From: Union Bank and Trust Company, Alan L. Fosler

Subject: Reg I I - Debit card Interchange

Comments:

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

Attention: Docket No. R-1404 and RIN No. 7100 AD63

February 15, 2011

Alan L. Fosler
Union Bank and Trust Company

Dear Ms. Johnson:

This letter is to bring to your attention our great concern and opposition regarding the pending regulatory changes within the Durbin Amendment, that now threatens the free market pricing and product innovation that has evolved over the past few decades in electronic banking services. We have experienced a decrease of paper check activity in our industry, and now the increasing electronic transaction activity from ACH and debit card transactions at point of sale terminals and automated teller machines. Throughout the past several years banks like ours have introduced, promoted, and attained a high acceptance rate from consumers for these electronic services. The convenience and safety of these payments has been a proven method of choice for consumer transactions that is growing rapidly. The infrastructure that banks and clearing networks have installed, along with various operating rules established, has developed a reliable and efficient payment method that is now widely accepted. Merchants have received the benefits of efficiencies in payment processing and funds collection, along with an often overlooked benefit of guaranteed funds. Eliminating returned items for insufficient funds and fraudulent payments is a significant burden that has been transferred from the merchants responsibly to that of the card issuing banks.

The pending legislation known as the Durbin Amendment is a significant threat to this growing payment method. If the pricing of this service is no longer determined by the banks that offer it and revenues are decreased to the current proposed federal guidelines, that are below our current operating costs, then these services and the customers who use them will most likely be negatively impacted by potential new activity fees that could certainly impact and discourage electronic activity. Banks have helped to build the debit card payment network and play the primary role in maintaining its integrity. Many fraudulent attempts and threats to the system are monitored and absorbed by the banks. When cards are compromised at points outside of the bank's control, it is the bank's expense to fund card replacements and new activity monitoring and fraud prevention tools. The fraud losses related to card activities are rapidly increasing, and this represents a potentially high risk if not properly managed and controlled. It is wrong to impose restricted revenue pricing on a product with high risk potential. The thought that just because banks like ours are below $10 Billion in assets will not be impacted by such legislation is also incorrect. We operate in a market driven economy where the lowest price tends to attract the highest volume. It is unrealistic to think that banks offering similar services to merchants at higher prices will not be negatively impacted by decreased activity as the market drives transactions to the lowest cost providers.

The following additional comments are on behalf of Union Bank and Trust Company, and the Nebraska Electronic Transfer System (NETS), Inc., a Nebraska-focused non-profit regional debit card network. As a member of the NETS network, our institution also is a part owner of NETS. The Durbin Amendment directs the Federal Reserve to adopt rules that will dramatically reduce debit interchange fees that will hurt our institution, our network, and our customers.

Union Bank and Trust Company serves approximately 110,000 consumers and employs over 800 people in Nebraska and Kansas. We believe the debit provisions will harm our institution and affect the services we are able to offer our customers. Furthermore, our ability to use a cost-effective regional network like NETS is threatened under the proposed rules.

We believe that the Federal Reserve's Proposed Rule to implement the Durbin Amendment goes much further than what is required by the Durbin Amendment. Our chief concern is that the proposal for interchange fees for non-exempt issuers and products does not reflect the reasonable and proportional costs incurred by issuers of debit products, as required under the statute. In particular, our actual incremental costs in excess of the proposed caps are precluded in all cases. We believe that any final rule should include all incremental issuer costs and not be subject to a cap. However, if a cap is deemed necessary for ease of administration, we believe the cap should take into account all issuer costs, including: network fees; the cost of inquiries and disputes; fraud losses and fraud prevention costs; fixed costs, including capital investments; and a reasonable profit. With regard to fraud prevention, we believe the non-prescriptive approach described in the proposal makes the most sense so that institutions can adopt evolving technologies that are appropriate to the size and scope of their debit programs.

Likewise, the network routing proposal goes far beyond the Durbin Amendment's requirements. Under the proposal, NETS, Inc. (a Nebraska-based, predominantly regional network) would not be allowed to serve as one of the networks for purposes of fulfilling the Durbin Amendment's multiple network routing requirements, despite the fact that the vast majority (90%) of transactions made with NETS cards take place in its coverage area. This geographic restriction is nowhere to be found in the statute itself, and we strongly believe that regional networks should qualify as a network alternative for all institutions within a network's geographic coverage area. If the proposed rule is not changed, institutions like ours will be forced to add additional, expensive national networks, resulting in greater consolidation among the few national networks that meet the proposed standard.

Finally, for purposes of the multiple network routing requirements, we believe the Board should adopt the less burdensome Alternative A. Alternative A limits the expense of managing network relationships and will increase sufficiently the number of PIN network routes available for merchants. Furthermore, Alternative B would require multiple signature networks on one card, which is impractical as the two signature card payment systems do not support such a choice. We also believe that ATM networks should not be made subject to any part of the Durbin Amendment.

We respectfully urge the Board to consider these concerns fully. Thank you for your consideration and for the opportunity to weigh in on these important matters.

Respectfully,

Alan L. Fosler