NACS®

September 30, 2011

BY EMAIL

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R–1404 (RIN No. 7100 AD 63) - Debit Card Interchange Fees and Routing

Dear Ms. Johnson:

The National Association of Convenience Stores (NACS) respectfully submits the following letter in response to the interim final rule and request for comment published by the Federal Reserve Board (Board) in the Federal Register on July 20, 2011. *Debit Card Interchange Fees and Routing*, 76 Fed. Reg. 43,478 (interim final rule).

NACS is an international trade association representing the convenience store industry. The industry as a whole includes about 145,000 stores in the United States, sells nearly 80 percent of gasoline sold in the nation, and employs about 1.7 million workers. It is truly an industry of small businesses; more than 60 percent of convenience stores are owned by single-store operators.

Debit card transactions account for a large portion of our business. All of our members dedicate substantial resources to ensure that debit card transactions in our stores and at our pumps are safe and secure. Fraud in the electronic payments system is very costly for our industry. Our members absorb a majority of fraud losses resulting from credit and debit card purchases through chargebacks while paying outrageously high interchange fees. Ultimately, the costs of debit transactions borne by retailers, including costs associated with fraud, are paid by consumers through higher prices. Consequently, our members spend large sums of money to prevent card fraud. Unfortunately, the interchange system has created negative incentives for banks that issue cards and many of them have engaged in conduct that increases fraud risks.

I. Background

The fraud-prevention provision of the Durbin Amendment (§ 920, Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq.) has multiple purposes: incentivize issuers to improve upon existing fraud-prevention practices and technologies, reduce the overall amount of fraud in the payments system, account for fraud-prevention costs borne by all parties to a debit transaction, and reach an appropriate cost basis for interchange fees. Toward those ends, the Durbin Amendment allows the Board to grant a fraud-prevention adjustment to issuers under specified conditions. However, the Board's interim final rule (the "Rule") runs afoul of the law's requirements and its purposes in several respects. The Rule does not require issuers to take any effective steps to reduce fraud in order to qualify for an adjustment, nor does the Rule account

for the fraud-prevention costs of other parties to a transaction. Instead, the Board's proposed standards and certification process allow issuers to maintain the status quo and continue to receive a windfall at the expense of merchants and consumers.

The law allows for a fraud-prevention adjustment only when certain requirements are met. Under the Durbin Amendment, the standards issued by the Board must "require issuers to take effective steps to reduce the occurrence of, and costs from, fraud." § 920(a)(5)(A)(ii)(II). Additionally, the law requires the Board to consider certain factors when developing standards and promulgating regulations. Those mandatory considerations include:

- The nature, type and occurrence of fraud in electronic debit transactions;
- The extent to which the occurrence of fraud depends on a particular authorization method;
- Available and economical means by which fraud may be reduced;
- Fraud prevention and data security costs expended by each party to a debit transaction;
- The costs of fraudulent transactions absorbed by each party to a debit transaction; and
- The extent to which interchange fees have in the past reduced or increased incentives for parties to reduce fraud.

The Rule does not satisfy the law's requirements. The Board failed to take the above considerations into account when setting the fraud adjustment amount and its standards. More specifically, the Rule violates the letter and intent of the Durbin Amendment in the following respects:

- The fraud-prevention standards adopted by the Board are vague and subjective, and do not require issuers to take *effective* steps to reduce fraud.
- The Board has abdicated its regulatory responsibilities by allowing issuers to certify compliance to their payment card networks and by leaving it to the networks to establish certification processes. The Rule does not provide for oversight by the Board or any other government body to ensure that the law is followed.
- In setting the fraud-prevention adjustment amount, the Board considered costs of issuers that have not been shown to prevent fraud and failed to consider the fraud-prevention costs borne by other parties to a debit transaction (e.g., merchants and cardholders).

- The Rule does not even require issuers to promote existing practices and technology with proven fraud-prevention benefits to receive the fraud-prevention adjustment.

In sum, the Rule lacks any mechanism to ensure that issuers receiving the fraud-prevention adjustment are actually preventing fraud. Furthermore, it sets the price for the fraud adjustment amount based exclusively on issuers' submitted costs; it does not balance those costs against any measurable indicator of fraud reduction or against fraud-prevention costs absorbed by other parties. And finally, the Board leaves it up to networks – companies that have every incentive to reward issuers – to determine who should receive the adjustment.

