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**By post and email:** [pysubmissions@rba.gov.au](mailto:pysubmissions@rba.gov.au)

24 January 2014

Dear Tony

**FEEDBACK ON OPTIONS FOR REFORM TO DRAFT ACCESS REGIMES**

Thank you for providing MasterCard Worldwide (MasterCard) with the opportunity to respond to the Reserve Bank of Australia (RBA) *Proposed Variation to the MasterCard and Visa Access Regimes: Consultation Document* (the Paper), which was released in December 2013.

We note the RBA's stated preference to move towards a type of Access Regime described as *Option 2: Removing the APRA SCCI Regime, but Retaining Some Controls via the Access Regimes*.

Whilst we continue to regard regulation of Access Regimes as unnecessary for the reasons we outlined in our submission dated 8 July 2013 (i.e. that the regulation of selected access regimes is inappropriate and has distorted the competitive landscape in Australia, and that any safety concerns around self-regulation are unfounded given MasterCard's rigorous systems, practices and oversights), we recognise the benefits of Option 2 when compared with the Access Regime currently in place in Australia.

We would certainly welcome additional, risk-appropriate participants within the MasterCard system.

We understand this proposal would require us to:

- establish and publish eligibility and assessment criteria;
- assess potential entrants; and
- report to the Reserve Bank each year.

As the Paper indicates, there would be additional costs to MasterCard associated with these requirements.

We have some reservations and comments about elements of the specifics outlined within the RBA's proposal. Those reservations and comments are:

- Requirement to Publish Eligibility Criteria. We recognise that, if all participants in our system will not be licensed by APRA, the RBA wants prospective participants in our system to be able to review our eligibility criteria, and for applicants to our system to be able to review our approval criteria. However, we consider it would be in the public interest for us to retain confidentiality and flexibility around the application of our eligibility criteria. The publishing of this criteria could drive some applicants for participation, who pose a risk to the stability or functioning of our network, to 'game' the system in the application process.
- Requirements about Timelines of Decisions. We also note the proposed requirement for MasterCard provide applicants an estimate of the time required to make a decision on their application, and report to the RBA annually on the timeliness of decisions. We would suggest the time MasterCard takes to "assess an application" should be measured from the time an application is received until the time we communicate our terms to the applicant. It should not include any subsequent time during which further negotiation of terms may take place. Clearly we could not control the behaviour or timeliness of applicants during that negotiation phase.

- Participants who are both Issuers and Acquirers. Section 15 of the Proposed Access Regime may give rise to some uncertainty as to whether MasterCard may apply a netting process between Issuers and Acquirers.
  - Section 15 states that “*Neither the rules of the Scheme nor any participant in the Scheme shall impose on a participant in the Scheme in Australia any fee, charge, loading or any form of penalty as a consequence of, or which is related in any way to, that participant’s activity as an acquirer relative to its activity as an issuer in the Scheme*”;
  - MasterCard currently nets off the issuing and acquiring obligations in the clearing and settlement process of participants who are both Issuers and Acquirers. We then settle with those participants based on the net position, rather than via two separate positions (one as Acquirer and one as Issuer);
  - This netting is a recognised best practice which can substantially reduce our exposure to participants who both Issue and Acquire; and
  - Consequently, we would propose that section 15 of the Proposed Access Regime be amended to make it clear that this best practice behaviour would not give rise to any possible issues under section 15.
  
- Certification and Reporting. We note Section 21 of the proposed regime would require certification and reporting around applicants and application processes. We would request that this certification and reporting be kept confidential between MasterCard and the RBA, on the basis that this material would be Commercial-In-Confidence.
  
- Assessment Criteria. Paragraph 9 of the Proposed Access Regime talks about the setting of “eligibility criteria” whereas paragraph 17 talks about MasterCard having to publish both “eligibility criteria” and “assessment criteria”. It is unclear as to what the distinction is between these criteria. It is suggested that the reference to publication of “assessment criteria” be deleted from paragraph 17 (and paragraph 21) as it is not otherwise referred to in paragraph 9.
  
- Eligibility Criteria. It is suggested that the proviso in paragraph 9 as regards the setting of eligibility criteria be deleted. In other words that eligibility criteria “must reasonably relate to the risks to the Scheme or its participants, merchants or cardholders that are likely to arise from the participation”. Given that the Schemes are being given responsibility to determine eligibility criteria and that they do this in most other countries (and did it in Australia before the Access Regime was introduced), we believe that the RBA should give the Schemes some credit for setting sound eligibility criteria and, on this basis, the proviso is an unnecessary complication to paragraph 9. The RBA should have assurance that MasterCard will set sound eligibility criteria because:
  - it may be (subject to our comment above) required to publish the criteria in accordance with paragraph 17 of the Proposed Access Regime (and so the criteria may be open to RBA and public scrutiny – although, as indicated above, our preference is that confidentiality of the criteria be retained); and
  - it is required, in accordance with paragraph 21 of the Proposed Access Regime, to disclose to the RBA the outcome of access determinations on the basis of the criteria.

We note that the proposed Access Regime for the Visa Debit System referred to in the Paper will not apply to the MasterCard Debit System. Accordingly, the comments provided in this letter are confined only to the *Access Regime for the [MasterCard] Credit Card System* in Attachment 2 of the Paper. No inference should be taken from our comments as being applicable to the MasterCard Debit System.

We would be very pleased to meet with the Bank to further discuss this response and the comments within it. In the meantime, should you have any questions or wish to discuss any part of this document, please don't hesitate to contact Brent Thomas.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cartwright', with a stylized flourish at the end.

Andrew Cartwright  
**SVP & Country Manager, Australia**