



DIVISION OF
CORPORATION FINANCE

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

March 21, 2023

Ning Chiu
Davis Polk & Wardwell LLP

Re: Mastercard Incorporated (the "Company")
Incoming letter dated March 20, 2023

Dear Ning Chiu:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Change Finance, P.B.C. (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 Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its February 7, 2023 request for a no-action letter from the Division.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: Sanford Lewis

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 Change Finance, P.B.C. (“**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**”).

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: Shareholders request our Board issue a public report detailing known and potential risks and costs to the Company of fulfilling information requests relating to Mastercard customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

REASONS FOR EXCLUSION OF THE PROPOSAL

We hereby request confirmation that the Staff of the Division of Corporation Finance (the “**Staff**”) will not recommend any enforcement action with respect to the 2023 Proxy Materials if the Company omits the Proposal pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous share ownership and the necessary authorization to submit the Proposal in response to the Company’s requests for that information;
- Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal;
and

- Rule 14a-8(i)(7) because the Proposal deals with matters related to the Company's ordinary business operations.

I. The Proposal May Be Excluded Pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) Because the Proponent Failed to Demonstrate Its Eligibility to Submit the Proposal After Receiving Notice of Such Deficiency.

Rule 14a-8(b) provides guidance regarding what information must be provided to demonstrate that a person is eligible to submit a shareholder proposal. Under Rule 14a-8(f)(1), it is permissible for a company to exclude a proposal where such eligibility requirements under Rule 14a-8(b) have not been satisfied, after a company has provided timely notice of the problem, and it has not been adequately corrected.

A. Background on the Proposal.

Submission of the Proposal. The Proponent submitted the Proposal via email to the Company on December 22, 2022 (the "**Submission Date**"). See Exhibit A for the Proposal and the accompanying cover letter, the email submitting the Proposal and the Company's acknowledgement of receipt of the Proposal. Although the cover letter is dated December 9, 2022, the Company has no record of receiving the Proposal via mail, courier, email or any other means prior to the Submission Date, and no indication from the Proponent that it was sent to the Company prior to the Submission Date. The Proposal also clearly stated that it was submitted to the Company "via email."

The cover letter accompanying the Proposal stated that the Proponent has "continuously beneficially owned the requisite shares of the Company's common stock required to file a shareholder proposal under Rule 14a-8. Verification of this ownership will be sent under separate cover." The Company acknowledged receipt of the Proposal on the same day.

First Deficiency Notice. After waiting a period for the proof of ownership that was stated to be forthcoming, on December 30, 2022, within 14 days of the Submission Date, the Company sent the Proponent a deficiency notice (the "**First Deficiency Notice**"). The First Deficiency Notice informed the Proponent that it had failed to demonstrate that it owned the requisite shares for the applicable period of time in order to be eligible to submit the Proposal pursuant to Rule 14a-8(b)(2) and explained the steps that the Proponent could take to cure such deficiency. The Proponent confirmed receipt of the First Deficiency Notice on December 30, 2022. See Exhibit B for the First Deficiency Notice and related correspondence.

In explaining the procedural deficiency and how the Proponent could cure such deficiency, the First Deficiency Notice described the ownership requirements that would satisfy Rule 14a-8(b), the type of statement or documentation necessary to demonstrate such ownership and the deadline for the Proponent's response. The Company included copies of Rule 14a-8 and Staff Legal Bulletin No. 14 (Jul. 13, 2001), Staff Legal Bulletin No. 14F (CF) (Oct. 18, 2011) and Staff Legal Bulletin No. 14G (Oct. 16, 2012) with the First Deficiency Notice.

Response Letter to First Deficiency Notice. On January 4, 2023, the Company received a letter from the Proponent (the "**First Response Letter**") via email, in response to the First Deficiency Notice. See Exhibit C for the First Response Letter and related correspondence. The First Response Letter is incorrectly addressed to Ms. Fink (who does not work at the Company) and refers to a deficiency letter dated November 23, 2022 (instead of December 30, 2022). Both references appear to be related instead to a

proposal that the Proponent submitted to American Express Company, based on a publicly available no-action letter request from that company.¹

According to the First Response Letter, the Proponent was the investment adviser to US Large Cap Fossil Fuel Free ETF, called the “**Original Fund**” in the First Response Letter, which owned the Company’s stock. Effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance ESG ETF, called the “**New Fund**” in the First Response Letter. Shareholders of the Original Fund became shareholders of the New Fund, and the Proponent has since served as the investment sub-adviser to the New Fund. As nothing in the cover letter or the Proposal on the Submission Date previously gave any indication of the Proponent’s status as an investment adviser or a sub-investment adviser instead of being the shareholder, the Company was not aware until it received the First Response Letter that the Proponent was in fact acting as a representative on behalf of its client, the Original Fund and the New Fund as the shareholder, within the meaning of Rule 14a-8(b).

The First Response Letter included (a) a letter from US Bank dated as of December 9, 2022 (the “**First US Bank Letter**”), and (b) a letter from Brown Brothers Harriman & Co. dated as of December 20, 2022 (the “**First BBH Letter**”) addressing the ownership of the Company’s stock. The First US Bank Letter indicated that from March 14, 2018 to March 21, 2022, “Change Finance, PBC” beneficially owned 187 shares of the Company’s stock. There is no reference to the Original Fund as the shareholder in the First US Bank Letter. The First BBH Letter indicated that “AXS Change Finance ESG ETF” (the New Fund) owned, from March 21, 2022 to December 9, 2022, at least 2,845 shares.

The First Response Letter contained several defects:

- the First BBH Letter failed to verify proof of ownership from the period of December 9, 2022, up to and including December 22, 2022, the Submission Date;
- contrary to the representation in the First Response Letter, the First US Bank Letter failed to verify that the Original Fund was the shareholder during the period covered by the First US Bank letter; and
- the First Response Letter clearly stated that the Proponent was acting as an investment adviser or a sub-investment adviser, but did not include sufficient written documentation from the New Fund as the shareholder-proponent authorizing the Proponent to submit the Proposal on its behalf.

Second Deficiency Notice. Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“**SLB 14L**”) notes that the Staff believes “that companies should identify any specific defects in the proof of ownership letter, even if the company previously sent a deficiency notice prior to receiving the proponent’s proof of ownership if such deficiency notice did not identify the specific defect(s).” Accordingly, on January 6, 2023, the Company sent the Proponent a second deficiency notice (the “**Second Deficiency Notice**”) identifying the specific defects that became evident upon receipt of the First Response Letter and how the Proponent could cure each such defect, including:

- the First BBH Letter did not provide proof of continuous ownership from the period of December 9, 2022 up to and including the Submission Date;

¹ See <https://www.sec.gov/files/corpfm/no-action/14a-8/ncppramex122422-14a8-incoming.pdf>.

- although the First Response Letter stated that the Proponent was the investment adviser of the Original Fund, the First US Bank Letter verified that Change Finance, PBC (instead of the Original Fund) beneficially owned the shares of the Company's stock; and
- the absence of sufficient authorization of the Proponent as a representative to submit the Proposal, outlining the detailed information needed to comply with Rule 14a-8(b)(1)(iv).

See [Exhibit D](#) for the Second Deficiency Notice and related correspondence. As noted above, the Company was not aware until it received the First Response Letter that the Proponent was not a shareholder of the Company and needed authorization as a representative to submit the Proposal, and therefore this deficiency was only raised in the Second Deficiency Notice.

Second Response Letter to Second Deficiency Notice. On January 20, 2023, 14 days after the Company sent the Second Deficiency Notice and 21 days after the First Deficiency Notice, the Company received a letter from the Proponent (the "**Second Response Letter**") via email, in response to the Second Deficiency Notice. See [Exhibit E](#) for the Second Response Letter and related correspondence. The Second Response Letter includes the same cover letter as the First Response Letter, including being dated January 4, 2023 and addressed to someone who does not work at the Company.

The Second Response Letter included (a) a letter from US Bank dated as of January 13, 2023 (the "**Second US Bank Letter**"), and (b) a letter from Brown Brothers Harriman & Co. dated as of January 20, 2023 (the "**Second BBH Letter**").

The Second US Bank Letter continued to state that "Change Finance, PBC" (instead of the Original Fund) owned 187 shares of the Company's stock. The date range of holdings changed from the First US Bank Letter to March 18, 2018 instead of March 14, 2018, to March 21, 2022.

The Second BBH Letter indicated that "AXS Change Finance ESG ETF" owned, from March 21, 2022 to December 22, 2022, at least 2,845 shares, which cured the deficiency related to the lack of proof of continuous ownership from the period of December 9, 2022 up to and including the Submission Date.

B. The Proponent Failed to Provide Sufficient Proof of Ownership Verifying Share Ownership.

With respect to the eligibility requirements under Rule 14a-8(b)(1)(i) and Rule 14a-8(b)(2), the Staff has consistently taken the position that a shareholder proposal may be excluded from a company's proxy materials where the proof of ownership that is provided verifies the share ownership of a holder having a different name from the shareholder-proponent. See *Abbvie Inc.* (Feb. 24, 2022) (concurring with the exclusion of a proposal submitted by Zevin Asset Management on behalf of an individual client, where the proof of ownership that was subsequently provided verified the share ownership of another individual holder of the company's stock who was not the same client); *KeyCorp* (Feb. 8, 2022) (concurring with the exclusion of a proposal from John Chevedden, where the proof of ownership identified Kenneth Steiner as the shareholder of the company's stock); *Great Plains Energy Inc.* (Feb. 4, 2013) (concurring with the exclusion of a proposal submitted by the Sierra Club, where the proof of ownership was provided in broker letters addressed to three individuals that did not identify the Sierra Club as the shareholder of the company's stock); *The Coca-Cola Co.* (Feb. 4, 2008) (concurring with the exclusion of a proposal from "The Great Neck Capital Appreciation LTD Partnership," where the proof of ownership identified "The Great Neck Cap App Invst Partshp., DJF Discount Broker" and "The Great Neck Cap App Invst Partshp" as the shareholders of the company's stock).

As the Company specifically noted in the Second Deficiency Notice, the First US Bank Letter indicated that "Change Finance, PBC" (and not the Original Fund, which is the shareholder according to the cover letter

accompanying the First Response Letter) held shares of the Company's common stock since March 14, 2018. Similarly, the Second US Bank Letter stated that from March 18, 2018, "Change Finance, PBC" (and not the Original Fund) held shares of the Company's stock. Therefore, both the First US Bank Letter and the Second US Bank Letter clearly identified "Change Finance, PBC," rather than the Original Fund, as the shareholder of the Company's stock.

The Company notes that both the First BBH Letter and the Second BBH Letter verified the share ownership of the New Fund, and not Change Finance, PBC. Given that both the First US Bank Letter and the Second US Bank Letter verified the share ownership of an entity that is not the shareholder according to the Proponent, the Company believes the Proposal may be excluded under Rule 14a-8(b)(1)(i) and Rule 14a-8(b)(2).

C. *The Proponent Did Not Provide Written Documentation from the Shareholder-Proponent Authorizing the Proponent to Submit the Proposal on Its Behalf.*

Rule 14a-8(b)(1)(iv) provides that a shareholder-proponent who uses a representative to submit a shareholder proposal on its behalf must provide the company with written documentation that:

- identifies the company to which the proposal is directed;
- identifies the annual or special meeting for which the proposal is submitted;
- identifies the shareholder as the proponent and identifies the person acting on his or her behalf as his or her representative;
- includes the shareholder-proponent's statement authorizing the designated representative to submit the proposal and otherwise act on his or her behalf;
- identifies the specific topic of the proposal to be submitted;
- includes the shareholder-proponent's statement supporting the proposal; and
- is signed and dated by the shareholder-proponent.

The Securities and Exchange Commission (the "**Commission**") explained the rationale for requiring such authorization in Release No. 34-89964 (Sept. 23, 2020) (the "**2020 Release**"): "When a representative speaks and acts for a shareholder, there may be a question as to whether the shareholder has a genuine and meaningful interest in the proposal, or whether the proposal is instead primarily of interest to the representative, with only an acquiescent interest by the shareholder. We believe that these amendments will help safeguard the integrity of the shareholder proposal process and the eligibility restrictions by making clear that representatives are authorized to so act, and by providing a meaningful degree of assurance as to the shareholder proponent's identity, role, and interest in a proposal that is submitted for inclusion in a company's proxy statement."

The Staff has also taken the position that a shareholder proposal may be excluded from a company's proxy materials where a representative submitted the proposal on behalf of a shareholder-proponent without proper written authorization from the shareholder-proponent. See *Abbvie Inc.* (Feb. 24, 2022) (concurring with the exclusion of a proposal submitted by Zevin Asset Management on behalf of an individual client, the shareholder-proponent, whose written documentation authorizing the submission did not comply with the requirements of Rule 14a-8(b)(1)(iv)); *Walt Disney Company* (Dec. 5, 2022) (concurring with the exclusion

of a proposal apparently submitted by a representative on behalf of a shareholder-proponent who did not provide written documentation authorizing the submission in accordance with Rule 14a-8(b)(1)(iv)).

In addition, the 2020 Release explicitly states that “compliance [with Rule 14a-8(b)(1)(iv)] would be required where the agency relationship is not apparent and self-evident. For example, *compliance would be required where an investment adviser submits a proposal on behalf of a client that is a shareholder*. A private relationship between a third-party investment adviser and the adviser’s client would not be apparent or self-evident because these private relationships are generally governed by private contractual arrangements where the scope of the principal-agent relationship does not as a matter of course extend to representation with respect to the submission of proposals” (emphasis added).

Here, both the First Response Letter and the Second Response Letter indicated that the Proponent acted as an investment adviser to the Original Fund, which later reorganized into the New Fund. Although both the First Response Letter and Second Response Letter referenced the definition of beneficial ownership under Rule 13d-3 of the Exchange Act, the representations made in such responses clearly demonstrate that the Proponent was, in the words of the 2020 Release, acting as “an investment adviser submit[ting] a proposal on behalf of a client that is a shareholder.” Within the meaning of the 2020 Release, the agency relationship between the Proponent and the Original Fund and New Fund is not “apparent or self-evident” by virtue of the Proponent acting as a third party-investment adviser. Given that the Proposal did not include written documentation from a shareholder-proponent authorizing the Proponent, as an investment adviser, to submit the Proposal on its behalf, the Proponent has failed to satisfy the eligibility requirements under Rule 14a-8(b)(1)(iv).

Under Rule 14a-8(f)(1), a company may exclude a proposal that fails to satisfy the eligibility requirements under Rule 14a-8(b). Because the Proponent failed to satisfy the eligibility requirements specified in Rule 14a-8(b)(1)(i), Rule 14a-8(b)(2) and Rule 14a-8(b)(1)(iv), the Company believes that it may exclude the Proposal from the 2023 Proxy Materials under Rule 14a-8(f)(1).

II. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(6) Because the Company Lacks the Power and Authority to Implement the Proposal, and Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Related to the Company’s Ordinary Business Operations.

A. Background on the Company’s Business and Access to Transaction Data.

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.