The Board's proposed rule issued in December 2010 solicited comments on two potential approaches to fraud-prevention adjustment standards: a technology-specific approach and a non-prescriptive approach. 75 Fed. Reg. 81740. The Board adopted the latter approach. The Board's interpretation of "non-prescriptive," however, is too vague and subjective to satisfy the law's requirements. The Board should adopt a non-prescriptive approach with regard to technology and include objective standards for demonstrating fraud reduction as required by the Durbin Amendment. For instance, the Rule should allow issuers to adopt practices, procedures, and technologies of their choice but provide that issuers could only receive the fraud-prevention adjustment if they demonstrate that their actions reduce fraud below some benchmark (e.g., the PIN debit fraud level that is currently achievable). It is essential that any approach – prescriptive or non-prescriptive – include an objective measure to prove that issuers are effectively reducing fraud before they receive an adjustment.

Below are more detailed comments on the Rule and suggestions for a final rule that satisfies the law and promotes the goals of the Durbin Amendment.

II. Analysis of Interim Final Rule

A. Board standards must require issuers to take effective steps to reduce fraud

According to the law, the Board's standards "*shall require issuers to take effective steps to reduce the occurrence of, and costs from fraud* in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology." § 920(a)(5)(A)(ii)(II) (emphasis added). The language clearly indicates that issuers should be rewarded for reducing fraud levels below what is already achievable with existing technologies, not for maintaining the status quo. The Board can take a technology-neutral approach and still require issuers to achieve an objective measure of fraud reduction below what already exists.

Contrary to the law, the standards in the Rule do not require issuers to take any affirmative steps to reduce fraud. In fact, the standards do not require issuers to achieve anything measurable to receive the adjustment. The Board's standards require issuers to "develop and implement policies and procedures reasonably designed to:" identify and prevent fraud; monitor the incidence of, reimbursements received for, and losses incurred from fraudulent transactions; respond appropriately to suspicious transactions; and secure cardholder data. 76 Fed. Reg.

43486-87. Nothing in the standards requires issuers to innovate or improve upon existing practices. None of these standards includes an objective benchmark to determine whether fraud is declining as a result of these activities.

The issuer activities under the Board's standards - "identifying," "monitoring," and "responding" – only maintain the status quo. Furthermore, issuers are not even required to engage in these activities; they only need to have policies in place "reasonably designed to" achieve them. They aren't required to act on these policies. "Reasonably designed to" is not defined under the rule and there is no mechanism by which the Board or any other entity could properly evaluate whether issuers' policies and procedures satisfy this ambiguous standard. Most importantly, "reasonably designed to" is not the standard required by the law. The Durbin Amendment mandates that the Board's standards "require issuers to take effective steps" to reduce fraud; nothing less than *mandatory effective steps* will satisfy the law. The Durbin Amendment contemplates meaningful actions aimed at reducing fraud, such as developing new low-fraud technologies, not simply identifying and monitoring fraudulent transactions as they occur.

The requirements under the Board's standards are nothing more than what many issuers claim to do today to "prevent fraud." In fact, a payments system researcher recently commented, "All debit card issuers have rudimentary fraud-prevention practices in place . . . so there is no reason to believe any issuer won't qualify for the one-cent adjustment."[1] The fraud-prevention provision of the Durbin Amendment is not meant to reward the current broken system, nor is it designed to compensate issuers for "rudimentary" practices in place today (practices that do not reduce fraud and are already paid for by merchants that are forced to absorb the cost by networks and large issuers with market power in the form of chargebacks). The Board must establish a benchmark rate of fraud reduction for issuers to meet in order to reap the provision's benefits. The adjustment must be reserved for issuers that innovate and can demonstrate they are improving upon the status quo.

B. The Board must fulfill its regulatory and oversight responsibilities

The Board has improperly delegated its regulatory and oversight authority to the card networks under the Rule. The Board puts forth vague and subjective standards and proposes to leave it up to the card networks to define those standards and determine which issuers meet them. Under § 235.4(c) of the Rule, the Board requires issuers to certify compliance with the Board's standards to their payment card networks on an annual basis. 76 Fed. Reg. 43487. Comment 4(c)(1) clarifies that the Board expects networks to develop "their own processes for identifying issuers eligible for this adjustment." 76 Fed. Reg. 43488. The Board must define and apply its own standards and hold regulated issuers accountable for adhering to the law. Those are not tasks for private companies with financial and business interests in weak standards and lax oversight. These are inherently governmental functions that cannot be outsourced.

