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February 22, 2011

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

Reference: Docket No. R-1404 and RIN No. AD63

Dear Ms. Johnson:

First Niagara Bank, N.A. ("First Niagara") is a regional community bank headquartered in Buffalo, New York. We provide a full range of financial services to individuals, families and businesses. We also are an issuer of debit and credit cards, and upon completion of our pending merger with NewAlliance Bancorp, Inc.[1], will have $30 billion in assets and more than 340 branches across Upstate New York, Pennsylvania, Connecticut and Massachusetts. As CEO, I am writing to express our opposition to the proposed regulation.

We are deeply concerned that the draft rule presented for comment will not achieve the goal of providing lower prices for consumers, but will instead have substantial and serious unintended consequences. We strongly believe that the proposed rule will impact banks of all sizes, limiting their ability to provide reasonably priced banking services and reduce the resources available to fight fraud in payment systems. While we agree that today's payments infrastructure is not perfect and are open to working towards a better solution, price fixing at the levels proposed will have a very different effect than that which was intended by this legislation.

The following paragraphs summarize our major concerns.

1. The proposed rule transfers the cost of card purchases from high income purchasers to low income purchasers.

   Banks are required to run a profitable enterprise and will be expected by shareholders and regulators to recoup the revenue drop associated with the virtual elimination of income from interchange fees. As evidence, many banks have already begun to raise minimum balance requirements and implement fees on checking accounts in anticipation of the rule

[1] Subject to customary closing conditions including approvals from regulators.

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change. Because high income consumers tend to have larger balances, the new fees will place a heavier burden on lower income consumers.

2. The proposed rule will eliminate debit cards as a payments solution for the lowest income consumers, because the proposed interchange fee caps do not permit banks to cover the cost of providing debit card transactions.

   The proposed interchange fees do not consider the fully loaded expenses associated with card usage. In an effort to minimize losses, banks will be forced to be considerably more selective in which products are eligible for "free" card transactions, and maintenance and other fees on checking accounts will rise. This will impact the customers who can afford it least, and less affluent consumers may find it difficult, if not impossible, to become eligible for free debit card services. Under the worse case scenarios, many of these individuals will be driven into the ranks of the non-banked.

3. The proposed rule will stifle innovation in the traditional payments industry.

   By mandating revenue below the total cost of providing payment services to customers and merchants, the draft rule removes the impetus and the means for developing new and innovative payments services, which would bring new efficiency and security for consumers and for merchants. While First Niagara does not directly drive these systems, we continually look for ways to use our scale as a top-25 bank to bring industry developments to our personal and commercial customers. If the draft rule is implemented as proposed, the payments architecture will be in danger of stagnating in the United States and lagging developments in other parts of the world.

4. Consumers and small business alike will not benefit from the price controls on interchange.

   There is nothing in the regulation to ensure, let alone enforce, that consumers will receive the benefits passed on to merchants in the form of lower prices. And while some larger merchants stand to gain wider margins, many small businesses will be harmed if the rule is adopted as proposed, by reduced competition and fewer choices in their own payment partners. Without the size and power that comes with being a global retailer, in the long run, small businesses will most likely be harmed as a result.

Our recommendation is that the Board convenes a cross-industry panel to better analyze the consequences of the legislation, and ensure that the spirit of the legislation is preserved and that there is no negative impact to those consumers who can least afford the change. Two specific areas to address that are within the Board's discretion are:

1. The proposed rule is needlessly proscriptive in limiting fees to issuers, to the ultimate detriment of low income consumers and smaller merchants, in particular. We urge the Board to exercise discretion to the maximum extent permitted under the statute. A fee that does not take into consideration factors such as network fees, fraud losses, fraud

prevention costs, fixed costs and capital investments as well as allow for a reasonable profit is not a "reasonable" fee.

2. The statute requires the Board to consider the functional similarity between electronic debit transactions and check transactions that clear at par within the Federal Reserve System. However, debit transactions are fundamentally different than checks with respect to the risk of loss. In debit card transactions, merchants are guaranteed payment and the issuing bank bears the loss in the case of insufficient funds or if no valid account exists. In contrast, where checks are returned unpayable, the merchant suffers the loss. Again, to the extent that debit transactions differ from check payments, the Board has discretion and this factor should be taken into account in determining a "reasonable" fee to the issuer for debit card transactions.

First Niagara stands ready to assist the Board in these efforts, and would readily respond to a request to participate in such a panel, in order to help find the right solution for consumers, small businesses and the financial institutions that serve them.

Thank you for your consideration.

Sincerely,

John R. Koelmel

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