B. 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 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 risks and costs to the Company in fulfilling information requests related to the law enforcement of state laws criminalizing abortion access with respect to information about activities by account holders. The Proposal asks the Company for a report covering "consumer" data including:

- "personal digital information such as geolocation data, internet activity, and commercial information";
- information related to the "feasibility of a nationwide or regionally based data privacy policy wherein consumers would have "deletion rights";
- information related to the "evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data"; and
- "metrics on government requests for consumer data" received by the Company.

Within the Company's four-party payments network, the "consumers" whom the Proposal is focused on are account holders who hold a card or otherwise use a device enabled for payment. These are not the Company's "customers" and the Company does not have the data that is the subject matter of the Proposal.

The Proposal's request is based on a fundamental lack of understanding about the data the Company holds in relation to the transactions that it processes over its network. 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 MCC identifying the merchant's primary business and other technical data elements relating to transaction processing technology. There is no other data available through the MCC. The Company's public reporting on its MCC governance standards (the "**MCC Principles**") also explains that the Company does not permit selective authorization of transactions, such as blocking based solely on a retailer's MCC, and does not make any decisions about merchant accounts based solely on this categorization system.²

In short, the Company does not hold the kind of data to implement the Proposal. In the case of core network transactions, account holder relationships instead belong to, and are managed by, the issuers (namely the banks who are Company's true "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 Company's customers – and not the Company itself.

While merchants can collect account holder information about, for example, the purchase of products mentioned in the Proposal, by utilizing stock-keeping units ("**SKUs**"), which are unique alphanumeric codes assigned by merchants to each of their products to distinguish and manage inventory, SKU data is not part of the data the Company receives when a transaction occurs. In relation to transactions, the Company does not obtain personal data at the SKU-level, and cannot compel merchants, or any other participants on its network, to provide this type of information. In practical terms, the Company would never know what items

² See <https://www.mastercard.com/news/press/2022/september/how-we-support-merchants-and-consumers-through-clear-consistent-principles>.

or services an account holder may have purchased in a transaction, and therefore has no way of telling whether they have purchased particular products or services.

Because the Proposal requests a report addressing the costs and risks of responding to “abortion-related law enforcement requests” concerning specific personal account holder data that the Company does not collect, the Company does not have the power or authority to unilaterally implement the Proposal. The information may sit with the issuers, merchants or certain of the other counterparts that participate in the wide range of transactions facilitated on the Company’s network, but the Company is unable to compel these independent third parties to provide such information. 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).

C. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Related to the Company’s Ordinary Business.

Rule 14a-8(i)(7) allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to the company’s ordinary business operations. The policy underlying the ordinary business exception is based on two central considerations: (i) that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” and (ii) the “degree to which the proposal seeks to ‘micromanage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” 1998 Release; see also SLB 14L.

The Proposal Relates to the Company’s Policies and Procedures Around the Products and Services That It Offers.

With respect to this first policy consideration, the Staff has consistently held that a company’s strategy around the products and services it offers, including the manner in which those products and services are designed, developed, distributed and marketed, is a fundamental part of its ordinary business. See, e.g., *Comcast Corp.* (Apr. 13, 2022) (permitting exclusion of a proposal requesting that the company adopt a practice of sending customers advance notice of termination, suspension or cancellation of service); *Verizon Communications Inc.* (Jan. 29, 2019) (permitting exclusion of a proposal requesting that the company offer its shareholders the same discounts on its products and services that are available to its employees); *Bank of America Corp.* (Feb. 21, 2019) (permitting exclusion of a proposal requesting a report on the impact of the financial services company’s overdraft policies and practices on its customers); *JPMorgan Chase & Co.* (Feb. 21, 2019) (same); *Pfizer Inc.* (Mar. 1, 2016) (permitting exclusion of a proposal requesting a report describing the steps the company has taken to prevent the sale of its medicines to prisons for the purpose of aiding executions); *Equity LifeStyle Properties, Inc.* (Feb. 6, 2013) (permitting exclusion of a proposal requesting a report on, among other things, “the reputational risks associated with the setting of unfair, inequitable and excessive rent increases that cause undue hardship to older homeowners on fixed incomes” and “potential negative feedback stated directly to potential customers from current residents”).

The Proposal requests that the Company prepare a report on the risks and costs to the Company in fulfilling information requests related to the law enforcement of state laws criminalizing abortion access with respect to the Company’s “customers.” The Proposal does not mean the Company’s customers, but rather the account holders.

The Proposal’s request for a report related to the Company’s response to information requests is primarily focused on the Company’s collection and protection of “sensitive personal digital information,” as part of its

provision of payment products and services. The Proposal directly references the Company's privacy policy and specific processes the Company follows in response to requests for account holder data, as well as the Company's compliance with certain legislation related to data privacy and protection. In addition, the supporting statement recommends that the Company evaluate the feasibility of adopting particular policies and procedures related to the Company's handling of account holders' personal information, including with respect to law enforcement requests for such information. Management's decision-making around its policies and procedures related to data privacy and protection is fundamental to the ordinary business of the Company, given that these matters inherently inform the manner in which the Company offers payments products and services to business counterparts across its network.

As part of overseeing this day-to-day business, management regularly makes strategic decisions around the policies and procedures used to collect and protect the information provided by these various business counterparts, in a manner that directly impacts how the Company offers its products and services. By requesting a report detailing known and potential risks and costs to the Company of handling information requests related to the account holders who use the Company's payment systems, the Proposal not only fails to understand the Company's business and the type of data it holds, but also seeks to improperly interfere with the Company's management of its policies and practices related to data privacy, a fundamental part of its provision of payment products and services. Because the Proposal directly relates to the Company's ordinary business decisions around its products and services, the Company believes the Proposal may be properly omitted from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7).

Further, the Commission has stated that a proposal requesting the publication of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the company. See Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, Staff Legal Bulletin No. 14H (Oct. 22, 2015), which was issued by the Staff to clarify its views on the scope and application of Rule 14a-8(i)(7), re-affirms that the analysis of the ordinary business exception "should focus on the underlying subject matter of a proposal's request for board or committee review regardless of how the proposal is framed." Although the Proposal is phrased in terms of preparing a report, including the evaluation of certain risks, this framing does not change the underlying subject matter of the Proposal: management's ordinary business decisions around data privacy matters that directly impact how the Company facilitates commerce and offers its products and services across its network.

The Proposal Does Not Raise Significant Social Policy Issues That Transcend the Company's Ordinary Business Operations.

In the 1998 Release, the Commission expressed that while proposals relating to ordinary business matters "but focusing on sufficiently significant social policy issues generally would not be excludable," under Rule 14a-8(i)(7), the Staff has indicated that proposals that relate to both ordinary business matters and significant social policy issues may be excludable if the proposals do not "transcend the day-to-day business matters." SLB 14L states that in making the determination on whether a proposal raises a significant social policy issue, the Staff will "focus on the social policy significance of the issue that is the subject of the shareholder proposal" and "consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company."

The mere fact that a proposal is phrased to reference or invoke issues that could implicate significant social policy issues under the Staff's current interpretation of Rule 14a-8(i)(7) is not sufficient to transcend day-to-day business matters. A proposal may still be excluded when it effectively focuses on an ordinary business matter. See, e.g., *Walmart Inc.* (Mar. 6, 2020) (concurring with the exclusion of a proposal requesting that the company publish a report on the use of contractual provisions requiring employees to arbitrate employment-related claims); *Amazon.com, Inc.* (Domini Impact Equity Fund and the New York State Common Retirement Fund) (Mar. 28, 2019) (concurring with the exclusion of a proposal requesting that the

company publish a report on the impacts of its operations when the company has “hundreds of facilities” around the world and employs a large workforce); *JPMorgan Chase & Co.* (Mar. 9, 2015) (concurring with the exclusion of a proposal requesting that the company amend its human rights-related policies related to political participation because the proposal related to the company’s “policies concerning its employees”).

The Proposal concerns data privacy policies and practices as it relates to the Company’s provision of financial services, a matter of ordinary business. While the Proposal may include the topic of state legislation related to access to reproductive healthcare, these references do not transcend the real subject matter of the proposal: the Company’s treatment of account holder information more generally, including the data privacy policies and procedures related to the products and services that the Company offers.

The Company acknowledges that in *Lowe’s Companies, Inc.* (Apr. 7, 2022), *The TJX Companies, Inc.* (Feb. 7, 2022) and *Walmart Inc.* (Apr. 12, 2022), the Staff did not concur with the exclusion of proposals concerning the impact on these companies of state policies restricting access to reproductive healthcare, finding that those proposals transcended ordinary business. Here, the Proposal is distinguishable because the focus is on the Company’s day-to-day decision-making around data privacy and protection, which are matters of ordinary business that broadly impact the Company’s business across its network.

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(b) and Rule 14a-8(f)(1), Rule 14a-8(i)(6) and Rule 14a-8(i)(7). 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
Dorrit Lowsen, Change Finance, P.B.C.

Proposal

Reproductive Rights and Data Privacy

WHEREAS: Following revocation of the constitutional right to an abortion in June 2022, policymakers are concerned about the use of personal digital data for the enforcement of state laws that ban or limit abortion access. Congress is considering legislation that increases privacy protections for personal reproductive health information. California bars corporations based in the state from sharing personal data with out-of-state law enforcement regarding any crime concerning an abortion that is lawful in California.

Law enforcement frequently relies on digital consumer data. While Mastercard does not report figures on law enforcement requests, Alphabet and Meta alone collectively received around 110,000 requests in the second half of 2021. Each complied with about 80 percent of those requests.¹ In 2022, Meta satisfied a Nebraska warrant for private Facebook messages from a mother facing felony charges for allegedly helping her daughter terminate a pregnancy,² receiving significant negative press.

Mastercard collects sensitive personal digital information such as geolocation data, internet activity, and commercial information. Shareholders are concerned this data will be accessed without consumer consent by states that criminalize abortion. The Company's privacy policy allows Mastercard to share personal consumer information "to respond to requests from law enforcement."³ However, such law enforcement requests may seek evidence of consumer acts that are inappropriate for Mastercard to voluntarily share – for example, consumer financial activities that were legal in the state where they occurred, but illegal in the consumer's state of residence, such as purchasing abortifacients.

Mastercard is not immune to abortion-related law enforcement requests that may create significant reputational, financial, and legal risks. Mastercard already complies with "deletion rights" under California law, wherein consumers may request the Company delete personal data that it is not legally required to retain. There is a strong brand benefit to meeting the privacy expectations of most consumers.⁴

RESOLVED: Shareholders request our Board issue a public report detailing known and potential risks and costs to the Company of fulfilling information requests relating to Mastercard customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

SUPPORTING STATEMENT: Shareholders recommend, at board discretion, that input from reproductive rights and civil liberties organizations be solicited and reflected in the report, and that the report contain, regarding reproductive health related issues:

- (1) An assessment of the feasibility of a nationwide or regionally based data privacy policy wherein consumers would have "deletion rights;"

¹ <https://transparencyreport.google.com/user-data/overview?hl=en;>

<https://transparency.fb.com/data/government-data-requests/country/us/>

² <https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>

³ <https://www.mastercard.us/en-us/vision/corp-responsibility/commitment-to-privacy/privacy.html>

⁴ <https://www.businesswire.com/news/home/20220928005430/en/Survey-Reveals-95-of-Consumers-Demand-that-Brands-Protect-their-Data-and-Privacy-to-Build-Trusted-Sustainable-Relationships>

- (2) An evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data prior to, and with sufficient time for consumer response, before complying with any such request; and,
- (3) Metrics on government requests for customer data received by the Company, including categories of requests and consumer data produced.

From: [Nicole Dodson](#)
To: [Office of the Corporate Secretary; Brown, Craig](#)
Cc: [Dorrit Lowsen; Antonio Pontón-Núñez](#)
Subject: {EXTERNAL} Stockholder Proposal for 2023 Annual Meeting
Date: Thursday, December 22, 2022 3:27:42 PM
Attachments: [Mastercard Data Privacy Propodal- Change Finance, PBC.pdf](#)

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

Dear
Corporate Secretary,

On behalf of Change Finance P.B.C. (“Change Finance”), I am submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of MasterCard Incorporated (the “Company”) for its 2023 annual meeting of shareholders.

Please see attached document for additional information.

--
Best,
Nicole

Nicole Dodson
Executive Assistant
Change Finance


Pronouns: she/her

This e-mail, and any attachments herein, is intended only for use by the addressee(s) and qualified eligible persons named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments herein, is strictly prohibited and request that you delete it and notify us. All emails sent to or from this address will be received or otherwise recorded by our corporate email system and is subject to archival and monitoring by, and/or disclosure to, authorized employees or to any

other party as required by law.

Investing involves risk. Principal loss is possible. Diversification does not eliminate the risk of experiencing investment losses. Past performance is no guarantee of future success. An investor should consider the investment objectives, risks, charges, and expenses of the ETF carefully before investing. The prospectus contains this and other information about the ETF. A copy of the ETF's prospectus is available [HERE](#). The prospectus should be read carefully before investing.

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CHANGE FINANCE, P.B.C

INVESTING IN SERVICE TO LIFE



December 9, 2022

Mastercard Incorporated
Office of the Corporate Secretary



Via email:



Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary,

On behalf of Change Finance, P.B.C. (“Change Finance”), I am submitting the attached proposal (the “Proposal”) pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of Mastercard Incorporated (the “Company”) for its 2023 annual meeting of shareholders.

Change Finance has continuously beneficially owned the requisite shares of the Company’s common stock required to file a shareholder proposal under Rule 14a-8. Verification of this ownership will be sent under separate cover. Change Finance intends to continue to hold such shares through the date of the Company’s 2023 annual meeting of shareholders.

I, as co-CEO of Change Finance, am available to meet with the Company via teleconference on January 5, 2023 at 11:00 am ET or 2:00 pm ET on January 6th .

I can be contacted on [REDACTED] or by email at [REDACTED] to schedule a meeting. Please feel free to contact me with any questions.

Sincerely,

Dorrit Lowson
Co-CEO
Change Finance, P.B.C.

Enclosures:
Shareholder proposal



Reproductive Rights and Data Privacy

WHEREAS: Following revocation of the constitutional right to an abortion in June 2022, policymakers are concerned about the use of personal digital data for the enforcement of state laws that ban or limit abortion access. Congress is considering legislation that increases privacy protections for personal reproductive health information. California bars corporations based in the state from sharing personal data with out-of-state law enforcement regarding any crime concerning an abortion that is lawful in California.