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[1] Fitzgerald, Kate, *Fed's Fraud Allowance May Not Cover Debit Issuers' Costs,* AMERICAN BANKER, Aug. 1, 2011, *available at* http://www.americanbanker.com/issues/176_148/fed-durbin-fraud-fee-1040771-1.html.

Oversight of issuer compliance with the law must be done by a government body. The Board cannot delegate that authority to card networks. This is particularly true in light of the long history of anticompetitive behavior by card networks that has led to multiple successful antitrust actions against Visa and MasterCard brought by the U.S. Department of Justice and private parties. The Board has abdicated its responsibility to ensure that the adjustment is received only by those issuers that satisfy the law's requirements and has instead handed the power of a regulator to private parties that do not have compliance with the law or the best interest of consumers as their priorities. The Durbin Amendment says the *Board* may allow for a fraud-prevention adjustment under certain circumstances and the *Board* shall prescribe regulations to establish standards. § 920(a)(5)(A)-(B). The law clearly identifies the Board as the gatekeeper and the party responsible for ensuring compliance; it does not give networks this authority and it is not credible for the Board to do so.

This delegation of regulatory responsibility is especially problematic because of the vague standards established by the Board and the economic and business relationship between networks and issuers. Issuers will have tremendous leeway in interpreting the Board's standards and certifying that they are met. Networks will have equally broad discretion to determine that issuers have certified correctly and qualify for the adjustment. Networks have no incentive to deny the adjustment to issuers – the opposite is true. Networks compete for banks to issue their brand of card. Networks look for ways to give benefits to issuers, particularly when they can be given at no cost to the networks. This dynamic is evident in the history of rising interchange fees set by networks to benefit and attract issuers.

The notion that issuers and networks should serve as their own watchdogs through the certification process is laughable. The Rule does not even provide government oversight of networks' certification of issuers. There is no check whatsoever on issuers' ability to certify compliance or networks' ability to award the fraud-prevention adjustment to all issuers. This arrangement violates the law. Issuers must be required to follow a certification process established by the Board – the entity granted authority under the law. The Board is responsible for ensuring that its standards are interpreted and applied accurately and in conformity with the law, not the card networks that have no incentive or obligation to ensure the law is upheld. If the Board isn't able or willing to perform this function, then the FTC – as the networks' regulator – should be given the responsibility.

C. The amount of the fraud adjustment conflicts with the requirements of the law

The Board's method for calculating the fraud adjustment amount violates the law in several respects. First, the Board considered issuer costs that are not incurred in preventing fraud. Second, the Board arrived at the adjustment amount by taking an average of issuer costs across the industry, rather than the costs specific to the issuer seeking the adjustment. Third, the Board considered only issuer costs and did not offset the adjustment amount to reflect the investment made by merchants in fraud prevention and in covering fraud losses. The result of the Board's calculation methods is an inflated adjustment amount that is not justifiable under the law.

1. Issuer costs considered are broader than what the law allows

The Durbin Amendment allows issuers to receive a fraud-prevention adjustment "reasonably necessary to make allowance *for costs incurred by the issuer in preventing fraud*." § 920(a)(5)(A)(i) (emphasis added). Based on the clear language of the law, the adjustment amount must be tied to fraud-prevention costs, not any other costs. The issuer costs considered by the Board in setting the one-cent adjustment, however, were related to "activities used to detect, prevent and mitigate" fraudulent transactions. 76 Fed. Reg. 43481. The Board considered the cost of all such activities reported by issuers, which is broader than the law allows.

The Board considered the following issuer costs: merchant blocking, card activation and authentication systems, PIN customization, system and application security measures (e.g. firewalls and virus software), and ongoing research and development. 76 Fed. Reg. 43481. The Board does not describe any of these activities in detail or how any of them effectively prevents fraud. For instance, "PIN customization" allows cardholders to choose their own PIN number for their debit card. This practice arguably makes debit transactions and debit cards *less* secure because it is more likely that someone engaged in debit card fraud could guess or discover a personalized PIN than guess or discover a computer-generated PIN number. Furthermore, PIN customization is not an effective fraud-prevention practice if issuers do not encourage customers to use lower-fraud PIN transactions instead of signature transactions. "Research and development" is a nebulous category of costs. Without tying research and development costs to resulting practices and technologies that actually prevent fraud, this category has the potential to greatly inflate issuers' cost basis.

The types of costs considered by the Board are beyond what the law allows. The adjustment may only compensate issuers for fraud-prevention costs. The costs considered in setting the one-cent adjustment also related to "detecting" and "mitigating" fraud. To satisfy the law, the Board must narrow these categories and clearly delineate between the cost of activities that prevent fraud and other costs.

