

MasterCard Worldwide  
Law Department  
2000 Purchase Street  
Purchase, NY 10577-2509  
tel 1-914-249-2000  
www.mastercard.com



November 14, 2011

*Via Electronic Mail*

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**RE: Survey Materials Related to Board Obligations Under Section 920 of the Electronic Fund Transfer Act (“EFTA”); FR 3063a, FR 3063b, FR 3064a, and FR 3064b**

Dear Ms. Johnson:

MasterCard Worldwide (“MasterCard”)<sup>1</sup> submits this comment letter in response to the notice and request for comment issued by the Board of Governors of the Federal Reserve System (“Board”) regarding various survey materials the Board proposes to use in fulfilling certain information collection and reporting obligations imposed on the Board by Section 920(a) of the EFTA.<sup>2</sup> MasterCard appreciates the opportunity to provide its comments on the survey materials.

**Generally Applicable Comments**

***Use of Estimates in Responses.*** MasterCard appreciates the challenges the Board faces in developing a survey tool that accurately collects information over time and can be relied upon when reporting aggregate results. We believe the general structure and format of the proposed surveys is an improvement from the surveys that were used in 2010 to inform the Board’s formulation of Regulation II. However, we believe there is room for further improvement. We note that the proposed survey instructions direct a respondent to use “NR” when the respondent

---

<sup>1</sup> MasterCard advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. In the company’s roles as a franchisor, processor and advisor, MasterCard develops and markets secure convenient and rewarding payment solutions, seamlessly processes more than 23 billion payments each year, and provides 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 21,000 of the world’s leading financial institutions. With more than 32.9 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard.

<sup>2</sup> See Proposed Agency Information Collection Activities; Comment Request, 76 Fed. Reg. 57,037 (Sept. 15, 2011).

is unable to report an “accurate figure” for a particular question. In our view, a major deficiency in the 2010 survey process was the substantial under-reporting of costs that resulted, in part, from issuers using the NR designation when they were able to provide a reliable estimate of a cost but not a precise cost figure. This deficiency forced the Board to rely on incomplete data, which resulted in skewed results. To improve the quality of the data collected, we believe it is essential that respondents have the ability to provide reliable estimates in cases where precision or complete accuracy is not feasible. Therefore, we strongly suggest that the Board revise the instructions for the issuer surveys so that respondents are able to report reliable estimates if they are unable to report a figure with certainty.

***Clarification on Territorial Scope.*** The following three jurisdictions are included within the list of U.S. territories in the definition of “United States” in the Glossary section of the proposed surveys—the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands.<sup>3</sup> Based on publicly available information maintained by the U.S. Department of State and the U.S. Department of the Interior, these three jurisdictions are not U.S. territories, but rather independent and sovereign countries. We are aware of no reason why the views of the Departments of State and Interior as to political status should be not be controlling on this point. To remove any doubt for networks and issuers as to the scope of jurisdictions covered by the surveys and the Board’s Regulation II, we ask the Board to revise the list of U.S. territories by deleting these three jurisdictions.

***Treatment of Information Under Freedom of Information Act (“FOIA”) Requests.*** The Board notes in the Supplementary Information that survey data collected from issuers and networks “may be kept confidential” under exemption (b)(4) of FOIA, if the release of such data would cause substantial harm to the competitive position of the respondent. The Board solicited comment on what survey information might meet this criteria. MasterCard believes that all of the information requested in the proposed surveys is confidential and proprietary and would meet the criteria for the (b)(4) exemption. Any public disclosure of this confidential business information, other than in aggregate form as required by Section 920(a)(3)(B) of the EFTA, would result in substantial competitive harm to MasterCard and other respondents. Moreover, disclosure should not be made of aggregate information in cases where the number of respondents is highly limited and their relative market share with respect to disclosed information is publicly available because such information can readily be disaggregated. MasterCard strongly encourages the Board to make clear when it finalizes the survey materials that it will treat all issuer and network information collected through the surveys as exempt under exemption (b)(4) of FOIA, and will deny any FOIA request for such information. We also encourage the Board, when fulfilling its statutory mandate to disclose aggregate information under Section 920(a)(3)(B), to disclose only such information as the Board is statutorily required disclose (*i.e.*, only information with respect to interchange transaction fees and costs incurred by issuers), and to exercise that same restraint in connection with any reports that may be made to Congress regarding such fees and costs. In MasterCard’s view, any disclosure that does not meet this basic test would be inconsistent with the statute and could have a significant impact on issuer and network competition in the debit card market.

---

<sup>3</sup> See also 76 Fed. Reg. 57,037 (footnotes 3 and 7).

## **Comments on the Payment Card Network Survey – FR 3064b**

### ***Pre- and Post-Effective Date Reporting of Information on an Exempt and Non-Exempt Basis.***

Under the network survey, networks would be required to report certain information on transactions using debit cards of exempt issuers and transactions using debit cards of non-exempt issuers across three separate timeframes: (i) January 1, 2011 through June 30, 2011; (ii) July 1, 2011 through September 30, 2011; and (iii) October 1, 2011 through December 31, 2011. The Board requested comment on whether it is possible for networks to report the specified information in the manner requested. While it is possible for MasterCard to report the specified information in the manner requested, we note that any breakouts for the first two time periods would be assumption-based because our issuer registration process was ongoing during the run-up to the October 1, 2011 effective date of Regulation II. A preferred approach would be to simply request that networks report information for the time periods on either side of the October 1, 2011 effective date. This approach would be more accurate as a practical matter and would reduce the administrative burden associated with developing assumption-based figures. If the Board rejects this approach, we ask that the instructional information for the network survey account for the assumption-based method of reporting and make clear that estimates are an acceptable form of reporting for time periods before the effective date of Regulation II.