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RESOLVED: Shareholders request our Board issue a public report detailing known and potential risks and costs to the Company of fulfilling information requests relating to Mastercard customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance the Company may deploy to minimize or mitigate these risks. The report should be produced

¹ [https://transparencyreport.google.com/user-data/overview?hl=en;](https://transparencyreport.google.com/user-data/overview?hl=en)
<https://transparency.fb.com/data/government-data-requests/country/us/>

²

<https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>

³ <https://www.mastercard.us/en-us/vision/corp-responsibility/commitment-to-privacy/privacy.html>

⁴

<https://www.businesswire.com/news/home/20220928005430/en/Survey-Reveals-95-of-Consumers-Demand-that-Brands-Protect-their-Data-and-Privacy-to-Build-Trusted-Sustainable-Relationships>

at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

SUPPORTING STATEMENT: Shareholders recommend, at board discretion, that input from reproductive rights and civil liberties organizations be solicited and reflected in the report, and that the report contain, regarding reproductive health related issues:

- (1) An assessment of the feasibility of a nationwide or regionally based data privacy policy wherein consumers would have “deletion rights;”
- (2) An evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data prior to, and with sufficient time for consumer response, before complying with any such request; and,
- (3) Metrics on government requests for customer data received by the Company, including categories of requests and consumer data produced.

From: [Office of the Corporate Secretary](#)
To: ["Nicole Dodson"; Office of the Corporate Secretary; Brown, Craig](#)
Cc: [Dorrit Lowsen; Antonio Pontón-Núñez](#)
Subject: RE: {EXTERNAL} Stockholder Proposal for 2023 Annual Meeting
Date: Thursday, December 22, 2022 4:04:11 PM
Attachments: [image001.png](#)

Dear Ms. Dodson,

This is to acknowledge our receipt of your stockholder proposal for our 2023 annual meeting.

Kathryn Yonda

Director
Legal Services

Mastercard



From: Nicole Dodson [REDACTED]
Sent: Thursday, December 22, 2022 3:22 PM
To: Office of the Corporate Secretary [REDACTED]; Brown, Craig
[REDACTED]
Cc: Dorrit Lowsen [REDACTED]; Antonio Pontón-Núñez
[REDACTED]
Subject: {EXTERNAL} Stockholder Proposal for 2023 Annual Meeting

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

Dear Corporate Secretary,

On behalf of Change Finance P.B.C. ("Change Finance"), I am submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of MasterCard Incorporated (the "Company") for its 2023 annual meeting of shareholders.

Please see attached document for additional information.

--

Best,
Nicole

Nicole Dodson
Executive Assistant
Change Finance

[REDACTED]
[REDACTED]
[REDACTED]

Pronouns: she/her

This e-mail, and any attachments herein, is intended only for use by the addressee(s) and qualified eligible persons named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments herein, is strictly prohibited and request that you delete it and notify us. All emails sent to or from this address will be received or otherwise recorded by our corporate email system and is subject to archival and monitoring by, and/or disclosure to, authorized employees or to any other party as required by law.

Investing involves risk. Principal loss is possible. Diversification does not eliminate the risk of experiencing investment losses. Past performance is no guarantee of future success. An investor should consider the investment objectives, risks, charges, and expenses of the ETF carefully before investing. The prospectus contains this and other information about the ETF. A copy of the ETF's prospectus is available [HERE](#). The prospectus should be read carefully before investing.

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Exhibit B

From: [Yonda, Kathryn](#)
To: [Dorrit Lowsen](#)
Subject: Shareholder proposal
Date: Friday, December 30, 2022 10:33:00 AM
Attachments: [image001.png](#)
[Change Finance PBC Rule.14a.8. deficiency letter - signed.pdf](#)

Dear Ms. Lowsen,

Attached is the response of Mastercard Incorporated's Corporate Secretary, Adam Zitter, to the shareholder proposal submitted by you on behalf of Change Finance P.B.C.

Please email me to confirm your receipt of this email and attached letter. Thank you.

Kathryn Yonda

Director
Legal Services

Mastercard





December 30, 2022

VIA EMAIL

Re: Notice of Deficiency Related to Shareholder Proposal

Dorrit Lowsen
Change Finance, P.B.C.

██████████
████████████████████

Dear Ms. Lowsen:

I am writing on behalf of Mastercard Incorporated (the "Company"), which received on December 22, 2022 a shareholder proposal (the "Shareholder Proposal") submitted via email on December 22, 2022 (the "Submission Date") by Change Finance, P.B.C. (the "Proponent") for inclusion in the Company's proxy statement for the 2023 annual meeting. The Shareholder Proposal contains certain procedural deficiencies under the rules of the Securities and Exchange Commission ("SEC").

Ownership Eligibility. Rule 14a-8(b) of the Securities Exchange Act of 1934, as amended, requires that in order to be eligible to submit a proposal for inclusion in the Company's proxy statement for an annual meeting, each proponent must have continuously held as of the Submission Date, at least (i) \$2,000 in market value of the Company's securities entitled to vote on the proposal at the meeting for at least three years, (ii) \$15,000 in market value of the Company's securities entitled to vote on the proposal at the meeting for at least two years or (iii) \$25,000 in market value of the Company's securities entitled to vote on the proposal for at least a year.

Note that SEC rules do not permit a proponent to aggregate the proponent's share holdings with those of another shareholder or group of shareholders to meet the ownership eligibility requirement.

The Company's stock records do not indicate that the Proponent is currently the registered holder on the Company's books and records of any shares of the Company's common stock, and you have not provided proof of the Proponent's ownership with the proposal.

Method for Demonstrating Proof of Ownership. As explained in Rule 14a-8 and SEC staff guidance, a proponent must provide sufficient proof of its continuous ownership of the requisite number of shares during the applicable time period preceding and including the Submission Date, by providing any of:

- **A written statement from the "record" holder of the securities.** To demonstrate ownership, you must submit to us a written statement from the "record" holder of the Proponent's shares (usually a bank or broker) verifying that the Proponent continuously held at least \$2,000, \$15,000 or \$25,000 in market value of the Company's securities entitled to vote on the proposal at the meeting for at least the three-year, two-year, or one-year period, respectively, prior to and including the Submission Date; or
- **SEC filings.** You can alternatively provide a (i) copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, reflecting the Proponent's

ownership of shares as of or before the date on which the required holding period begins and (ii) written statement that the Proponent continuously held the required number of shares for the required time period through the Submission Date.

To help shareholders comply with the requirements when submitting proof of ownership to companies, the SEC's Division of Corporation Finance published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, and Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012. We have attached copies of both for your reference, as well as a copy of SLB 14. As the SEC adopted amendments to Rule 14a-8 that became effective in 2021, note that SLB 14, SLB 14F and SLB 14G do not reflect those amendments and to the extent any provisions are inconsistent, Rule 14a-8 governs in all respects. A copy of Rule 14a-8 is also enclosed for your reference.

Most large U.S. banks and brokers deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). SLB 14F and SLB 14G provide that for securities held through the DTC, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. You can confirm whether the Proponent's bank or broker is a DTC participant by checking DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/client-center/dtc-directories>.

If the Proponent holds shares through a bank or broker that is not a DTC participant, you will need to obtain proof of ownership from the DTC participant through which the bank or broker holds the Proponent's shares. You should be able to find out the name of the DTC participant by asking the Proponent's bank or broker. If the DTC participant that holds the Proponent's shares knows the Proponent's bank or broker's holdings, but does not know the Proponent's holdings, you may satisfy the proof of ownership requirements by submitting two proof of ownership statements—one from the Proponent's bank or broker confirming her ownership and the other from the DTC participant confirming the bank or broker's ownership. Both should verify the Proponent's ownership for the required time period prior to and including the Submission Date.

SEC rules require that these defects that we have identified be remedied, and your response to this letter must be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Please address any response to me at the address or email address provided below. The failure to correct the deficiencies within this time period will provide the Company with a basis to exclude the proposal from the Company's proxy statement for the 2023 annual meeting.

Sincerely,



Adam Zitter

Corporate Secretary

Mastercard Incorporated

████████████████████
████████████████████
██

From: [Dorrit Lowsen](#)
To: [Yonda, Kathrin](#)
Subject: (EXTERNAL) Happy Holidays! Re: Shareholder proposal
Date: Friday, December 30, 2022 10:34:29 AM

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

Hello,

Change Finance is closed for the holidays. I will be back in the office on January 2 and will get back to you then. I will be monitoring email for time sensitive items between now and then.

Happy Holidays!

Best,
Dorrit

--
Dorrit Lowsen
Co-CEO
Change Finance

w change-finance.com

Pronouns: she/her

[image: A button with "Hear my name" text for name playback in email signature] <[--

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Investing involves risk. Principal loss is possible. Diversification does not eliminate the risk of experiencing investment losses. Past performance is no guarantee of future success. * An investor should consider the investment objectives, risks, charges, and expenses of the ETF carefully before investing. The prospectus contains this and other information about the ETF. A copy of the ETF's prospectus is available [HERE](#) <[**Distributor***: IMST Distributors, LLC. Change Finance, PBC and IMST Distributors, LLC are not affiliated entities.*](https://urldefense.proofpoint.com/v2?url=https-3A_www.axsinvestments.com_download_557_axs-2Dchange-2Dfinance-2Ddesg-2Ddef_5964_prospectus-2D14.pdf&d=DwIFaQ&c=uc5ZRxi8dGLM1RMQwF7xTCjRqXF0jmcF6SP0bDlmMmY&r=WJeQaezP67TuhXdAGITcBya77eMsqwE_0NB6sefT0cl&m=JgHWroBB8IrtFOZH0Xbp0VCzflTs5ZZcsvXZIC4TK0ALyQ8bJn3wPLUFk1c_e9&s=YBepzAUhm2htcQleSVsJAt6t5y972VLHZ8lymhKvLA&e=>>. The prospectus should be read carefully before investing.*</p></div><div data-bbox=)

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From: [Dorrit Lowsen](#)
To: [Yonda, Kathryn](#)
Cc: [Nicole Dodson](#)
Subject: {EXTERNAL} Re: Shareholder proposal
Date: Friday, December 30, 2022 11:55:08 AM
Attachments: [image001.png](#)
[image001.png](#)

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

Dear Ms. Yonda,

I confirm receipt of your letter. Change Finance will respond within the required 14 days.

Regards,
Dorrit

Dorrit Lowsen (she/her)
Co-CEO
Change Finance


My Android isn't a good typist. Please forgive typos and auto-correct errors.

On Fri, Dec 30, 2022, 10:33 AM Yonda, Kathryn  wrote:

Dear Ms. Lowsen,

Attached is the response of Mastercard Incorporated's Corporate Secretary, Adam Zitter, to the shareholder proposal submitted by you on behalf of Change Finance P.B.C.

Please email me to confirm your receipt of this email and attached letter. Thank you.

Kathryn Yonda

Director

Legal Services

Mastercard



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This e-mail, and any attachments herein, is intended only for use by the addressee(s) and qualified eligible persons named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments herein, is strictly prohibited and request that you delete it and notify us. All emails sent to or from this address will be received or otherwise recorded by our corporate email system and is subject to archival and monitoring by, and/or disclosure to, authorized employees or to any other party as required by law.

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Exhibit C

From: [REDACTED] on behalf of [Dorrit Lowsen](#)
To: [Yonda, Kathryn](#)
Cc: [Nicole Dodson](#)
Subject: {EXTERNAL} Re: Re: Shareholder proposal
Date: Wednesday, January 4, 2023 3:03:02 PM
Attachments: [image001.png](#)
[MasterCard Response Complete \(1\).pdf](#)

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

Hello Kathryn,

Please review the attached response regarding the Change Finance shareholder resolution, including confirmation of share ownership.

Please let me know if there is anything else you need. We are excited to speak with you soon.

Dorrit Lowsen
Co-CEO
Change Finance

[REDACTED]

Pronouns: she/her

[REDACTED]

-

On Fri, Dec 30, 2022 at 10:59 AM Yonda, Kathryn [REDACTED] wrote:

Thank you!

Kathryn Yonda

Director

Legal Services

Mastercard

[REDACTED]

[REDACTED]



From: Dorrit Lowsen [REDACTED]
Sent: Friday, December 30, 2022 11:54 AM
To: Yonda, Kathryn [REDACTED]
Cc: Nicole Dodson [REDACTED]
Subject: {EXTERNAL} Re: Shareholder proposal

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

Dear Ms. Yonda,

I confirm receipt of your letter. Change Finance will respond within the required 14 days.

Regards,

Dorrit

Dorrit Lowsen (she/her)
Co-CEO
Change Finance

[REDACTED]

My Android isn't a good typist. Please forgive typos and auto-correct errors.

On Fri, Dec 30, 2022, 10:33 AM Yonda, Kathryn [REDACTED] wrote:

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Kathryn Yonda

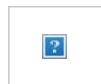
Director

Legal Services

Mastercard

[REDACTED]

[REDACTED]



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Investing involves risk. Principal loss is possible. Diversification does not eliminate the risk of experiencing investment losses. Past performance is no guarantee of future success. An investor should consider the investment objectives, risks, charges, and expenses of the ETF carefully before investing. The prospectus contains this and other information about the ETF. A copy of the ETF's prospectus is available [HERE](#). The prospectus should be read carefully before investing.

Distributor: IMST Distributors, LLC. Change Finance, PBC and IMST Distributors, LLC are not affiliated entities.

Change Finance, PBC is an investment advisor registered with the Securities and Exchange Commission. Registration does not imply a certain level of skill or training. More information about Change Finance's investment advisory services can be found in its Form ADV Part 2 or Form CRS, which is available upon request.

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Investing involves risk. Principal loss is possible. Diversification does not eliminate the risk of experiencing investment losses. Past performance is no guarantee of future success. An investor should consider the investment objectives, risks, charges, and expenses of the ETF carefully before investing. The prospectus contains this and other information about the ETF. A copy of the ETF's prospectus is available [HERE](#). The prospectus should be read carefully before investing.

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CHANGE FINANCE, P.B.C

INVESTING IN SERVICE TO LIFE



January 4, 2023

MasterCard Incorporated



Attn: Craig Brown, Assitant Corporate Secretary

Via email:



Re: Proof of ownership for submission of shareholder proposal

Dear Ms. Fink,

On behalf of Change Finance, P.B.C. (“Change Finance”), I write in response to the MasterCard Incorporated (the “Company”) letter dated November 23, 2022 concerning Change Finance’s proof of share ownership for eligibility to submit a shareholder proposal regarding abortion and consumer data privacy (the “Proposal”) pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934.

Rule 13d-3(a) of the Securities Exchange Act of 1934 provides that “a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security.”





From October 9, 2017 through March 18, 2022, Change Finance was the investment adviser to the US Large Cap Fossil Fuel Free ETF (the “Original Fund”), a series of ETF Series Solutions, which owned the Company’s common stock. The advisory agreement between Change Finance and the Original Fund (the “Advisory Agreement”) provided Change Finance with authority to “exercise [the Original Fund’s] proxy voting responsibilities.”

Effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance ESG ETF (the “New Fund”), a newly created series of Investment Managers Series Trust II with the same investment objective and investment strategies. As a result of the conversion, shareholders of the Original Fund became shareholders of the New Fund. The conversion also shifted management responsibility – Change Finance has since served as the investment sub-adviser to the New Fund.

The sub-advisory agreement between Change Finance and the New Fund (the “Sub-Advisory Agreement”) provides Change Finance with power “to engage in shareholder advocacy efforts and to vote proxies with respect to [the New Fund’s] securities,” which power authorizes Change Finance “to exercise full discretion and act for the [New Fund] in the same manner and with the same force and effect as the [New Fund] . . . , as well as with respect to all other things necessary or incidental to the furtherance or conduct of shareholder advocacy efforts and proxy voting with respect to the securities of the [New Fund].”