2. Adjustment must be issuer-specific

The Board set the adjustment amount based on median costs of issuers that responded to the Board's survey. 76 Fed. Reg. 43481. There are multiple problems with this approach. First, the Durbin Amendment refers to the costs of individual issuers, not the average or median costs across the industry. Second, the survey conducted and responses relied upon by the Board present serious concerns for accurately assessing industry costs and formulating an appropriate adjustment level.

The Durbin Amendment clearly requires an issuer-specific adjustment. The law says that *an issuer* may receive the fraud-prevention adjustment if the adjustment is reasonably necessary to compensate *the issuer* for fraud-prevention costs involving *that issuer*, and if *the issuer* complies with the Board's standards. § 920(a)(5)(A) (emphasis added). Contrary to the law, the

Board arrived at a median industry fraud-prevention cost of 1.8 cents per transaction and then subtracted "transaction monitoring costs" (approximately .7 cents) because those are now included in the interchange fee issuers may charge.

The Board's survey and reliance on survey responses are also flawed, and compound the problem of using median cost figures. A very small percentage of covered issuers responded to the Board's survey, raising significant questions about response bias and the median cost figure relied upon by the Board. Smaller issuers, generally with higher cost bases, skew the median and do not represent the costs of larger covered issuers. By establishing an issuer-specific adjustment as the law requires, the Board would avoid these problems.

3. Adjustment must be offset by costs to other parties

The law requires the Board to consider the fraud-prevention, data security, and fraud loss costs borne by other parties to a debit transaction and offset the adjustment amount accordingly. § 920(a)(5)(A)(ii)(I), § 920(a)(5)(B)(ii)(IV)-(V). Despite the law's mandate, the 1.8-cent figure arrived at by the Board is derived entirely from banks' reported costs and does not account for any costs incurred by other parties (e.g., consumers and merchants). The Board acknowledges that merchants take on a significant portion of fraud losses but the Board neglected to even survey merchants about their fraud-prevention and fraud loss costs. Nonetheless, NACS and others provided this information to the Board in comments on the proposed rules.

Based on issuer survey responses, the Board found that across all transaction types and all merchants, 62 percent of fraud losses were borne by issuers and 38 percent were borne by merchants. 76 Fed. Reg. 43481. For NACS members, merchant costs are much higher. NACS merchants pay up to 70 percent of payment card fraud losses through chargebacks. A survey of NACS members revealed that each convenience store pays an average of $930 in chargebacks each year and the convenience store industry as a whole loses $150 million annually in chargebacks. Additionally, retailers are forced to bear a significant portion of the costs associated with fraud prevention and fraud mitigation (e.g., invest in incremental system upgrades, bear the risk of data breaches, pay for additional validation processes, and comply with PCI DSS standards set without merchant input). These expenditures total $9200 per store each year and $1.3 billion each year for the convenience store industry.

The Board failed to offset the adjustment amount by merchant costs in the same categories as those considered for issuers. For instance, the Board takes into consideration issuer software costs for data security, but does not – contrary to the law's clear mandate – offset with the costs to merchants for purchasing and maintaining similar software with the same purpose. Merchants are on their own to pay these costs. Under the Rule, merchants must also subsidize issuer costs for the same activities.

Historically, the costs of fraud and fraud prevention have been pushed onto merchants through the same anticompetitive forces that have driven up interchange fees (e.g., through take-it-or-leave-it chargeback policies set by networks). Because issuers and networks have been able to put a lot of the costs of fraud losses and fraud prevention (through costly PCI DSS

requirements) onto merchants, issuers have had little incentive to reduce fraud. The Durbin Amendment recognizes that issuers are not the only parties making investments in fraud prevention practices and technologies (indeed, in industries like the convenience store industry, merchants are making the bulk of the investment). The law is structured to provide an incentive for issuers to improve upon existing practices without allowing them to push all of the costs onto other parties. The law explicitly requires the Board's standards to "take into account any fraud-related reimbursements (including amounts from charge-backs) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer." § 920(a)(5)(A)(ii)(1). In other words, to avoid the cost-shifting from issuers to merchants that has prevailed until now, any fraud-prevention adjustment available to issuers should be offset by what they are already recouping from other parties to the transaction.

