SYNOVUS

February 22, 2011

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

Delivery via E-Mail to regs.comments@federalreserve.gov and submitted via the Federal Reserve eRulemaking Portal at www.regulations.gov

Re: Regulation H: Docket No. R-1404; Notice of Proposed Rulemaking – Debit Card Interchange Fees and Routing

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System ("Board") by Synovus Bank ("Synovus") in response to the proposed rule published in the Federal Register on December 28, 2010 at 75 Fed. Reg. 81722-81763 ("Proposed Rule") relating to debit card interchange transaction fees and routing. The Proposed Rule was introduced to implement EFTA Section 920, as added by Section 1075 (the "Durbin Amendment") of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

Synovus is a Georgia state-chartered bank. We have approximately 304,203 traditional debit card customers, and we are a leading provider of general-purpose reloadable prepaid cards.

We understand the difficult task that the Board faces in drafting regulations to implement the Durbin Amendment. We appreciate this opportunity to comment and hope that our comments may assist the Board in its efforts and result in regulations that are better for consumers, merchants and banks.

I. Reasonable and Proportional To Costs Does Not Mean Equal To Costs

We recognize that the Board is limited in its determinations by the language of the Durbin Amendment. However, the Durbin Amendment requires that the "amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction." Thus, the initial question is what "reasonable and proportional" means.

Congress did not elect to require that the interchange transaction fees be equal to the issuer's costs or even approximately equal, but rather that the fees be proportional to the costs. The use of the word "reasonable" in the Durbin Amendment itself indicates that the fees could exceed costs as long as such fees are not unconscionable.

The statistics cited by the Board when publishing the Proposed Rule indicate that interchange transaction fees are roughly proportional to issuer costs. Based on the Supplementary Information for the Proposed Rule, the ratio of the interchange transaction fee charged for signature debit and PIN debit as compared to the issuers' costs for such transactions are approximately 4:1 (for signature debit) and 3:1 (for PIN debit). (See 75 Fed.Reg. at 81725, and at footnote 25.) The proportion of the fee to the cost is thus roughly the same for these two types of transactions. As discussed further below, the fee to cost ratio for prepaid cards, based on the statistics compiled by the Board, actually shows that prepaid card costs exceed the average interchange transaction fee for those transactions.

Although the Durbin Amendment only requires that the interchange transaction fee be reasonable and proportional to costs, the two alternative standards proposed by the Board for determining whether the amount of a fee is reasonable and proportional to the costs incurred would effectively limit the fee to an amount that is roughly equal to the median total per-transaction processing cost. Even for an issuer whose costs are this median number, the issuer is not allowed to receive any return on its service and investments. We do not believe that is required by the Durbin Amendment.

Moreover, capping interchange transaction fees on the basis of median costs in the industry means that half of the industry would not even be able to recover their costs. We do not believe that was the intent of the Durbin Amendment.

II. The Fee Alternatives Inappropriately Fail to Account for the Differences Among the Costs for the Three Types of Transactions

The Board suggests two alternatives for determining the level of allowable interchange fee. Under one alternative, the fee would be subject to a safe harbor set at 7 cents per transaction with maximum fees capped at 12 cents per transaction; under the second alternative, the fee for all affected issuers would be capped at 12 cents per transaction.

However, the statistics provided by the Board tell us that the costs for signature debit, versus PIN debit, versus prepaid card transaction vary greatly. We believe that a "reasonable and proportional" fee approach should distinguish among these types of transaction.

The variation in issuer costs is particularly great for issuers of prepaid cards. The Board's statistics show us that their median total per-transaction costs exceed the average interchange fee charged by such issuers for such transactions. We therefore believe that prepaid card transactions should not be subject to the same safe harbors or caps as would apply to general debit card transactions.

Moreover, one of the reasons that prepaid card issuers incur higher costs than issuers of traditional debit cards is that prepaid card programs typically involve a number of non-bank parties that assist the bank in the marketing, processing and distribution of the prepaid cards. The cost associated with these relationships is an unavoidable component of the transaction costs incurred by most prepaid card issuers. By imposing the same fee safe harbors and caps on prepaid card issuers, those financial institutions are effectively required to issue cards at significant loss. This again illustrates how important it is that the final rules recognize the differences among the various types of cards and card issuers.

III. The Fraud Prevention Alternatives

While the Board has not proposed specific regulatory provisions to implement an adjustment for fraud-prevention costs to the interchange transaction fee, the Board has suggested two approaches – a technology specific approach and a non-prescriptive approach. We believe that a non-prescriptive approach would be more appropriate and would better enable each issuer to develop programs that are effective for it.

As noted in footnote 62 to the Proposed Rule, Senator Durbin recognized that "any fraud prevention cost adjustment would be made on an issuer-specific basis, as each issuer must individually demonstrate that it complies with the standards established by the Board, and as the adjustment would be limited to what is reasonably necessary to make allowance for fraud-prevention costs incurred by that particular institution." Thus, a non-prescriptive approach would be in line with Senator Durbin's views.

If the Board instead imposes specific technology requirements, some issuers will be forced to incur costs that may not be necessary given the risk characteristics of any specific issuer's debit or prepaid operations. A non-prescriptive approach also should be easier from a regulatory perspective. If the Board imposes specific technology requirements, the Board would find itself in the position of having to assess, on a periodic basis, what the "best" technologies are.

