining from transaction data what items account holders have purchased in a transaction.

REASON FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal.

The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(6) Because the Company Lacks the Power and Authority to Implement the Proposal.

Rule 14a-8(i)(6) permits the exclusion of a shareholder proposal if the company would lack the power or authority to implement the proposal. The Securities and Exchange Commission has recognized that exclusion under Rule 14a-8(i)(6) (formerly Rule 14-8(c)(6)) "may be justified where implementing a proposal would require intervening actions by independent third parties." Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). The 1998 Release distinguished such a proposal from one that "merely requires the company to ask for cooperation from a third party," which would not be excludable under Rule 14a-8(i)(6).

Further, the Staff has consistently permitted exclusion of proposals that seek implementation through the action of third parties. See, e.g., *Beckman Coulter, Inc.* (Dec. 23, 2008) (concurring in the exclusion of a

proposal requesting that the company implement a set of executive compensation reforms at The Bank of New York Mellon, an unaffiliated bank which served as a trustee for the company under an indenture agreement); *eBay Inc.* (Mar. 26, 2008) (concurring in the exclusion of a proposal requesting that the company prohibit the sale of dogs and cats on the company's affiliated Chinese website, where the website was a joint venture which the Company did not control and therefore could not implement the proposal without the consent of its joint venture partner); *Catellus Development Corp.* (Mar. 3, 2005) (concurring in the exclusion of a proposal requesting that the company take certain actions related to property it managed but no longer owned); *AT&T Corp.* (Mar. 10, 2002) (concurring in the exclusion of a proposal requesting a bylaw amendment concerning independent directors that would "apply to successor companies," where the Staff noted that it did "not appear to be within the board's power to ensure that all successor companies adopt a bylaw like that requested by the proposal"); *The Southern Co.* (Feb. 23, 1995) (concurring in the exclusion of a proposal requesting that the company's board of directors take steps to ensure ethical behavior by employees serving in the public sector); *Ford Motor Co.* (Mar. 9, 1990) (concurring in the exclusion of a proposal requesting that the company prohibit employers of its directors from engaging in certain index stock arbitrage transactions, and also requesting that directors whose employers did not comply terminate their relationship with the company because "the proposal relates to the activities of companies other than the Company and over whom the Company has no control"); *Harsco Corp.* (Feb. 16, 1988) (concurring in the exclusion of a proposal requesting that the company's board of directors sign and implement a statement of principles relating to employment in South Africa where the company's only involvement with employees in the country was its 50% ownership of the stock of a South African entity, and the owner of the remaining 50% interest had the right to appoint the entity's chairman, who was empowered to cast the deciding vote in the event of a tie).

The Proposal requests a report regarding the Company's response to government requests to close "customer" accounts, which in the Proposal means the accounts of the merchants from whom account holders make purchases. As described above, however, the Company's customers are instead issuers and acquirers. If law enforcement or a government agency notifies the Company that a merchant is acting illegally, the Company shares that information with the acquirer related to that merchant, so that the acquirer can take any action it deems appropriate.

The Proposal's request is based on a fundamental lack of understanding about the Company's relationship with the different participants in its four-party payments network, and the information the Company holds in relation to the transactions that it processes over this network. While the Company operates a network and payment system, and makes the payment system available for use, the company does not own relationships with merchants and does not onboard merchants onto the network. As a result, the company lacks the authority to unilaterally respond to government request to close, or issue warnings of imminent closure about, any merchant accounts. Responses to the type of government requests that are the subject of the Proposal, including decisions around whether or not to close a merchant account due to those requests, are made solely by the merchant's acquirer. The Company has no involvement in how these acquirers decide to respond to government requests with respect to an underlying merchant account, and therefore the Company lacks the power and authority to implement the Proposal.

The Proposal's supporting statement acknowledges the direct role that acquirers and issuers – but not the Company itself – may play in responding to government requests to close merchant accounts, based on prior investigations led by the U.S. Department of Justice. The Proposal also references a settlement related to these government investigations with the Federal Deposit Insurance Corporation, an agency that regulates depository institutions, entities that are distinct from, and whose businesses are independent of, the Company.

