Joshua L. Peirez
Group Executive, Global Public Policy

MasterCard Worldwide
2000 Purchase Street
Purchase, NY 10577-2509

tel 1-914-249-5903
fax 1-914-249-3648

joshua_peirez@mastercard.com
www.mastercard.com

MasterCard
Worldwide

January 30, 2007

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: Proposed Rule and Official Staff Interpretation of Regulation E
Docket No. R-1270**

To Whom It May Concern:

MasterCard Worldwide ("MasterCard")[1] submits this comment letter in response to the proposed rule ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("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. 69500 (Dec. 1, 2006). MasterCard appreciates the opportunity to comment on the Proposed Rule.

<u>In General</u>

The Board's Regulation E implements the provisions of the Electronic Fund Transfer Act ("EFTA") which require that a receipt be made available to a consumer at the time an electronic fund transfer ("EFT") is initiated. The receipt requirement applies

[1] MasterCard Worldwide (NYSE:MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 16 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to 25,000 of the world's leading financial institutions. With more than 24 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to www.mastercard.com.

whenever a consumer initiates an EFT at an electronic terminal, regardless of the amount of the transaction. The Proposed Rule would create an exception to the receipt requirement for all types of transfers initiated by a consumer at an electronic terminal when the amount of the transaction is $15 or less. The proposed exception is intended to benefit consumers who use debit cards in retail environments where the receipt requirement may not be practical or cost-effective. The exception would apply to both signature-based debit transactions and debit transactions initiated using a personal identification number.

MasterCard applauds the Board's effort to amend Regulation E to account for the shift in consumer payment preferences in small-dollar transactions. We agree with the Board's conclusion that the Proposed Rule would expand payment options for consumers and result in increased convenience and efficiency in a wide range of everyday transactions and support the Board's proposed exemption. We believe, however, that a $25 threshold would be more useful to consumers in small-dollar transactions and more reasonable given the trend in consumer spending. Accordingly, and for the reasons that follow, we urge the Board to increase the threshold amount when issuing a final rule to provide an exception for transactions of $25 or less.

Increased Use of Debit and Credit Cards

As a introductory matter, we note that consumers are increasingly using credit and debit cards in lieu of cash across a wide range of retail transactions, including for purchases of food, beverages, and gasoline, as well as for paying highway tolls, parking fees, and mass transit fares. According to one study, the volume of consumer debit card transactions has increased at an annual rate of 23 percent since 1998.[2] The increase in consumer use of debit cards is due not only to the ease with which debit cards facilitate payment, but also reflects a consumer demand for a fast, efficient, and reliable way to make purchases. In addition, the growing use of debit cards in different retail environments is indicative of consumers' confidence in and comfort with the debit card as a method of payment. As the Board's Supplementary Information accompanying the Proposed Rule notes, there are numerous reasons why consumers prefer debit cards over other methods of payment, including "convenience, shorter checkout times, avoiding ATM fees or check printing fees, and the ability to track and record payments." We agree with the Board's assessment and believe that the Board's proposed exception is a logical and necessary response to the trend in consumer preference and demand.

Benefits of the Proposed Rule

We believe the Board's Proposed Rule would benefit consumers because it would reduce transaction time and ultimately result in consumers having more choice and flexibility in a wider array of retail environments. In our experience, consumers are increasingly choosing payment methods that save time by allowing them to forego receiving a receipt, especially for transactions of $25 or less. For example, internal

[2] American Bankers Association/Dove Consulting, The 2005/2006 Study of Consumer Payment Preferences.

MasterCard data show that consumers use *PayPass*-enabled[3] payment cards approximately 18 percent more frequently on average than cards that are not *PayPass*-enabled. Roughly 75 percent of all *PayPass* transactions are for purchases of $25 or less. As one convenience retailer accepting the MasterCard *PayPass* product reports, consumers save approximately eight seconds per transaction.

Our experience accords with the Board's observation that in several retail environments "the additional time required to provide a receipt to each consumer using a debit card...would add delays that would make it operationally unfeasible to allow consumers to use debit cards for such transactions." The Board's reasoning on this point is particularly sound given that there are a growing number of consumer contexts where quick transaction times are crucial to the efficient movement of people and goods, including at convenience stores and fast food establishments, and on tollways and in mass transit systems.

Similarly, in the context of vending machines, the Board noted in its 1997 *Report to the Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products* ("Report to Congress"), that "[i]n places that the machines are used heavily or are subject to peak demands, the delay in transaction time from printing a receipt might discourage the use of machines accepting [debit] cards." Again, our experience supports the Board's observation on this point. The current receipt requirement deters small-dollar transactions and we believe the Proposed Rule will go a long way toward encouraging businesses and service providers to offer consumers the option of paying by debit card. The Proposed Rule would facilitate the use of debit cards in retail environments that do not currently accept payment cards, such as in vending machines, parking meters, and taxi cabs. Consumers frequently are unable to use a debit card in these settings because businesses (or local governments in the case of some parking meters) are unwilling to bear the costs that would be necessary to provide a receipt.

We point again to the Board's observations in its Report to Congress, wherein the Board opined that the compliance costs of requiring receipts in vending machines would include "additional power to operate the printer, paper to print the receipts, and labor to replenish the paper and repair occasional malfunctions of the printer." The Board's observations nearly a decade ago are equally prescient today. We also agree with the Board that "in the absence of any relief from the receipt requirement, merchants may choose to forego the acceptance of debit cards entirely, thereby limiting consumer payment choices." The Board's Proposed Rule would remove the regulatory disincentive that businesses engaged in small-dollar transactions currently face, and enable service providers and businesses to offer consumers the choice of purchasing goods or services with a debit or credit card.