We also do not believe that a technology specific approach should be necessary to ensure that each issuer implement appropriate fraud-prevention measures. Each issuer has strong incentives of its own to implement appropriate fraud-prevention measures. Larger banks, or banks with customers that conduct frequent online transactions, international transactions or otherwise engage in riskier activities would have a strong incentive to implement the best fraud-prevention measures available. For smaller banks with limited ATMs, no online functionality, and a less risky customer base, less robust fraud-prevention measures might be entirely reasonable.

IV. The Prohibition on Network Exclusivity

We believe that the Board's proposal to address the Durbin Amendment's prohibition against exclusivity arrangements goes beyond Congress' intent. Specifically, we do not believe that Congress intended that rule to apply to any debit or prepaid card that is solely signature based. Statements made by Senator Durbin indicate that the routing restrictions were intended only to restore competition in PIN-based cards where multiple networks traditionally existed:

> Third, my amendment says that card networks cannot require that their debit cards all use exclusively one debit network.
>
> The story here is that there are a number of debit networks that merchants can use to conduct transactions. Until recently, most cards could be used on multiple networks. You used to see a number of debit network logos on each debit card.

> In recent years, however, the biggest networks like Visa have begun requiring banks to sign exclusive agreements under which they become the sole network on banks' cards. This diminishes competition between networks and leads to higher prices. My amendments restore this competition.[1]

For the rest of the story, while cards with multiple PIN-based networks were once common, we do not believe that many, if any, cards with multiple signature networks exist. For that reason, we believe that Senator Durbin's explanation for the purpose of the exclusivity restrictions could only have been aimed at PIN-based cards. We therefore believe that the Board should limit the scope of the exclusivity rule to PIN-based cards.

If the Board concludes, however, that it cannot limit the rule to PIN-based cards, we support Alternative A for general debit cards but encourage the Board to adopt a modified Alternative A for prepaid cards.

As proposed by the Board under Alternative A, an issuer or payment card network may not restrict the number of payment card networks to less than two unaffiliated networks; under Alternative B, an issuer or payment card network may not restrict the number of payment card networks to less than two unaffiliated networks for each method of authorization that may be used by the cardholder.

With respect to general debit cards, the Board has indicated that Alternative A would allow an issuer to provide a debit card that can be processed over one signature-based network and one PIN-based network, provided that the networks are unaffiliated. Assuming that Congress intended for the rule to cover signature-based cards at all, the Alternative A approach when applied to general debit cards is fair to consumers without imposing undue costs and burdens on card issuers.

We strongly agree with the Board's observation that requiring multiple unaffiliated payment card networks for each method of card authorization could limit the development and innovation of new authorization methods. The rapid development of new technologies in recent decades illustrates the impossibility of predicting what might emerge in the near future. If every new authorization method must involve multiple unaffiliated payment networks, the incentives for innovation may be stifled and the costs of innovation may be perceived as outweighing the benefits. We therefore are in opposition to Alternative B for both debit and prepaid cards.

With respect to prepaid cards, we urge the Board to adopt a modified Alternative A that simply requires that the issuer provide a card that can be processed with at least two unaffiliated payment card networks without regard to the method of authorization. That is, we do not believe that an issuer of a prepaid card should be required to offer both signature and PIN based functionality.

As noted above, many of the prepaid cards that banks issue today allow only signature-based transactions. Non-reloadable prepaid cards typically must be routed on signature debit platforms and cannot be routed on PIN-based platforms. We believe that this system reflects customer expectations

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[1] 156 Cong. Rec. S10996 (2010).

with respect to the most common types of non-reloadable cards in the market, such as low-dollar gift cards, rebate cards, and reward and loyalty cards.

Any requirement for the card issuer to establish PINs for these non-reloadable cards would require the issuer to implement card-registration and PIN selection systems. We believe that the costs of adding this functionality would be grossly disproportionate to any value to the customer.

We also believe that many customers would consider the card registration and PIN selection process to be unduly burdensome for what are typically low value cards. In addition, many of these non-reloadable cards are offered as gift cards. The purchaser of the card generally is not the same person who will ultimately use the card. When the purchaser delivers the gift card to a friend or relative, it is that recipient of the gift card who will need to go through the registration process to activate PIN functionality. We believe that this aggravation to the consumer is not merited by any marginal value of PIN functionality.

V. Time Is Needed for Implementation

We request that the Board delay final implementation of the Proposed Rule for so long of a period as the Board determines to be permissible under the Durbin Amendment. Whatever limits the Board ultimately decides must be imposed on interchange fees, it is clear that the changes will have enormous financial consequences for us and all other banks. Time therefore is needed for banks to adjust their business plans, not just with respect to debit and prepaid cards but with respect to many other products and services offered by the bank. Every bank will need to determine how best to address the loss of income, and this is best done in a measured and careful way that will require time.

In addition, we and many or all other banks will need to make changes to our systems and policies to address the new rules on network exclusivity. Depending on the terms of the final rules, we may need to contract with new payment card networks, add network connectivity, add functionality to certain card products, change card stock, and change customer agreements and disclosures. If it is necessary for us to add access to new payment card networks, we could not do so without first negotiating and entering into a contract with the new network, and until then we cannot begin the process of changing card stock and customer agreements and disclosures. Given the significant amount of time that we anticipate that these actions will require, we strongly urge the Board to grant the industry as much time to implement final rules as the Board determines to be consistent with the Durbin Amendment.

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Thank you for this opportunity to comment on the Proposed Rule. We respectfully request the Board to consider our comments and suggestions.

Sincerely,

Joy B. Wells