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MasterCard International

Via Electronic Delivery

July 1, 2002

FinCEN
Post Office Box 39
Vienna, VA 22183

Attn: Section 312 Regulations

Dear Sirs and Mesdames:

This comment letter is submitted on behalf of MasterCard International Incorporated ("MasterCard")[1] in response to the proposed regulation ("Proposal") published by the Financial Crimes Enforcement Network ("FinCEN") to implement Section 312 of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act (the "PATRIOT Act"). Under the Proposal, certain U.S. financial institutions would be required to establish due diligence polices, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts established or maintained for non-U.S. persons. MasterCard appreciates the opportunity to comment on the Proposal. As discussed below, our comments are focused on the Proposal as it relates to operators of payment card systems, such as MasterCard.

MasterCard is a global membership organization comprised of financial institutions that are licensed to use the MasterCard service marks in connection with a variety of payments systems. These member institutions issue payment cards (so-called "issuing institutions") and contract with merchants to accept such cards (so-called "acquiring institutions"). MasterCard provides the networks through which the member financial institutions interact to complete payment transactions — MasterCard itself does not issue payment cards, nor does it contract with merchants to accept those cards. Those functions are performed by our financial institution members. Moreover, MasterCard does not accept deposits from or hold funds on behalf of financial institutions or other entities.

[1] MasterCard is a global membership organization comprised of financial institutions that are licensed to use the MasterCard service marks in connection with a variety of payments systems.

As an operator of a payment card system, MasterCard is subject to Section 352 of the PATRIOT Act and FinCEN's interim final rule implementing that section ("Interim Rule"). The Interim Rule requires MasterCard to adopt and implement an anti-money laundering program reasonably designed to prevent its system from being used by financial institutions to facilitate money laundering and financing of terrorist activities. As indicated in our comments on the Interim Rule, we believe that FinCEN produced a well balanced and appropriate standard requiring system operators to conduct due diligence with respect to providing financial institutions access to their systems. Indeed, MasterCard has devoted substantial resources to developing an anti-money laundering program to comply with Section 352 and is in the process of refining that program to meet the specific requirements of the Interim Rule. We are concerned, however, that the new Proposal may create confusion regarding the anti-money laundering obligations of a system operator in as much as the Proposal appears to: (i) suggest that a system operator like MasterCard may be viewed as engaging in some type of "account" taking or maintenance activities; and (ii) impose requirements on system operators that overlap with and differ from the approach set forth in the Interim Rule.

The Proposal would require a "covered financial institution" to establish an anti-money laundering due diligence program with respect to any "correspondent account" or "private banking account" established or maintained for non-U.S. persons. The term "covered financial institution" is defined to include an operator of a credit card system. As such, this definition may create confusion regarding the compliance obligations of system operators like MasterCard by suggesting that such operators establish or maintain correspondent or private banking accounts.

As noted above, MasterCard licenses financial institutions that issue payment cards and contract with merchants to accept those cards. MasterCard also provides the networks through which its member financial institutions interact to complete payment transactions. MasterCard itself, however, does not accept deposits or hold funds on behalf of others (including foreign entities).

If a financial institution member of MasterCard establishes an account with a financial institution, any anti-money laundering obligations with respect to that account should be fulfilled by the financial institution that holds the account. For example, if a foreign financial institution were to establish an account in the U.S. to receive funds payable to the financial institution, or pay amounts owed by the financial institution, as a result of its participation in the MasterCard system, that account would be held by a U.S. depository institution. MasterCard's anti-money laundering obligations with respect to the foreign financial institution are set forth in the Interim Rule. That is, MasterCard would be required to conduct appropriate due diligence with respect to the foreign financial institution regarding the risk of money laundering and terrorist financing presented by that financial

institution. The anti-money laundering obligations of a system operator cannot and should not also extend to the accounts established by the financial institution even if those accounts are used to receive or pay funds resulting from transactions that flow through the system.

It does not appear that the Proposal was intended to apply to the types of activities conducted by MasterCard described above. The inclusion of an "operator of a credit card system" within the Proposal's definition of "covered financial institution," however, could create confusion in this regard. To avoid this confusion, we suggest that the Proposal be modified to make it clear that it does not apply to an operator of a credit card system.

We also note that applying the Proposal to operators of credit card systems appears to be unnecessary in view of the obligations already imposed under the Interim Rule. Under the Interim Rule, operators must "incorporate policies, procedures, and internal controls designed to" deny authorization to a financial institution to serve as an issuing or acquiring institution without engaging in an appropriate level of due diligence with respect to money laundering and terrorist financing risks. The Supplementary Information to the Interim Rule notes that the due diligence process should include information provided by the U.S. government or international organizations regarding money laundering or terrorism risks and other relevant information from publicly available sources.

The Interim Rule would also require operators to undertake a heightened level of due diligence for certain types of financial institutions. Specifically, (i) a foreign shell bank, (ii) certain offshore institutions, (iii) a person appearing on the Specially Designated Nationals List issued by Treasury's Office of Foreign Assets Control, (iv) a person located in or operating under a license issued by a jurisdiction that is a state sponsor of terrorism, (v) a person located in or operating under a license issued by a jurisdiction that is noncompliant with international anti-money laundering principles, and (vi) a person located in or operating under a license issued by a jurisdiction that has been designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns are all *automatically* subject to heightened levels of due diligence. In essence, the Interim Rule already requires a credit card system operator to conduct appropriate due diligence with respect to *all* of those seeking or obtaining access to the system and requires enhanced scrutiny with respect to any entity, including foreign entities, that present a heightened risk of money laundering or terrorist financing.

In addition, each system operator must ensure that its anti-money laundering program is approved by senior management and must designate a compliance officer to oversee the program. Moreover, each system operator must provide for proper anti-money laundering education and training of its employees and must establish an independent audit function to monitor and maintain an

adequate program. In light of these ongoing obligations of credit card system operators under the Interim Rule, we do not believe it is necessary to also subject such operators to the requirements of the Proposal.

Finally, we note that some of the Proposal's specific guidelines regarding enhanced due diligence appear to be inconsistent with guidance provided under the Interim Rule. For example, the Proposal indicates that enhanced scrutiny may involve monitoring transactions "when appropriate." The Interim Rule, on the other hand, states that such a practice may not be useful for credit card systems, although FinCEN intends to work with operators to develop such a system if possible. We believe that all of these issues are best addressed by making it clear that an operator of a credit card system is not a "covered financial institution" for purposes of the Proposal.

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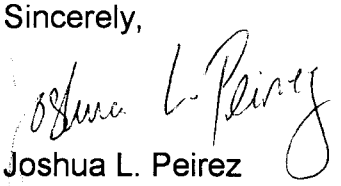
Once again, MasterCard appreciates the opportunity to comment on the Proposal. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin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

Sincerely,



Joshua L. Peirez
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cc: Michael F. McEneney, Esq.