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REGIONS

Via Electronic Delivery and Facsimile (202) 452-3819

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

RE: Proposed Rulemaking: Debit Card Interchange Fee and Routing – Docket No. R-1404 and RIN No. 7100 AD63 Response to the Board's Requests for Comments By Regions Bank

Dear Ms. Johnson:

Regions Bank, a wholly owned subsidiary of Regions Financial Corporation[1], appreciates the opportunity to comment on the Federal Reserve Board's proposed new regulations regarding Debit Card Interchange Fees and Routing. Today, debit cards offer a range of benefits to both consumers and merchants who receive guaranteed payment in fast, efficient transactions. Regions believes, however, that the Board's overly narrow interpretation of the congressional legislation will have a harmful effect on consumers and issuing banks and that it will unnecessarily disrupt the fastest-growing and most popular form of payment. Regions has broad experience in the debit card business. Regions is the sixth largest debit card issuer based on transaction volume with our customers carrying over 4 million debit cards[2]. In 2010, these same customers chose debit cards as their payment option of choice over 700 million times. Clearly, debit

[1] Regions Financial Corporation, with $132 billion in assets, is a member of the S&P 100 Index and is one of the nation's largest full-service providers of consumer and commercial banking, trust, securities brokerage, mortgage and insurance products and services. Regions serves customers in 16 states across the South, Midwest and Texas, and through its subsidiary, Regions Bank, operates approximately 1,800 banking offices and 2,200 ATMs. Its investment and securities brokerage trust and asset management division, Morgan Keegan & Company Inc., provides services from over 300 offices. Additional information about Regions and its full line of products and services can be found at www.regions.com.

[2] The Nilson Report, April 2010, Issue 947.

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cards have become the foundation of demand deposit accounts. In fact, debit cards are used more than all other transaction types, including checks, in Regions' demand account activity, accounting for sixty percent of all transactions in 2010.

In light of the negative consequences of a restrictive fee cap proposal, Regions believes that the Board should find that current interchange levels are reasonable and proportional to costs for a period of time after the effective date of July 21, 2011. This would allow time for the Board to: (i) study the effects that the statute will have on consumers, issuers, merchants, and the financial system; (ii) fairly consider the issuing banks' transaction costs; and (iii) issue a fraud rule while simultaneously giving the issuing banks and the payment card networks adequate time to plan for disruptions to their operations and to modify their business strategies prior to implementation of any transaction fee limitations.

Regions believes that the Board should take these steps because it did not properly consider the full intent of the congressional legislation and it set a restrictive fee cap when the legislation mandated more general debit fee standards. For example, the Board is mandated to distinguish between the "the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular debit transaction" and "other costs incurred by an issuer which are not specific to a particular electronic debit transaction." The plain reading of this requires the Board to only exclude those "other costs" that are not specific to a particular electronic debit transaction. Instead, the Board excluded all other costs—including those other costs that are specific to the particular electronic debit transaction.

Another example of where the Board has failed to conform to the statute is by failing to set initial interchange fees that account for a fraud adjustment. Fraud protection (and fraud loss coverage) is a central feature of the debit card. It is unfair to the issuing banks to go forward with a new rule when the congressionally mandated fraud provisions have not been addressed. To proceed without this adjustment irresponsibly puts issuers in the position of having to take an even further immediate operating loss per transaction and significantly weakens issuers' incentive to engage in and to enhance their security measures beyond those minimum required by law and regulations.

Under the Board's current, cramped reading of the legislation in drafting its proposed rules to not include all costs related to an electronic debit transaction, Regions would have lost money on each of the 700 million plus debit card transactions initiated by its customers in 2010. Forcing banks that issue debit cards and guarantee payments at the point of sale into a situation where their costs to provide the service exceeds the fee earned on each transaction is not a reasonable interpretation of the statute, either from a policy or legal position. In addition, even though there are four major participants in each debit card transaction—the bank that issued the debit card, the merchant who receives the money, the acquiring bank that sets the merchants actual discount rate, and the payment network that provides much of the electronic system that links the parties

together—the Board's rule addresses only the issuing bank. This punitive rule—capping the issuing banks' fee far below its cost to provide the service—will have consequences for the consumer who uses debit cards as well as for card functionality.

Pushing banks into a loss position on each transaction will force them to add new customer fees. Given that merchants are unlikely to lower prices (they already can offer cash discounts if they prefer)—and they are not mandated in the law to pass their savings on to the consumer—the net outcome to consumers will be increased costs, which will take the form of bank fees or a reduction in services and functionality. Facing new and unexpected fees, such as per transaction charges, or monthly fees associated with demand deposit accounts to name a few, will push consumers away from traditional banks to very expensive non-bank alternatives such as check cashing providers or payday lenders. Not surprisingly, merchants currently offer these services themselves. The practical effect of this proposal will be to shift enormous financial benefit to merchants to further expand their offerings of higher cost financial products to the same consumer that the Dodd-Frank Act intended to protect. This also runs counter to the stated public policy goal of the FDIC to support the continued migration of the under-banked and unbanked into the banking system.

In addition, without clear rules on fraud coverage (or the ability adequately to recoup the costs of the risk from guaranteeing each debit card transaction), banks will be forced to alter the functionality of the debit card. For example, issuers may approve fewer transactions to reduce the risk of fraud and provide less robust customer service as a way to lower operating costs that support each transaction. Additionally, these changes will have a negative impact on the economy and businesses, in particular those businesses that are largely or completely reliant upon transactions occurring over the internet or telephone. In response to these possible changes, customers may turn away from debit cards and instead increase their reliance on credit cards. A shift from the more fiscally responsible debit cards to more expensive credit cards (from the merchant perspective as well) would be another negative unintended consequence of the Board's proposal.

Issuers may need to reduce operating costs in order to avoid losing money from their debit card operations. For Regions and all issuers this also means the potential loss of jobs. While merchants talk about possible future jobs due to lower interchange fees, pushing the cap below the operating costs per transaction will likely force banks to shed actual jobs.

To provide some context for the punitive nature of the Board's proposal, Regions would lose about 75% of its debit interchange revenue under the $.12 proposal. In 2010, the company earned $346 million in debit card revenue; thus, the revenue would decrease by about $275 million on a yearly basis. As noted, the bank would lose money on each transaction because the proposal is far below the company's expenses to support each transaction.

Regions believes that the Board did not properly interpret the "reasonable and proportional" language in the legislation and that the Board has the latitude, and should exercise that authority, to expand its definition of costs related to each transaction. Regions participated with several other debit card issuers, including a credit union, in a study that determined the average costs of the combined institutions that are directly germane to a debit card transaction. The transaction costs of these institution for a typical debit card transaction, is $.28 (excluding rewards costs). The chart breaks down those transaction costs into relevant categories.

Transaction Cost Categories		
Average processing costs related to authorization, clearing and settlement	$.07	
Network fees (paid to Visa or MasterCard or other networks)	$.04	
Fraud Prevention/transaction	$.03	
Fraud Loss/transaction	$.03	
Card production/delivery costs	$.01	
Customer service/compliance	$.08	
Fixed card operations costs	$.02	
Total Transaction Costs	$.28	
Current Board Proposal	$.12 option	$.07 option
(Loss)/Profit per transaction	($.16)	($.21)

The Board chose to restrict its rule only to the variable costs that it directly tied to authorization, clearing and settlement, which is only one element of the critical transaction chain that issuing banks support. A government mandate to alter long-standing market arrangements should not ignore more than half of banks' costs to operate the business. The fact that the law instructs the Board to make the interchange fee reasonable to the costs incurred by the issuer underlines the unfairness of this proposal. In addition, the Board is not ready to issue a final rule on fraud protection—and without the fraud protection, it removes one of the key factors that differentiates debit card transactions from check transactions. Regions believes that the Board can and should expand its definition of transaction costs to reach a reasonable and proportional return to the issuing banks on debit card transactions. Each of the categories noted above contribute to the convenience and security of each debit card transaction—and provide benefits that both customers and merchants have come to expect and that help to explain the rapid growth of debit card use. It's these costs borne by the issuing banks that distinguish debit card transactions from check transactions. These key transaction categories include:

- Fraud loss: the issuing banks cover the vast majority of fraud losses, whether measured in number of transactions or total dollar value; if banks cannot cover this cost to guarantee a transaction, the functionality of the card will change

- Network processing fees: card issuers pay a fee to the network on each transaction, making this a central and unavoidable cost to authorize any purchase
- Customer service: issuing banks maintain extensive operations, including toll-free and internet customer service, to deal with customer inquiries around specific transactions and to address lost costs or other customer concerns
- Card production: issuing banks provide cards and replace lost ones along with required statements under federal regulation
- Routing costs: both of the current proposed alternatives regarding network exclusivity will expand card costs; specifically, they may require new cards to be issued to all customers and increase operational, technology, and compliance costs associated with requiring financial institutions to increase the number of networks they elect to work with.

This list does not include fraud prevention and data security costs that Congress mandated as part of its legislation. The failure to include fraud prevention details in the proposal emphasizes the need to delay a final rule. Finally, the absence of fraud prevention underscores the faulty analysis of the costs of debit card transactions that included a false comparison with checks clearings at par. Debit card interchange, as currently negotiated in the marketplace without government price setting, explicitly captures costs—to ensure fraud coverage and guaranteed payment—that are not part of the check clearing process. Merchants, for instance, pay fees to a third party if they want to guarantee the payment; moreover, merchants bear the costs of bad checks.