Merchants spend vast resources on fraud prevention and absorbing the costs of fraud losses. For the convenience store industry, merchants shoulder more than half of fraud costs already. Considering only issuer costs in setting the fraud adjustment amount forces merchants to continue shouldering their portion of the fraud burden while also funding issuer activities that may or may not result in fraud reduction. The Durbin Amendment is written to avoid just this outcome. The Board's failure to take merchant costs into account defeats the law's purpose and violates the law's requirements.

D. At a minimum, use of existing low-fraud technology should be required

Two of the primary aims of the Durbin Amendment fraud-adjustment provision are to reduce the occurrence of fraud in debit transactions and reduce the cost of fraud to all parties in the payments system. To achieve these objectives, at a minimum, issuers should be required to promote existing technology with the lowest rate of fraud. The law requires the Board, in issuing standards and promulgating regulations, to consider "the extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means." §920(a)(5)(B)(ii)(II). The law also instructs the Board to consider "available and economical means by which fraud on electronic debit transactions may be reduced." §920(a)(5)(B)(ii)(III). Today, there is an available technology with a very low fraud rate – PIN debit. However, despite the law's clear instructions, the Board neglected to include a basic requirement that issuers meet the success rate of the low-fraud option already available.

The Board recognizes that signature debit transactions result in approximately four times more fraud losses than PIN debit transactions. 76 Fed. Reg. 43480. For NACS members, PIN debit fraud occurs at a rate of .01 percent of sales, whereas signature debit fraud occurs at a rate of .075 percent. It is well established (based on the responses to the Board's own survey conducted in advance of the proposed rule) that PIN debit is substantially more secure than signature debit. However, in Comment 4(b)(1)(i)-2, the Board instructs issuers to do an assessment of "the effectiveness of the different authentication methods that the issuer enables its cardholders to use, including a review of the rate of fraudulent transactions for each authentication method." 76 Fed. Reg. 43487. Then, according to the Board, "[i]f one method of authentication results in significantly lower fraud losses than other method(s) . . . the issuer should *consider* practices to encourage its cardholders to use the more effective authentication

method." *Id.* (emphasis added). Requiring issuers to conduct an assessment of the fraud rates for different available authorization methods will only confirm what we already know – that PIN leads to less fraud. But issuers must do more than just "consider" promoting the proven fraud-reducing method of authentication. They must promote it honestly and make more transactions PIN. That is the only way to be consistent with the law.

Despite the undisputed evidence that PIN debit is far less fraud-prone than signature debit, the Board has opted not to favor the lower-fraud technology in its Rule. The Board's reasoning ignores the facts. To date, issuers and networks have not voluntarily steered cardholders toward available lower-fraud options (e.g., PIN debit), nor have they invested in bringing more secure existing technology to the United States payment system. Through centrally-fixed interchange fees and practices that force the cost of fraud losses onto merchants and cardholders, issuers and networks have had no economic incentive to pursue lower-fraud technologies (existing or new).

Issuers and networks have actually been counterproductive in terms of promoting existing low-fraud options, openly encouraging cardholders to use the less secure signature method of authentication. For example, a 2010 JPMorgan Chase debit card promotion suggested that signature debit is more secure than PIN. The bank's mailer, sent to former Washington Mutual customers, said, "It's not a credit card, so the money still comes out of your checking account. But by choosing 'credit,' you won't have to enter your PIN in public."[2] The card networks also promote the use of less secure technology and engage in anti-competitive routing and processing practices. According to the official rules of Visa's 2010 NFL Super Bowl "Trip for Life" Sweepstakes, purchases made via PIN transaction and transactions processed by Interlink did not qualify for automatic entry into the contest -- only signature transactions processed through Visa U.S.A. Inc.'s transaction processing system qualified as "eligible purchases."[3] The Rule does nothing to change this dynamic – it does not even discourage these harmful practices, let alone promote innovation and improvement in debit security and fraud prevention.

E. Responses to Board requests for comment

The Board requested comment on the following specific questions:

1. *Should the rule include a definition of "fraud" or "fraudulent electronic debit transaction"? If so, what would be an appropriate definition?*

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[2] *JPMorgan Chase Stakes Claims on Signature Safety*, American Banker. April 2010, *available at* http://www.americanbanker.com/bulletins/-1018306-1.html.