The Proposal is distinguishable from the type of proposal referenced in the 1998 Release that could be implemented by merely "ask[ing] for cooperation" from third parties. Like the proposals in the prior Staff

decisions cited above, implementation of the Proposal would instead require action by third parties. The Company could only implement the Proposal if the acquirers that serve as merchants' financial institutions respond to the directive in the Proposal, because the acquirers handle the responses to government inquiries regarding merchant account closures. The Company does not participate in responding to these government requests, or any resulting closure of merchant accounts, and therefore cannot prepare the report requested by the Proposal without intervening action from these independent third-party acquirers, over whom the Company has no control.

By requesting a report focused on policies and responses to government requests to close merchant accounts, the Proposal is effectively requesting a report on the activities of certain participants on the Company's four-party payments network, rather than of the Company itself. The disclosures requested by the Proposal would need to be produced voluntarily by these counterparts, and the Company lacks the power or authority to compel such action. Because implementation of the Proposal would require intervening action by independent third parties over whom the Company has no control, the Company believes the Proposal is excludable under Rule 14a-8(i)(6).

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded from the Company's 2023 Proxy Materials pursuant to Rule 14a-8(i)(6). The Company respectfully requests the Staff's concurrence with its decision to exclude the Proposal from its 2023 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. If you should have any questions or need additional information, please contact the undersigned at (212) 450-4908 or at ning.chiu@davispolk.com.

Respectfully yours,



Ning Chiu

Attachment

cc w/ att: Adam Zitter, Corporate Secretary, Mastercard Incorporated
Paul Chesser, National Legal and Policy Center

Proposal

Report on Government Requests for Account Closings

RESOLVED:

The shareholders request that Mastercard Incorporated (“Company”) provide a report, published on the Company’s website and updated semi-annually – omitting proprietary and private customer information and at reasonable cost – that specifies the Company’s policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government, or by any representative of a government of any individual state within the U.S.

This report shall also include an itemized listing of such requests, including the name and title of the government official making the request; the nature and scope of the request; the date of the request; the Company’s decision in response to the request; and a reason for the Company’s response.

SUPPORTING STATEMENT:

In 2013, the U.S. Department of Justice initiated “Operation Choke Point,” to investigate financial institutions that provided services to payment processors for allegedly “high risk” – but legal – businesses, such as firearms retailers. The stated purpose of the initiative was to ferret out “fraud.”

This discriminatory campaign against legally functioning businesses drove many owners to financial ruin and forced many to close. Many financial institutions cooperated¹ with the government in the unconstitutional program.² After multiple lawsuits, the FDIC reached settlements³ with several of its former targets, and the Justice Department announced⁴ in July 2017 that it would end Operation Choke Point. In 2021, however, the current presidential administration considered reinstating the program.⁵

Earlier in 2022 the International Organization for Standardization established a “merchant category code” for firearms retailers⁶ – a decision long sought by those who seek to run roughshod over privacy rights and weaken the 2nd Amendment to the U.S. Constitution. Contemporaneous with the IOS decision, top pension fund managers for the states of California and New York pressured the Company to implement the new merchant code.⁷

Shareholders need to know whether the Company cooperates with government officials engaged in unconstitutional law enforcement activities and censorship, opening the Company to liability claims by victims. Shareholders also need to know whether the Company fails to disclose these potential liabilities as material risks in its public filings.

¹ “Payday lenders sue US regulators over ‘Operation Choke Point’,” Reuters, June 6, 2014. See <https://cnb.cx/3T8Vtkd>.

² Halbrook, Stephen P. “Some of the world’s most powerful banks push policies circumventing Constitution and federal laws,” Tribune Content Agency, Sept. 17, 2018. See <https://bit.ly/3rZ5BKu>.