The Board's punitive interchange cap proposal, with the July implementation date puts revenue pressure on banks at an inopportune time and could further destabilize the industry. It especially puts pressure on regional commercial banks that have less diverse revenue streams than complex Wall Street firms. Moreover, it harms banks that provide significant credit to small and medium size businesses. It would be extremely unfortunate if implementation of this aspect of the Dodd-Frank Act causes the regional banking sector to shrink, not grow.

By its own admission—during staff comments on December 16, 2010 and Governor Raskin's February 17, 2011 testimony before a House Financial Services subcommittee—the Board does not have any clear analysis, study, forecast, or expectation of how consumers will benefit overall. In fact it is quite the opposite, the Board has acknowledged consumers can certainly anticipate to pay more in banking fees while there is no indication on how they will benefit from a reduction in the costs of goods purchased.

While the Board would suggest that its proposal sets standards, from a practical market perspective the Board is price fixing in a very robust and competitive market. The Board is not required to set prices, it is required to establish standards that are reasonable and proportional to an issuers costs. The current proposals fail to achieve that end.

Regions has briefly noted some of its core objections to the Board's debit interchange proposal and the reasons why it believes a final rule should be delayed in order to more fully address transaction costs and the broader consequences of the government-imposed price cap. These points, as well as the legal objections, to the Board's narrow reading of the statute, are discussed in more detail below.

A. Requested Comment on the Proposed Standards for Assessing Whether an Interchange Transaction Fee Is Reasonable and Proportional[3]

1. Requested Comment on the Appropriateness of its Approaches -- the Board Failed to Make Any Assessment of the Reasonableness and Proportionality of the Interchange Fees Required by the Amendment[4]

The Durbin Amendment in Section 920 (a)(1) of the EFTA requires the Board to "prescribe regulations . . . to establish standards for assessing whether the amount of any interchange transaction fee . . . is reasonable and proportional to the cost incurred by the issuer with respect to the transaction." The Board is therefore charged to determine whether the current interchange transaction fees are "reasonable and proportional" and to determine the standards that should be made to assess the reasonableness and proportionality of these standards. The Board has not done this. Instead, it has embarked on a course that is far beyond its statutory authority. *See, Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1,* 554 U.S. 527, 525-26 (2008) (an administrative agency "cannot abdicate its statutory responsibility to ensure just and reasonable rates through the expedient of a heavy-handed presumption . . . [T]he agency is 'obliged at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress.'" (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968)).

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[3] The Board requested "public comment on the proposed New Regulation II, Debit Card Interchange Fees and Routing, which: established whether an interchange fee received or charged by an issuer with respect to an electronic debit transaction is reasonable and proportional to the cost incurred by the issuer with respect to the transaction." Proposed Rules 81722 col. 1.

[4] The Board requested comment on whether its approaches were "appropriate." Proposed Rules 81739 col. 1.

The Board's proposed setting of fixed fees for debit card interchange rates between the two alternatives – Alternative No. 1 - an issuer specific fee with a 12¢ cap and Alternative No. 2 - a 12¢ fee – suggests a belief that today's current rates are not reasonable and proportional. However, the Board has not made any initial finding that the current interchange fees that generally combine a fixed fee component and an *ad valorem* component are not reasonable and proportional to issuers' transaction costs. Such a required finding is inherent in the statute's prescription that the Board engage in "assessing" the reasonableness and proportionality of interchange fees. Indeed, the facts in the Notice of Proposed Rule Making and Statements in the Board's December 16th meeting by Chairman Bernanke and staff members indicate that the interchange rates are reasonable and proportional. Chairman Bernanke noted the well-established "presumption that prices will be set by market competition generally." Meeting Tr. 21[5]. And, nothing in the staff's remarks indicate that the interchange fees set by the market are unreasonable.

Most evidently, the wide and rapidly increasing acceptance of debit cards in the marketplace shows that the rates charged are reasonable and proportional. As the Board has found, "Debit card payments have grown more than any other form of electronic payment over the past decade, increasing to 37.9 billion transactions in 2009." Further, debit cards have "near ubiquity of card acceptance" and are "accepted at about 8 million merchant locations in the United States." Meeting Tr. at 22.

Merchants may not like interchange fees, as merchants probably do not like any costs of doing business, but the fees are not such that merchants do not choose to accept debit cards which, of course, is a merchant's right. Networks and issuers want merchants to accept their debit cards. That desire serves as a profound market-driven suppressant to higher debit interchange rates and to keep interchange rates at a reasonable level. There are merchants that elect to accept certain payment products versus all payment products because of a market choice and the demand for their business. These decisions made in the market demonstrate that merchants have viable options and the value provided by the use of the debit card must have been evaluated and determined to provide meaningful value in return for the merchant's investment. According to a *Chicago Fed Letter* "three times as many merchants accept signature-based debit card transactions as accept PIN-based debit card transactions." Victor Lubasi, *Debit card competition: Signature versus PIN*, Chi. Fed Letter (Fed. Reserve Bank of Chi., Chicago, Ill.), Dec. 2005, at [pincite]. The fact that three times as many merchants accept signature versus PIN, clearly demonstrates that merchants do have options as to whether to accept or decline certain types of debit card transactions or to accept debit cards at all. Each merchant must undoubtedly determine if the aggregate benefits to the merchant are greater or equal to

[5] "Meeting Tr." refers to the Meeting of the Board of Governors of the Board System on December 16, 2010.

the aggregate costs to the merchant when deciding what if any type of payment card it should accept from customers.

The uppermost consideration in whether the interchange rates are reasonable and proportional should be the consumer. After all, the Dodd-Frank Act is a "consumer protection act", not a merchant protection act. The Board appears to recognize that customers are happy with the current system. As the staff noted in the December 16th meeting, "customers don't tend to take into account the costs [interchange fees] incurred by merchants as the result of their decisions." Meeting Tr. at 22. The Board also indicated that customers are happy with the highly visible benefits that they receive from the banks who "use the revenues from these interchange fees to offer more attractive account terms to their customers including in some cases rewards for making payments with debit cards." Meeting Tr. at 22.

A proper, market-driven measure of whether interchange fees were unreasonable and disproportional would be if a significant number of merchants began to opt out of taking debit cards. That would constitute a market sign that interchange fees were unreasonable and that the Board should set standards to correct the interchange fees to a more reasonable rate. The Board could determine the acceptance of interchange fees by monitoring the rate of increase or decrease of merchant locations accepting debit cards or by commonly accepted polling methods.

2. **Requested Comment on the Board's Proposed "Standards":** The Board Has Not Set "Standards" for Assessing the Reasonableness or Proportionality of an Issuer's Interchange Fees Relative to Its Costs[6]

The statute requires the Board to set standards for assessing whether "*any* interchange transaction fee . . . is reasonable and proportional to the cost incurred *by the issuer with respect to the transaction.*" The Board's proposed rules fail the prescription of the statute in three ways.

First, the plain language of the statute requires the Board to set standards, plural. A cap of 12¢ for all the different kinds of debit cards and debit card transactions does not establish "standards" for assessing the reasonableness of interchange fees, it merely fixes prices. Setting price caps for interchange fees by administrative ruling is certainly easier than setting standards for assessing the reasonableness of interchange fees, but that is not the task Congress prescribed to the Board. If Congress wanted the Board to set a fixed fee or a fixed cap on fees, it could have easily and clearly done so. It did not. Congress

[6] The Board requested comment on its proposed standards for assessing the reasonableness and proportionality of interchange fees received by an issuer. Proposed Rules 81722 col. 1.

required the Board to set standards to assess the reasonableness of fees. The Board simply failed to follow the requirements of the statute in contravention of its role under the law. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000) (An administrative agency "may not exercise its authority 'in a manner that is inconsistent with the administrative structure that Congress enacted into law ....' '[T]he agency must give effect to the unambiguously expressed intent of Congress.'" (citing *ETSI Pipeline Project* v. *Missouri*, 484 U.S. 495, 517 (1988); *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984)) *Id.* at 125-26.).

Second, the statute requires the Board to set standards to assess the reasonableness of fees with respect to "the transaction." This requires the Board to set the standards for evaluating the reasonableness of the fees for any single transaction or at least a class of transactions. A fixed fee for all debit card transactions does not fulfill this purpose.

Third, the statute plainly requires the Board to establish standards to assess the reasonableness of fees with respect to "the costs incurred by the issuer", not to establish the reasonableness of an issuer's costs. These are very different considerations. The Board, contrary to the statute's explicit language, instead of accepting an issuer's costs and establishing standards that would determine whether the issuer's costs are reasonable and proportional to those costs, has set up a scheme whereby it defines limited costs that it believes should be reasonable for all issuers and then fixes an interchange cap of 12¢ applicable to all issuers – irrespective of whether the cap is truly representative of an issuer's costs. If Congress intended the Board to fix fees for all issuers rather than standards applicable to the "costs of the issuer," it could have easily done so. That the Board chose to disregard the plain language of the statute and set a fixed cap for all issuers for all kinds of debit card transactions is a usurpation of the role of Congress to make the laws. *See MCI Telecomm. Corp. v. AT&T Co.*, 512 U.S. 218 (1994) (The Court held that the administrative agency exceeded the scope of its authority where "an elimination of the crucial provision of the statute for 40% of a major sector of the industry is much too extensive to be considered a 'modification.' What we have here, in reality is a fundamental revision of the statute...." *Id.* at 231-32.).

