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

MasterCard Worldwide

September 22, 2016

Via Email (thirdpartylending@fdic.gov)

Rae-Ann Miller
Associate Director
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429-9990

RE: Proposed Guidance for Third-Party Lending

Dear Ms. Miller:

MasterCard International Incorporated ("Mastercard") submits this comment letter to the Federal Deposit Insurance Corporation (the "FDIC") in response to its proposed guidance for third-party lending (the "Proposed Guidance").[1]

Mastercard appreciates the opportunity to provide input on the Proposed Guidance. Before offering our comments however, we thought it may be useful to provide some basic information about Mastercard.

Background on Mastercard

Mastercard is a technology company in the global payments industry. We operate the world's fastest payments processing network, connecting consumers, financial institutions, merchants, governments and businesses in more than 210 countries and territories. Mastercard's products and solutions make everyday commerce activities—such as shopping, traveling, running a business and managing finances—easier, more secure and more efficient for everyone.

Mastercard does not issue credit cards or other payment cards of any type, nor does it contract with merchants to accept those cards. In the Mastercard payment system, those functions are performed in the United States by numerous depository institutions. Mastercard refers to the depository institutions that issue payment cards bearing the Mastercard brands as "issuers." Mastercard refers to the depository institutions that enter into contracts with merchants to accept Mastercard-branded payment cards as "acquirers." Mastercard owns the Mastercard family of brands and licenses depository institutions in the United States to use those

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[1] Financial Institution Letter FIL-50-2016 (July 29, 2016).

brands in conducting payment transactions. Mastercard also provides the networks through which its customer depository institutions can interact to complete payment transactions and sets certain rules regarding those interactions.

When a cardholder presents a Mastercard-branded payment card to a merchant to purchase goods or services, the merchant sends an authorization request to its acquirer, the acquirer routes the request to Mastercard, and Mastercard routes the request to the issuer. The issuer either approves or declines the authorization request and routes its decision back to the merchant through the same channels. Mastercard's role in the transaction is to facilitate the payment instructions between the parties to the transaction—the cardholder, the merchant, the acquirer, and the issuer. In an automated teller machine ("ATM") transaction, Mastercard similarly transmits instructions between the ATM operator and the issuer.

Comments on the Proposed Guidance

Mastercard recognizes the importance in ensuring that depository institutions manage and mitigate risks that arise in third-party relationships. However, for purposes of the Proposed Guidance, it is important for the FDIC to distinguish between entities that are performing functions traditionally associated with lending and entities that merely facilitate lending carried out in full by depository institutions. Payment networks are the latter type of entity. In light of the need to clarify this distinction, we offer our comments to the second question posed by the FDIC in the introductory letter to the Proposed Guidance:

> *Is the scope of the definition [of third-party lending] (and therefore, the scope of the guidance) appropriate, too broad, or too narrow?*

The Proposed Guidance defines "third-party lending" to be "a lending arrangement that relies on a third party to perform <u>a significant aspect of the lending process</u>, such as some or all of the following: marketing; borrower solicitation; credit underwriting; loan pricing; loan origination; retail installment sales contract issuance; customer service; customer disclosures; regulatory compliance; loan servicing; debt collection; and data collection, aggregation, or reporting" (emphasis added).

This definition is too broad and should include an exclusion for payment networks. Without a clarification or an exclusion for payment networks, the definition might allow the Proposed Guidance, once finalized, to be applied to our activities or have the unintended consequence of causing financial institutions to think it applies even if it does not. This would unnecessarily impose upon depository institutions additional compliance measures with respect to their relationships with payment networks. Moreover, it would subject payment networks to additional oversight by their depository institution clients when adequate protections already exist.

As discussed in the previous section of this letter, Mastercard is a technology company that links together the various participants in consumer credit transactions. Notably, we do not participate in any of the activities enumerated in the proposed definition as examples of significant aspects of the lending process, and we do not have any direct relationships with borrowers.

Depository institutions are already subject to the FDIC's Guidance for Managing Third-Party Risk,[2] which requires these institutions to have in place appropriate procedures for their relationships with all third-party service providers, including payment networks (the "Existing Guidance"). In the context of third-party service providers generally, the Existing Guidance addresses many of the same risks discussed in the Proposed Guidance and requires depository institutions to have in place the same four-step risk management process as set forth in the Proposed Guidance: risk assessment, due diligence, contract structuring and review, and oversight. Thus, an institution's relationship with Mastercard is already subject to the same type of risk management process as an institution's relationship with a third-party lender. Importantly, because Mastercard is not involved in traditional lending activities, an institution's relationship with Mastercard does not give rise to the additional risks that the Proposed Guidance is meant to address, and therefore does not necessitate the additional compliance measures described in the Proposed Guidance.

Additionally, Mastercard is subject to examination by the federal banking agencies under the Bank Service Company Act. The scope of the examination includes topics that are addressed in the Existing Guidance and many other topics. This creates strong incentives for Mastercard to ensure that its relationships with depository institutions remain in compliance with federal guidance and should obviate the need for the FDIC to impose heightened standards on depository institutions vis-à-vis their relationships with Mastercard.

We encourage the FDIC to modify the definition of "third-party lending" when it adopts final guidance related to third-party lending. We respectfully request that either this definition be limited to specifically enumerated activities or the final guidance expressly state that it does not apply to financial institutions' use of payment networks such as Mastercard.

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Again, Mastercard appreciates the opportunity to provide comments on the Proposed Guidance. If there are any questions regarding our comments, please do not hesitate to contact the undersigned at (914) 249-2139 or jenna.goodfellow@mastercard.com, or our counsel at Sidley Austin LLP in this matter, Joel D. Feinberg, at (202) 736-8473.

Sincerely,

Jenna S. Goodfellow
Senior Counsel, U.S. Regulatory and Public Policy

cc: Joel D. Feinberg

[2] Financial Institution Letter FIL-44-2008 (June 6, 2008).