Fishback Financial Corporation

February 18, 2011

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

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

Dear Ms. Johnson:

Fishback Financial Corporation and its wholly-owned subsidiary First Bank & Trust ("FBT" or the "Bank") respectfully submit this public comment on the Federal Reserve System's proposed Debit Card Interchange and Routing Rule, which implements portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). FBT is a state-chartered bank located in Brookings, South Dakota, with $800 million in total assets. FBT is opposed to the rule for three (3) primary reasons.

1. **The rule effectively prohibits FBT and other community banks from issuing a decoupled debit card program.**

Since 2009, the Bank has issued decoupled debit cards pursuant to a contractual relationship with Tempo Payments, Inc. ("Tempo"). We believe that offering niche products, such as decoupled debit cards, is important as these products help diversify the Bank's income stream. While we take great pride in meeting the needs of our local community, diversification of income is important to our institution from a financial perspective, particularly in light of recent economic pressures on the banking industry.

The decoupled debit products issued by the Bank provide consumers with the opportunity to receive various merchant discounts and rewards, but still allow them to keep their existing demand deposit accounts. FBT ventured into the decoupled debit market at roughly the same time as two much larger banks, Capital One and HSBC, were exiting the market. Similar to a "traditional" debit card program, the bulk of the Bank's income from this program is derived from interchange. In fact, for a decoupled debit card, the customer is not charged annual fees or monthly fees that add to the card's overall profitability.

Accordingly, the proposed regulation setting the cap on interchange severely limits the income generating potential of the Tempo decoupled debit program. Since FBT has assets of less than $10 billion, we initially assumed our decoupled debit program would be exempt from interchange restrictions. However, we understand that the final version of the Act eliminated this exemption, as the new Electronic Funds Transfer Act ("EFTA") Section 920 provides that "the term 'issuer' shall be limited to the person holding the asset account that is debited through an electronic debit transaction." *See* EFTA Section 920 (a)(6)(A)). As a direct result, issuers of decoupled debit cards are not considered "issuers" for purposes of the small issuer exemption because they do not hold the account being debited.

It seems contradictory, however, that within the rule, the definition of debit card "applies to any card...or device... regardless of whether the issuer holds the account." Proposed Section 235.2(f)(2). If decoupled debit cards are by definition "debit cards", why would banks less than $10 billion ***not be*** allowed the interchange exemption? It seems inconsistent that the location of where the underlying asset account is held is irrelevant for the very definition of debit card - but relevant for the interchange cap.

Furthermore, it's worth noting proposed comment 2(f)-7 states that "[t]he term 'debit card' does not include an account number when it is used by a person to initiate an ACH transaction that debits the person's account." Decoupled debit is simply a systematic way for a consumer to use their demand deposit account number to initiate an ACH, which debits his/her account, thus seemingly giving decoupled debit relief from interchange caps. However, the Federal Reserve then goes on to state the use of a decoupled debit card, "involves the use of a debit card for purposes of this part." Again, if a consumer-oriented ACH transaction is not part of the definition of debit card, why is decoupled debit included?

Unfortunately, we recognize that the this situation can only be remedied in two ways: (1) amending the original bill to eliminate Section 920(a)(6)(B) or (2) changing the definition of debit card or ACH transaction to recognize decoupled debit as the unique product that it is.

We believe that these seemingly innocuous definitions and interpretations have inadvertently created an anticompetitive situation whereby FBT, a small community bank that is, to the best of our knowledge, the only bank in the country with a program of this type, is effectively prevented from continuing our relationship with Tempo, which provides a consumer friendly decoupled debit product. Without an exemption from the interchange cap, this program will not generate sufficient revenue, particularly since we do not charge the consumer egregious fees. While larger banks may choose to issue decoupled debit with a strategy of cross selling other bank products to make up for losses on decoupled debit products, FBT does not have the scale to do so.

2. The small bank exemption also does not provide adequate protection to small issuers.

FBT does qualify for the small bank exemption for debit cards issued to our local customers; however, economic forces will likely force our institution to adopt the same price level or risk losing market share to the largest institutions, as merchants may steer customers to

use cards of the large institutions. As a result, we have serious concerns that the "community bank safe harbor" will practically cease to exist.

3. **The proposed fee is not "reasonable and proportional" and thus the Federal Reserve should exercise the maximum discretion permitted under the statute.**

The interchange amendment allowed the Federal Reserve to determine a "reasonable and proportional" fee for the amount a merchant is charged on each transaction to use the debit card payment network. We believe that the Board should include in the calculation of the fee: network fees; the cost of inquires and disputes; fraud losses and fraud prevention costs; fixed costs; and a reasonable profit. It is paramount that fraud and fraud prevention are considered in terms of costs, particularly since in some cases (such as merchant fraud), the losses are difficult to predict and often beyond the bank's control. With merchant breaches, the bank ends up paying the price of the breach - not only in terms of reissuing cards, but also in terms of reputational costs. A large breach would have the potential to basically "wipe out" all profits obtained via interchange revenue. Accordingly, a reduction is interchange revenue ignores the true costs of offering a debit card program.

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In sum, we believe that the proposed interchange rule is significantly anti-competitive, particularly in relation to decoupled debit. In addition the rule does not adequately protect small issuers, causing serious economic harm to community banks, such as ours. Finally, the Federal Reserve did not properly account for all costs associated with debit card issuing risk, and we believe the resulting cap on interchange will have a significant impact on our bank and our customers.

Sincerely,

David Waligoske
Executive Vice President

cc: Senator Tim Johnson