3. **Requested Comment on the Proposed Fixed Fee Caps and Alternatives**: The Board's Fixed Cap Are Not Reasonable or Proportional[7]

   a. The Board's Proposed Fixed Caps Would Be a Dramatic Change from the Current Market-Set Interchange Fees

[7] The Board requested comments on its two alternative fixed fee cap proposals "as well as on any other alternatives that could be applied. Proposed Rules 81736 col. 2.

The Board reported that the average interchange fee for all debit transactions in 2009 was 44¢ per transaction. Proposed Rules 81725 col. 2. Judging by Regions' interchange fees, these fees have remained relatively stable over the last several years. The Board now proposes to cap the issuer's interchange at 12¢ per-transaction for all debit card transactions. On average this would be a 73% drop in the interchange fees currently obtained by issuers. Issuers would lose 32¢ on average per transaction. The average loss for signature debit transactions would be greater. According to the Board's calculations, issuers would lose 44¢ per signature debit transaction from their current rate of 56¢ per transaction. The loss to issuers for PIN transactions would be 11¢ per transaction – about half of the current rate. Each prepaid card transaction would represent a loss of 38¢ per transaction from the current rate of 50¢.[8] Proposed Rules 81725 col. 2. The 12¢ fixed cap will take away approximately 12 billion dollars from issues' income by administrative fiat with little warning or justification.

Moreover, the proposed fixed cap would disproportionally affect issuers with customer bases where PIN transactions are less accepted. PIN transactions are only accepted in two million of the eight million locations that accept debit cards. Issuers who primarily issue signature debit cards will lose an enormous 44¢ per transaction from their current rates.

b. **Requested Comment on Allowable Costs:** Setting Reasonable and Proportional Fees Should Take into Account All Costs Incurred by Issuers, Including the Factors Specifically Referred to in the Statute[9]

Regions strongly believes that, to the extent possible, the market should dictate the reasonable costs for interchange fees because set fees that ignore marketplace reality will cause market imbalances, harm and disruptions, some of which are clearly foreseeable and contrary to the intention of the statute and the role of the Board to protect the integrity of financial institutions, the financial sector and the public and many of which are unknown, adverse, and unintended. However, the Board has chosen instead to propose a rule that fixes prices rather than to set standards to assess whether an issuer's fee is reasonable and proportional to its costs. And, it has requested comment on the criteria it has used to set its fixed fees. Proposed Rules 81735 col. 2.

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[8] The average interchange fee for signature debit cards was 56¢; the average for PIN transactions was 23¢ and the average for pre-paid debt cards was 50¢. Proposed Rules 81725 col.2.

[9] The Board requested "comment on whether it should allow recovery through interchange fees of other costs of a particular transaction beyond authorization, clearing, and settlement." Proposed Rules 81735 col. 2.

EFTA Section 920 requires the Board, in promulgating rules to establish standards for assessing the reasonableness and proportionality of interchange fees, to consider the functional similarity between electronic debit transactions and checking transactions and the reasonableness and proportionality of the interchange fees to an issuer's costs with respect to the transaction.

As the Board noted, the statute only required the Board to "consider" these factors in promulgating assessment standards for reasonable and proportionate fees. The statute does not limit the Board's consideration of other criteria and costs that fairly should be taken into account. Proposed Rules 81734 col. 1. We believe, as the Board comments, that these factors should help inform and guide the Board as to the costs to be taken into consideration by the Board in setting its assessment standards. They should also be a helpful guide to the measure of reasonableness and proportionality that should be weighed against the costs to determine those standards. However, the statute does not require the Board to limit its consideration to these two factors, as it clearly did.

c. Electronic Debit Cards Offer Significant Functional Benefits to Consumers and Merchants and Those Benefits Should Reflect the Reasonableness of the Current Interchange Fees

The statute's requirement that the Board consider the functional similarities of electronic debit cards to checks necessarily means that the Board is charged to consider the functional benefits that electronic debit cards provide that are similar to checks and those additional benefits that electronic debit cards provide. Significantly, Congress did not narrowly limit the Board's consideration of these similarities to cost, but broadly instructed the Board to consider the functional similarities for the overall regulations. Thus, Congress requires the Board to consider the debit card's functionality in determining standards for reasonable and proportional fees.

The most obvious functional similarity between debit cards and checks is, as noted by the Board: "Both are payment instruments that result in a debit to the payer's asset account." This is a significant benefit because the debit card combines the ease of card electronic payment with the benefit that the payment comes out of consumers' demand deposit accounts, rather than their credit accounts. Debit cards and other consumer demand deposit payment methods, like checks, promote consumer thrift and lessen consumer debt and therefore should be encouraged as a matter of policy.

Debit cards provide many additional benefits to consumers and merchants. Debit cards are efficient and easily accessible and are much quicker, friendlier and less cumbersome than checks. They allow consumers to purchase online and through self service. They also generate less paper than checks.

Another advantage of debit cards over checks is that the consumers are not liable if there is fraud because the issuer bank authorizes the payment. Further, debit cards permit real time fraud protection. An issuer can monitor the card's use and take proactive measures to minimize the occurrence of fraud if suspicious patterns of use arise. Unlike checks, debit cards permit customers global, 24-hour access to cash from demand deposit accounts. Further, issuers generally offer consumers rewards programs as a functional benefit to using debit cards. There are no comparable rewards programs for checks, rather the cost of checking accounts are often subsidized by issuers. Issuers also generally provide telephone and online services so customers can receive information about their transactions, accounts and manage disputes. As the Board noted, the debit card interchange system allows a longer period to reverse transactions, and can address disputes efficiently without evoking the legal system. Proposed Rules 81734 col. 3.

A great advantage that the debit card interchange system provides merchants is that once a transaction is accepted by the issuer on the spot, the merchant is guaranteed its payment – absent a dispute with the customer – in contrast with checks where the merchant bears the expense and trouble of collecting on a bad check. In the case where a merchant obtains a check guarantee comparable to the benefit of a debit card, the merchant will typically pay 1% of the cost of the transaction for this service and protection. Merchants also benefit from debit cards by reduced operating costs, improved customer satisfaction, cash-back at point of sale, which reduces a merchant's need for cash on hand, and they increase merchant sales through extended online operating hours and ease of purchase.

All these advantages and more are reflected in the great and increasing popularity and use of debit cards and the accompanying diminishing use of checks that the Board has noted. Proposed Rules 81723 col. 1.

d. Issuers' Reasonable Profit Should Be a Part of Any Reasonable and Proportional Interchange Fee

Congress has mandated that the Board consider these many and significant functional advantages of the debit card payment system over the check payment system in issuing its rules for determining an issuer's reasonable and proportional interchange fees. However, the Board, although it has noted many of the functional advantages of the debit card payment system over the check payment system, appears to have completely left out these advantages in determining its consideration of reasonable and proportional fees.

The debit interchange system benefits did not arrive without cost to issuers nor do they continue without cost to issuers. There are massive past and ongoing costs to issuers to create and improve this system that provides such great mutual benefits to all participants including consumers and merchants. It is naïve for the Board to ignore these very real costs and others to issuers who are a mainstay of the system and expect the

system to operate as before without serious adverse effects to the system and its participants – both known and unknown.

Accordingly, in response to the Board's inquiry, the Board should consider the fixed costs and a reasonable profit in determining the assessment standard for an issuer's reasonable and proportional interchange fees. The failure to take these kinds of costs into consideration will create insuperable barriers to entry for newcomers. No newcomer will invest in the initial and ongoing capital costs to enter this market. Further, the proposed rule will stifle innovation because the proposed system is designed to remove the profit from interchange system for issuers. No reasonable person would invest in an area whose operating calculus is to remove profit from the system.

The Board should permit issuers some profit, not fix prices below the issuers' costs. The Board is absolutely correct in its observation that the statute does not provide that an issuer's fees be the same as its costs or that the statute requires the Board "to disallow all profit that might come along." Meeting Tr. 45. The statute could have simply stated that an issuer's interchange fees shall be no more than its costs. But that was not Congress' charge to the Board. Instead, Congress chose to have the Board set assessment standards. Compared to the blunt axe of fixing a set cap, assessment standards are more difficult to create; they require more study; and they must be more nuanced. However, this is what Congress has required from the Board. The requirement for the Board to use a scalpel rather than an axe is in keeping with the Board's overall responsibilities to "ensure the safety and soundness of the Nation's banking and financial system and to protect the credit rights of consumers" and the Act's goal to aid consumers.

e. Requested Comment on the Board's Consideration of Allowable Costs of Other Issuers' Costs, including Fixed Costs, that *Are* Associated with the Authorization, Clearing, and Settlement of a Transaction[10]

Rather than considering the functional benefits accruing through the debit card system as opposed to the check system as mandated by Congress, the Board, in its proposal, determined to confine its consideration to a very limited set of incremental costs "associated with the authorization, clearing, and settlement of a transaction." Proposed Rules 81734 col. 3. The Board asked for comments to its proposed approach.

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[10] The Board requested "comment on what other costs of a particular transaction, including network fees paid by issuers for the processing of transactions, should be considered allowable costs." Proposed Rules Tr. 81735 col. 2. The Board also specifically requested comment on "whether it should include fixed costs in cost measurement." Proposed Rules 81736 col. 1 and 2.

There are many problems with this approach in addition to those we have already alluded to. Most fundamentally, Congress did not mandate the Board to consider *only* those costs; rather, it was required to consider those specific costs. There is a great difference between these two approaches. If Congress intended the Board to consider only certain specific transaction fees, it could easily have provided for that limitation, but it obviously chose not to do so. Accordingly, the Board has substituted its own objectives to the direction given it by Congress.