Since both the Advisory Agreement and the Sub-Advisory Agreement explicitly provided Change Finance with “[v]oting power which includes the power to vote, or to direct the voting of, [the Company’s] security,” Change Finance has been the beneficial owner of the Company’s common stock pursuant to Rule 13d-3(a) for the necessary time period to submit the Proposal. Moreover, Change Finance’s beneficial ownership of the Company’s common stock has been continuous for at least one year as of the Proposal submission date, given that, as a result of the conversion, shareholders of the Original Fund immediately became shareholders of the New Fund. Therefore, as the continuous beneficial owner of the Company’s common stock, Change Finance is eligible to file the Proposal with the Company pursuant to Rule 14a-8(b)(1).

Enclosed you will find Change Finance’s proof of ownership of the Company’s common stock by way of letters from U.S. Bank, the share custodian through the March 18, 2022 conversion, and Brown Brothers Harriman & Co., the current share custodian since the conversion date.



Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'D' followed by a horizontal line.

Dorrit Lowsen
Co-CEO
Change Finance, P.B.C.



Enclosures:

Ownership verification from U.S. Bank

Ownership verification from Brown Brothers Harriman & Co.



December 9, 2022

MasterCard Incorporated

[REDACTED]

[REDACTED]

[REDACTED]

Attn: Craig Brown, Assistant Corporate Secretary

Re: Shareholder proposal submitted by Change Finance, PBC

Dear Mr. Brown,

I write concerning a shareholder proposal (the "Proposal") submitted to MasterCard Incorporated (the "Company") by Change Finance, PBC.

As of March 21, 2022, Change Finance, PBC beneficially owned, and had beneficially owned continuously since 3/14/2018, 187.00 shares of the Company's common stock worth at least \$25,000 (the "Shares"). Please note that the custodian changed on March 21, 2022, and a separate letter will be submitted to verify beneficial share ownership past that date.

US Bank acted as record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at

[REDACTED]

Very truly yours,

Mitchell Hauser-Smetana

Mitchell Hauser-Smetana
Officer | Fund Custody Account Manager

December 20, 2022

Brown Brothers Harriman & Co.
[REDACTED]

RE: Proof of Holdings Instruction Letter in respect of: MasterCard Incorporated (the "Shares")

Dear Brown Brothers Harriman & Co.:

Reference is made to the custodian agreement between Investment Managers Series Trust II in respect of its series, AXS Change Finance ESG ETF ("Client") and Brown Brothers Harriman & Co. ("BBH"), (as amended, restated, modified, and/or supplemented, and otherwise in effect from time to time, the "Agreement"). Further reference is made to the Proof of Holdings Letter relating to the Shares held by the Client attached hereto as Appendix A (the "Proof of Holdings Letter").

Client instructs BBH to sign and address the Proof of Holdings Letter as set forth below. Client further confirms that:

1. On December 9, 2022 it held 3,225 of Shares in custody with BBH;
2. From the period March 21, 2022 through December 9, 2022, Client held at least 2,845 Shares continuously;
3. From March 21, 2022 through December 9, 2022 (i) Client beneficially owned, and (ii) Client had beneficially owned continuously for at least March 21, 2022 through December 9, 2022 Shares worth at least \$25,000;
4. The Proof of Holdings Letter should be addressed to:

MasterCard Incorporated
[REDACTED]

Attn: Craig Brown, Assistant Corporate Secretary

The Client represents and warrants that all statements, representations and/or warranties set forth in the Proof of Holdings Letter, are true, accurate, and complete, and that this letter of direction is signed by an authorized person or persons with all necessary authority to sign on behalf of the Client. Client further instructs that, after BBH executes the Proof of Holdings Letter, BBH email the Proof of Holdings Letter to the Client at: [REDACTED]. This letter of instruction shall be deemed an Instruction as defined under the Agreement.

Sincerely,
Investment Managers Series Trust II

By: Joshua Gohr
Name: Joshua Gohr
Title: Assistant Treasurer

APPENDIX A

To The Proof of Holdings Instruction Letter in respect of MasterCard Incorporated Dated
December 20, 2022

December 20, 2022

MasterCard Incorporated



Attn: Craig Brown, Assistant Corporate Secretary

Dear Sir or Madam:

References is made to a shareholder proposal submitted to MasterCard Incorporated by Investment Managers Series Trust II on behalf of its series, AXS Change Finance ESG ETF (“Client”).

Brown Brothers Harriman & Co. (“BBH”), acting as custodian for Client, hereby confirms that, as of December 9, 2022, Client beneficially owned, and had beneficially owned continuously since March 21, 2022, 2,845 shares of MasterCard Incorporated. worth at least \$25,000 (the “Shares”), with Cusip 57636Q104.

BBH has acted as record holder of the Shares and is a Depository Trust and Clearing Corporation participant since March 21, 2022.

The above information is provided at the request and direction of the Client. The above statements do not constitute legal advice or legal conclusions. BBH assumes no liability or responsibility for any party’s reliance on this document and will not be responsible for any loss or damage (direct, indirect or consequential) incurred as a result of any reliance thereon.

Sincerely,

Brown Brothers Harriman & Co.

By: 

Name: Hugh Bolton

Title: Managing Director

Exhibit D

From: [Yonda, Kathryn](#)
To: [Dorrit Lowsen](#)
Subject: Shareholder Proposal Deficiency
Date: Friday, January 6, 2023 11:38:00 AM
Attachments: [image001.png](#)
[Change Finance Rule.14a.8.deficiency letter 2\(554997.2\) - signed.pdf](#)

Ms. Lowsen,

Attached is the response of Adam Zitter, Mastercard's Corporate Secretary, to your January 4, 2023 email regarding the 14a-8 shareholder proposal you submitted on behalf of Change Finance P.B.C. on December 22, 2022.

Please email me to acknowledge your receipt of this email and the attached letter. Thank you.

Kathryn Yonda

Director
Legal Services

Mastercard





January 6, 2023

VIA EMAIL

Re: Notice of Deficiency Related to Shareholder Proposal

Dorrit Lowsen
Change Finance, P.B.C.

[REDACTED]
[REDACTED]

Dear Ms. Lowsen:

I am writing on behalf of Mastercard Incorporated (the "Company"), which received on December 22, 2022 a shareholder proposal (the "Shareholder Proposal") submitted via email on December 22, 2022 (the "Submission Date") by Change Finance, P.B.C. ("Change Finance") as an investment adviser for inclusion in the Company's proxy statement for the 2023 annual meeting. In our letter to you dated December 30, 2022 (the "Initial Deficiency Notice"), we informed you of certain procedural deficiencies regarding the submission and provided information on how to remedy those deficiencies. Subsequently, on January 4, 2023, we received a letter from you (the "Response Letter"), which includes letters from US Bank dated as of December 9, 2022 (the "US Bank Letter") and Brown Brothers Harriman & Co. dated as of December 20, 2022 (the "BBH Letter" and collectively with the US Bank Letter, the "Broker Letters") addressing the ownership of the Company's shares. This letter supplements the Initial Deficiency Notice, as the Response Letter does not satisfy certain requirements of Rule 14a-8.

Ownership Eligibility. According to the Response Letter and Broker Letters:

- The Response Letter indicates that Change Finance was the investment adviser of the US Large Cap Fossil Fuel Free ETF, which owned shares of the Company's common stock, from October 9, 2017 through March 18, 2022 (therein named the "Original Fund" in the Response Letter). The US Bank Letter stated that Change Finance owned 187 shares of the Company's common stock since March 14, 2018, and that the custodian for the shares changed on March 21, 2022.
- The Response Letter indicates that effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance ESG ETF (therein named the "New Fund" in the Response Letter). The BBH Letter stated that AXS Change Finance ESG ETF (identified therein as the "Client") continuously held at least 2,845 shares of the Company's stock from March 21, 2022 to December 9, 2022.

The Brokers Letters are not sufficient because they do not verify that Change Finance has held shares of the Company's common stock for the requisite period up to and including the Submission Date. More specifically, the proof of ownership contains the following two defects:

- First, although the Response Letter stated that Change Finance was the investment adviser of the Original Fund, the US Bank Letter verified that Change Finance (instead of the Original Fund), was the beneficial owner of the shares of the Company's stock.
- Second, the BBH Letter does not provide proof of continuous ownership from the period of December 9, 2022 up to and including December 22, 2022, the Submission Date.

To remedy these defects, please submit a written statement from the "record" holder of the securities verifying that: (a) the Original Fund is the beneficial owner of the shares of the Company's stock for the period covered in the US Bank Letter and (b) the New Fund is the beneficial owner of the shares of the Company's stock from the time of the transfer to the new custodian in accordance with the BBH Letter, up to and including the Submission Date. Please refer to the Initial Deficiency Notice for additional information regarding remedying deficiencies pertaining to proof of ownership.

Authorization of Representative to Submit Proposal. The Response Letter does not provide sufficient information to confirm that Change Finance, as an investment adviser, has the authority to submit the Shareholder Proposal on behalf of a shareholder of the Company's stock. The rules of the Securities and Exchange Commission (the "SEC") require that, where a proponent that is not a natural person elects to use a representative for the purpose of submitting a proposal, if the representative's authority to act on such proponent's behalf is not apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on such proponent's behalf, then such proponent must provide written documentation that:

- identifies the company to which the proposal is directed;
- identifies the annual or special meeting for which the proposal is submitted;
- identifies the shareholder as the proponent and identifies the person acting on his or her behalf as his or her representative;
- includes the shareholder's statement authorizing the designated representative to submit the proposal and otherwise act on his or her behalf;
- identifies the specific topic of the proposal to be submitted;
- includes the shareholder's statement supporting the proposal; and
- is signed and dated by the shareholder.

Based on the Response Letter, it is not apparent and self-evident that Change Finance has the authority to submit the Shareholder Proposal and otherwise act on behalf of the New Fund.¹ Change Finance must provide documentation that meets the requirements described above to act as the representative of the Shareholder Proposal.

SEC rules require that these defects that we have identified be remedied, and your response to this letter must be postmarked or transmitted electronically to us. Please address any response to me at the address or email address provided below. The failure to correct the deficiencies will provide the Company with a basis to exclude the Shareholder Proposal from the Company's proxy statement for the 2023 annual meeting.

Sincerely,



Adam Zitter

Corporate Secretary

Mastercard Incorporated

[REDACTED]

[REDACTED]

[REDACTED]

¹ “[C]ompliance [with Rule 14a-8(b)(iv)] would be required where the agency relationship is not apparent and self-evident. For example, compliance would be required where an investment adviser submits a proposal on behalf of a client that is a shareholder.” Exchange Act Release No. 34-89964, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8* (Sept. 23, 2020).

Exhibit E

From: Nicole Dodson [REDACTED]
Sent: Friday, January 20, 2023 3:59 PM
To: Dorrit Lowesen [REDACTED]
Cc: Yonda, Kathryn [REDACTED]
Subject: {EXTERNAL} Re: Re: Shareholder proposal

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

Hi Kathryn,

I am attaching our response letter and updated confirmation of share ownership.

We look forward to hearing from you soon.

On Wed, Jan 4, 2023 at 1:58 PM Dorrit Lowesen [REDACTED] wrote:

Hello Kathryn,

Please review the attached response regarding the Change Finance shareholder resolution, including confirmation of share ownership.

Please let me know if there is anything else you need. We are excited to speak with you soon.

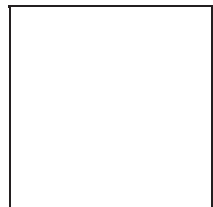
Dorrit Lowesen
Co-CEO
Change Finance

w change-finance.com

e [REDACTED]

p [REDACTED]

Pronouns: she/her



On Fri, Dec 30, 2022 at 10:59 AM Yonda, Kathryn [REDACTED] wrote:

Thank you!

Kathryn Yonda

Director

Legal Services

Mastercard



From: Dorrit Lowsen [REDACTED]
Sent: Friday, December 30, 2022 11:54 AM
To: Yonda, Kathryn [REDACTED]
Cc: Nicole Dodson [REDACTED]
Subject: {EXTERNAL} Re: Shareholder proposal

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

Dear Ms. Yonda,

I confirm receipt of your letter. Change Finance will respond within the required 14 days.

Regards,

Dorrit

Dorrit Lowsen (she/her)
Co-CEO
Change Finance

e [REDACTED]
m/o [REDACTED]

My Android isn't a good typist. Please forgive typos and auto-correct errors.

On Fri, Dec 30, 2022, 10:33 AM Yonda, Kathryn [REDACTED] wrote:

Dear Ms. Lowsen,

Attached is the response of Mastercard Incorporated's Corporate Secretary, Adam Zitter, to the shareholder proposal submitted by you on behalf of Change Finance P.B.C.

Please email me to confirm your receipt of this email and attached letter. Thank you.

Kathryn Yonda

Director

Legal Services

Mastercard

[REDACTED]

[REDACTED]

Error! Filename not specified.

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--
Best,
Nicole

Nicole Dodson
Executive Assistant
Change Finance

w change-finance.com

e [REDACTED]

p [REDACTED]
Pronouns: she/her

This e-mail, and any attachments herein, is intended only for use by the addressee(s) and qualified eligible persons named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments herein, is strictly prohibited and request that you delete it and notify us. All emails sent to or from this address will be received or otherwise recorded by our corporate email system and is subject to archival and monitoring by, and/or disclosure to, authorized employees or to any other party as required by law.

Investing involves risk. Principal loss is possible. Diversification does not eliminate the risk of experiencing investment losses. Past performance is no guarantee of future success. An investor should consider the investment objectives, risks, charges, and expenses of the ETF carefully before investing. The prospectus contains this and other information about the ETF. A copy of the ETF's prospectus is available [HERE](#). The prospectus should be read carefully before investing.

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CHANGE FINANCE, P.B.C

INVESTING IN SERVICE TO LIFE



January 4, 2023

MasterCard Incorporated



Attn: Craig Brown, Assitant Corporate Secretary

Via email: [REDACTED]

Re: Proof of ownership for submission of shareholder proposal

Dear Ms. Fink,

On behalf of Change Finance, P.B.C. (“Change Finance”), I write in response to the MasterCard Incorporated (the “Company”) letter dated November 23, 2022 concerning Change Finance’s proof of share ownership for eligibility to submit a shareholder proposal regarding abortion and consumer data privacy (the “Proposal”) pursuant to Rule 14a-8(b)(1) of the Securities Exchange Act of 1934.

Rule 13d-3(a) of the Securities Exchange Act of 1934 provides that “a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security.”



From October 9, 2017 through March 18, 2022, Change Finance was the investment adviser to the US Large Cap Fossil Fuel Free ETF (the “Original Fund”), a series of ETF Series Solutions, which owned the Company’s common stock. The advisory agreement between Change Finance and the Original Fund (the “Advisory Agreement”) provided Change Finance with authority to “exercise [the Original Fund’s] proxy voting responsibilities.”

Effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance ESG ETF (the “New Fund”), a newly created series of Investment Managers Series Trust II with the same investment objective and investment strategies. As a result of the conversion, shareholders of the Original Fund became shareholders of the New Fund. The conversion also shifted management responsibility – Change Finance has since served as the investment sub-adviser to the New Fund.

The sub-advisory agreement between Change Finance and the New Fund (the “Sub-Advisory Agreement”) provides Change Finance with power “to engage in shareholder advocacy efforts and to vote proxies with respect to [the New Fund’s] securities,” which power authorizes Change Finance “to exercise full discretion and act for the [New Fund] in the same manner and with the same force and effect as the [New Fund] . . . , as well as with respect to all other things necessary or incidental to the furtherance or conduct of shareholder advocacy efforts and proxy voting with respect to the securities of the [New Fund].”

Since both the Advisory Agreement and the Sub-Advisory Agreement explicitly provided Change Finance with “[v]oting power which includes the power to vote, or to direct the voting of, [the Company’s] security,” Change Finance has been the beneficial owner of the Company’s common stock pursuant to Rule 13d-3(a) for the necessary time period to submit the Proposal. Moreover, Change Finance’s beneficial ownership of the Company’s common stock has been continuous for at least one year as of the Proposal submission date, given that, as a result of the conversion, shareholders of the Original Fund immediately became shareholders of the New Fund. Therefore, as the continuous beneficial owner of the Company’s common stock, Change Finance is eligible to file the Proposal with the Company pursuant to Rule 14a-8(b)(1).

Enclosed you will find Change Finance’s proof of ownership of the Company’s common stock by way of letters from U.S. Bank, the share custodian through the March 18, 2022 conversion, and Brown Brothers Harriman & Co., the current share custodian since the conversion date.



Sincerely,

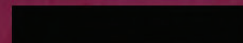
Dorrit Lowsen
Co-CEO
Change Finance, P.B.C.



Enclosures:

Ownership verification from U.S. Bank

Ownership verification from Brown Brothers Harriman & Co.



January 20, 2023

Brown Brothers Harriman & Co.
[REDACTED]

RE: Proof of Holdings Instruction Letter in respect of: MasterCard Incorporated (the “Shares”)

Dear Brown Brothers Harriman & Co.:

Reference is made to the custodian agreement between Investment Managers Series Trust II in respect of its series, AXS Change Finance ESG ETF (“Client”) and Brown Brothers Harriman & Co. (“BBH”), (as amended, restated, modified, and/or supplemented, and otherwise in effect from time to time, the “Agreement”). Further reference is made to the Proof of Holdings Letter relating to the Shares held by the Client attached hereto as Appendix A (the “Proof of Holdings Letter”).

Client instructs BBH to sign and address the Proof of Holdings Letter as set forth below. Client further confirms that:

1. On December 22, 2022 it held 3,125 of Shares in custody with BBH;
2. From the period March 21, 2022 through December 22, 2022, Client held at least 2,845 Shares continuously;
3. From March 21, 2022 through December 22, 2022 (i) Client beneficially owned, and (ii) Client had beneficially owned continuously for at least March 21, 2022 through December 22, 2022 Shares worth at least \$25,000;
4. The Proof of Holdings Letter should be addressed to:

MasterCard Incorporated
[REDACTED]

Attn: Craig Brown, Assistant Corporate Secretary

The Client represents and warrants that all statements, representations and/or warranties set forth in the Proof of Holdings Letter, are true, accurate, and complete, and that this letter of direction is signed by an authorized person or persons with all necessary authority to sign on behalf of the Client. Client further instructs that, after BBH executes the Proof of Holdings Letter, BBH email the Proof of Holdings Letter to the Client at: [REDACTED]. This letter of instruction shall be deemed an Instruction as defined under the Agreement.

Sincerely,
Investment Managers Series Trust II

By: Joshua Gohr
Name: Joshua Gohr
Title: Assistant Treasurer

APPENDIX A

To The Proof of Holdings Instruction Letter in respect of MasterCard Incorporated Dated
January 20, 2023

January 20, 2023

MasterCard Incorporated



Attn: Craig Brown, Assistant Corporate Secretary

Dear Sir or Madam:

References is made to a shareholder proposal submitted to MasterCard Incorporated by Investment Managers Series Trust II on behalf of its series, AXS Change Finance ESG ETF (“Client”).

Brown Brothers Harriman & Co. (“BBH”), acting as custodian for Client, hereby confirms that, as of December 22, 2022, Client beneficially owned, and had beneficially owned continuously since March 21, 2022, 2,845 shares of MasterCard Incorporated. worth at least \$25,000 (the “Shares”), with Cusip 57636Q104.

BBH has acted as record holder of the Shares and is a Depository Trust and Clearing Corporation participant since March 21, 2022.

The above information is provided at the request and direction of the Client. The above statements do not constitute legal advice or legal conclusions. BBH assumes no liability or responsibility for any party’s reliance on this document and will not be responsible for any loss or damage (direct, indirect or consequential) incurred as a result of any reliance thereon.

Sincerely,

Brown Brothers Harriman & Co.

By: 

Name: Hugh Bolton

Title: Managing Director

January 13, 2023

MasterCard Incorporated

[REDACTED]
[REDACTED]
[REDACTED]

Attn: Craig Brown, Assistant Corporate Secretary

via email: [REDACTED]

Re: Shareholder proposal submitted by Change Finance

Dear Mr. Brown,

I write concerning a shareholder proposal (the "Proposal") submitted to MasterCard Holdings (the "Company") by Change Finance, the beneficial owner of the US Large Cap Fossil Fuel Free ETF.

As of 3/21/2022, Change Finance, PBC beneficially owned, and had beneficially owned continuously since 3/18/2018, 187.0 shares of the Company's common stock worth at least \$25,000 (the "Shares"). Please note that the custodian changed on March 21, 2022, and a separate letter will be submitted to verify beneficial share ownership past that date.

US Bank and Trust has acted as the record holder of the Shares and is a DTC participant. If you require any additional information, please do not hesitate to contact me at

[REDACTED]

Very truly yours,

Mitchell Hauser-Smetana

Mitchell Hauser-Smetana
Fund Custody Account Manager - Officer

Sanford Lewis & Associates

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

March 15, 2023
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder proposal to Mastercard Incorporated on behalf of Change Finance, P.B.C.

Ladies and Gentlemen:

Change Finance, P.B.C. (the “Proponent”) is the beneficial owner of common stock of Mastercard Incorporated (the “Company” or “Mastercard”) and has submitted a shareholder proposal (the “Proposal”) to the Company. We have been asked by the Proponent to respond to the letter dated February 7, 2023 (the “Company Letter”) sent to the Securities and Exchange Commission by Ning Chiu of Davis Polk. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2023 proxy statement. A copy of this letter is being emailed concurrently to Ms. Chiu.

SUMMARY

The Proposal (attached hereto as Exhibit A) requests that the Company issue a public report detailing known and potential risks and costs to the Company of fulfilling information requests relating to Mastercard customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance the Company may deploy to minimize or mitigate these risks. The Proposal notes that the report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

The Supporting Statement adds that shareholders recommend, at board discretion, that input from reproductive rights and civil liberties organizations be solicited and reflected in the report. The Supporting Statement further recommends the report contain, regarding reproductive health related issues: (1) an assessment of the feasibility of a nationwide or regionally based data privacy policy wherein consumers would have “deletion rights”; (2) an evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data prior to, and with sufficient time for consumer response, before complying with any such request; and, (3)

metrics on government requests for customer data received by the Company, including categories of requests and consumer data produced.

The Company seeks exclusion of the Proposal on both procedural and substantive bases pursuant to Rule 14a-8(f)(1) and Rule 14a-8(i)(6)-(7), respectively.

Procedurally, the Company challenges the Proponent's eligibility to submit the Proposal without proper authorization to act as a representative. This procedural contention is wholly misdirected and without merit, since the Proponent is the beneficial owner of the Company's common stock based on its voting power over the stock – as opposed to a representative – and submitted appropriate documentation showing its eligibility to submit the Proposal.

Substantively, the Company first claims that it lacks power and authority to implement the Proposal because the Proposal concerns granular credit card transactional data that is held by the cardholder's financial institution and not by the Company. However, such claim reduces the scope of the requested risk analysis report to only one type of customer data (i.e., granular credit card transactional data), when the Proposal clearly concerns *all* data that the Company has publicly identified as collecting and retaining (e.g., geolocation data, internet search history, inferential data, general transactional data). Significantly, by explaining why Mastercard consumers should not be worried about granular transactional data being used for abortion-related prosecutions, the Company has essentially initiated the type of risk analysis that the Proposal contemplates, thereby undermining any such claim that the Company does not have the power to implement the Proposal.

The Company further claims that the Proposal failed to address a significant policy issue and merely relates to the Company's ordinary business operations — that is, the Company's management of policies and procedures related to data privacy and protection. Yet, the Proposal centers reproductive rights, a significant and contentious social policy issue that is deeply intertwined with the Company's business operations. In particular, the Proposal focuses on the vulnerability of individuals exercising their reproductive rights to mismanagement of data privacy rights by the Company. Lax commercial data privacy policies, including those of the Company, may provide law enforcement with easy access to consumer data for the enforcement of laws that criminalize abortion access, even when consumers exercise their reproductive rights in states where those rights are still protected.

Lastly, the Proposal adheres to Staff precedent declining to exclude digital privacy and reproductive rights proposals under the ordinary business rule. Accordingly, exclusion is also unwarranted pursuant to Rule 14a-8(i)(7) in this matter, because the Proposal transcends ordinary business operations.

BRIEF BACKGROUND

In 1973, the Supreme Court of the United States ruled in *Roe v Wade* (410 U.S. 113) that the right to privacy embedded in the Fourteenth Amendment of the United States Constitution protected abortion as a fundamental right. The decision struck down many federal and state laws criminalizing or severely restricting abortion access. In its June 2022 *Dobbs v Jackson Women's Health Center* (142 S.Ct. 2228) decision, however, the Supreme Court reversed decades of precedent guaranteeing the constitutional right to abortion, leaving the matter to the states. Since then, at least a dozen states have criminalized abortion, and about half of the states are expected to enact laws making abortion broadly illegal.¹ Consequently, nearly 36 million people today may be deprived of access to safe and legal abortions in the event of pregnancy.²

Law enforcement in abortion-restrictive states are expected to use consumer digital data to investigate and prosecute individuals who provide, aid, or receive the procedure, even if the abortions are conducted in states where the procedures remain legal. Since the *Dobbs* decision, the press has extensively reported on how a digital reproductive health footprint could be accessed by law enforcement and lead to criminal charges. Meta recently received negative press after complying with a data request from a local Nebraska police department for private Facebook messages between a mother and daughter, both who were subsequently charged with felony crimes related to the alleged illegal termination of the daughter's pregnancy.³

Mastercard has been largely silent on the issue, even though it may be vulnerable to similar abortion-related government information requests. Indeed, major news outlets have already specifically identified the Company as holding consumer data that could facilitate the enforcement of criminal abortion laws.⁴ Since the Company holds personal data on millions of American consumers, the scope of such vulnerability is especially large— in 2022, there were 333 million Mastercard credit cards in circulation and roughly 23.3 billion purchase transactions in the United States.⁵

¹ See *Interactive Map: US Abortion Policies and Access After Roe*, Guttmacher Institute (last visited Oct. 17, 2022), <https://states.guttmacher.org/policies/west-virginia/abortion-policies>.

² *Court Cases: Dobbs v Jackson Women's Health Center*, ACLU (last updated June 27, 2022), <https://www.aclu.org/cases/dobbs-v-jackson-womens-health-organization>.

³ See Aaron Sanderford, *Facebook data used to prosecute Nebraska mother, daughter after alleged abortion*, Nebraska Examiner (Aug. 10, 2022), <https://nebraskaexaminer.com/2022/08/10/facebook-data-used-to-prosecute-nebraska-mother-daughter-after-alleged-abortion/>.

⁴ See e.g., Shoshana Wodinsky & Kyle Barr, *These Companies Know When You're Pregnant—And They're Not Keeping It Secret*, Gizmodo (Jul. 30, 2022), <https://gizmodo.com/data-brokers-selling-pregnancy-roe-v-wade-abortion-1849148426>; Ron Lieber & Tara Siegel Bernard, *Payment Data Could Become Evidence of Abortion, Now Illegal in Some States*, N.Y. Times (June 29, 2022), <https://www.nytimes.com/2022/06/29/business/payment-data-abortion-evidence.html>.

⁵ See *Supplemental Operational Performance Data*, Mastercard (Jan. 26, 2023), https://s25.q4cdn.com/479285134/files/doc_financials/2022/q4/4Q22-Mastercard-Supplemental-Operational-Performance-Data.pdf.

Policymakers are considering government strategies to mitigate the negative impact of criminal abortion laws on privacy rights and expectations. Shortly after the *Dobbs* decision, several U.S. Senators requested that the Federal Trade Commission initiate an investigation of specific companies regarding practices that compromised the data of “individuals seeking abortions and other reproductive healthcare.”⁶ President Biden further signed an executive order calling upon certain agencies to protect consumer health data and to address concerns of “digital surveillance related to reproductive healthcare services.”⁷ Federal legislators are considering laws like the *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) and the *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265) to protect consumer data from abortion-related prosecutions. California recently enacted legislation safeguarding digital data from being used by out-of-state law enforcement for abortion conduct that is lawful in that state. Washington, among other states, is considering a bill that would make it illegal to sell any type of health information, including reproductive health data.⁸

As the new patchwork of state laws regulating abortion access comes into force, companies with nationwide operations like Mastercard will be especially vulnerable to law enforcement information requests related to abortion, particularly with respect to interstate conflicts regarding exercise of reproductive rights in states where abortion remains legal. Shareholders have reason to be concerned about whether the enforcement of criminal abortion laws will impact the reputation and financial wellbeing of the Company. The Proposal therefore calls upon management to examine the risks associated with the Company’s current data handling practices, including its response to government information requests, in the face of new restrictive abortion laws.

ANALYSIS

A. The Proponent established the requisite eligibility to submit the Proposal.

The Company contends that the Proposal should be excluded pursuant to Rule 14a-8(f)(1) because the Proponent failed to provide documentation that it had authority to act as a representative of two related exchange-traded funds (“ETFs”) that, during the relevant time period, owned the requisite Company stock. Such contention, however, fundamentally ignores that the Proponent is the beneficial owner of the Company’s common stock under Rule 13d-3(a),

⁶ See *Letter to Federal Commission Chair Lina Khan from U.S. Senators* (June 24, 2022), <https://cdn.arstechnica.net/wp-content/uploads/2022/06/Letter-to-FTC-Chair-Lina-Khan-on-Ad-IDs-and-Privacy.pdf>

⁷ Exec. Order (Jul. 8, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/>.

