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July 22, 2011

By E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

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

**Re: Docket No. R-1419, RIN 7100-AD76—Electronic Fund Transfers**

Dear Ms. Johnson,

MasterCard Worldwide (“MasterCard”) respectfully submits to the Board of Governors of the Federal Reserve System (“Board”)<sup>1</sup> the following comments in response to the Board’s proposed amendments to Regulation E regarding remittance transfers (the “Proposed Rule”).<sup>2</sup> The Proposed Rule implements Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Act”).<sup>3</sup>

I. Description of MasterCard’s MoneySend and RPPS Services

MasterCard is a leading global payment solutions company that provides a critical economic link among financial institutions, businesses, merchants, cardholders and governments worldwide, enabling them to use electronic forms of payment. MasterCard provides a variety of services in support of the credit, debit and related payment programs of approximately 22,000 financial institutions. Two of the services offered by MasterCard to its financial institution customers may fall within the scope of the Proposed Rule—MasterCard MoneySend, a money transfer technology service, and MasterCard RPPS, an electronic bill payment service.

A. *MasterCard MoneySend*

MasterCard MoneySend is a technology platform that is designed to facilitate funds transfers between MasterCard’s customer financial institutions on behalf of their retail customers, where the funds are received on a MasterCard-branded card. The platform allows financial institutions to enable their customers to initiate such transactions via mobile phone (including SMS-text message or mobile phone application), the Internet, bank branches, kiosks, ATMs, and other channels. MoneySend transactions are processed through MasterCard’s global

<sup>1</sup> As the Proposed Rule likely will be revised and finalized by the Consumer Financial Protection Bureau (“Bureau”), we direct our comments and suggestions to both the Board and the Bureau, as appropriate.

<sup>2</sup> Electronic Fund Transfers, 76 Fed. Reg. 29902 (May 23, 2011) (to be codified at 12 C.F.R. pt. 205).

<sup>3</sup> Pub. L. No. 111-203 (2010).

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payment network in a manner similar to the processing of a credit, debit, or prepaid card transaction over such network.

For cross-border MoneySend transactions, currency conversion does not occur until the transaction is processed, which may not happen on the day the transaction is initiated by the consumer. Accordingly, the MasterCard-established currency conversion rate that will apply to a MoneySend transaction may differ from the MasterCard-established conversion rate for the date the transaction was initiated.

MasterCard has enabled MoneySend transfers from the U.S. abroad, and believes that the convenience of MoneySend and familiarity of the MasterCard brand will increase the number of financial institutions that participate in the remittance industry and the number of consumers that process their remittance transfers through financial institutions. The potential reach of MoneySend is significant, as MasterCard currently has approximately 22,000 financial institution customers with approximately 500,000 branches. MasterCard processes transactions in over 160 currencies and there are over 1 billion MasterCard cardholders worldwide who could potentially take advantage of MoneySend. We believe that the scale of MoneySend will increase the competition for consumers' remittance business and, ultimately, lower prices while increasing choices for consumers.

#### *B. MasterCard RPPS*

MasterCard RPPS is an electronic payment network that enables MasterCard customers to provide bill payment services to consumers. MasterCard RPPS provides comprehensive electronic routing, settlement services, billing, and online research tools to facilitate electronic bill payments. Hundreds of financial institutions, payment processors, and non-financial consumer service providers use RPPS to process consumer online bill payment requests. While financial institutions currently cannot process bill payments to foreign merchants via RPPS, it is possible that such functionality may be available at a future date.

## II. MasterCard's Comments on the Proposed Rule

Section 1073 of the Act amended the Electronic Fund Transfer Act ("EFTA") to add a new Section 919, which requires remittance transfer providers to provide certain disclosures regarding remittance transfers and implement certain error resolution and cancellation policies. While MasterCard does not meet the definition of a "remittance transfer provider" and the Proposed Rule would not impose any obligations on MasterCard directly, it would impose significant obligations on the financial institutions that utilize the MoneySend and RPPS services. In addition, as the network operator that facilitates the funds transfers and bill payments, MasterCard would need to implement significant operational changes to its network, at great cost, to provide financial institutions with access to the information needed to make the disclosures required by the Proposed Rule. Such network modifications ultimately will increase the cost of the services to consumers. Alternatively, if MasterCard determines that the cost of such changes is too significant to undertake and stops providing the subject services, this will decrease consumer choice and flexibility. Accordingly, we offer the following comments on the

Proposed Rule in an effort to ensure that the MoneySend and RPPS services continue to be available in a way that is most beneficial to the consumers who use the services.