The Board has excluded from its consideration costs simply because those costs are not paid for by issuers on a transaction-by-transaction basis. This approach especially penalizes financial institutions like Regions who choose for quality and security reasons to perform many of the functions and services relating to the authorization, clearing and settlement of transactions in-house rather than outsourcing these functions and services to service providers who would charge on a per-transaction basis. These costs which often service multiple transactions include the equipment, software, facilities, compliance and personnel costs for posting and electronic transaction to a consumer's account, authorization and clearance costs, consumer inquiries and disputes, and fraud prevention.

Particular costs of Regions and other issuers associated with authorization, clearing and settlement of a transaction that the Board has chosen not to consider include the following:

Network Processing Fees. The Board determined to exclude network processing fees. However, as the Board recognized, "[c]ard issuers pay such fees to payment card networks for each transaction processed over those networks." Proposed Rules 81735 col. 1. Therefore, these are issuer costs that are directly associated with authorization, clearing and settlement of a transaction and are costs that Congress required the Board to consider. But, the Board dismissed these fees because of a stated concern that acquirers may indirectly pay such fees. Proposed Rules 81735 col. 1. The Board's determination to dismiss such fees from its calculation might make some sense only if the Board was charged by Congress to frame regulations that would aid merchants at the expense of issuers – something that Congress did not do. The Board's refusal to take into account issuers' network processing fees is directly contrary to the express terms of the statute and usurpation of Congress's role in setting policy.

Cardholder Rewards. As the Board noted, cardholder rewards are paid by the issuer to the cardholders for each transaction. Proposed Rules 8135 col. 1. Thus, these costs are costs "associated" with authorization, clearing and settlement of a transaction and are costs that the Board should consider to determine whether the interchange fees are reasonable and proportional to the costs incurred by the issuer. The Board excludes these costs without explanation, merely dismissively stating that they are not "appropriate." Proposed Rules 81735 col. 1.

These reward program costs serve valuable market functions for the consumer and the financial system. Their near ubiquity reflects their popularity and social utility. Also, the debit card reward programs help to balance credit card reward programs. Thus, very visibly and tangibly these debit card reward programs encourage consumers to use their debit cards to pay for purchases through their direct deposit accounts, rather than to use their credit cards and to increase their debt.

Cardholder Services. Cardholder transaction services are another cost to issuers that the Board has not considered that are associated with the authorization, clearing and settlement of a transaction. These services include maintaining toll-free and internet customer service centers to deal with customer inquiries and complaints concerning transactions, to provide exceptions for individual transactions, e.g., authorizing a previously declined transaction after a call with a consumer, and to make proactive inquiries concerning unusual transactions.

As the Board noted, one of the functional benefits of debit cards over checks is that disputes can be more efficiently handled without invoking the legal system. Proposed Rules 81734 col. 3. However, this benefit is a significant cost to issuers and by any rational view from any perspective – consumer, bank, merchant or system – should be included in the costs used to determine reasonable interchange fees.

Indeed, the Board should set standards for assessing an issuer's reasonable interchange rates that include metrics for good customer service. Instead, the Board in effect proposes just the opposite – to strip any incentive for issuers to provide any, but the minimum legally-mandated service for debit card holders. This failure in the Board's proposed rule that removes an efficient means to provide individualized information to consumers and to allay their confusion and that facilitates the settlement of disputes will harm the system as a whole and all its participants – issuers, customers, and even merchants.

Routing Costs and Other Costs for Implementing the Board's Adopted Rules. The Board has not even considered in its setting of interchange fee caps the enormous costs and operational upheavals that its routing proposals, administrative costs, and other changes caused by its proposed rules would cause issuers. Either of its routing proposals or some other variant that includes multiple payment channels that the Board might adopt will cause great disruption and significant cost to the issuers. So while the Board's proposals will have the effect of abruptly reducing the interchange fees obtained by issuers, the Board at the same time only proposes to consider a narrow set of costs incurred by issuers in 2009 and not the additional costs that issuers will incur to implement and to run the Board's new proposed system. Of course, this is not reasonable in any sense.

Card Production. The Board also has not considered the costs for card production or issuing cards which are a necessary part of any transaction cost.

Fraud Loss. Another functional benefit to merchants that debit cards have over checks is that the issuer is largely responsible for fraud loss. This is another significant transactional cost incurred by issuers that the Board should consider in preparing its final assessment standards for reasonable and proportional interchange fees.

Fraud Prevention Costs. Particularly since the Board recognizes that fraud costs are a part of issuer's transactional costs and it is mandated to *include* such costs in promulgating assessment standards for interchange fees, it is unjust and unwise to set initial interchange fees that do not account for such costs. Failing to recognize such costs is unjust because they are clearly legitimate and have been recognized by Congress as legitimate. It is unwise because such action significantly weakens issuer's incentive to engage in and to enhance their security measures beyond those minimum required by law and regulations. Such costs should be considered and included in any initial determination of assessment standards for reasonable and proportional transaction fees.

Data Security and Compliance. The Board's proposed rules also do not include in its consideration the issuer's transactional costs for data security and compliance with federal laws.

4. Requested Comment on the Proposed Inflexible 12¢ Fixed Caps Approach[11]

a. The Same 12¢ Caps for Prepaid and Signature Cards Will Cause Losses to Issuers for Each Transaction

As appears above, the Board has proposed that, in determining whether an issuer's transactional fees are reasonable and proportional to an issuer's costs, it will ignore issuers' real costs and leave aside various transactional associated costs such as issuer's network processing fees, cardholder rewards costs, cardholder services costs, new routing costs, fraud loss costs, card production costs, fraud security costs, and data security and compliance costs, as well as their investment costs and profit.

Instead, the Board has come up with what it calls an "average variable cost." Proposed Rules 81735 col. 3. The Board's "average variable cost" is supposed to represent "the cost of a typical or average transaction." However, in reality, it does not represent the "cost" of a transaction, a "typical" transaction, or an "average" transaction. The "average variable cost" is derived from what the Board has determined to be

[11] The Board recognized some of the drawbacks of an inflexible approach and requested comment on flexible issuer specific cost alternatives versus its proposed inflexible cap alternatives. Proposed Rules 81738 col. 3.

"processing fees" (Proposed Rule 81735 col. 3) which is something significantly less than the true costs associated with authorization, clearing and settlement of a transaction.

Nor is the cost in any sense "typical." The Board's findings demonstrate that the processing fees vary significantly with different kinds of transactions. Even by its own calculations, the "median total transaction processing costs" varied for different kinds of debit card transaction very widely – from 7.9¢ for PIN debit, to 13.7¢ for signature debit and 63.6¢ for prepaid cards. The transaction costs for a prepaid card is more than eight times greater than a PIN debit transaction and greater than four times the cost of a signature card transaction. Accordingly, the Board's notion that some medium combined cost would represent a "typical" transaction and that the "average variable transaction cost" of 11.9¢ would form the basis of a fixed interchange cap of 12.0¢ is nonsensical.

This becomes apparent when one considers the effect of applying the same transaction rate to all kinds of debit card transactions as proposed by the Board. Even if the processing fees proposed by the Board represented actual costs (which they do not) and all issuers had the same medium total costs for their different debit transactions (which they do not), still the cap proposed by the Board would cause issuers to *lose* 51.6¢ per transaction for prepaid cards and 1.7¢ per transaction for signature cards.

The Board has to recognize this is not a sustainable model for issuers to continue prepaid debit cards or signature cards. Issuers like any other businesses will not continue activities that guarantee a loss. At the very least, the proposed rules will distort the marketplace and severely affect the issuance and use of prepaid cards and signature cards in a manner that is not commensurate with those cards' value to the marketplace.

We are not aware of any study by the Board examining the effects of applying the same fee caps to signature, PIN, and prepaid card transactions on consumers, merchants and issuers. The Board should have a firm grasp of the likely effect of such a rule on consumers, especially poor consumers who are most likely to use prepaid cards or to small businesses that do not have the economic wherewithal to have their own prepaid cards.

b. The Proposed Interchange 12¢ Fixed Cap and 12¢ Fixed Cap with a 7¢ Safe Harbor Will Cause Banks to Lose Money on Each Debit Card Transaction

The imposition of the Board's "average variable cost" calculation as a fixed 12¢ cap, even if it represented a fair reflection of issuer's true transaction costs (which it does not) will cause many issuers to lose money on each transaction.

The Board recognizes that the "variation among individual user's costs is large" (Proposed Rules 81737 col. 3) and notes that some issuers "unlikely . . . are recovering their per-transaction costs through interchange transaction fees." Proposed Rules 81737

col. 2. The Board apparently has no study that informs who these issuers are or the reasons that they have higher transaction costs. The Board speculates that some issuers' higher costs may be because they are "newer start-up programs that have not yet achieved economies of scale." Proposed Rules 81737 col. 2. The Board has decided it is not "reasonable" for interchange fees to compensate such issuers for their higher costs. Proposed Rules 81737 col. 2.

The number of issuers who would be penalized by the Board's proposed 12¢ cap is by no means a small percentage of outliers. Even by the lights of the Board's grossly under-counted 12¢ average medium "processing" costs, fully one in five issuers will not recoup their costs for debit card transactions.

