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March 13, 2006

By Electronic Mail

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

**Re: Interim Final Rule and Official Staff Interpretation of Regulation E
Docket No. R-1247**

To Whom It May Concern:

MasterCard International Incorporated (“MasterCard”)¹ submits this comment letter in response to the interim final rule and official staff interpretation (the “Interim Final Rule”) issued by the Board of Governors of the Federal Reserve System (the “Board”) regarding the Board’s Regulation E, 12 C.F.R. Part 205, issued under the authority of the Electronic Fund Transfer Act, 12 U.S.C. § 1693 *et seq.* See 71 Fed. Reg. 1473 (Jan. 10, 2006). MasterCard appreciates the opportunity to comment on the Interim Final Rule.

Over the past several years, payroll cards have become an increasingly widespread method by which employers can pay wages or salary to employees. Payroll cards provide a number of advantages to each of the participants in the payroll card system. Payroll cards provide employees a safe and reliable means to receive their wages without being forced to incur fees for check cashing or to carry large amounts of cash. Employers benefit from the fact that payroll cards offer a less expensive way to deliver wages than paper checks, particularly for employees who do not have access to direct deposit services. Payroll cards also provide issuing financial institutions with a manner to deliver services to traditionally “unbanked” people, with such cards potentially serving as a way to transition such consumers to more traditional banking products such as checking or savings accounts.

¹ MasterCard is an SEC-registered private share corporation that licenses financial institutions to use the MasterCard service marks in connection with a variety of payments systems, including stored value cards.

Under the Interim Final Rule, the Board treats payroll cards as “accounts” for purposes of Regulation E but does not impose the full range of Regulation E requirements to such cards. We commend the Board for exercising regulatory flexibility in tailoring the requirements of Regulation E to address this emerging and popular product more appropriately. We agree with the Board’s general approach to regulating payroll cards adopted in the Interim Final Rule and make further suggestions to clarify and refine the regulatory scheme applicable to such products.

Other Stored Value Cards. Under the Interim Final Rule, the Board has declined to extend the scope of Regulation E coverage to all stored value products on a universal basis. Specifically, the Board states in the Supplementary Information to the Interim Final Rule:

“As stated in the proposal, the Board is limiting the scope of this interim final rule to payroll card products. Thus, for example, ‘gift’ cards issued by a merchant that can be used to purchase items in the merchant’s store would not be covered by the interim final rule.”

We applaud the Board’s decision to limit the application of the Interim Final Rule to payroll cards. As we stated in our comments to the proposed rule, it is important to recognize that there are a wide variety of different types of stored value cards in the marketplace, serving many different consumer needs. In addition, the financial services industry continues to develop new types of cards in response to consumer demand. We reiterate our belief that it would be a mistake to regulate stored value cards as a whole under Regulation E, because to do so may curtail or eliminate the commercial viability of many of these products and stifle the continued evolution of these valuable products. As the Board notes in the Supplementary Information:

“Consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements and error resolution rights would be quite significant for the issuer. In addition, coverage of such products could impede the development of other card products generally.”

We commend the Board for recognizing that the full application of Regulation E to stored value products on a blanket basis has the potential to stifle the development of such products while providing consumers with little benefit. Further, we urge that any future regulation of stored value cards should be undertaken only to the extent that there is a clear, identifiable need to do so and such regulation can be implemented without affecting the economic or practical viability of the cards.

Periodic Statements. We commend the Board’s decision not to apply to payroll cards the Regulation E requirement of delivering regular periodic statements to

cardholders. As the Board correctly notes in the Interim Final Rule, the burden of requiring all financial institutions to provide paper periodic statements outweighs the marginal benefit that consumers who prefer written statements would obtain from such statements. We believe that the alternatives to periodic statements adopted by the Board will spare financial institutions from an onerous regulatory burden while at the same time maximize the consumer protection afforded to payroll cardholders by giving cardholders access to the most up to date information regarding their accounts.

The alternatives to periodic statements set forth in § 205.18(b) of the Interim Final Rule benefits payroll cardholders by allowing them to access account balance information and transaction histories on demand via a toll-free, telephonic information system or via the Internet. As the Board rightly notes, information accessed by telephone or online is typically updated regularly in contrast to periodic statements that provide only a static snapshot of account activity at the end of each statement cycle. Therefore, the alternatives to periodic statements will afford cardholders more timely information that may be of particular importance to consumers who may need to track their account balances on a transaction-by-transaction basis to avoid overdrawing their accounts. Further, we note that consumers who would prefer to receive paper statements have the option of receiving such statements upon request.

Additional Information. Pursuant to § 205.18(b)(2), the Interim Final Rule requires the same type of transaction information to be provided to consumers that is set forth in §205.9(b) of Regulation E, regardless of whether the information is provided electronically or in writing. The Board has solicited comment on whether additional transaction information should be provided to payroll card users, or whether certain information should be excluded from the account transaction history. We believe that the information that Regulation E currently requires to be provided on periodic statements is sufficient to protect the interests of consumers in the payroll card context. We do not see any reason why Regulation E should require more information regarding transactions be provided to payroll cardholders than is provided to other consumers under Regulation E. Therefore, we recommend that the Board not require additional transactional information to be disclosed to cardholders in the payroll card context.

Liability Limits. We urge the Board to clarify the provision in the Interim Final Rule relating to the time frames for purposes of error resolution and liability for unauthorized transfers. The rule contemplates that the sixty-day period for limiting liability for unauthorized electronic fund transfers is triggered on the date the transaction history for the account is electronically accessed by the consumer or, in the case the consumer requests a written history of his or her account transactions, on the date the financial institution sends the written history. In all cases, the sixty-day period begins to run only if the transaction at issue appears in the information provided to the consumer.