[3] Visa 2010 NFL Super Bowl "Trip for Life" Sweepstakes Official Rules, *available at* http://docs.google.com/viewer?a=v&q=cache:uRQUP_7yzVgJ:www.alturacu.com/assets/2010/9/2/visa_nfl10_rules.pdf+Visa+superbowl+for+life+sweepstakes&hl=en&gl=us&pid=bl&srcid=ADGEESjQ-hqGYczM2ghl8K2oPGpctQpkIvPrsKuUuViA8C3nocPaJkRwyWtBoQ8rmMGX30M-gS1CTtCGhE6JBXrnWf1u9LNF0XP7dzcrQqHOtR6o1TZrosqZiV-693pHgtOcX8xW0YDZ&sig=AHIEtbTJMG8ZKLlaDYtmTV4WPsioK7l-uQ.

Yes, the Board should develop a definition of "fraud" or "fraudulent electronic debit transaction" in its Rule. The law calls for an objective standard for showing reduced fraud levels before issuers receive an adjustment. In order to effectively measure fraud reduction, there should be a clear and consistent definition of what is being reduced.

The definition of "fraud" for purposes of this Rule should be limited to unauthorized use of a debit card. The other types of fraud discussed by the Board in the Rule are not debit card fraud and are beyond the scope of this Rule. The Durbin Amendment is solely concerned with "preventing fraud *in relation to electronic debit transactions*." §920(a)(5)(A)(i) (emphasis added). "Phony merchants" and cardholders and businesses seeking to avoid paying a debt that they themselves incurred do not amount to debit card fraud. They may be engaged in other types of fraud or other illegal activity, but the law is not meant to reach those cases and the Board does not have authority under the law to address those items and make merchants pay for them (or prevention of them).

2. *Should an issuer's policies and procedures require an assessment of whether its customer rewards or similar programs provide inappropriate incentive to use an authentication method that is demonstrably less effective in preventing fraud?*

Yes. Not only should issuers be required to assess whether their rewards programs are counterproductive for fraud prevention, they should be required to cease rewards programs that incentivize the use of high-fraud options if they want to receive the adjustment. As discussed above, networks and issuers have historically used promotions and rewards to encourage the use of signature debit over PIN debit (to take advantage of higher interchange rates and routing exclusivity), even though PIN debit has proven lower fraud rates. At the very least, to satisfy the Durbin Amendment, issuers must be required to achieve the lowest fraud level already available – the level associated with PIN. Rewards and promotions that favor signature debit have kept the U.S. payments system from achieving reduced fraud rates, and have burdened merchants and consumers with high fraud costs. Allowing issuers to continue those practices (including promoting any other authentication method or technology with higher fraud rates than PIN in the future) cannot be justified under the letter or spirit of the law. The law is clear, issuers must take effective steps to reduce fraud to receive the adjustment. Identifying and stopping fraud-*promoting* practices by issuers should certainly be required.

3. *Should the Board develop a consistent certification process and reporting period for an issuer to certify to a payment card network that the issuer meets the Board's fraud-prevention standards and is eligible to receive or charge the fraud-prevention adjustment?*

Yes and no. Certification to networks is useless, but the Board should develop a consistent certification process and reporting period for issuers to demonstrate compliance with the Board's standards. The Board has the power and responsibility to interpret its own standards and ensure they are met by issuers; the card networks are not given that power under the law and it is inappropriate for the Board to delegate that power to them. The certification process must

be developed and controlled by the Board, and the process should be conducted in a consistent manner between issuers to ensure uniform and fair application of the Board's standards.

III. Conclusion

Fraud losses drive up the cost of doing business and ultimately drive up retail prices and the costs associated with card transactions. The Durbin Amendment seeks to incentivize issuers to reduce the occurrence of fraud, while sharing the cost burden of fraud-prevention and fraud losses with merchants and consumers. Making the fraud-prevention adjustment available to issuers without regard to whether they are promoting existing high- or low-fraud technologies, let alone whether they are actively taking steps that reduce fraud ignores the purpose of the law entirely. The only sure way to reduce fraud is to set an objective benchmark by which real progress can be measured. Simply "considering" policies that favor low-fraud technology is meaningless; issuers must be required to do more to receive the adjustment. The fraud rate associated with PIN debit transactions provides a reasonable beginning benchmark for issuers to meet or beat to qualify for the fraud-prevention adjustment. PIN debit represents the best fraud-prevention option the payments system has today and that, at the very least, is where issuers should be required to start.

NACS appreciates the opportunity to comment on the Board's interim fraud-prevention adjustment rule. We look forward to the Board's continued diligence as it finalizes its fraud-prevention standards.

Sincerely,

Lyle Beckwith

Lyle Beckwith
Senior Vice President, Government Relations
National Association of Convenience Stores