- A. Transfers conducted over an open network system were not the intended target of the statute and should be excluded from coverage under the Proposed Rule or, at a minimum, should be included within the scope of the permanent exception.*

As the Board recognized in the Supplementary Information, the typical remittance transfer is a cash-to-cash transaction sent through a money transmitter that operates a network of agent locations at which senders may request, and recipients may claim, remittance transfers.<sup>4</sup> We believe that Section 919 of the EFTA is intended to address the perceived problem that consumers requesting typical remittance transfers generally do not fully understand the fees and taxes that apply to their transactions and the calculation of the amount ultimately received by the designated recipients. This problem is unique to the traditional remittance transfer structure, where the consumers often are walk-up customers who may not have an established relationship with the transfer provider. By contrast, the MoneySend service is designed for use by consumers who have an established payment card or other banking relationship with the financial institution that is the remittance transfer provider.

Also, in a “closed” system such as the one operated by a traditional money transmitter, the remittance transfer provider controls the transaction end-to-end. As a result, the typical remittance transfer provider has total control over, and information about, the transaction, including the fees and taxes to be deducted, the currency into which the funds will be converted and the exchange rate used to convert the funds, and the timing of availability of the funds. By contrast, financial institutions that participate in “open” systems, such as MoneySend, use a payment network to process the funds transfer, and therefore do not manage the process end-to-end. Such institutions have no control over, and little insight into, the fees or taxes that may be deducted by the recipient’s institution, the timing of availability of the funds or, on the day the transaction is initiated, the exchange rate, all of which are set by other parties in the payment process. Similarly, as the payment network, MasterCard does not specify, and has no control over, the fees or taxes deducted by the recipient’s institution or the timing of the availability of the funds.

While the MoneySend method of converting the funds and establishing the exchange rate when the transaction is processed means that the sender is not able to determine the final amount received by the recipient at or prior to the time the sender initiates the transaction, this process reduces the risks to the sending and receiving financial institutions from currency fluctuations, and allows MoneySend (and, thus, the financial institutions that conduct transactions using MoneySend) to offer more competitive exchange rates. The money transmitters who provide remittance transfer services in a closed network and establish the exchange rates when the sender requests the remittance transfer must mark-up the exchange rates they charge by a sufficient margin to cover the currency fluctuation risk associated with quoting a rate today for foreign currency they will not acquire until tomorrow. Since the exchange rate in a MoneySend

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<sup>4</sup> 76 Fed. Reg. at 29903.

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transaction is not determined in advance and, thus, need not account for possible currency fluctuations, MasterCard is able to offer exchange rates through MoneySend that are substantially lower than the rates charged by such traditional remittance transfer providers. We believe this reduced cost is a greater benefit to consumers than the certainty of a higher exchange rate quoted at the time the transaction is initiated.

The fact that Section 1073 is targeted to traditional remittance transfers is all-the-more evident by the nature of the disclosures required. Section 919(a)(2)(A)(ii) and (iii) of the EFTA require disclosure of “the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and any exchange rate to be used by the remittance transfer provider for the remittance transfer . . . .”<sup>5</sup> Not only do the statutory requirements reference fees and exchange rates applied by the remittance transfer provider, rather than by other institutions processing the transfer, but they are disclosures that can only be determined and guaranteed in a closed system. As explained above, a remittance transfer provider in an open system cannot determine with certainty the taxes, fees or exchange rate to be applied by other parties involved in processing the transfer.

While EFTA Section 919 is drafted quite broadly, Section 904(c) of the EFTA provides that the Board’s implementing regulations may include “such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title . . . or to facilitate compliance therewith.”<sup>6</sup> Section 1073 of the Act amended Section 904(c) to add the reference to remittance transfers, thereby confirming the Board’s authority to provide exceptions to Section 919 through the rulemaking process.<sup>7</sup> Thus, as there is nothing in Section 1073 that suggests Congress contemplated application of the statute to a funds transfer conducted through an “open” system such as MoneySend, the Board should use its Section 904(c) authority to exempt from coverage under the Proposed Rule remittance transfers conducted through an open system such as MoneySend.