⁸ See *Bill would force period tracking apps to follow privacy laws*, Associated Press (Jan. 16, 2022), <https://apnews.com/article/health-washington-state-government-privacy-3fc4813c3e075191e00b4ec9f7684ce9>.

and not acting as a representative in the manner required by the rule. With the submission of the Proposal, the Proponent has always represented itself as the beneficial owner and shareholder-proponent, as opposed to filing as a representative of the ETFs. Accordingly, as will be further explained below, exclusion of the Proposal under 14a-8(f)(1) is unwarranted since the Proponent fulfilled the necessary eligibility requirements to submit the Proposal as a shareholder-proponent.

1. Applicable rules

Rule 14a-8(f)(1) generally allows a company to omit a shareholder proposal from its forthcoming proxy statement if the shareholder-proponent “fail[s] to follow one of the eligibility or procedural requirements” outlined in Rule 14a-8(a)-(d), and only after the company has timely notified the shareholder-proponent of the problem and the proponent has timely failed to adequately correct the problem.

Rule 14a-8(b)(1)(i)(C) provides that, in order to submit a proposal, the shareholder-proponent “must have continuously held . . . [a]t least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.” Rule 14a-8(b)(2) outlines several ways by which a shareholder-proponent may demonstrate ownership of the requisite securities. One such method applies to proponents who are not the register holders of their securities, wherein they must submit a “a written statement from the ‘record’ holder of [the shareholder’s] securities” verifying that, at the time of the proposal’s submission, the shareholder “continuously held” the requisite amount of shares during the above-mentioned specified time frame. Rule 14a-8(b)(2)(ii)(A). In Staff Legal Bulletin No. 14F (Oct. 18, 2011), the Division clarified that only Depository Trust Company (“DTC”) participants are viewed as record holders of securities deposited at the DTC.

A shareholder-proponent may be the beneficial owner of the company’s shares. Pursuant to Rule 13d-3(a), “a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security.” The Commission clarified in Exchange Act Release No. 34-17517 (Feb. 5, 1981) that the definition of “beneficial ownership” provided by Rule 13d-3(a) is applicable for proxy purposes under Rule 14a-8.

2. Factual background

On December 22, 2022, the Proponent submitted the Proposal to the Company along with a filing letter indicating that the Proponent, as the shareholder-proponent, met the necessary eligibility and ownership requirements. On December 30, 2022, the Company notified the

Proponent (the “First Deficiency Notice”) that it “ha[d] not provided proof of the Proponent’s ownership with the [P]roposal.” On January 4, 2023, the Proponent responded to the First Deficiency Notice with a letter and supporting documentation (the “First Deficiency Response”), explaining that it was submitting two separate proofs of ownership given that corporate restructuring during the relevant time period had affected share ownership.

As the First Deficiency Response outlines, from October 9, 2017 through March 18, 2022, the Proponent was the registered investment adviser to the US Large Cap Fossil Fuel Free ETF (the “Original Fund”), a series of ETF Series Solutions, which owned the Company’s common stock. The advisory agreement between the Proponent and the Original Fund provided the Proponent with explicit authority to “exercise [the Original Fund’s] proxy voting responsibilities.”

Effective March 18, 2022, the Original Fund reorganized into the AXS Change Finance ESG ETF (the “New Fund”), a newly created series of Investment Managers Series Trust II with the same investment objective and investment strategies. As a result of the conversion, shareholders of the Original Fund immediately became shareholders of the New Fund. The conversion also shifted management responsibility – the Proponent has since served as the investment sub-adviser to the New Fund.

The sub-advisory agreement between the Proponent and the New Fund (the “Sub-Advisory Agreement”) provides the Proponent with power “to engage in shareholder advocacy efforts and to vote proxies with respect to [the New Fund’s] securities,” which power authorizes the Proponent “to exercise full discretion and act for the [New Fund] in the same manner and with the same force and effect as the [New Fund] . . . , as well as with respect to all other things necessary or incidental to the furtherance or conduct of shareholder advocacy efforts and proxy voting with respect to the securities of the [New Fund].” Accordingly, the First Deficiency Response noted that, since both the Advisory Agreement and the Sub-Advisory Agreement explicitly provided the Proponent with “[v]oting power” on the Company’s securities for the requisite time period, the Proponent had been the “beneficial owner” of the Company’s common stock pursuant to Rule 13d-3(a) for the necessary time period, which made it eligible to submit the Proposal pursuant to Rule 14a-8(b)(1).

The First Deficiency Response further included a letter from US Bank (the “First US Bank Letter”), a DTC participant, verifying that, “[a]s of March 21, 2022, Change Finance, PBC beneficially owned, and had beneficially owned continuously since 3/14/2018, 187.00 shares of the Company’s common stock worth at least \$25,000.” The First Deficiency Response also included a letter from Brown Brothers Harriman & Co. (the “First BBH Letter”), a DTC participant, confirming that the New Fund – that is, AXS Change Finance ESG ETF –

continuously held at least \$25,000 of the Company's securities from March 21, 2022 through December 9, 2022.

On January 6, 2023, the Company notified the Proponent (the "Second Deficiency Notice") that the First US Bank Letter identified the Proponent as the beneficial owner of the Company shares, even though the First Deficiency Response had provided that the Proponent "was the investment adviser of the Original Fund" during the relevant time period. In addition, the Second Deficiency Notice alerted the Proponent that "the [First] BBH Letter d[id] not provide proof of continuous ownership from the period of December 9, 2022 up to and including December 22, 2022" – the date when the Proposal was submitted. The Second Deficiency Notice further noted that the Proponent had failed to provide documentation from the Original Fund and/or the New Fund authorizing the Proponent to submit the Proposal as a representative.

On January 20, 2023, the Proponent responded to the Second Deficiency Notice (the "Second Deficiency Response"), including a revised proof of ownership letter from US Bank (the "Second US Bank Letter"), which identified the Proponent as "the beneficial owner of the US Large Cap Fossil Fuel Free ETF" – the Original Fund, and corrected the ownership dates to provide that "[a]s of 3/21/2022, Change Finance, PBC beneficially owned, and had beneficially owned continuously since 3/18/2018, 187.0 shares of the Company's common stock worth at least \$25,000." The Second Deficiency Response also included a corrected proof of ownership letter from Brown Brothers Harriman & Co. (the "Second BBH Letter") which provided that the New Fund – that is, "AXS Change Finance ESG ETF" – owned, from March 21, 2022 to December 22, 2022, at least 2,845 Company shares, thereby curing the deficiency related to the lack of proof of continuous ownership from the period of December 9, 2022 up to the submission date. Lastly, the Second Deficiency Response included a copy of the First Deficiency Response letter in order to reiterate that the Proponent was eligible to submit the Proposal as the beneficial owner of the Company's common stock pursuant to Rule 13d-3(a).

3. The Proponent is the beneficial owner of the Company's common stock and provided required documentation proving its eligibility to submit the Proposal.

The Company contends that because the Second US Bank Letter and the Second BBH Letter identified other entities that were not the Proponent as the shareholder, the New Fund was required to provide written documentation authorizing the Proponent to act as its representative. In the absence of any such authorization, the Company argues that exclusion of the Proposal is justified since the Proponent failed to comply with ownership requirements under Rule 14a-8(b), proving that it was the owner of the Company's stock during the relevant time period. However, the Company's attempts to exclude the Proposal on this basis is meritless because the Proponent is the beneficial owner of such shares and therefore had authority to submit the Proposal as the shareholder-proponent.

As the Proponent explained in both its First and Second Deficiency Responses, since the Advisory Agreement and the Sub-Advisory Agreement explicitly provided the Proponent with “[v]oting power” over the Company’s securities pursuant to Rule 13d-3(a), the Proponent has been the beneficial owner of the Company’s common stock for the time period governing eligibility to submit the Proposal. Furthermore, the Proponent’s beneficial ownership of the Company’s common stock has been continuous for at least one year as of the Proposal submission date, given that as a result of the corporate restructuring of the Funds, shareholders of the Original Fund immediately became shareholders of the New Fund. The Company does not dispute in the Company Letter that the Second US Bank Letter and/or the Second BBH Letter verify the temporal and value requirements for proof of ownership under Rule 14a-8(b)(1)(i)(C). Given the foregoing, the Proponent, as the continuous beneficial owner of the Company’s common stock, is eligible to directly file the Proposal as the shareholder-proponent pursuant to Rule 14a-8(b)(1).⁹

As a final matter, it should be noted that the Staff recently declined to exclude another shareholder proposal submitted by the Proponent upon consideration of an almost identical procedural challenge (*see American Express Company* (Mar. 6, 2023) (finding that the proposal passed muster under Rules 14a-8(b) and 14a-8(f) since “the Proponent’s proof of ownership was sufficient”).

B. The Company has power and authority to implement the Proposal.

The Company next challenges the Proposal under Rule 14a-8(i)(6), which permits exclusion “[i]f the company would lack the power or authority to implement the proposal.” In this regard, the Company posits that the request for a “report detailing known and potential risks and costs to the Company of fulfilling information requests relating to Mastercard customers for the enforcement of state laws criminalizing abortion access” concerns “specific personal account holder data that the Company does not collect” since “transaction data, as well as data pertaining

⁹ Even assuming, *arguendo*, that the Proponent, as the beneficial owner of the Company’s shares, cannot act as the shareholder-proponent to submit the Proposal, the Company’s procedural challenge still fails. While Rule 14a-8(b)(2)(iv) ordinarily requires an authorization letter from the shareholder, the rule expressly carves out an exception “for shareholders that are entities so long as the representative’s authority to act on the shareholder’s behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder’s behalf.” In Exchange Act Release No. 34-89964 (Nov. 4, 2020), the Commission stated that such exception would apply in situations “where an adviser to an investment company submits a proposal on behalf of an investment company.” The Proponent is a registered investment adviser (*see* SEC Investment Adviser Public Disclosure, CRD # 287807 / SEC # 801-110973, <https://adviserinfo.sec.gov/firm/summary/287807>) with authority to direct disposition of the securities of the New Fund. Therefore, the Proponent squarely meets the type of situation where the Commission recognized that an authorization letter is unnecessary, pursuant to the “apparent and self-evident” exception of Rule 14a-8(b)(2)(iv).

to the identity of the account holders making such purchases, is owned and controlled by the Company's customers – and not the Company itself.”¹⁰

Initially, it should be noted that in explaining that Mastercard is not at risk because it “only sees the card number, the merchant's name and location, the date and amount of the transaction,” the Company has effectively taken a first step toward the type of risk analysis that the Proposal requests. It is also fully within the power of the Company in conducting such a risk analysis to ask its customers that use its services to disclose their relevant policies or impacts.

In any event, the Company's position improperly reduces the type of consumer data at issue in the Proposal to just one type of information: transactional data. However, the Company also collects other types of consumer data that may (or may not) raise significant issues with respect to law enforcement inquiries related to abortion.

According to the Mastercard Global Privacy Policy, the Company collects personal consumer data (1) from financial institutions and merchants as part of Mastercard's products of services, (2) when providing products or services directly to consumers, (3) from a consumer's “[i]nteraction with Mastercard's [a]ds, [w]ebsites, [a]pps or [o]ther [d]igital [a]ssets,” and (4) when a person applies for a job with the Company.¹¹ Therefore, the Company collects information from consumers through avenues that go beyond a consumer using a Mastercard credit card to purchase goods or services. For example, the Company collects a consumer's “IP address,” “browsing history,” and “the location of [their] mobile device” when the customer engages with the Company's websites or apps.¹² Law enforcement could potentially use a customer's browsing history to verify if there were any abortion-related searches, or the location of a customer's cellphone to identify whether the customer was near a reproductive healthcare clinic at a specific time. Whether such data could produce such information or actually place a customer at risk of abortion-related prosecution is exactly what the Proposal urges management to evaluate as part of the requested risk analysis report.

In short, the Company's public disclosures reveal that Mastercard collects several categories of data, which include, but are not limited to, transactional data. The Proposal seeks to evaluate whether any such data – including those which are non-financial in nature – presents risks to consumers vis-à-vis abortion-related criminal prosecutions. Contrary to the Company's contention, implementation of the Proposal would not require the action of third parties – nowhere in the Proposal is there a call to take specific actions affecting consumer data handling

¹⁰ Company Letter at 8-9.

¹¹ Global Privacy Notice, Mastercard (effective Jan. 1, 2023), <https://www.mastercard.us/en-us/vision/corp-responsibility/commitment-to-privacy/privacy.html>.

¹² *Id.* (providing that the Company also collects: (1) personal identifiers (e.g., name, date of birth); (2) “biometric information”; (3) “internet or other electronic network activity information” (e.g., “[c]ookie and web beacon data, IP address, browser type, operating system, mobile device identifier, referring URLs, pages viewed and actions you take on our online properties and apps”); (4) “geolocation data”; and, (5) “inferences drawn from personal information” (e.g., “[p]ersonal characteristics, life habits, consumption habits, and interests”)).

by Mastercard or third parties; rather, the Proposal seeks to better understand the risks associated with Mastercard data and the feasibility of implementing certain mitigation efforts. As such, the Proposal should not be excluded pursuant to Rule 14a-8(i)(6).¹³

C. The Proposal focuses on issues that transcend ordinary business.

The Company also seeks exclusion pursuant to Rule 14a-8(i)(7) upon its view that the Proposal interferes with ordinary business without implicating a transcendent significant policy issue. The Company contends that the Proposal merely concerns “[m]anagement’s decision-making around its policies and procedures related to data privacy and protection”¹⁴ – day-to-day tasks inappropriate for direct shareholder oversight.

As the ensuing sections will show, the Company’s arguments mischaracterize the Proposal’s request and ignore Staff precedent. In essence, the Proposal’s focus is on the transcendent policy issue of reproductive rights, including related rights of privacy in the wake of new criminal abortion laws across various states, which will inevitably impact the Company’s business. The Proposal does not interfere with management’s ability to run the Company but only asks for a report on the Company’s assessment of the risks and mitigation opportunities, needed to give shareholders more insight into the Company’s response to how the rollback of reproductive rights in the United States intersects with the Company’s business. Thus, we submit that the Company’s request for relief under Rule 14a-8(i)(7) should be denied.

1. Rule 14a-8(i)(7): ordinary business according to the Commission

Rule 14a-8(i)(7) ordinarily permits a Company to omit a shareholder proposal from its proxy statement “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” In 1998, the Commission issued Release No. 34-40018 (May 21, 1998) (the “1998 Release”), updating and interpreting the ordinary business rule by both reiterating and clarifying past precedents. To date, the 1998 Release serves as the Commission’s authoritative interpretation of the meaning and scope of the ordinary business exclusion. In it, the Commission summarized two central considerations in making ordinary business determinations: whether the proposal addresses a significant social policy issue, and whether it micromanages.

First, the Commission noted that certain tasks were generally considered so fundamental to management’s ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight (e.g., the hiring, promotion, and termination of

¹³ Staff has agreed that exclusion under Rule 14a-8(i)(6) is improper in circumstances where a company mischaracterizes the scope of a proposal (*see Franklin Resources, Inc.* (Dec. 30, 2013) (rejecting the company’s argument that the proposal *only* concerned company investments and not those of its subsidiaries).

¹⁴ Company Letter at 10.

employees, as well as decisions on retention of suppliers, and production quality and quantity). However, proposals related to such matters but focused on sufficiently “significant social policy issues” (i.e., significant discrimination matters) generally would not be excludable.