***Request for Calendar Year Data on Exempt Cards and Issuers.*** Under the network survey, the Board has requested calendar year information for cards covered by the general-use prepaid card exemption, and for transactions involving debit cards issued by exempt and non-exempt issuers. The proposed information collection will result in skewed data in so far as all debit and general-use prepaid card volume was “exempt” prior to the October 1, 2011 effective date of Regulation II. To the extent this aspect of the survey materials may be used for purposes of developing a benchmark for assessing the debit card market pre- and post-effective date, we encourage the Board, consistent with our comments above, to simply request that networks report the requested information for the time periods on either side of the October 1, 2011 effective date.

***Availability / Release of the Survey; 60-Day Response Time Requested.*** In the Supplementary Information, the Board notes that the network survey would likely be available online by mid-January 2012, and proposes that networks be given 30 days to complete the survey. Our fiscal year ends on December 31 and we report our financial earnings in the following February. This reporting cycle coincides with year-end closing requirements and the preparation of our annual report for filing with the Securities and Exchange Commission. As a practical matter, this means that we will not have any annualized data available until February. It is our understanding that this issue is not unique to MasterCard and would impact any networks with a similar fiscal year. We therefore ask the Board to change the proposed survey release date to mid-February, which would be consistent with other regulatory reporting obligations. However, even if the Board makes the network survey available in mid-February, it is our view that the proposed 30-day timeframe for completing the survey is simply too short for us to collect and ensure accurate reporting of the requested information. We also note that the 30-day turnaround time for networks is significantly shorter than the 60-day timeframe the Board proposes to give issuers to complete their survey, and that the Board has provided no explanation for the different treatment. We do not believe that giving networks an additional 30 days to complete the survey would impair or delay the Board’s own information collection and reporting obligations. As such, we

request that networks be given a 60-day window within which to complete the survey, consistent with the timeframe that would be given to issuers.

**Reporting of Incentive Payments.** The proposed survey would be used to collect information on network incentive payments to acquirers, merchants, and issuers; however, the survey’s instructions for reporting this information lack clarity, and do not account for the likelihood that many such payments will have been made in 2011 under agreements that were not drafted in contemplation of Regulation II and, therefore, may not categorize incentive payments as the Board has in the proposed survey. This will necessitate that networks estimate these amounts or report “NR” if estimates are not permitted. Moreover, issuers (which also are required to report on incentives) may categorize incentive payments differently than networks. In recognition of this fact, we ask the Board, as part of the instructions for completing the survey, to allow networks to take the approach outlined for issuers in the Board’s Regulation II FAQs for § 235.6(b) and use any reasonable consistently-applied method of accounting for incentive payments, and make clear that estimates consistent with that methodology are acceptable in connection with completing the survey.

#### **Comments on the Debit Card Issuer Survey – FR 3064a**

**Capturing All Authorization, Clearing, and Settlement Costs.** MasterCard continues to believe that it is vitally important for the issuer survey to collect the full range of issuer cost information so that the Board can fulfill its statutory mandate over time for assessing whether the established amount of debit interchange that a covered issuer may receive in connection with a transaction is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. The proposed survey is deficient in this regard because it, like the Board’s 2010 survey, fails to collect many costs that are relevant to the Board’s statutory obligation and instructs issuers to report only data in the categories specified.

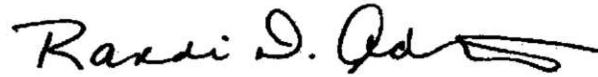
#### **Comments on the Government-Issued, General-Use Prepaid Card Survey – FR 3063a**

The survey would be used to collect information regarding the “minimum and maximum” fees that may be assessed to cardholders in connection with the cards that are covered by the survey. While the reporting of this information is feasible, we note that fees to cardholders may vary on the basis of limitations or requirements that are not identified in the survey (*i.e.*, government-imposed requirements, statutory or otherwise, on allowable program fees). These government-imposed requirements are likely to skew the results on a basis that is not within an issuer’s control. The Board could address this by noting the existence of government-imposed requirements in the survey instructions and in any reports to Congress, and by publishing information on the nature of any such requirements across each of the states.

\* \* \* \* \*

Again, MasterCard appreciates the opportunity to provide comments on the Board's survey materials. If you have any questions regarding our comments, please do not hesitate to contact the undersigned at (914) 249-6715 or randi\_adelstein@mastercard.com, or our counsel at Sidley Austin LLP in this matter, Joel D. Feinberg, at (202) 736-8473.

Sincerely,

A handwritten signature in black ink that reads "Randi D. Adelstein" followed by a stylized flourish.

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

cc: Joel D. Feinberg, Esq.