If the Board does not provide a complete exemption for remittance transfers conducted through an open system, at a minimum, the Board should extend the application of the permanent exception provided under proposed Section 205.32(b)(2) to permit providers to estimate disclosure amounts for such transactions. The exception provided by Section 205.32(b)(2) would permit a provider to estimate certain of the disclosure requirements under Section 205.31(b) if the provider cannot determine the exact amounts because the method by which transactions are made in the recipient country does not permit such a determination. The Board’s initial view – that this exception is intended to apply to transfers sent by international ACH on terms negotiated by the U.S. government and the government of the recipient country where the exchange rate is set after the transfer is sent – is an unnecessarily narrow reading of the statutory exception. Remittance transfers conducted through open systems more broadly, including international ACH transactions, involve methods of transfer for which it is extremely

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<sup>5</sup> 15 U.S.C. § 1693o-1(a)(2)(A)(ii)–(iii) (emphasis added).

<sup>6</sup> 15 U.S.C. § 1693b(c).

<sup>7</sup> See Act § 1073(a)(2).

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difficult, if not impossible, to determine the exact amount of taxes, fees, and exchange rates applicable to a transaction because the remittance transfer provider does not remit the funds directly or through an agent to the recipient or even the recipient's institution. Accordingly, we urge the Board to consider all such transactions as ones in which the method by which the transaction is made in the recipient country does not permit a provider to determine the amounts to be disclosed.

*B. Online bill payment services are not true "remittance transfers" and should be excluded from coverage under the Proposed Rule.*

Section 205.30(d) of the Proposed Rule and the accompanying commentary would provide that a consumer's online bill payment transaction involving a foreign recipient constitutes a remittance transfer for which the consumer's financial institution would be required to provide disclosures. In the Supplementary Information to the Proposed Rule, the Board solicited comment on whether online bill payments, particularly preauthorized bill payments, made through the sender's financial institution should be exempt from coverage under the rule.<sup>8</sup> MasterCard urges the Board to expressly exempt all bill payment transactions from coverage under the final rule.

Extension of the disclosure requirements to online bill payment transactions is not supported by the spirit of the statute. As discussed above, the statute was intended to provide additional protections in the case of a typical remittance transfer—a cash-to-cash, person-to-person, closed system transfer requested by an unsophisticated consumer. A consumer who maintains a bank account with online bill pay access and uses that online bill payment functionality to make payments to foreign merchants is not the intended target of the statute. Nor is there any indication in the statute that Congress intended to extend Section 919 of the EFTA to a remittance transfer where the transfer of funds is not the primary transaction and, rather, is merely incidental to an underlying transaction, such as the underlying purchase of goods or services resulting in a bill to the consumer. Moreover, the definition of a "remittance transfer" in proposed Section 205.30(d) is an "*electronic transfer of funds requested by the sender to a designated recipient that is sent by a remittance transfer provider*" (emphasis added). In an online bill payment transaction, unlike a traditional remittance transaction, the sender is not requesting an electronic transfer as required under the definition of a remittance transfer. The sender merely requests a transfer, *i.e.*, that a stated amount be deducted from his or her account with the financial institution and paid to the biller, without preference for the means of transfer. Indeed, many financial institutions reserve the right to make an online bill payment by electronic transfer or check, depending upon a variety of factors including the identity of the merchant. Thus, an electronic transfer is made at the institution's election, not the sender's.

Moreover, financial institutions face practical impediments to providing the disclosures required by the Proposed Rule for online bill payment requests, as the Proposed Rule does not reflect the way in which online bill payment services are provided. As the Board noted in the

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<sup>8</sup> 76 Fed. Reg. at 29908.

Supplementary Information, consumers may establish recurring payment requests for routine payments of the same amount or automatic payment requests for regular invoices of varying amounts from a designated merchant. The Proposed Rule could be read to require the consumer's financial institution to make the pre-payment disclosure when the consumer sets up a recurring or automatic payment, despite the fact that the financial institution cannot possibly determine the exchange rate, taxes and fees, or even the amount transferred with respect to future transactions. Even if the Proposed Rule were revised to require financial institutions to spontaneously generate and deliver to the consumer the pre-payment disclosures immediately before each recurring or automatic payment rather than at the time the recurring or automatic payments are established by the consumer, doing so would be a difficult and time-consuming process that could delay processing of the consumer's bill payment request. Similarly, the cancellation rights proposed in Section 205.34 would be particularly problematic for the financial institutions that utilize RPPS because RPPS does not provide a systematic cancellation or reversal right. These impediments are in addition to the more fundamental challenges noted above which face such financial institutions as participants in an open funds transfer network.

