February 22, 2011

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

RE: Debit Card Interchange Fees and Routing Proposed Rule, Docket No. R–1404

Dear Ms. Johnson:

McDonald's Corporation ("McDonald's") appreciates the opportunity to provide comment to the Board of Governors of the Federal Reserve System (the "Board") on the Board's proposed Regulation II.

McDonald's is the leading global foodservice retailer with more than 32,000 local restaurants serving more than 64 million people in 117 countries each day. We believe locally-owned and operated restaurants are at the core of our competitive advantage, making McDonald's not just a global brand but a locally relevant one. Approximately 80% of McDonald's restaurants worldwide are operated by local business people, including conventional franchisees, joint venture partners (foreign affiliates) and developmental licensees. McDonald's is also a small-ticket merchant within the growing debit card industry and will be impacted by the regulations prescribed by the Board in response to the directives of Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Durbin Amendment").

McDonald's has reviewed the letter submitted by the International Franchise Association ("IFA") and the National Council of Chain Restaurants ("NCCR") in response to the Board's invitation for public comment on the Durbin Amendment.

McDonald's fully supports the opinions expressed in the IFA/NCCR letter and is in complete agreement with those positions.

McDonald's welcomes the Board's efforts to address this issue and appreciates the opportunity to provide comment. Please do not hesitate to contact us if you should have any questions or wish to discuss the contents of this letter in greater detail.

Sincerely,

Michael D. Richard
Senior Vice President & Treasurer
McDonald's Corporation

IFA INTERNATIONAL FRANCHISE ASSOCIATION

Franchising
Building local businesses, one opportunity at a time.

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Washington, DC 20551

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Dear Ms. Johnson:

On behalf of the International Franchise Association (IFA), please find attached comments on the Board of Governors proposed Regulation II. We are submitting these comments to supplement some of our members' unique views regarding the proposal. The IFA is also a member of the Merchants Payments Coalition (MPC) and we support the comments submitted by the Coalition.

Thank you for your consideration in this matter.

Sincerely,

Jason Straczewski
Senior Director, Government Relations & Public Policy

attachment

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RE: Debit Card Interchange Fees and Routing Proposed Rule, Docket No. R–1404

Dear Ms. Johnson:

This letter is submitted by the International Franchise Association ("IFA") and the National Council of Chain Restaurants ("NCCR") to present to the Board of Governors of the Federal Reserve System (the "Board") certain views regarding the Board's proposed Regulation II.

The IFA is the world's oldest and largest group representing franchising for more than 50 years. IFA represents more than 90 different industries, including more than 11,000 franchisee, 1,100 franchisor and 500 supplier members nationwide. According to a 2011 study conducted for the IFA Educational Foundation, there are nearly 800,000 franchised establishments in the U.S., creating 18 million American jobs and generating $2.1 trillion in annual economic output.

The NCCR is the leading trade association exclusively representing chain restaurant companies. For more than 40 years, NCCR has worked to advance sound public policy that best serves the interests of both chain restaurants and the millions of people they employ. NCCR members include the country's largest and most respected quick-serve and casual dining companies. The NCCR is a division of the National Retail Federation, the world's largest retail trade group.

While we applaud the Board's efforts to address this complex and challenging issue, we want to ensure that the Board recognizes the impact proposed Regulation II may have on merchants that accept small-ticket transactions and on consumers. We respectfully submit this comment letter to share our perspectives and to express certain concerns regarding proposed Regulation II. Interchange reform is good for business and consumers but inefficient reform may be harmful to both of those constituents.

Small-ticket transactions have provided fertile ground for the growing debit card industry as more retailers have begun to accept noncash payments for these transaction types. However, retailers also face unique challenges and circumstances when accepting small-ticket transactions that we believe the Board has not fully considered and addressed through proposed Regulation II, and which, if left unaddressed, may cause disparate harm to the merchants who accept small-ticket transactions and the consumers who rely on debit cards to make small-ticket transaction purchases.