However, the statute does not authorize the Board to penalize a large portion of the issuers in this country or in particular small start-up debit programs who have not achieved economies of scale. The statute states that the Board should "establish standards for assessing whether the amount of any interchange transaction fee . . . is reasonable and proportionate to the cost incurred by the issuer with respect to the transaction." The Board is not charged to determine whether the issuer's costs are reasonable. Rather it is required to assess standards to determine whether the interchange fees are reasonable and proportional to an issuer's *given* costs.

The Board has not conducted any study that would demonstrate that its "penalty" on the less efficient issuers would have the desired effect of making them more efficient. Fundamental economics teaches us that the basic drive for a profit, which is the underlying rationale of for-profit businesses, would have already spurred the issuers to be as efficient as their means and circumstances would allow. It is contrary to economic theory, much less common sense, to believe that the Board's imposition of a draconian cap with no appreciation of issuers' true costs for debit cards, of the variables in costs of debit cards, or of the variations of the costs of different users would cause issuers to be more efficient than currently caused by market forces.

Further, the Board has not conducted any study that would suggest that its imposition of a 70% to 80% reduction of interchange fees would benefit consumers, small merchants, or achieve any other policy underlying the Dodd-Frank Consumer Protection Act or the Durbin Amendment. To the contrary, the statements by the staff indicate that they understand that the proposed rules very well might have a negative impact upon consumers, small merchants, and small banks. Meeting Tr. 26-28, 34-37 and 43. The hoped-for benefit of the proposed regulations on consumers and small banks appears to be based on a wished-for "trickle down effect" from large merchants and acquirers.

5. The Known Adverse Consequences to a Systemic Drastic Reduction of Interchange Rates

The fixed fee cap of 12¢ will have very predictable adverse consequences on consumers, issuers, banks and the financial system s a whole.

a. Consumers Will Be Adversely Affected

Remarkably, for proposed sweeping regulations designed to implement amendment and a statute intended to protect consumers, the Board has not had any systematic, or indeed any, study of the effect that its proposed regulations will have on consumers. In response to Vice-Chair Yellen's question, "And I wonder if you thought through what the likely overall effect of this rule is going to be on consumers?", the staff answered in effect that they did not know:

> "So we think the effect of this rule on consumers is, is difficult to predict."

Meeting Tr. 25. But the staff had some "observations." They observed that the overall effect on consumers is likely to be negative.

> However, any savings that a consumer might realize at point of sale could be offset by fee increase at their banks as well as changes in terms that debit cardholders face for card use and deposit accounts.

Meeting Tr. 26.

The reality is that the Board's regulation has created a situation where Regions and issuers in general will lose money on a transaction-by-transaction basis and on an overall debit card program basis because the Board proposes to ignore the true costs to issuers of debit card programs. Because of these losses, Regions will inevitably have to end or scale back its debit card programs and remove consumer benefits associated with debit card programs and related demand deposit accounts. The Board in its Proposed Rules, when recognizing that its failure to take into consideration issuers' fixed costs "may prevent issuers from recovering through interchange fees some costs associated with debit card transactions," also recognized that:

> [I]ssuers have other sources, besides interchange fees, from which they can receive revenue to help cover the costs of debit card operations.

Proposed Rules 81736 col. 1. For most banks, these sources, although the Board did not identify them, are, of course, consumers.

As the Board's proposed rules will have a sudden and dramatic negative impact on issuers, so too will they have a sudden, dramatic, and very visible negative impact on

consumers. This negative impact on consumers is universally recognized by bank industry groups and consultants, and even the Board itself.

The obvious negative impacts on Regions' customers are:

- **"Higher fees for debit card use."** Meeting Tr. 26. The most apparent effect of the proposed rules will be Regions' adding fees for use of its debit cards to help offset the losses imposed by the Board. This will have the effect of suppressing a popular method of payment and pushing Regions' consumers to other forms of payment that may be less salutary for consumers and the financial system as a whole.

- **Elimination of rewards programs.** As the staff noted, "one of the first things that issuers may do is reduce or eliminate debit card reward programs." Meeting Tr. 27. This will make Regions' debit cards and checking accounts less attractive to many consumers than credit cards.

- **Higher fees for other demand deposit account services.** Debit cards are functionally tied to checking accounts and other demand deposit accounts. The drastic reduction of the interchange fees will prevent Regions from offering "Free Checking" and other efforts and lower fees to bring more consumers into the banking system.

- **The scaling down or elimination of customer services associated with debit cards.** Issuers will necessarily seek to reduce these uncompensated services thereby increasing confusion among consumers and lessening the dispute resolution function of debit cards.

In particular, the Board has not studied the impact of its proposed regulations on lower income consumers and, indeed, none of its "observations" address the potentially devastating effect of these regulations on the most vulnerable members of society. As the Board has recognized, the interchange rates allowed issuers through means such as free checking accounts to attract users to direct deposit accounts. The persons who have most benefited from the lower barriers of entry to direct deposit accounts (funded to a large extent by interchange rates) are lower income consumers. These consumers will be the sector of the economy most immediately impacted by issuers' need to replace their huge losses in interchange fees that will be dictated by the Board's proposed rules.

The practical effect of the change in interchange rates is that persons who are marginally in the financial system will lose access to direct deposit accounts and debit cards. This will make their day-to-day living more difficult – eliminating, for example, their 24 hour access to cash and the ease of payment provided by debit cards. It will push consumers to prepaid cards and to cash. It will push consumers to very expensive banking alternatives such as check cashing providers and payday lenders.

Not surprisingly, in this time of extraordinary challenges for banks resulting from the recession, increased levels of loan losses, higher capital requirements, regulatory reform, and other well publicized factors, several major US retailers are emerging to provide these same very costly services themselves as unregulated entities. For example, according to the US Banker, "Wal-Mart is opening its MoneyCenters, which offer such financial goodies as wire transfers, check-cashing and bill pay, at an accelerating clip. It expects to have them in about 40 percent of its nearly 3,000 SuperCenters by the end of 2010, with more on tap for next year." John Engen, *Wal-Mart Gets Serious*, U.S. Banker, September 2010, at 22. In effect, the shift of $12 billion in interchange will enable merchants to more aggressively themselves engage in providing financial products at even higher costs for consumers than those provided through banks today.

The Board's proposed rules will have the effect of making debit cards a much less attractive payment device for financial institutions. Naturally, and as recognized by the Board, issuers will steer consumers to other forms of payment where they can make a profit, such as credit cards. Meeting Tr. 28. The Board hopes that merchants might have a counter balancing influence to encourage debit card use. But at the end of the day, without any systematic objective study, the Board simply must say in response to Vice Chair Yellen's question on the proposed rules' impact on the use of debit cards, as it did:

> So on the whole we don't know what the outcome will be.

Meeting Tr. 29.

b. The Adverse Impact of the Proposed 12¢ Cap on Issuers

Similarly, the Board has not undertaken any study of the likely impact of the drastic reduction of interchange fees on the financial institutions directly impacted by the proposed rules. The financial expert Oliver Wyman estimates that the effect of the proposed rules on issuers will be an immediate reduction of approximately $12 billion of non-interest revenue from the banking system. Part of this impact will be borne by consumers in higher fees and reduced services.

But, much of this immense financial loss will be borne directly by banks. Regions is concerned, as should the Board whose responsibility is to "maintain the stability of the financial system", that the effect of the proposed rules will be to undermine the financial stability of banks during this period of economic instability.

The Board does not even speculate on, much less have studied, the effect of the losses on smaller and medium size financial institutions caused by its rate rules and the costs of its routing requirements. In this fragile financial environment, the effect on these institutions could be disastrous.

The heavy pressure from the huge losses in revenue that will be caused if the Board's rules are adopted also may result in issuers laying off workers who support and service debit cards transactions and associated services. These layoffs could cause harm to local economies (and merchants) and will cause suffering to the affected workers. Further, the pressure on banks' costs may cause the banks to outsource processing overseas causing higher unemployment in this country. Again, the Board has not studied the impact of its proposed rules on employment.

c. The Negative Impact on Merchants

The Board's proposed interchange regulations will have a huge windfall benefit for the larger retailers. These merchants may retain those sums and use them for other purposes, such as increased advertising expenditures or increased salaries, distribute them to its stockholders in the form of dividends, or pass on some of them to their customers. The Board has not studied the extent to which merchants may pass on variable portions of their interchange fee reductions.

The Board also has not studied the impact of the debit fee reduction on smaller merchants. Small merchants likely would not see any benefit from the lower fees. The most likely outcome would be that merchant acquirers would retain the benefits.

d. The Trickle-Down Benefits to Consumers and Small Merchants Are Unstudied and Merely Aspirational

The apparent wished-for result arising from the Board's proposed rules is that the reduced interchange fees paid by merchants' acquirers will be passed on to merchants and then will trickle down to consumers. The Board has no study that would support such an aspirational result. It does not know and has not studied whether the large merchants who are the most likely beneficiaries of the interchange reduction of fees will pass on some or any of the benefits of the reduction of their interchange fees on to consumers.

The most the Board can do is state that "merchants *could* choose to pass the savings" on to consumers. Meeting Tr. 26. But, the Board further qualifies this speculation on merchants' behavior acknowledging that price reduction would only "most likely be passed on to consumers in those markets with lower margins and intense price competition." Accordingly, in all those markets and industries where there are not lower margins and intense competition, consumers will not experience any lower prices.

Further, small merchants and medium sized merchants will not likely pass on any interchange fee reduction that they might receive themselves. This is because the fee reduction as a percentage of their costs is so small, especially when the fact that debit cards is just one payment method among many is factored in, that these merchants' prices would not likely be affected by the change in their interchange fees.