Therefore, we believe that benefits of the Proposed Rule are twofold. First, a small-dollar exception to the receipt requirement would benefit consumers because it would speed up transaction time and provide greater convenience in a wider range of retail

---

[3] The MasterCard *PayPass* is a "contactless" payment feature that eliminates the need for consumers to hand over a card or swipe it through a reader.

environments, especially where transaction time is important to consumers. Second, a small-dollar exception to the receipt requirement will enable merchants and businesses to offer goods and services to consumers in ways (and in locations) that are not currently available to consumers. We commend the Board for recognizing these benefits and for its thoughtful consideration of the issues involved.

Intent of Congress

The Board notes in the Supplementary Information that "the legislative history of the [EFTA] indicates that Congress was...concerned about the importance of terminal receipts for EFTs as evidence of the transaction." In general, we agree that the Board's characterization of Congress' concern is accurate, and that the principal purpose of the EFTA was to create a substantive set of consumer rights. We note, however, that Congress also expressed concern that regulatory requirements could impede the development of new services for consumers. Accordingly, Congress sought "to provide a framework of rights...without imposing unnecessary restrictions on the continued development of [EFT] services." (S. Rep. 95-915, 9405.) Exemplifying Congress' concern in this regard, the congressional report accompanying the EFTA states that "[r]eceipts would not be required for pay-by-phone or automated clearing house transactions where the expense of providing a receipt would nullify the cost savings of these services." (S. Rep. 95-915, 9414.) That Congress did not impose a receipt requirement in every consumer purchase context helps to demonstrate that Congress intended for there to be exceptions to the receipt requirement, especially where the compliance costs of providing a receipt outstrip the benefit to consumers in receiving one.

We also agree that the proposed exemption fits squarely within the authority granted to Board by Congress. The plain language of the EFTA grants the Board broad discretion to "provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes [of the EFTA]." (15 U.S.C. § 1693b.) We applaud the Board for using its authority to ensure that consumers will continue to benefit from the development of new services and methods of payment.

Consumer Protections Are Not Affected by the Proposed Rule

Among the EFTA's consumer protection provisions is the receipt requirement set forth in 906(f) of the Act, which provides that "any documentation required by this section...shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made." (15 U.S.C. § 1693d.) The primary purpose of the receipt requirement is to provide consumers with a document that can be relied upon as proof of payment. We agree with the Board's assessment in the Supplementary Information that:

> "While receipts may be important for consumers for moderate to high value transactions...receipts are less significant for transactions of relatively small amounts because consumers are less likely to retain them for proof of payment or for account management purposes given the limited risk of loss to the consumer."

The Board's conclusion in this regard is not a novel one, and we applaud the Board for considering the overwhelming anecdotal evidence indicating that consumers often choose not to request or receive a receipt for small-dollar transactions. In fact, the Board reached a similar conclusion in its Report to Congress where it stated that "for small or commonly made transactions, many consumers may not want or need a receipt."

In addition, we believe that the Proposed Rule does not reduce consumer protections or affect consumers' ability to track account information because consumers will continue to receive monthly periodic statements. Unlike a transaction receipt which only captures information about a specific purchase and may be lost or misplaced, the periodic statement provides the consumer with a complete transaction history and enables a consumer to prove or contest a particular transaction. It is noteworthy that the Proposed Rule does not in anyway affect a consumer's right to assert transaction errors with a financial institution under the EFTA. Nor does the Proposed Rule affect the liability caps for unauthorized transfers under the EFTA. To the extent there is any marginal impact on consumer protections as a result of the Proposed Rule, we believe the benefits described above far outweigh it. Finally, in addition to the billing error and liability protections consumers will continue to receive under the EFTA, we also point out that MasterCard has implemented a "Zero Liability" policy whereby consumers are generally not liable in the event of an unauthorized use of a MasterCard-branded debit card. Again, the Proposed Rule would not in anyway diminish the effectiveness of MasterCard's Zero Liability policy or card issuers' ability to resolve errors with consumers because consumers will continue to receive a monthly statement itemizing every transaction.

A Twenty-Five Dollar Threshold Is More Useful To Consumers

MasterCard strongly supports the Board's Proposed Rule. We believe, however, that the proposed threshold of $15 is too low and would reduce the utility of the exception in a number of contexts important to consumers. Accordingly, we believe the threshold should be increased to $25 in order to achieve the Board's goal of "provid[ing] sufficient flexibility for the industry to accommodate consumer preferences for electronic forms of payment instead of cash in a variety of circumstances." For example, the Board's proposed threshold would in many cases still prevent consumers from using debit cards to pay for many transactions where providing a receipt is not practical, such as taxi cab fares, parking garage fees, postal vending machines, and turnpike or other tolls. If the Board is going to provide an exception from the receipt requirement, we believe that a $25 threshold would be more appropriate and inclusive with respect to the types of transactions for which the Board appears to intend to provide regulatory relief.

Conclusion

In light of the foregoing, we believe that the Board should amend the Proposed Rule to provide an exception for transactions of $25 or less.

* * * * *

Once again, we appreciate the opportunity to comment on the Proposed 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,

Joshua L. Peirez

cc: Michael F. McEneney, Esq.