I. Background on Small-Ticket Transactions

Electronic debit transactions that have an average per transaction amount less than $15 ("Small-Ticket Transactions") represent a growing and vibrant segment of the retail industry. Small-Ticket Transactions are common to retailers of all sizes across a broad range of industries. In particular, quick service restaurants, sellers of inexpensive and/or consumable goods, transit authorities, self-service and vending operators, convenience stores, taxi services and other consumer service-oriented businesses accept a disproportionate number of Small-Ticket Transactions.

Today, the majority of noncash payment tender types are electronic debit transactions. The proportion of these electronic debit transactions that are Small-Ticket Transactions is significantly higher than that of large-ticket electronic debit transactions that have an average per transaction amount greater than $15. This market reality exacerbates the relative burden on Small-Ticket Transactions of the high flat interchange fees supported under the Proposed Regulations. According to the 2010 Federal Reserve Payments Study on Noncash Payment Trends, 35% of noncash payment transactions in 2009 were electronic debit transactions, representing only 2% of the noncash payment dollar value.[1] Although the mean dollar value of electronic debit transactions in 2009 was $38, the median dollar value would likely have fallen within the Small-Ticket Transaction dollar value of below $15. This assumption is supported by a prior Cash Product Office payment size study which estimated 30% of electronic debit transaction volume was under $15 in 2006.[2] Debit growth rates and the introduction of transit, vending and other Small-Ticket Transaction industry segments suggest this share has increased since that study. Given the increasing prevalence of electronic debit transactions and the number of these transactions that are Small-Ticket Transactions, we submit that it is imperative that the Board consider the impact of proposed Regulation II on these transactions, including the consumers that initiate them and the retailers that accept them.

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[1] Federal Reserve System, The 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006-2009, at 14 (Dec. 8, 2010), *available at* http://www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf.

[2] Federal Reserve System, Cash Product Office Electronic Payments Study (2008).

II. The Durbin Amendment's Interchange Fee Restrictions

In Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Durbin Amendment"),[3] Congress directed the Board to prescribe regulations that implement (1) electronic debit transaction interchange transaction fee restrictions (the "Interchange Fee Restrictions"); and (2) prohibitions against payment card network exclusivity arrangements and transaction routing restrictions related to the processing of electronic debit transactions (the "Network Exclusivity and Routing Restrictions"). On December 16, 2010, the Board issued proposed Regulation II to implement these requirements (the "Proposed Regulations").[4]

The Proposed Regulations include two Interchange Fee Restriction alternatives for comment. Alternative 1 contains an issuer-specific standard with a safe harbor and a cap, and Alternative 2 contains only a cap (which also functions as a safe harbor). Under Alternative 1, the interchange transaction fee charged by a debit card issuer for each electronic debit transaction is limited to allowable costs incurred by the issuer on an average per transaction basis during the previous year, but may not exceed 12 cents per transaction. Additionally, interchange transaction fees set at 7 cents per transaction or lower fall within a safe harbor, under which debit card issuers are not required to demonstrate allowable costs. Under Alternative 2, the interchange transaction fee charged by a debit card issuer for each electronic debit transaction is limited to 12 cents per transaction regardless of allowable costs.

A. While the Proposed Regulations create an acceptable framework for regulating interchange transaction fees, the proposed safe harbor and cap values are unjustifiably high and exceed debit card issuers' allowable costs.

We support the Board's proposed regulatory framework and believe that it fosters the changes necessary to alter the debit card marketplace to achieve the Durbin Amendment's objectives of promoting competition and protecting merchants from unfair interchange transaction fees. However, we also believe that the proposed 12 cent per transaction cap and 7 cent per transaction safe harbor values exceed the actual costs debit card issuers are permitted to recover through interchange transaction fees under the Durbin Amendment. We respectfully request the Board to reconsider the statutory text of the Durbin Amendment, including the functional and cost similarities between electronic debit transactions and checking transactions, to arrive at Interchange Fee Restrictions that are more in-line with actual allowable costs and with the plain meaning of the Durbin Amendment.

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[3] Pub. L. 111-203, 2010 H.R. 4173, 111th Cong. (July 15, 2010).

[4] Debit Card Interchange Fees and Routing, 75 Fed. Reg. 81,722 (December 28, 2010).