In sum, there is not any reason to believe that consumers will benefit from the drastic reduction in interchange rates proposed by the Board, rather there is every reason to believe that consumers, particularly the lower income consumers, will be hurt by higher costs and lower service in their debit card transactions and associated demand deposit accounts. Regions will be directly and immediately harmed by the Board's proposed draconian reduction of interchange fees to a fixed 12¢ cap. The full extent of that harm caused by the Board's proposed rules to Regions and other issuing banks, to the interchange system and to the financial system and economy as a whole is largely unknown and has not been studied. Accordingly, the proposed interchange fees will not likely achieve any of the stated policy objectives of the statute or the Board.

6. **Requested Comment on Alternative 1 and Alternative 2 Fixed Caps:** The 12¢ Cap with a 7¢ Safe Harbor Has No Benefits Compared to the 12¢ Cap[12]

The Board seeks comments on its two alternative proposals for caps on the allowable interchange fees: Alternative No. 1 that an issuer could receive its "allowable per-transaction costs with a safe harbor of 7¢ per-transaction with the Alternative No. 2 cap of 12¢ per-transaction fee with no requirement of determining the allowable per-transaction cost.

As Regions has commented earlier, neither 12¢ cap follows the plain mandate or requirements of the statute – they are not reasonable or proportional to Regions' actual costs associated with debit card transactions. However, given the choice between the two unreasonable alternatives proposed by the Board, Regions prefers the 12¢ cap proposal Alternative No. 2 to the 7¢ safe harbor and 12¢ cap of the Board's Alternative No. 1 proposal.

The Board has unfairly and unjustifiably narrowed the considerations regarding allowable costs and its12¢ caps insure Regions will lose money on each debit card transaction. However, the first proposal would add a significant administrative burden to the many other burdens imposed by the Board, on all issuers, particularly the smaller and mid-sized issuers like Regions who have higher costs.

Regions is also opposed to proposal Alternative No. 1 because for virtually every issuer it is purposely designed to ensure that issuers do "not receive an interchange fee for any transaction in excess of its allowable per-transaction costs." This means in real terms that the regulations are designed to ensure that issuers will lose money on each

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[12] The Board requested comments on the two alternatives that would apply to covered issuers: an issuer-specific standard with a safe harbor and a cap; or a cap applicable to all such issuers." Proposed Rules 81722 col. 1.

transaction. They will lose money if their "allowable per-transaction costs" are between the 7¢ safe harbor and the 12¢ cap because the allowable per transaction costs are not a realistic reflection of the issuers' true costs and because the interchange fees would be exactly the same as the unrealistic allowable per-transaction.

The statute requires that the Board set assessment standards to determine whether any interchange transaction fee is reasonable and proportional to the cost incurred by the issuer. The language of the statute clearly indicates that there should be some "reasonable" proportionality between an issuer's interchange fee and its costs, not a one to one correspondence. The Board has acknowledged that "[r]easonable and proportional doesn't mean, is different than equal to or less than costs." Meeting Tr. 45. And the Board has recognized that "reasonable and proportional has been in other contexts read to include some profit." *Id.*

Yet, the Board's proposed regulations almost perversely set up a system where all issuers will lose money. They will lose money if their "allowable pre-transaction costs" are less than 12¢ and will lose more money on a per-transaction basis if their costs are more than 12¢.

Accordingly, the 7¢ safe harbor and the 12¢ cap is just the worst of both worlds – it guarantees loss and it adds a high administrative cost to boot (which would be just another additional cost added to the issuers not considered and accounted for by the Board).

The 12¢ cap itself is a money-losing proposition per-transaction for virtually all issuers, but it at least will not come with yet more administrative burdens from the Board.

7. Networks Should Be Required to Pay Issuers the 12¢ Fixed Cap

The Board proposes that the issuers can receive from networks *up to* the 12¢ caps in Alternatives Nos. 1 and 2 or *up to* the issuers "allowable per-transaction costs" or the "safe harbor" of 7¢ in Alternative No. 1. This only means that the networks could provide issuers interchange fees even less than the already inadequate fees permitted by the Board's proposed rules. Particularly, since these caps fall most hard on the smaller and mid-size issuers like Regions who are the most vulnerable and less able to negotiate favorable interchange fees, and the Board has guaranteed that such issuers will lose money on each debit card transaction, Regions believes that the Board should require the payment networks to provide issuers with the limit of the cap permitted – if the Board ultimately decides that it will impose a cap on issuers.

8. **Requested Comment on Interchange Fixed Fees for Prepaid Cards** – They Should Be Higher[13]

The Board has requested comment on whether the Board should have separate standards for debit card transactions and prepaid card transactions.

Regions believes that because prepaid card transaction costs (63.9¢ by the Board's reckoning) are significantly higher than the costs associated with signature debit card (13.7 ¢) and PIN debit card (7.9 ¢) transactions, the Board should set assessment standards that would permit issuers to recoup their costs through interchange fees that reflect their higher costs. Proposed Rules 81725 fn. 25. Since the purchase of pre-paid debit cards skew toward lower income consumers, Regions believes that such pre-paid cards use should be encouraged, not discouraged with penalties that would be especially onerous to issuers of pre-paid cards because of their attendant transaction costs.

9. **Requested Comments on whether the Board's Regulations Should Be Applicable to Three Party Debit Card Systems, Pay Pal and Other Electronic Debt Card Transactions** – They Should Be to Have a Level Playing Field[14]

Regions believes that three party networks, Pay Pal, non-affiliated pre-paid cards and other electronic debit payment methods, not explicitly excluded by the statute, should all be treated the same as other electronic debit payment systems under the proposed regulations. If the Board carries out its proposed punitive rules against issuers of debit cards like Regions, those rules should be applied in all respects to other methods of debit payment. These other debit payment methods are functionally equivalent to debit cards. To exclude them from the Board's regulations would allow these other debit payment methods to reap unfair competitive advantages that are not dictated by their inherent characteristics or the market, but are artificially dictated by administrative rulings. This would cause further distortions to the marketplace with further negative effects.

10. **Requested Comment on the Timing of Issuer Reports**[15]

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[13] The Board requested comment on whether it should "have separate standards for debit card transactions and prepaid card transactions." Proposed Rules 81738 col. 1.

[14] The Board requested comment on whether its regulations should be applicable to three party systems and other electronic transactions. Proposed Rules 81727 col. 3, 81730 col. 3, and 81733 col. 1.

[15] The Board requested "comment on whether the three-month [reporting] time is appropriate." Proposed Rules 81753 col. 2.

Regions does not believe that it is necessary to have a rule prescribing the time that an issuer report its maximum allowable interchange fee to each payment card network through which it processes transactions. However, if such a rule is necessary, March 31 of each year (based on the costs of the previous calendar year) is an appropriate deadline to ensure compliance with the standard beginning on October 1 of that same year.

11. **Requested Comment on Adjustments for Fraud Prevention Costs and a Proposed Framework** – They Should Be Based on the Effectiveness of an Issuer's Fraud Prevention Efforts Regions Proposed Framework[16]

The Board described two approaches it was considering regarding the statutorily called-for adjustment of interchange fees for fraud-prevention costs. One was a technology-specific approach in which the Board would decide the fraud prevention technology that issuers need to adopt in order to receive an adjustment for all or some of the costs associated with Board-approved anti-fraud technology. Proposed Rules 81742 col. 1. The other approach being considered by the Board is non-prescriptive. The Board would not mandate any particular anti-fraud technology or efforts that must be undertaken by an issuer but instead the Board would issue more general standards that an issuer must meet to be eligible to receive an adjustment. Proposed Rules 8742 cols. 1-2. The Board requested comments on these approaches and how the standards may be implemented.

Regions believes that the non-prescriptive approach that sets standards relating to the *effectiveness* holistically of an issuer's anti-fraud program is far preferable to an approach that merely relies on the adoption of technology irrespective of the its effectiveness. There are many reasons that a Board-mandated technology approach does not make sense and would not be practical.

As the Board appears to recognize, it may not be in the best position to judge the effectiveness of anti-fraud programs and technology. The Board's expertise is not in anti-fraud technology and it does not itself run an anti-fraud debit card program. It does not institutionally have either the expertise or the practical experience to decide what is best for issuers. Further, the same approach for anti-fraud programs may not be the same for the different kinds of issuers having a variety of debit card devices. Moreover, top down directed technology is almost never the most efficient or best technology. The marketplace benefits by many approaches. Particularly in areas where innovation is

[16] The Board requested comment on possible frameworks for an adjustment to interchange fees for fraud – prevention costs. Proposed Rules 81722 col. 1, 81740 cols. 2-3, and 81742 col. 3-81743 col. 2.

necessarily rapid, mandated adoptions of technology will only stymie innovation and effective anti-fraud prevention.

Additionally, reliance solely on technology suggests a myopic view of what is necessary and effective for anti-fraud measures. As the Board recognized, issuers pay for "customer servicing associated with fraudulent transactions and personnel costs for fraud investigation teams or other staffing costs." Proposed Rules 81741 col. 3. Issuers pay for these personnel and services because they are an important part of an effective program. Anti-fraud adjustments should be determined on the effectiveness of an issuer's particular program, not the kind of hardware and software that they employ.