Second, proposals could be excluded to the extent they seek to “micromanage” a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment. This concern did not, however, result in the exclusion of all proposals seeking detailed timeframes or methods. Proposals that passed muster under the first prong but for which the wording involved some degree of micromanagement could be subject to a case-by-case analysis of whether the proposal probes too deeply for shareholder deliberation.

2. The Proposal focuses on a significant social policy issue that transcends ordinary business.

The Company argues that the Proposal should be excluded under Rule 14a-8(i)(7) because it failed to raise a significant policy matter transcending ordinary business. In the Company’s view, “[t]he Proposal concerns data privacy policies and practices as it relates to the Company’s provision of financial services, a matter of ordinary business.”¹⁵ Yet, such view distorts the Proposal’s focus, which clearly is reproductive rights and related consumer privacy concerns – issues that the Staff has consistently upheld as significant policy matters transcending ordinary business.

a. The Proposal concerns a significant policy issue.

The Proposal is fundamentally focused on reproductive rights. In particular, the Proposal concerns the risks to the Company from fulfilling information requests and breaching consumer privacy expectations regarding Mastercard customers for the enforcement of state laws that criminalize abortion access, including in instances where abortion may be legal in the state where it is conducted.

Abortion and reproductive rights are one of the most significant social controversies of our era. Although abortion access had been constitutionally protected since *Roe v Wade* in 1973, the Supreme Court of the United States revoked all such protections following its *Dobbs* decision in June 2022. Since then, a dozen U.S. states have criminalized the abortion activities of providing, aiding, and receiving the procedure. Texas, for example, enacted what has been referred to as the “vigilante abortion law,” which incentivizes citizens with a cash “bounty” if

¹⁵ Company Letter at 10.

they succeed in suing individuals who have helped a person get an illegal abortion.¹⁶ Missouri outright banned all abortions, only except when the mother’s life is threatened, and punishes providers with 5 to 15 years of imprisonment.¹⁷ It is expected that about half of the states will enact similar laws making abortion broadly illegal.¹⁸

Following the *Dobbs* decision, a substantial portion of the US population — 36 million people — may be deprived of access to safe and legal abortions in the event of pregnancy,¹⁹ notwithstanding that such access has been recognized as a fundamental human right by the United Nations Human Rights Committee.²⁰ Fifteen million women of color and nearly 3 million women with disabilities, who frequently have less access to quality reproductive and maternal healthcare, live in the states that have already banned, or are likely to ban, abortion.²¹ So far, at least 60 reproductive health clinics have closed or paused in the U.S., affecting access to reproductive healthcare, including contraception, particularly in communities with poor maternal healthcare outcomes.²² Indeed, it has been shown that “[a] third of American women of reproductive age now face excessive travel times to obtain an abortion” – for example, women in Texas and Louisiana went from median travel times of roughly 15 minutes to obtain an abortion before the *Dobbs* decision to more than six-hour trips.²³

Civil society organizations like Planned Parenthood, the National Partnership for Women and Families, and the nonpartisan Center for American Progress have all called this a “crisis moment.”²⁴ The American College of Obstetricians and Gynecologists remarked “that this is a

¹⁶ Emma Bowman, *As states ban abortion, the Texas bounty law offers a way to survive legal challenges*, NPR News (July 1, 2022), <https://www.npr.org/2022/07/11/1107741175/texas-abortion-bounty-law>.

¹⁷ *Abortion ruling prompts variety of reactions from states*, Associated Press (July 21, 2022), <https://apnews.com/article/supreme-court-abortion-ruling-states-a767801145ad01617100e57410a0a21d>.

¹⁸ *See Interactive Map: US Abortion Policies and Access After Roe*, Guttmacher Institute (last visited Oct. 17, 2022), <https://states.guttmacher.org/policies/west-virginia/abortion-policies>.

¹⁹ *Court Cases: Dobbs v Jackson Women’s Health Center*, ACLU (last updated June 27, 2022), <https://www.aclu.org/cases/dobbs-v-jackson-womens-health-organization>.

²⁰ *See Information Series on Sexual and Reproductive Health and Rights: Abortion*, U.N. Human Rights Office (2020), https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf.

²¹ Laura Valle Gutierrez, *The Dobbs Decision’s Cost to Women and Families*, The Century Foundation (Aug. 18, 2022), <https://tcf.org/content/commentary/the-dobbs-decisions-cost-to-women-and-families/>.

²² *See* Karl Stark, *What We Know About Abortion So Far*, U. of Penn. Leonard Davis Institute of Health Economics (Oct. 4, 2022), <https://ldi.upenn.edu/our-work/research-updates/what-we-know-about-abortion-so-far/>.

²³ Cameron Scott, *Model Shows Where Women Lost Access to Abortion After Dobbs*, U. of Cal. San Francisco (Nov. 1, 2022), <https://www.ucsf.edu/news/2022/10/424121/model-shows-where-women-lost-access-abortion-after-dobbs>.

²⁴ *See* Jocelyn Frye, *Crisis Moment for Abortion Access*, National Partnership for Women and Families (May 3, 2022), <https://www.nationalpartnership.org/our-impact/news-room/press-statements/crisis-moment-for-abortion.html>; Brad Chester, *A Crisis Moment for Abortion Access*, CAP Action (May 3, 2022), <https://www.americanprogressaction.org/article/a-crisis-moment-for-abortion-access/>; Planned Parenthood tweet, Twitter (May 2, 2022), <https://twitter.com/PPFA/status/1521309734925742086>.

dark and dangerous time for the women and doctors of America,”²⁵ while the American Medical Association called the *Dobbs* decision “an egregious allowance of government intrusion into the medical examination room, a direct attack on the practice of medicine and the patient-physician relationship, and a brazen violation of patients’ rights to evidence-based reproductive health services.”²⁶ Other medical associations like the American College of Physicians and the American Academy of Pediatrics, as well as the editorial board of the *New England Journal of Medicine* – one of the most prestigious general medicine publications in the world – have similarly condemned the Supreme Court’s decision to overturn constitutional reproductive rights, noting that it will exacerbate inequities in healthcare and undermine science.²⁷

The repercussions of the *Dobbs* decision have not gone unnoticed by the general public and policymakers. Internet search trends mentioning “abortion pill” or “abortion medications” spiked 162% to an all-time high in the 72 hours after the leaked Supreme Court draft of the *Dobbs* decision in May 2022,²⁸ representing a wave of public fear and anxiety. Following the eventual publication of the *Dobbs* decision, a Gallup national survey from July 2022 found that abortion ranked fourth in its “most important problem” list.²⁹ A September 2022 Marist poll concerning the 2022 congressional elections found that “abortion [constituted] a key issue for the campaigns,” since it ranked as the second most important voting issue.³⁰

Given the heightened awareness of abortion restrictions in the United States, American consumers are becoming increasingly wary about the data they share and with which companies. For instance, an increasing number of consumers have switched from the most popular period-tracking app to rival platforms that offer stronger privacy protections.³¹ Indeed, data privacy expectations and rights are inextricably connected to reproductive rights.

²⁵ Iffath Abbasi Hoskins, MD, FACOG, *ACOG Statement on the Decision in Dobbs V. Jackson*, American College of Obstetricians and Gynecologists (June 24, 2022), <https://www.acog.org/news/news-releases/2022/06/acog-statement-on-the-decision-in-dobbs-v-jackson>.

²⁶ Jack Resneck Jr., MD, *Dobbs ruling is an assault on reproductive health, safe medical practice*, American Medical Association (June 24, 2022), <https://www.ama-assn.org/about/leadership/dobbs-ruling-assault-reproductive-health-safe-medical-practice>.

²⁷ See Patrick McGroarty, *Medical Groups Condemn Dobbs Decision*, Wall Street Journal (June 24, 2022), <https://www.wsj.com/livecoverage/supreme-court-decision-roe-v-wade-6-24-2022/card/medical-groups-condemn-dobbs-decision-G1X3ztrS8Pb4JFgV151n>; see also Abigail Zuger, *A Journal Stands Out in Prestige and Longevity*, N.Y. Times (Mar. 19, 2012), <https://www.nytimes.com/2012/03/20/science/200-years-of-the-new-england-journal-of-medicine.html>.

²⁸ Mary Kekatos, *Spike in Google searches for abortion pills may lead to rise in unsafe abortions: Study*, ABC News (June 29, 2022), <https://abcnews.go.com/Health/spike-google-searches-abortion-pills-lead-rise-unsafe/story?id=85854789>.

²⁹ See Frank Newport, *Abortion Moves Up on "Most Important Problem" List*, Gallup (Aug. 1, 2022), <https://news.gallup.com/poll/395408/abortion-moves-important-problem-list.aspx>.

³⁰ *The 2022 Midterm Elections, Sep 2022*, NPR/PBS NewsHour/Marist National Poll (Sept. 8, 2022), <https://maristpoll.marist.edu/polls/the-2022-midterm-elections-sep-2022/>.

³¹ See Sarah Perez, *Consumers swap period tracking apps in search of increased privacy following Roe v. Wade ruling*, TechCrunch (June 27, 2022), <https://techcrunch.com/2022/06/27/consumers-swap-period-tracking-apps-in-search-of-increased-privacy-following-roe-v-wade-ruling/>.

Article 12 of the Universal Declaration of Human Rights provides privacy rights, which have been recognized to include the right to bodily autonomy and privacy with respect to abortion. The U.S. Supreme Court has recognized the existence of a constitutional right to privacy in health, reproductive and family matters. Although abortion privacy safeguards have recently been eroded at the constitutional level, federal laws like the Health Insurance Portability and Accountability Act of 1996 continue to offer privacy protections around reproductive health information that include abortion-related data.³²

In the wake of newly-enacted restrictive abortion laws, Congress is considering several bills addressing data privacy, two of which are specifically focused on personal reproductive health information. The *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) would create various privacy protections for “personal reproductive or sexual health information,” including a requirement that entities only collect and use these data if the individual has consented or if they are strictly necessary to provide a service or product that the individual has requested. The *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265) would prohibit law enforcement and intelligence agencies from purchasing communications data from data brokers. States are also taking matters into their own hands, with California having recently enacted laws protecting digital information from being used by out-of-state investigators for abortion activities that are lawful in that state. One such law (AB 1242) prohibits California courts from authorizing searches that would assist other states with investigations related to providing, facilitating or obtaining abortion services, whereas another law (AB 2091) requires that medical information concerning an individual seeking or obtaining an abortion not be disclosed for the enforcement of another state’s laws that ban or limit abortion access. At least seven states, including New York, Maryland, Oregon, New Jersey and Washington, are also weighing legislation targeting specific subsets of data, such as the collection and use of health information, or seeking to put limits on third-party data brokers. Some of the bills appear aimed at addressing privacy concerns raised by the Supreme Court decision to overturn federal abortion rights under *Roe v. Wade*.³³

Against this backdrop, reproductive rights represent a significant policy issue within the meaning of Rule 14a-8(i)(7) as an important matter of social concern and a hotly debated topic. In fact, the Staff has recently declined to exclude proposals under an ordinary business challenge when the proposals raised reproductive rights issues. (*see e.g., The TJX Companies, Inc.* (April 15, 2022) (proposal requesting a risk assessment report related to “state policies severely

³² Many countries including South Korea, Spain and the United Kingdom recognize privacy rights as a constitutionally protected freedoms.

³³ See Cristiano Lima, *States are readying a flurry of privacy bills as Washington stalls*, Wash. Post (Jan. 20, 2023), <https://www.washingtonpost.com/politics/2023/01/20/states-are-readying-flurry-privacy-bills-washington-stalls/>.

restricting reproductive rights”); *Walmart Inc.* (April 12, 2022) (same); *Lowe’s Companies, Inc.* (April 7, 2022) (same)).

b. The subject matter of the proposal transcends ordinary business operations.

In the Proposal, reproductive rights are unquestionably the central matter of concern – the background section frames the data privacy issues within a newly-effectuated legal framework criminalizing abortion in more than a dozen states, while the “resolved” clause explicitly states that the risk assessment report concerns law enforcement requests related to the enforcement of such criminal abortion laws, and the Supporting Statement recommends participation of “reproductive rights” organizations in the process. Without a doubt, reproductive rights, or the absence of those rights, have a significant relation to the Company as a result of its data management and potential provision of data for law enforcement.

As the Proposal notes, law enforcement is expected to rely on digital consumer data for the enforcement of these new abortion criminal laws. For instance, they may identify suspects through reverse keyword and geofence searches using troves of consumer data, or gather evidence from commercial digital data to support charges against specific defendants. The *New York Times* reported in June 2022 that “[p]ayment data could become evidence of [criminalized] abortion[s],” specifically noting that “evidence of patronage of, say, a pharmacy that sells only abortion pills could give someone away,” even when “[c]ard issuers and networks like . . . Mastercard generally do not have itemized lists of everything that people pay for when they shop for prescription drugs or other medications online, or when they purchase services at health care providers.”³⁴ For that article, the Company “declined to comment.” Mastercard does not publicly provide transparency reporting or details related to law enforcement information requests.

Other digital economy companies, such as Alphabet, Salesforce, Apple and Meta, on the other hand, do publish such figures, which provide insight into the reliance of law enforcement on commercial data. As the Proposal highlights, just in the second half of 2021, Alphabet and Meta respectively received around 50,000 and 60,000 law enforcement information requests, and complied with about 80% of those requests.³⁵ Meta, which owns Facebook, more recently complied with a warrant from a local Nebraska police department for private social media

³⁴ Ron Lieber & Tara Siegel Bernard, *Payment Data Could Become Evidence of Abortion, Now Illegal in Some States*, N.Y. Times (June 29, 2022), <https://www.nytimes.com/2022/06/29/business/payment-data-abortion-evidence.html>.

³⁵ See Irina Ivanova, *Why even discussing abortion can now get you arrested*, CBS News (Aug. 16, 2022), <https://www.cbsnews.com/news/nebraska-abortion-felony-facebook-privacy-data/>; see also *Transparency Report: Global requests for user information*, Google (last visited Sept. 12, 2022), https://transparencyreport.google.com/user-data/overview?user_requests_report_period=authority:US&user_data_produced=authority:US;series:compliance&lu=user_data_produced; *Transparency Center: Requests by country, United States*, Facebook (last visited Sept. 12, 2022), <https://transparency.fb.com/data/government-data-requests/country/us/>

messages between a mother and her daughter, both of whom subsequently faced felony charges related to the daughter's alleged illegal termination of her pregnancy.³⁶ Similarly, Fog Data Science, a data broker, has been identified as selling raw location data about individual people to federal, state, and local law enforcement agencies, which data could be used for abortion-related prosecutions.³⁷

Mastercard has around 333 million credit cards in circulation, facilitates roughly 23.3 billion purchase transactions in the United States,³⁸ and additionally provides non-financial services and goods such as its Priceless travel program.³⁹ As such, many Mastercard customers are now at risk of law enforcement accessing their data for the investigations and prosecutions of abortion-related acts that, just months ago, were legal across the United States, and which may remain legal in the state where the activity or service is provided, but not where the customer resides.