1. *The Board should give further consideration to the functional similarities between electronic debit transactions and checking transactions and more closely follow the statute by excluding the costs of electronic debit transaction clearance and settlement as "allowable costs" under the Proposed Regulations.*

Congress directed the Board to "consider the functional similarity between electronic debit transactions; and checking transactions that are required within the Federal Reserve bank system to clear at par."[5] As the Board recognized, there are a number of similarities between electronic debit transactions and checking transactions, including that (i) both are payment instruments used to debit an account; (ii) both require merchants to pay fees to various entities for processing the payments; and (iii) both have roughly similar settlement timeframes.[6] Additionally, like electronic debit transactions, virtually all checks are now processed and collected electronically.[7] In fact, aside from the authorization element of electronic debit transactions, the function, processing and costs of electronic debit transactions and checking transactions are substantively indistinguishable, yet merchants do not pay interchange transaction fees (or any other amounts directly to paying banks) in connection with checking transactions. If, as Congress directed, the Board only allows interchange transaction fees to compensate issuers for the functional differences between checking transactions and electronic debit transactions, the Board should exclude clearance and settlement function costs from its determination of allowable interchange transaction fees. Merchants do not compensate paying banks for check clearance and settlement, and they should not be required to compensate debit card issuers for electronic debit transaction clearance and settlement either.

Further, Congress directed the Board only to *consider* the costs of authorization, clearance and settlement - it did not mandate that the Board allow for recovery of all of these specific costs.[8] In considering together (i) the congressional mandate to consider the functional similarities between electronic debit transactions and checking transactions, and (ii) the congressional mandate to consider the costs of authorization, clearance or settlement, the Board should have adopted the plainest interpretation of congressional intent and allowed only for the inclusion of authorization costs in the calculation of allowable costs recoverable through interchange transaction fees. The Board acknowledged in its discussion of the Proposed Regulations that "the existence of authorization for a debit card transaction . . . to ensure that the account has sufficient funds to cover the transaction amount" is one of the most prominent differences between debit cards and checks.[9] As the Board noted, while clearing and settlement occur for both debit cards and checks, with checks there is no fee for these activities analogous to interchange transaction fees. However, the Board nevertheless opted to include the additional costs of clearance and settlement in the calculation of allowable costs for the purpose of determining interchange transaction fees. The Board's allowance for recovery of clearance and settlement costs through interchange transaction fees reflects a misapplication of the text of the Durbin Amendment.

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[5] § 920(a)(4)(A).
[6] 75 Fed. Reg. at 81,734.
[7] *Id.* at 81,734; Noncash Payment Trends in the United States: 2006-2009, at 8.
[8] § 920(a)(4).
[9] 75 Fed. Reg. at 81,735.

By including clearance and settlement costs in the costs recoverable through interchange transaction fees, the Board effectively supported interchange transaction fees at an artificially high level not permitted under the Durbin Amendment. All merchants would be negatively affected if the interchange transaction fees contemplated in the Proposed Regulations are not adjusted downward to levels supported by the Durbin Amendment prior to finalization. The negative impact of these arbitrarily high interchange transactions fees would be particularly great for merchants that transact a high volume of Small-Ticket Transactions because the cost of fixed interchange fees per transaction increases as a percentage of the transaction amount as amount size decreases.[10]

2. *The Board should consider the functional and cost similarities between electronic debit transactions and electronic check (ACH) transactions, which are more similar to electronic debit transactions than paper check transactions.*

While the Board considered the functional similarities between electronic debit transactions and paper check transactions in the Proposed Regulations, we believe the Board should also have considered the functional and cost similarities between electronic debit transactions and electronic check (ACH) transactions because electronic check transactions are even more akin to electronic debit transactions than are paper check transactions. The Board's own evaluation of self-reported debit card issuer and payment card network cost data revealed that the average variable cost to issuers of authorizing, clearing and settling electronic debit transactions is approximately 4 cents per transaction when each issuer's costs are weighted by the number of its transactions.[11] This amount included costs of clearance and settlement as well as authorization[12] and would therefore be even lower if only the cost of authorization was included, as discussed above in section II.A.1. This average cost of 4 cents per transaction is comparable to the amount many financial institutions charge to process ACH transactions, many of which are electronic check transactions. As with paper check transactions, electronic check (ACH) transactions involve no value transfer payments similar to interchange transaction fees from payees to the paying bank. However, even if the Board considered the costs assessed by financial institutions for the clearing and settlement of ACH transactions to be analogous to interchange transaction fees for electronic debit transactions, the outcome would be Interchange Fee Restrictions that require much lower interchange transaction fee limits than are currently proposed.