Anti-fraud measures by issuers aid everyone – cardholders, merchants, and the financial system. The Board should not place caps on anti-fraud adjustments or other artificial limitations on adjustments as it has done elsewhere in its proposed rules and as it intimates that it is considering for anti-fraud measures. Any such artificial and arbitrary restrictions will discourage fraud prevention and suppress innovation. These are not the policy goals of the Durbin amendment.

Regions offers that issuers should be rewarded for fraud prevention performance through an increased interchange fee paid to the issuer the following quarter based on prior quarter fraud losses ratio to total gross dollar sales volume by transaction type (Signature and PIN).

The following examples show how this approach may work:

Issuer Transaction Fraud Basis Points 2 - 4 Increased Interchange $.04
Issuer Transaction Fraud Basis Points 5 - 7 Increased Interchange $.02
Issuer Transaction Fraud Basis Points 8 - 10 Increased Interchange $.01
Issuer Transaction Fraud Basis Points Greater 10 Increased Interchange $0.00

Further, to encourage effective anti-fraud measures by issuers, their losses attributable to merchant data breach should be excluded from the incentive calculation and passed directly to the merchant regardless of payment network rules or amount.

As indicated earlier, Regions believes that current issuer fraud prevention costs need to be considered as a part of the transaction costs and in the Board's initial rules setting forth standards for reasonable and proportional interchange rates. Issuers have incremental transaction cost associated with transaction risk scoring and monitoring. Adding standards and costs for fraud prevention would increase issuer expense per-transaction. Technology solutions like EMV would require significant capital investment in the form of replacement cards to consumers, education, infrastructure updates at merchants, issuers, processors, ATMs and payment networks. Such standards imposed by the Board would make debit transactions even more unprofitable than the Board's initial proposed rules.

12. **Requested Comment on Prohibitions on Circumvention** – Rebates and Signing Bonuses[17]

As the Board recognizes there are many reasons for a network to pay issuers fees in connection with debt card transaction. These include incentive payments and rebates from a network to increase volume for a particular network. It also would include upfront payments to encourage an issuer to shift all or some of debit card business to the network. As the Board also recognizes these upfront payments or signing bonuses to issuers upon the execution of a contract also tend to defray the costs of issuing new cards, marketing the new network brand, or other conversion and connectivity costs that the use of the new network might entail. In addition, these upfront payments by the networks are often in connection with long term contracts. Therefore, at the beginning of new long term contract with a network, the initial upfront payments and incentives might exceed the fees charged to the issuer for the initial year. This might be particularly true for the addition of a new network that requires marketing and promotion to create acceptance among the issuers' customers and significant initial outlays for installation and other connectivity costs.

These incentives and signing bonuses are currently provided. They have nothing to do with circumvention of Board rules that currently do not even exist. Moreover, these fees are not paid by merchants or acquirers. They are paid by the networks as part of the overall system's competitive framework. Further, these payments are not listed in the statute as part of the Board's consideration and they really have nothing, other than a theoretical possible connection, to do with interchange fees. Therefore, they should not be a part of the Board's regulations concerning the standards for assessing whether interchange fees are reasonable and proportional to an issuer's costs.

II. Prohibitions on Network Exclusivity: Requested Comment on Implementing the Proposed Limitations on Network Exclusivity[18]

A. Requested Comment on Two Alternative Rules Prohibiting Network Exclusivity: Alternative B Requiring Multiple Networks for Each

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[17] The Board requested comment on its prohibitions against circumvention of its rules and in particular "regarding how the rule should address signing bonuses that a network may provide to attract new issuers or retain existing issuers upon the execution of a new agreement between the network and the issuer." Proposed Rules 81748 col. 1.

[18] The Board requested comment on all aspects of implementing the proposed limitations on network exclusivity and merchant routing restrictions under, including the specific changes that will be required and the entities affected. Proposed Rules 81750 col. 1.

Method of Authorization Exceeds the Board's Authority and Will Harm Consumers and Issuers[19]

The Board has also requested comment on its proposed rules and alternatives that attempt to implement the Durbin Amendment's prohibition against restricting the number of payment card networks on which an electronic debit transaction may be processed to a single network or affiliated networks.

The Board proposed two alternatives approaches for its rules prohibiting network exclusivity; namely (1) Alternative A: an issuer or payment card network must have at least two unaffiliated networks for processing the electronic debit transaction regardless of the method of authorization; or (2) Alternative B: an issuer or payment card network must have at least two unaffiliated networks for each method of authorization.

Regions believes that Alternative A is the preferable course because it avoids the many practical problems raised by Alternative B and because Alternative B is inconsistent with Congress's intention as expressed and embodied in the Durbin Amendment.

Regions is extremely concerned about the likely very adverse impact on consumers and issuers resulting from the adoption of Alternative B. Alternative B would cause issuers, merchants and networks considerable costs and operational time and effort and a substantial disruption of their businesses. The Board recognizes that implementing Alternative B would require, among other things:

> [t]he replacement or reprogramming of millions of merchant terminals as well as substantial changes to software and hardware for networks, issuers, acquirers, and processors in order to build the necessary systems capability to support multiple signature debit networks for a particular debit card transaction.

Proposed Rules 81749 col. 2.

Issuers would be required to adapt at enormous expense its technology and operational infrastructure to support multiple card signature brands and processing parameters based on each payment network rules and regulations.

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[19] The Board requested "comment on the two alternative rules prohibiting network exclusivity: one alternative [Alternative A] would require at least two unaffiliated networks per debit card and the other [Alternative B] would require at least two unaffiliated networks for each type of authorization method." Proposed Rules 81722 col. 1.

Additionally, participation in multiple networks would diminish the issuers' ability to reduce transaction expenses associated with network fees which are typically priced on volume. Having to manage additional multiple vendors will also increase costs across the operations spectrum. Debit cards will have to be rebranded and subsequently reissued to customers. Websites and customer communication materials will have to be revamped. New and additional education and training of associates will have to occur. All of these things come at price to issuers.

Moreover, in presenting the benefits associated with exclusivity arrangements in its commentary, the Board indirectly points out the adverse effects (e.g., increased core processing costs and compliance costs, etc.) of requiring issuers to have multiple networks will have on issuers, and ultimately on consumers as the increased costs are passed on them:

> For example, an issuer may want to shift a substantial portion or all of its debit card volume to a particular network to reduce core processing costs through economies of scale; to control fraud and enhance data security by limiting the points for potential compromise; or to eliminate or reduce the membership and compliance costs associated with connecting to multiple networks.

Proposed Rules 81748 col. 3.

In addition to the substantial costs, operational time and disruption noted above, consumers will also likely lose certain debit card benefits as well. The Board acknowledges that requiring multiple payment card networks could result in very unfavorable effects to cardholders, as evidenced in its commentary:

> For example, a cardholder may receive zero liability protection or enhanced chargeback rights only if a transaction is carried over a specific card network. Similarly, insurance benefits for certain types of transactions or purchases or the ability to receive text alerts regarding possible fraudulent activity may be tied to the use of a specific network. Requiring multiple unaffiliated payment card networks, coupled with a merchant's ability to route electronic debit transactions over any of the networks, could reduce the ability of a cardholder to control, and perhaps even to know, over which network a transaction would be routed. Consequently, such a requirement could reduce the likelihood that the cardholder would be able to obtain benefits that are specific to a particular card network.

Proposed Rules 81748 col. 3 - 81749 col. 1. In addition, Alternative B would make it impossible for issuers to accurately communicate cardholder benefits because network rules, regulations, card products, and form factors are different among the various networks.

Also, prospects for innovation, including the development of the next-generation of authorization methods will be constrained if Alternative B is adopted. The Board astutely recognizes this likely result in its commentary:

> Although PIN and signature are the primary methods of debit card transaction authorization today, new authentication measures involving biometrics or other technologies may, in the future, be more effective in reducing fraud. However, an issuer may be unable to implement these new methods of card authorization if the rule requires that such transactions be capable of being processed on multiple unaffiliated networks.

Proposed Rules 81749 col. 2.

In the Durbin Amendment, the Board is charged with implementing a statutory provision that only requires an issuer to enable at least two unaffiliated networks on its debit cards *without regard to the method by which a transaction may be authorized.* The Board clearly recognizes that the statute provides that its regulation should be made without consideration as to the method of authorization when its states in its commentary that the "statute does not expressly require issuers to offer multiple unaffiliated signature and multiple unaffiliated PIN debit card network choices on each card." Proposed Rules 81749. Nonetheless, the Board's proposed Alternative B does take into consideration the method of authorization and requires more than two unaffiliated networks for each method of authorization. Accordingly, the Board's proposed Alternative B exceeds the scope of the Board's authorization under the statute. It is well recognized that an administrative body in promulgating regulations cannot insert its own will when a statute is silent on the matter and the rule is only inconsistent with the statutory requirements and with congressional intent. "An inference drawn from congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent." *Burns v. United States*, 501 U.S. 129, 136 (1991) (quoting Illinois Dep't of Public Aid v. Schweiker, 707 F.2d 273, 277 (7th Cir. 1983)). Furthermore, "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not. . . hide elephants in mouseholes." *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001).

In sum, by proposing Alternative B, the Board has exceeded its statutory authority given to it by Congress. Moreover, the selection of Alternative B will significantly increase the costs and operational upheaval caused by implementing the routing restrictions to not less than two unaffiliated networks for each method of authorization as compared to implementing Alternative A. Furthermore, requiring multiple unaffiliated networks on a debit card for each method of card authorization will limit innovation and investment in new and improved products by networks and issuers alike. In contrast, Alternative A, while not optimal, is more closely aligned with the plain language of

statute. Given all of the above, Regions urges the Board to adhere strictly to the statutory language by adopting Alternative A instead of Alternative B.