*C. Receipts for transactions conducted by text messaging or mobile phone application should be permitted by any method agreed to by the remittance transfer provider and the sender.*

Section 205.31(c) of the Proposed Rule contains formatting requirements with respect to the disclosures required under the Proposed Rule. In the Supplementary Information, the Board requested comment on how the grouping, proximity, size and prominence requirements in Section 205.31(c)(1)-(3) can be applied to transactions conducted via text message or mobile phone application.<sup>9</sup> As suggested by the Board's request, the transmission of compliant disclosures by text message or mobile phone application would be impracticable due to several technical limitations, including limitations on the length and format of messages. In light of such practical limitations, the Proposed Rule should not inconvenience consumers by effectively prohibiting transactions from being conducted by text message or mobile phone application, or by preventing providers from completing such transactions instantaneously if a consumer is forced to, for example, access a website to review a compliant form of the disclosures before completing the transaction. Instead, the Proposed Rule should provide remittance transfer providers with the flexibility to permit them to provide the disclosures required by the Proposed Rule in a manner that complies with the spirit of the statute and is also convenient and desirable for the consumer and remittance transfer provider. Accordingly, we suggest that, where a transaction is conducted by text message or mobile phone application, the remittance transfer provider be permitted to provide all required disclosures by any method agreed to by the provider and the sender, including by return text message, mobile phone application, email, online, or U.S. postal mail. This flexibility would also recognize that senders may express a preference regarding the manner in which disclosures are received, and providers should be permitted to honor those choices.

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<sup>9</sup> 76 Fed. Reg. at 29915-16.

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*D. The payment card network processing services exclusion acknowledged in proposed comment 30(d)-4(ii) should refer to prepaid cards, in addition to the references to credit and debit cards.*

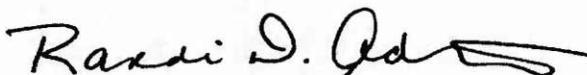
Proposed comment 30(d)-4 clarifies that a payment card network, such as the MasterCard network, “does not send a remittance transfer when a consumer designates a debit or credit card as the payment method to purchase goods or services from a foreign merchant,” because the network is merely providing payment processing and settlement services, not remittance transfer services.<sup>10</sup> We support this recognition that a payment card network merely serves as an intermediary to facilitate such a payment transaction and is not a principal to the transaction. We also offer that such a transaction is distinguishable from a remittance transfer in that the electronic transfer of funds in such a purchase transaction is not an independent transaction, but rather an ancillary step necessary to consummate the underlying purchase of goods or services. In an ever-expanding global economy, such international transfers are increasingly necessary, and should not be considered a separate transaction.

We trust that the reference to “debit or credit” cards in the proposed comment was not an intentional omission of prepaid cards and was not intended by the Board to signal a distinction in the treatment of foreign payment transactions initiated with a prepaid card. However, this omission is particularly notable as other sections of the Proposed Rule refer to debit, credit, and prepaid cards collectively.<sup>11</sup> From MasterCard’s perspective, and that of the consumer, merchant, and financial institutions involved in such a transaction, the substance of a transaction in which a prepaid card is used to purchase goods or services from a foreign merchant is no different than a transaction in which a credit or debit card is used. Accordingly, for the avoidance of doubt, we ask that the Board revise this comment to include prepaid cards in the list of payment cards.

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We appreciate this opportunity to comment on the Proposed Rule. Please do not hesitate to contact the undersigned at (914) 249-6715, or our counsel at Sidley Austin LLP, Joel Feinberg at (202) 736-8473.

Sincerely,



Randi D. Adelstein  
Vice President  
U.S. Public Policy and Regulatory Counsel

cc: Joel D. Feinberg, Esq.

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<sup>10</sup> *Id.* at 29954.

<sup>11</sup> See proposed comment 33(a)-1, *id.* at 29959.