

April 21, 2022

The Honorable Jerome H. Powell
Chair
Federal Reserve Board
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Constitution Avenue, N.W.
Washington, D.C. 20580

Dear Chairman Powell and Chairwoman Khan,

The below signed trade associations proudly represent millions of U.S. retailers and merchants who accept debit and credit cards for consumer payments. We appreciate the Federal Reserve Board's continued vigilance in protecting merchant routing rights that were guaranteed in the Dodd-Frank Wall Street Reform and Consumer Protection Act. We write today to share our concerns about a recently announced significant change by Visa that we believe violates the debit routing requirements under Regulation II – and should be clearly disallowed in the Board's pending clarification to Regulation II.

In 2014, Visa announced the implementation of a Visa network token (Visa Token Service or VTS) but did not require the use of the Visa token. Recently, Visa announced that starting this April, Visa will increase interchange fees on consumer credit transactions for merchants who do not use VTS for online credit card purchases. At the same time, Visa also announced that it has partnered with major web browser developers (e.g., Google, Microsoft, Apple) to enable the use of the Visa Token Service for consumer credit and debit card data in autofill/form-fill features in these web browsers. Taken together, these two announcements raise significant concerns regarding compliance with Regulation II and merit the Board's attention. The impact to merchants from a cost and customer support perspective as well as the damage to the ability of competitor debit networks to fairly try to earn market share will be substantially impacted.

Many trade associations below raised concerns with the global card brand's tokenization solutions and the challenges they create for merchants in their initial comments to the Board and appreciated that the Board's clarification provided that tokens must be routable. Visa's Token Service replaces the primary account number (PAN), with a Visa network token. However, Visa's business and operating rules require that only Visa may detokenize a Visa network token to allow a transaction to be processed. As a result, if a merchant chooses to use another network to process a debit transaction, that network would have to perform a "call out" and send the transaction data to Visa for detokenization, and as indicated in comments to the Board, Visa adds to this friction by refusing to include certain transaction data used by issuing banks to authorize the transaction. This creates both an obstacle to using any network other than Visa and gives Visa visibility into a competitive network's transactions it otherwise would not see. The web browser autofill and fee hikes on credit for not using VTS create even greater challenges for merchants and increases the need for swift action by the Board.

In its announcement, Visa did not indicate which web browsers will begin tokenization auto-fill data but did indicate that it is up to each browser to opt-in if it chooses. While all merchants are auto-enrolled, unless they opt-out, Visa has stated that merchants may opt-out, but must do so before the April 28, 2022, deadline, a date arbitrarily and unilaterally set by Visa which was only recently announced. With the deadline only a week away, Visa has not provided details to many of the questions asked by merchants

making the supposed ability to opt-out illusory. For example, merchants seek more information on how to opt out, how to confirm their opt out, how to participate with some but not all browsers, or which browsers will participate with VTS at all. Importantly, in addition to the auto-enrollment and unworkable opt-out process, Visa has not informed merchants whether they can choose to opt out of tokenization only for debit transactions and not for credit. We expect that even if permitted, enabling separate implementations for credit and debit would add further obstacles by raising merchant costs. Finally, Visa has provided no information about how to support customers' inquiries when a Visa token is used, as the token numbers will not match the card number the customer used to make the purchase.

The overall lack of transparency in this significant change, and lack of awareness leaves Main Street merchants with no real choices or even understanding of relevant facts.

Moving forward, Visa will charge merchants a higher credit card interchange rate if they do not use the VTS, even if the merchant uses another tokenization service which most merchants have been using for many years to properly secure cardholder data. Merchants will essentially be punished by Visa in the form of higher fees if they opt to not use its proprietary product that will inhibit routing choice.

On behalf of our collective members, we respectfully request the Board act swiftly to finalize clarifications to the debit routing provisions of Regulation II to ensure merchants are protected from situations like the one in which they currently find themselves. April 28th is rapidly approaching, and without quick action by the Board millions of Main Street businesses will be opted-into this new program without their knowledge or informed consent.

Thank you for your attention to this very important matter. We welcome the opportunity to meet with you directly to share greater details on the VTS product and our concerns with the web browser enablement.

Sincerely,

FMI – The Food Industry Association
Merchant Advisory Group
NACS – The Association for Convenience & Fuel Retailing
National Grocers Association
National Retail Federation
Retail Industry Leaders Association

cc: The Honorable Michelle W. Bowman
The Honorable Lael Brainard
The Honorable Christopher J. Waller
The Honorable Noah Joshua Phillips
The Honorable Rebecca Kelly Slaughter
The Honorable Christine S. Wilson