

February 22, 2011

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



Re: **Comments of Payment Alliance International, Inc. to
Regulation II: Docket No. R-1404
RIN No. 7100-AD63 (the "NPRM")**

Dear Ms. Johnson:

Our company, Payment Alliance International, Inc. ("PAI") is the largest retail automated teller machine ("ATM") independent sales organization in the United States. We currently manage the processing of over 50,000 retail ATMs, most of which are owned and principally operated by various small business owners as independent sales representatives around the United States. On behalf of our company, our thousands of merchant customers and our national network of independent sales representatives in the retail ATM industry, we respectfully request that you ensure that the regulations implementing Section 920 of the Electronic Funds Transfer Act (the "Act") apply to ATM transactions. We believe that such a result is consistent with the express provisions and the legislative intent of the Act.

The Act was enacted largely to restrain the exercise of disproportionate market power in the debit transaction market by certain debit networks. Although we believe that the independent, free market economy will generally permit competition between independent firms to create an efficient market for goods and services, the reality of the debit transaction market is that market forces do not efficiently protect the non-bank retail ATM owners and operators. Semi-efficient market forces exist between debit networks and debit card issuers, but the remuneration for services provided to consumers (ATM transaction interchange) by non-bank retail ATM owners and operators are governed by the business arrangements negotiated between the debit networks and debit card issuers. In effect, the non-bank retail ATM owners and operators have no seat at the table and no market power to affect ATM transaction interchange rates. Thus, the same anti-competitive market forces that have caused inefficiencies in the debit transaction market for point of sale merchants have affected in a similar manner the business of non-bank retail ATM owners and operators. However, the economic impact to non-bank retail ATM owners caused by identical anti-competitive forces is much greater than the impact felt by POS merchants for electronic debit transactions. In fact, without some regulatory intervention into the ATM transaction landscape, interchange revenues to non-bank retail ATM owners may be further reduced in the near future to benefit only the bank issuers of these debit cards. The negative impacts of such an act to various small businesses, consumers and the United States economy could include: (1) reduction of the profitability of or causing many non-bank retail ATM owners and operators to reduce operations or close their businesses, (2) reduction of the availability of ATMs in the marketplace, which in turn decreases the amount of cash exchanged for goods and

services in the economy and (3) a possible increase to the costs of providing access to consumers' direct deposit accounts from non-bank ATMs.

The Act defines “electronic debit transaction” as any transaction using a “debit card” and a “debit card” is defined in subsection 920(c) (2) as “any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means.” Since all ATM transactions debit the same financial accounts (usually a demand deposit account) as point-of-sale (“POS”) debit transactions (and in most cases travel over the same networks), we believe they should be included under this definition. Therefore, we believe ATM transactions should be considered “electronic debit transaction[s]” for purposes of the Act. The natural result would be the applicability of the network exclusivity arrangements and the routing restrictions.

Network Exclusivity Restrictions

The Board specifically requested comments related to the implementation of the network exclusivity provisions of Section 920 of the Act. As detailed above, many of the debit transaction networks have created exclusive contractual arrangements between their networks (largely Visa and MasterCard networks) and their issuers that limit the placement of competing routing networks on their cards. At the same time, the emergence of these exclusive arrangements also harmed non-bank ATM owners as well because these relationships are now being funded, in part, by fees and other onerous economic measures that the dominant networks are imposing on non-bank retail ATM owners.

We believe that it is consistent with the original intent of the statute and the proposed Alternative B, which we endorse over Alternative A, to explicitly require an issuer to enable ATM transactions over at least two unaffiliated networks. This will permit greater competition between the various debit transaction networks related to the processing of ATM transactions in a similar manner as with POS transactions.

Routing Restrictions

In addition to the application of the network exclusivity provisions of 920 to ATM transactions, we believe it is consistent with the legislative intent of the Act to apply Section 920(b)'s prohibition against rules that “inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions....” to ATM transactions. Non-bank ATM owners are different from financial institutions (among many differences, they are not debit card issuers) and should be treated in the same manner as a merchant for purposes of the routing restrictions of Section 920(b). Non-bank ATM owners provide cash dispensing services to consumers who are not also their banking clients and accept payment through convenience fees that are paid by those consumers. These non-bank ATM owners are in the same position as a POS merchant that receives payment for goods and services from credit/debit transactions and thus, there should be no reason to distinguish between non-bank ATM owners and POS merchants in terms of their ability to direct the routing of transactions under the Act. As a result, debit network rules or issuer practices that mandate that either the networks or the issuers control the routing of ATM transactions,

or prohibit or inhibit network routing by a non-bank ATM owner, should be prohibited by the regulations.

Interchange Transaction Fee Standards

We agree with the Board's position that the proposed "interchange transaction fee" standards of Section 920 of the Act would explicitly not apply to ATM transactions since the interchange paid is paid "for the purpose of compensating an issuer."

While Section 920(a) applies to ATM transactions for the reasons set forth above, we do not believe that Section 920(a) applies to ATM interchange fees (or any fees for that matter) paid to non-bank ATM owners and operators based upon the way the industry currently operates. Unlike POS debit interchange, ATM interchange currently flows from the issuer to the ATM owner. We believe this distinction renders Section 920(a) (1) inapplicable to ATM interchange paid to non-bank ATM owners and operators because it is not an "interchange transaction fee that an issuer ... receives[s] or charge[s] with respect to an electronic debit transaction." Should interchange payments to the issuer be implemented for ATM transactions, ATM interchange should then be subject to Section 920(a) as issuers would then be receiving or charging ATM interchange. Unless and until that happens, Section 920(a)'s requirement that debit interchange be "reasonable and proportional" to issuer costs should not apply to ATM interchange paid to non-bank ATM owners and operators.

Based on these arguments, we believe that applying Section 920 to ATM network exclusivity and ATM network routing is consistent with the Act's original intent and will help ensure fair and equitable competition in the related debit and ATM markets and therefore respectfully request that the Federal Reserve take the following positions:

- 1) Recognize that Section 920(b)'s restrictions on single network arrangements apply to all transactions using a debit card, including without limitation ATM transactions, under Alternative B;
- 2) Recognize that Section 920(b)'s prohibition on routing restrictions from an issuer or a network that inhibit selective routing of debit transactions by a merchant applies to ATM transactions with the merchant being considered as the non-bank retail ATM operator; and
- 3) Recognize that Section 920's provisions on interchange fees do not apply to ATM transactions.

We greatly appreciate your consideration of the foregoing opinions. I remain available to discuss these matters with you in person and at your convenience. Please feel free to contact me at (502) 212-4001 if I can be of any assistance whatsoever.

Yours truly,



John J. Leehy, III
CEO and President
Payment Alliance International, Inc.