As currently drafted, the Interim Final Rule appears to allow the consumer to dispute the validity of a transaction (either due to billing error or unauthorized use) sixty days after the consumer accesses the transaction information, regardless of when the transaction occurred. For example, if a consumer has not accessed his or her account information for six months, the consumer then accesses the account, and a bank makes

transaction history available dating back to the last time the consumer accessed the account (*i.e.*, transaction history for 180 days), it appears as though the consumer would have the right to dispute *any* of those transactions for sixty days after accessing the information. Financial institutions may decide to limit their liability exposure in these circumstances by limiting the amount of transaction history they provide to the regulatory minimum (*i.e.*, transaction history for the prior sixty days).

We believe that this disincentive to providing consumers additional information was probably unintended. Therefore, we urge the Board to clarify that a financial institution may provide additional transaction information to a consumer, in excess of the sixty-day minimum, without incurring additional potential liability due to the operation of the unauthorized use or billing error provisions. We believe that, in the interest of providing consumers with the greatest amount of information regarding their transaction history as possible, the Interim Final Rule should be clarified to provide that at any given time, a financial institution may only be liable for unauthorized transfers incurred in the previous sixty days.

Further, we urge the Board to amend §205.18(c)(3) and (4) of the Interim Final Rule to include the date upon which a cardholder accesses his or her account balance via telephone as a trigger for commencing the sixty-day period relating to unauthorized transfers and billing errors. If a consumer learns via telephone that his or her account balance is not what he or she believes it to be, the consumer should be responsible for further investigating the perceived inaccuracy. Therefore, the sixty-day period for reporting unauthorized transfers should begin to run on the date the consumer receives notice of an inaccuracy in his or her account balance, whether by written, electronic or telephonic means. As the Board notes in the Supplementary Information, this procedure was used with respect to the government benefits portion of Regulation E (§ 205.15). However, there is no discussion as to why such a trigger is appropriate for purposes of government benefits, but not for payroll. In fact, we believe that § 205.15(d)(3) and (4) are appropriate, and similar treatment should be afforded in § 205.18(c)(3) and (4).

Financial Institution. We urge the Board to reconsider the expansion of the concept of “financial institution” to encompass employers as set forth in § 205.18(a) of the Interim Final Rule. For example, § 205.18(a) would cover employers, by defining them as “financial institutions”, to the extent they are involved in the transfer of funds to the payroll card account or in the issuance of the card. We are unaware of how consumers would benefit if employers are deemed to be financial institutions for purposes of Regulation E. Indeed, employers are not “financial institutions” if they transfer funds to a deposit account from which electronic fund transfers can be initiated through use of an access device, nor are they “financial institutions” if they are involved in assisting employees open deposit accounts at a local bank to receive their paychecks through direct deposit. We are not aware of any consumer protection gap that has resulted from employers not being covered under Regulation E in such circumstances, and we are hesitant to conclude that such a gap exists if employers perform similar roles in connection with a payroll card account.

Although the Supplementary Information does not explain the rationale for including employers as financial institutions under Regulation E, the Board states that no reasons were provided with respect to the potential harms associated with such a classification, or how such harms would not be addressed under existing § 205.4(e).² In short, employers may be unwilling to establish payroll card programs for their employees if doing so exposes them to more liability than they would otherwise have in connection with a more traditional direct deposit or other payroll delivery mechanism. Although § 205.4(e) allows for some level of joint agreements with respect to compliance obligations, such a provision does may not fully alleviate the concerns of increased liability exposure. In order to benefit from § 205.4(e), an employer would need to be sophisticated enough to understand the nuances of Regulation E, an area of law most employers have no reason to understand. Furthermore, the employer would need to negotiate the appropriate contractual provisions with the other parties involved. This may be successful at times, but not necessarily so. Finally, in the event of an allegation of noncompliance, the employer would need to resort to the contractual protections and enforce them. Employers may simply decide that they are not experts in Regulation E, and they are not sophisticated enough to become sufficiently comfortable with the obligations thereunder, and forego payroll card programs altogether. This would be an unfortunate outcome in light of the fact that there does not appear to be any corresponding benefit to consumers.

We do not believe that including employers in the scope of “financial institutions” will result in any benefit to payroll cardholders. With respect to the “compulsory use” provisions of Regulation E, we can appreciate the need to regulate employers to prevent their requiring consumers to establish an account with a particular institution for receipt of electronic fund transfers as condition of employment. In this regard however, we note that the compulsory use provisions of Regulation E apply by their terms to “financial institutions or other persons”. *See* 12 C.F.R. §205.10(e)(2). The term “other persons” in this section is sufficiently broad to encompass employers.

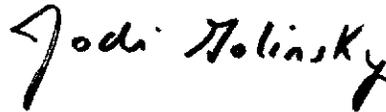
In light of the foregoing, we believe that the Interim Final Rule should not alter the application of the definition of “financial institution” as it relates to payroll cards.

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² The original proposal suggests that expanded coverage of “financial institutions” is necessary because an employer may “issue” a payroll card. We believe these situations to be unlikely, as most payroll cards are issued through a bank, and the bank would be the “financial institution” for purposes of Regulation E.

Once again, we appreciate the opportunity to comment on the Interim Final Rule. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin LLP, at (202) 736-8368, our counsel in connection with this matter.

Sincerely,

A handwritten signature in black ink that reads "Jodi Golinsky". The signature is written in a cursive, slightly slanted style.

Jodi Golinsky
Vice President and
Senior Regulatory Counsel

cc: Michael F. McEneney, Esq.