Indeed, as a business with nationwide operations, the Company is extremely likely to be implicated in interstate conflicts regarding reproductive rights and freedoms. For example, if a company stores data in an abortion-restricted state like South Dakota, law enforcement could use the company's presence in that state by way of its data storage facility to compel the company to turn over any data regarding suspected abortions, regardless if the company is a resident of a jurisdiction that offers strong abortion-related data protections, like California. Furthermore, states that ban abortions may seek to legally punish those who leave the state to get an abortion, or punish people who help them secure an out-of-state abortion. Although no state has yet enacted a law banning abortion-related travel, Missouri state legislators have attempted several times to introduce bills that would enforce abortion restrictions through civil lawsuits if the abortion were administered outside the state.⁴⁰ The Company could therefore be a target of law enforcement data inquiries investigating reproductive healthcare decisions that may be legal in one state but illegal in another.

³⁶ See Martin Kaste, *Nebraska cops used Facebook messages to investigate an alleged illegal abortion*, NPR (Aug. 12, 2022), <https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>.

³⁷ See Bennett Cyphers, *Inside Fog Data Science, the Secretive Company Selling Mass Surveillance to Local Police*, Electronic Frontier Foundation (Aug. 31, 2022), <https://www.eff.org/deeplinks/2022/08/inside-fog-data-science-secretive-company-selling-mass-surveillance-local-police>.

³⁸ See *Supplemental Operational Performance Data*, Mastercard (Jan. 26, 2023), https://s25.q4cdn.com/479285134/files/doc_financials/2022/q4/4Q22-Mastercard-Supplemental-Operational-Performance-Data.pdf.

³⁹ See *Priceless*, Mastercard (last visited Mar. 2, 2023), <https://www.priceless.com/about>.

⁴⁰ See Diego Mendoza, *Will lawmakers try to ban out-of-state abortions?*, King5 NBC (June 24, 2022), <https://www.king5.com/article/news/nation-world/how-states-could-limit-out-of-state-abortions/507-46e54b41-ab4c-4d6a-9498-97ca2b29ab44>. In a similar vein, the Idaho legislature is currently considering a bill criminalizing cases of children traveling out-of-state to obtain gender-affirming medical care (see Tyler Kingkade, *Idaho lawmakers seek to punish parents who take trans youth to other states for health care*, NBC News (Mar. 9, 2022), <https://www.nbcnews.com/news/us-news/idaho-trans-health-care-youth-bill-rcna19287>).

Overall, consumers are subject to startling surprises and breaches of expectations regarding the security of their digital data, which in turn may undercut the Company's brand and goodwill. A 2019 Pew Research Center nationally-representative survey indicated that while most Americans are very worried about their digital privacy, they are not always diligent about scrutinizing the privacy policies and terms of service they regularly encounter: only about one-in-five adults overall said they always (9%) or often (13%) read a company's privacy policy before agreeing to it.⁴¹ Moreover, only 6% of adults said that they understand "a great deal what companies do with the data collected," and a similar share (4%) said they know "a great deal about what the government does with the data." Conversely, 78% said that they understand "very little or nothing about what is being done with their data by the government," and 59% stated the same about corporate practices.⁴² Prior to the current changes in abortion laws, federal agencies had already identified companies that have implemented deceptive data collection practices.⁴³

Many companies are collecting larger volumes of data than strictly necessary for a requested consumer service or product. In the wake of a new patchwork of state laws regulating abortion access, examination of the risks associated with the Company's current consumer data privacy practices vis-à-vis law enforcement data requests is an appropriate shareholder inquiry given the potential damage to the Company's reputation and goodwill if consumer expectations regarding privacy are breached by company disclosures that put numerous consumers exercising their reproductive rights in legal jeopardy. As the Proposal indicates, the Company could face reputational and financial consequences stemming from the actual and potential use of customer data by law enforcement seeking to investigate individuals allegedly engaged in abortion-related activities.

To that end, a recent empirical study in the *Journal of Marketing* by Kelly Martin and colleagues showed that vulnerabilities concerning the misuse of commercial data can generate negative outcomes for businesses, including negative abnormal stock returns and damaging customer behaviors such as negative word of mouth and switching to a close business rival.⁴⁴ These findings could apply to data vulnerabilities from actual and potential disclosures of abortion-related data to law enforcement, thereby amplifying consumer worries about data

⁴¹ Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information*, Pew Research Center (Nov. 2019), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/11/Pew-Research-Center_PI_2019.11.15_Privacy_FINAL.pdf.

⁴² *Id.*

⁴³ See Press Release, *Fed. Trade Comm'n, Facebook Settles FTC Charges That It Deceived Consumers by Failing to Keep Privacy Promises* (Nov. 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>; Press Release, *Fed. Trade Comm'n, FTC Takes Action against the Operators of Copycat Military websites* (Sept. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>

⁴⁴ See Kelly D. Martin et al., *Data Privacy: Effects on Customer and Firm Performance*, 81.1 *Journal of Marketing* at 36-58 (2017).

misuse. Consequently, corporations collecting large troves of consumer data, such as Mastercard, are likely exposing themselves to higher financial and reputational risks. Apropos to the current Proposal, the study found that data transparency and heightened customer control practices can suppress these detrimental effects.

Given the conditions surfaced as a result of the revocation of abortion rights in the United States, the Company may face substantial reputational damage, and related difficulties in attracting new customers or maintaining existing ones. Privacy experts are already advising American consumers to abstain from using credit or debit cards to purchase goods or services related to reproductive healthcare.⁴⁵

Abortion is a common medical procedure: nearly one in four women in the United States will have an abortion by age 45.⁴⁶ The reach of new criminal abortion laws casts a wide net that implicates not just these women, but also friends, family, partners, and medical professionals involved in the provision or access to the procedure. As a business reaching millions of customers nationwide, the Company will inevitably face data demands related to the new laws criminalizing abortion.

The Proposal consequently calls for the Company to assess data privacy risks and vulnerabilities as it relates to information requests serving the enforcement of criminal laws infringing upon reproductive rights, and to set forth mitigation strategies that could ameliorate any such risks and vulnerabilities. The Proposal requests a risk assessment report of the Company's data handling practices vis-a-vis law enforcement requests concerning abortion-related crimes, which should also identify mitigation strategies. Nowhere in the Proposal is there a call to implement specific policies, and management is ultimately empowered to select the type of information it includes in the report.

The Staff has found proposals to pass muster under Rule 14a-8(i)(7) because reproductive rights, as a significant policy issue, transcended ordinary business matters. Indeed, the Staff recently denied exclusion under Rule 14a-8(i)(7) of an almost identical proposal on those grounds (*see American Express Company* (Mar. 6, 2023) (finding that a reproductive rights and data privacy proposal "transcend[ed] ordinary business matters")). Another example includes *Lowe's Companies, Inc.* (April 7, 2022), wherein the challenged proposal requested that "Lowe's issue a public report . . . detailing any known and any potential risks and costs to [Lowe's]

⁴⁵ See Michelle Cheng, *US abortion laws revive a strong argument for cash*, Quartz (June 30, 2022), <https://qz.com/2183819/us-abortion-laws-revive-a-strong-argument-for-cash>.

⁴⁶ See Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, Guttmacher Institute (Oct. 2017), <https://www.guttmacher.org/article/2017/10/population-group-abortion-rates-and-lifetime-incidence-abortion-united-states-2008>.

caused by enacted or proposed state policies severely restricting reproductive health care, and detailing any strategies beyond litigation and legal compliance that [Lowe's] may deploy to minimize or mitigate these risks" (see *The TJX Companies, Inc.* (April 15, 2022) (nearly identical proposal request); *Walmart Inc.* (April 12, 2022) (same); see also *Walmart, Inc.* (March 28, 2011) (proposal requesting that the board issue a report disclosing the business risks related to climate change was not excluded under Rule 14a-8(i)(7)); *General Electric Company* (February 8, 2011) (same); *Goldman Sachs Group, Inc.* (February 7, 2011) (same)).

The Staff has also declined exclusion under Rule 14a-8(i)(7) when consumer privacy rights and expectations are a main focus of the proposal, since such privacy issues normally transcend ordinary business. In *Meta Platforms, Inc.* (April 2, 2022), a proposal seeking "a report and . . . advisory shareholder vote on [Meta's] metaverse project" survived exclusion under Rule 14a-8(i)(7) upon the Staff's view that it "transcend[ed] ordinary business matters." The proponent in that matter notably argued that the proposal concerned "issues of social impact" including issues related with "[u]ndermining [p]rivacy." In *Amazon.com, Inc.* (March 28, 2019), the Staff found that a proposal seeking to "prohibit sales of facial recognition technology to government agencies unless the Board concludes, after an evaluation using independent evidence, that the technology does not cause or contribute to actual or potential violations of civil and human rights" was not excludable under Rule 14a-8(i)(7) because it also "transcend[ed] ordinary business matters." Similar to the subject Proposal, the *Amazon* proposal's supporting statement recommended the Board consult with technology and civil liberties experts, and civil and human rights advocates to assess "the extent to which such technology may endanger or violate *privacy or civil rights*" (emphasis added), as well as how Amazon would mitigate these risks and the extent to which such technologies may be marketed and sold to repressive governments.

Various other Staff decisions recognize the propriety of seeking disclosure of impacts and mitigation measures. For example, in *Amazon.com Inc.* (Feb. 7, 2020), the Staff did not exclude a proposal under Rule 14a-8(i)(7) that called for Amazon to publish certain human rights impact assessments examining the actual and potential impact of high-risk products sold by the company or its subsidiaries. The proposal recommended that the assessment include, among other things, an overview of how the findings would be acted upon in order to prevent, mitigate and/or remedy impacts, as is the case here. In *Citigroup Inc.* (Feb. 21, 2008), the Staff declined to exclude a proposal under Rule 14a-8(i)(7) that urged the board to prepare a report discussing how certain corporate policies address or could address human rights issues. That proposal called for the report to review the current investment policies of Citigroup with a view toward adding appropriate policies and procedures to apply when a company in which Citigroup is invested, or its subsidiaries or affiliates, is identified as contributing to human rights violations through their businesses or operations in a country with a clear pattern of mass atrocities or genocide.

In sum, shareholders asking the Company to report on risks associated with the role it may play in undercutting consumers' remaining reproductive rights, including expectations of privacy regarding the exercise of those rights, is reasonable, appropriate, and transcends ordinary business.

CONCLUSION

As the foregoing demonstrates, the Proposal comports with Rule 14a-8(b) as well as Rule 14a-8(i)(6) and (7), such that its exclusion is unwarranted pursuant to Rule 14a-8. Accordingly, the Proponent respectfully submits that the Company's request for no-action relief be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis". The signature is written in a cursive style with a large initial "S" and "L".

Sanford Lewis

Antonio Pontón-Núñez

EXHIBIT A: THE PROPOSAL

Reproductive Rights and Data Privacy

WHEREAS: Following revocation of the constitutional right to an abortion in June 2022, policymakers are concerned about the use of personal digital data for the enforcement of state laws that ban or limit abortion access. Congress is considering legislation that increases privacy protections for personal reproductive health information. California bars corporations based in the state from sharing personal data with out-of-state law enforcement regarding any crime concerning an abortion that is lawful in California.

Law enforcement frequently relies on digital consumer data. While Mastercard does not report figures on law enforcement requests, Alphabet and Meta alone collectively received around 110,000 requests in the second half of 2021. Each complied with about 80 percent of those requests.¹ In 2022, Meta satisfied a Nebraska warrant for private Facebook messages from a mother facing felony charges for allegedly helping her daughter terminate a pregnancy,² receiving significant negative press.

Mastercard collects sensitive personal digital information such as geolocation data, internet activity, and commercial information. Shareholders are concerned this data will be accessed without consumer consent by states that criminalize abortion. The Company's privacy policy allows Mastercard to share personal consumer information "to respond to requests from law enforcement."³ However, such law enforcement requests may seek evidence of consumer acts that are inappropriate for Mastercard to voluntarily share – for example, consumer financial activities that were legal in the state where they occurred, but illegal in the consumer's state of residence, such as purchasing abortifacients.

Mastercard is not immune to abortion-related law enforcement requests that may create significant reputational, financial, and legal risks. Mastercard already complies with "deletion rights" under California law, wherein consumers may request the Company delete personal data that it is not legally required to retain. There is a strong brand benefit to meeting the privacy expectations of most consumers.⁴

¹ <https://transparencyreport.google.com/user-data/overview?hl=en>; <https://transparency.fb.com/data/government-data-requests/country/us/>

² <https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>

³ <https://www.mastercard.us/en-us/vision/corp-responsibility/commitment-to-privacy/privacy.html>

⁴ <https://www.businesswire.com/news/home/20220928005430/en/Survey-Reveals-95-of-Consumers-Demand-that-Brands-Protect-their-Data-and-Privacy-to-Build-Trusted-Sustainable-Relationships>

RESOLVED: Shareholders request our Board issue a public report detailing known and potential risks and costs to the Company of fulfilling information requests relating to Mastercard customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

SUPPORTING STATEMENT: Shareholders recommend, at board discretion, that input from reproductive rights and civil liberties organizations be solicited and reflected in the report, and that the report contain, regarding reproductive health related issues:

- (1) An assessment of the feasibility of a nationwide or regionally based data privacy policy wherein consumers would have “deletion rights;”
- (2) An evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data prior to, and with sufficient time for consumer response, before complying with any such request; and,
- (3) Metrics on government requests for customer data received by the Company, including categories of requests and consumer data produced.

March 20, 2023

Re: Withdrawal of No-Action Request Dated February 7, 2023 Regarding Shareholder Proposal Submitted by Change Finance, P.B.C.

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**”), we are writing 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 Corporation Finance of the Securities and Exchange Commission concur with our view that the Company may exclude the shareholder proposal (the “**Proposal**”) submitted by Change Finance, P.B.C. (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 20, 2023 (the “**Withdrawal Communication**”), from the Proponent 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
Dorrit Lowsen, Change Finance, P.B.C.

Withdrawal Communication

Subject: RE: Mastercard Incorporated: Change Finance, PBC proposal withdrawn

From: Antonio Pontón-Núñez [REDACTED]

Sent: Monday, March 20, 2023 12:59 PM

To: [REDACTED]

Cc: Chiu, Ning [REDACTED]; Dorrit Lowson [REDACTED]; Nicole Dodson [REDACTED]; Shelley Alpern [REDACTED]; Sanford Lewis [REDACTED]

Subject: Mastercard Incorporated: Change Finance, PBC proposal withdrawn

TO: SEC 14a-8 Team

Greetings. On behalf of Change Finance, P.B.C. (the "Proponent"), I am pleased to notify you that the Mastercard Incorporated (the "Company") proposal submitted by the Proponent regarding reproductive rights and data privacy has been withdrawn. A letter from the Company formally withdrawing the no-action request should follow shortly.

Saludos,

Antonio Pontón-Núñez
Sanford Lewis & Associates

[REDACTED]
[REDACTED]
[REDACTED]