³ “Federal Deposit Insurance Corporation Agrees to Settlement in Operation Choke Point Lawsuit,” PR Newswire, May 22, 2019. See <https://prn.to/3zanhqD>.

⁴ Guida, Victoria. “Justice Department to end Obama-era ‘Operation Choke Point’,” Politico, 8/17/2017. See <https://politi.co/2DPsyUR>.

⁵ Zimmerman, Dan. “Biden Administration Takes First Step to Reinstating Operation Choke Point,” The Truth About Guns, January 29, 2021. See <https://bit.ly/3TacioK>.

⁶ Kerber, Ross. “Global standards body approves new merchant code for gun sellers,” Reuters, Sept. 9, 2022. See <https://reut.rs/3OLxUGJ>.

⁷ Brad Lander & Aisha Mastagni. Letter to Mastercard, Aug. 29, 2022. See <https://on.nyc.gov/3EMhoBE>.

March 2, 2023

Re: Withdrawal of No-Action Request Dated February 7, 2023 Regarding Shareholder Proposal Submitted by the National Legal and Policy Center

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F. Street, N.E.
Washington, D.C. 20549
Via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Mastercard Incorporated, a Delaware corporation (the “**Company**”), and in reference to our letter, dated February 7, 2023 (the “**No-Action Request**”), pursuant to which we requested that the staff of the Office of Chief Counsel, Division of Corporate Finance of the Securities and Exchange Commission concur with our view that the Company may exclude the shareholder proposal (the “**Proposal**”) submitted by the National Legal and Policy Center (the “**Proponent**”), from the proxy materials it intends to distribute in connection with its 2023 Annual Meeting of Shareholders.

Attached hereto as Exhibit A is an email communication, dated March 2, 2023 (the “**Withdrawal Communication**”), from the Proponent to the Company in which the Proponent has voluntarily agreed to withdraw the Proposal. In reliance on the Withdrawal Communication, we hereby withdraw the No-Action Request.

Please contact the undersigned at (212) 450-4908 or ning.chiu@davispolk.com if you should have any questions or need additional information. Thank you for your attention to this matter.

Respectfully yours,



Ning Chiu

Attachment

cc: Adam Zitter, Corporate Secretary, Mastercard Incorporated
Paul Chesser, National Legal and Policy Center

Withdrawal Communication

Subject: FW: NLPC Shareholder Proposal

From: Paul Chesser [REDACTED]
Sent: Thursday, March 2, 2023 3:28 PM
To: Zitter, Adam [REDACTED]
Cc: Office of the Corporate Secretary [REDACTED]; Yonda, Kathryn [REDACTED]
Subject: {EXTERNAL} Re: NLPC Shareholder Proposal

CAUTION: The message originated from an EXTERNAL SOURCE. Please use caution when opening attachments, clicking links or responding to this email.

Adam,

My apologies, I got busy on other matters and overlooked this for a time. Yes, we confirm withdrawal of the proposal.

Sincerely,

Paul

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
[REDACTED]

On Feb 27, 2023, at 2:34 PM, Zitter, Adam [REDACTED] wrote:

Paul,

Thank you for taking the time to discuss the National Legal and Policy Center (NLPC) shareholder proposal with us today. Based on that discussion, you indicated that NLPC is willing to withdraw the proposal. If you would kindly respond to this email confirming the withdrawal of the proposal by NLPC, then on that basis, we will withdraw the no-action letter we filed with the SEC.

Best,
Adam

Adam Zitter
General Counsel, Strategic Initiatives & Technology
Corporate Secretary

Mastercard

tel [REDACTED] | mobile [REDACTED]
[<image001.png>](#)

CONFIDENTIALITY NOTICE This e-mail message and any attachments are only for the use of the intended recipient and may contain information that is privileged, confidential or exempt from disclosure under applicable law. If you are not the intended recipient, any disclosure, distribution or other use of this e-mail message or attachments is prohibited. If you have received this e-mail message in error, please delete and notify the sender immediately. Thank you.