B. <u>If set at the proposed levels, the Interchange Fee Restrictions could result in higher per transaction interchange transaction fees than currently apply to many Small-Ticket Transactions.</u>

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[10] In fact, as described in Section II.B below, certain classes of Small-Ticket Transactions will result in *higher* per transaction interchange fees under the Proposed Rules than the merchants pay for those transactions on the current network-established interchange rate schemes.

[11] *Id.* at 81,737.

[12] *Id.*

As noted above, the Durbin Amendment did not authorize, and a plain reading of the statute does not support, interchange transaction fees as high as 7 to 12 cents per transaction. Further, such high interchange transaction fee levels would be particularly burdensome on merchants in connection with Small-Ticket Transactions. Cost-based electronic debit transaction interchange transaction fees, which are required by the Durbin Amendment, are necessarily flat from one transaction to another, regardless of transaction amount. Such flat interchange transaction fees result in a cost per transaction that increases (on a percentage basis) as transaction amount decreases. While we do not oppose, and in fact encourage, a flat fee approach to the Interchange Fee Restrictions, we are concerned about the harm the high interchange transaction fee amounts contemplated in the Proposed Regulations may cause to retailers accepting Small-Ticket Transactions. Of particular concern is the negative financial impact of the high interchange transaction fees allowed under the Proposed Regulations on electronic debit transactions under $5 ("Micro-Payments"). Under current published Visa and MasterCard Small-Ticket Transaction debit interchange fee rates (both set at 1.55% + 4 cents), a $5 transaction incurs 11.75 cents in interchange transaction fees, which is below the proposed 12 cent cap contemplated in the Proposed Regulations. Similarly, under the same Visa and MasterCard Small-Ticket Transaction debit interchange fee rates, a $1 transaction incurs 5.6 cents in interchange transaction fees, which is lower than the proposed 7 cent safe harbor and less than half of the proposed 12 cent cap.[13] Thus, Micro-Payments will likely incur higher interchange transaction fees under the Proposed Regulations than under the existing interchange transaction fee regime, contrary to the intended results of the Durbin Amendment.

The Board should consider the increased burden the Proposed Regulations will place on merchants with a high proportion of Small-Ticket Transactions and Micro-Payments unless the safe harbor and cap values are lowered significantly. Implementing Interchange Fee Restrictions that promote higher than current interchange rates will put merchants that accept a high proportion of Small-Ticket Transactions and Micro-Payments in the difficult and unfortunate position of having to decide whether to discontinue accepting electronic debit transactions for Small-Ticket Transactions and Micro-Payments, whether to significantly limit future technology and marketing innovation around the debit payment space, and/or whether to raise prices to continue accepting debit cards. None of these outcomes is desirable or appropriate in light of the purposes of the Durbin Amendment.

C. <u>If interchange transaction fees are supported at artificially high levels, the Proposed Regulations would have a negative impact on consumers and on the debit marketplace as a whole by reducing consumer choice and stifling innovation.</u>

Section 904 of the Electronic Fund Transfer Act ("EFTA") requires the Board to take into account and allow for the "continuing evolution of electronic banking services and the technology utilized in such services."[14] It is not clear from the Proposed Regulations or its

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[13] Visa USA Consumer Debit Interchange Reimbursement Fees, CPS Small Ticket, Debit Interchange Fee, *available at* http://usa.visa.com/download/merchants/october-2010-visa-usa-interchange-rate-sheet.pdf; MasterCard U.S. and Interregional Interchange Rate Programs, *available at* http://www.mastercard.com/us/merchant/pdf/MasterCard_Interchange_Rates_and_Criteria.pdf.