B. **Requested Comment on the Impact of the Proposed Approach on Regional Networks** – The Requirement of National Coverage for Each Method of Authorization Is Not Reasonable and Will Have Severe Adverse Consequences[20]

The Board has proposed that it is necessary for the at least two unaffiliated payment networks that the second unaffiliated network, either alone or in combination with other networks operate nationwide.

Regions respectfully notes that the Dodd-Frank Act does not specify any type of network that an issuer must use. In fact, the statutory language makes no mention whatsoever of any of type of network, let alone make the distinction between regional and nationwide networks. Instead, the statute only requires that the networks be unaffiliated. To add language that Congress did not include in the statute amounts to "enlargement" of the statute rather than "construction" of it. *Iselin v. United States,* 270 U.S. 245, 250 (1926). "Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*Burden v. Snowden*, 828 P.2d 672, 676 (Cal. 1992) (citing *Cal. Teachers Ass'n v. San Diego Cmty. College Dist.*, 621 P.2d 856, 858-59 (Cal. 1981)). If Congress had intended for the unaffiliated networks to be either all nationwide payment networks or a combination of multiple regional networks that together would provide nationwide coverage, Congress would have stated so in the statute "The primary indication of [Congress'] intent is the language of the statute." *United States v Aguilar*, 21 F.3d 1475, 1480 (9th Cir. 1994), *aff'd in part, rev'd in part on other grounds*, 115 S.Ct. 2357 (1995).

Under the proposed rule, issuers that maintain a single payment network or affiliated networks will be required to contract with at least one additional unaffiliated national network or alternatively, several unaffiliated regional networks. This will, for all intents and purposes, force an issuer to contract with payment card networks that it may not have otherwise done so. For example, by requiring 100% coverage in all 50 states, an issuer's desire to participate in multiple regional networks in order to attain national coverage, will be substantially reduced.

As a result, the smaller networks will be effectively foreclosed from the business of issuing cards through banks, creating a duopoly consisting of Visa and MasterCard and giving them tremendous market power and greatly reduce the intense competition

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[20] The Board requested "comment on the impact of the proposed approach to networks with limited geographic acceptance. Proposed Rules 81750 col. 2.

between these networks. In the current market where a debit card generally only has one network, Visa and MasterCard compete for a single space. This competition would be removed by the proposed rule and would require, in effect (because of the practicalities and difficulties of insuring national coverage from multiple regional networks), issuers to choose both Visa and MasterCard thereby giving each a monopoly position. Such an anti-competitive network environment would produce an enormous potential for abusive conduct that has long been recognized by antitrust laws. It would severely limit the need or desire of these networks to offer new and better products and services of their own, all to the detriment of consumers. "Consumers benefit when multiple networks compete for banks' business because such competition stimulates the networks to offer more competitive products and services." Schmalensee Tr. 6019:7-6020:12 (T6037-38)." [Brief for the United States (Final Version) (08/30/2002), *United States v. Visa U.S.A. Inc.*, 344 F.3d 229 (2d Cir. 2003).

This anticompetitive environment will also restrict the ability of issuers to ensure adequate risk mitigation practices are in place for effective oversight and management of their network relationships. For example, the lack of competition would eliminate the need for networks to invest resources in creating or improving safer systems and products, to share risks with banks through contractual obligations, or to meet minimum service level requirements in order to compete for issuers' business.

Today, Regions, like many other issuers, only engages networks that have proper controls in place to protect our customers, our business and our reputation, to reduce our liability and minimize risks, to enhance shareholder value, and to comply with banking regulatory requirements. We accomplished this in a number of ways, including (without limitation) performing in-depth due diligence in selecting a network, mitigating our risk through contract terms, and through ongoing monitoring of the network. Through this process, we are able to identify, measure, monitor, and control risks associated with a particular network. This is important because some of the risks associated with transaction processing and settlement activities include threats to security, availability and integrity of systems and resources, confidentiality of information, and regulatory compliance. In a competitive network market, we are able to leverage our business as a means of obtaining better contractual terms and to ensure that networks maintain proper controls for risk mitigation purposes. In contrast, an anticompetitive network market eliminates an issuer's leverage to insist that networks manage risk effectively, thereby creating unreasonable regulatory burdens on the issuers.

For instance, the Board in its guidance on risk management of outsourced technology services warns financial institutions against entering into contractual arrangements with service providers who will not agree to terms that effectively manage risks of the institution:

> Institutions may encounter situations where service providers cannot or will not agree to terms that the institution requests to manage the risk

> effectively. Under these circumstances, institutions should either not contract with that provider or supplement the service provider's commitments with additional risk mitigation controls.

Supervisory Letter SR 00-4, "Outsourcing of Information and Transaction Processing," issued by Federal Reserve on February 29, 2000.

In Supervisory Letter SR 00-4 (SUP), the Board makes clear that it "expects institutions to ensure that controls over outsourced information and transaction processing activities are equivalent to those that would be implemented if the activity were conducted internally."

Unfortunately, an unintended consequence of the Board's proposed rule is that it will likely create an anticompetitive market making it, among other things, very difficult for issuers to meet the Board's expectations regarding the management of risks that may arise from the outsourcing of critical information and transaction processing activities by issuers.

It is for all of the reasons above, that we strongly urge the Board to not adopt the geographic restrictions requirement or to provide for modifications to minimize the potentially harmful consequences of such a requirement.

C. Comment: Minimum Service Levels for Payment Networks

As an issuer Regions primary concern is for the successful completion of the customer's transaction. Merchants have different concerns. They seek the lowest cost per transaction. Therefore, one effect of requiring multiple networks on each card is that merchants will likely route transactions to the lowest cost payment network regardless of capacity or service levels. Accordingly, in addition to its other proposed regulations, the Board should establish minimum service level standards for payment networks.

D. **Requested Comment**: Time Required to Add a New Network Where There Is Payment Network Consolidation [21]

The Board requested comment on its proposed rule that requires issuers to add an additional unaffiliated debit card network no later than 90 days after the date on which a prior unaffiliated payment card networks become affiliated.

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[21] The Board requested comment on whether 90 days provides sufficient time for issuers to negotiate new agreements and add connectivity with the additional networks in order to comply with the rule." Proposed Rules 81751 col. 2.

The required 90 day period of time is too short to adequately adopt a new payment network. When establishing a new payment network relationship, Regions will be required to perform due diligence on each network to determine if that network is financially stable, is willing to agree to Regions information security and customer quality standards. This process could be lengthy is and dependent on each networks cooperation and resources. Banks will be required to train and educate support personnel on rules and settlement processes for each network. Regions recommend issuers be given 12 months to identify and implement a new unaffiliated payment network.

E. **Requested Comment**: Rule Accommodation and Accounting for Different Payment Methods and their Unique Benefits[22]

The Board requested comment on cards, or other payment codes or devices, that meet the proposed definition of debit card, but that may be capable of being processed using only a single authorization method. The Board gave examples of key fob or mobile phone embedded with a contactless chip that may be able to be processed only as a signature debit transaction or only on certain networks.

One of the significant difficulties that the Board has encountered in its efforts to credit a limited set of rules to account for a wide variety of devices and means to debit accounts electronically is that those rules do not account for the benefits that each kind of device or means was designed to provide. There are many different kinds of payment methods because each was designed to solve issues that a payment network and issuer identified and to provide them with competitive advantages. This is the heart of innovation. If there are niche products, they almost necessarily will not be compatible with various payment networks. This is because there does not exist uniform standards that would allow these different kinds of products. Moreover, smaller networks may not have the resources to adhere to the standards of the larger networks creating a drag on innovation of new debit products.

Even with the most common kinds of payment methods, each offers particular benefits that can only be performed by a certain type of network. An obvious example is cash-back transactions at the point of sale which are currently only supported by PIN networks but not signature networks.

When establishing a new payment network relationship Regions will be required to perform due diligence on each network to determine if that network is financially stable, is willing to agree to Regions information security and customer quality standards. This process could be lengthy is and dependent on each networks cooperation and

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[22] The Board requested comment on whether applying the rules to cards and devices that only have a single method of authorization "could inhibit the development of these devices in the future." Proposed Rules 81751 col. 2.

resources. Banks will be required to train and educate support personnel on rules and settlement processes for each network. Peak transaction periods should be avoided to minimize potential consumer disruption. Regions recommends an Alternative A effective date of July 31, 2012. Also, implementation cost associated with identifying and establishing multiple network relationships should be included in transaction cost.

III. Conclusion

As appears above, Regions does not believe that the Board has adequately studied or thought through the full implications of its proposed debit card rules and their adverse consequences on issuers, merchants, consumers, and the financial system. Regions therefore urges the Board to study fuller and more closely the effect of its proposed rules.

Further, Regions believes that the real-world effects of the Board's rules will not be fully understood until they are begun to be put into effect. Accordingly, Regions recommends that whatever final rules are implemented that they be done so gradually so that all affected constituents can adequately prepare for and absorb their impact. Otherwise, this vitally important part of our financial system could be severely harmed in ways that cannot be anticipated and in ways that are unforeseen.

Again, Regions values the opportunity to comment on the proposed regulations and appreciates your consideration of the views expressed in our letter. We would be pleased to discuss our comments further with the Board and its staff.

Sincerely,

John Owen
Senior Executive Vice President
Consumer Services
Regions Financial Corporation