[14] 15 U.S.C. § 1693b(a)(1).

accompanying discussion whether the Board fully contemplated the regressive impact the 12 cent cap would have on the use and evolution of electronic payments, particularly in the Small-Ticket Transaction and Micro-Payments space. If interchange transaction fees are set at or near the cap permitted under the Proposed Regulations, merchants with a high proportion of Small-Ticket Transactions and Micro-Payments will have little incentive to accept debit cards (if they do not already do so) or to continue accepting debit cards because the costs of debit card acceptance will likely be higher than the costs of accepting other forms of payment. Further, some such merchants may discontinue deployment of technologies that promote and enhance debit card use because interchange transaction fees for debit card transactions make doing so unprofitable. For example, merchants with a high percentage of Small-Ticket Transactions and Micro-Payments may be unable or unwilling to invest in equipment that would enable them to accept emerging payment form factors (such as contactless, chip and PIN, or mobile payments), technologies that have the potential to increase payments efficiency, reduce fraud, reduce costs, and enhance the U.S. payment system. Reducing or eliminating debit cards as a payment option will not only limit consumer choice, but will also slow the transition of payments in the U.S. toward a more secure, efficient and convenient all-electronic environment that is beneficial for consumers, financial institutions and merchants alike.

III. The Durbin Amendment's Network Exclusivity and Routing Restrictions

The Durbin Amendment requires the Board to prescribe regulations prohibiting a payment card network or debit card issuer from restricting the networks on which an electronic debit transaction may be processed to a single network or affiliated group of networks (the "Network Exclusivity Restrictions").[15] The Board must also prescribe regulations that prohibit a payment card network or debit card issuer from inhibiting the ability of any person who accepts debit cards for payments to route an electronic debit transaction over any network that is enabled to process the transaction (the "Routing Restrictions").[16] The Network Exclusivity and Routing Restrictions are designed to facilitate greater merchant flexibility in selecting payment card networks over which to route electronic debit transactions in fulfillment of the Durbin Amendment's objective to "increase fairness, transparency and competition in the debit card and credit card industries."[17]

A. Network Exclusivity Restrictions

The Board proposed two alternatives for implementing the Network Exclusivity Restrictions. Alternative A would prohibit payment card networks and debit card issuers from limiting the number of networks available for processing an electronic debit transaction to fewer than two unaffiliated networks, regardless of the means by which a transaction may be authorized. Alternative B would prohibit payment card networks and debit card issuers from limiting the number of networks available for processing an electronic debit transaction to

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[15] § 920(b)(1)(A).
[16] § 920(b)(1)(B).
[17] 156 Cong. Rec. S5926 (2010).

fewer than two unaffiliated networks for each method by which a transaction may be authorized.[18]

We strongly encourage the Board to adopt Alternative B as it is the only alternative that will accomplish the Durbin Amendment objective of providing effective merchant routing choice. As Senator Durbin testified before Congress, the Network Exclusivity Restrictions are "intended to enable each and every electronic debit transaction—no matter whether that transaction is authorized by a signature, PIN, or otherwise—to be run over at least two unaffiliated networks, and the Board's regulations should ensure that networks or issuers do not try to evade the intent of this amendment by having cards that may run on only two unaffiliated networks where one of those networks is limited and cannot be used for many types of transactions."[19] The Board itself acknowledged that Alternative A is unlikely to achieve the objectives of the Network Exclusivity Restrictions. As the Board stated, "the effectiveness of the rule promoting network competition could be limited in some circumstances if an issuer can satisfy the requirement simply by having one payment card network for signature debit transactions and a second unaffiliated payment card network for PIN debit transactions."[20] Alternative A fails to satisfy the purpose for the Network Exclusivity Restrictions because (1) most merchants do not accept and/or are technologically unable to accept) PIN-based electronic debit transactions, and (2) once the consumer selects an authorization method, the merchant has only a single network routing option.

Alternative A would result in only one payment card network being available for processing electronic debit transactions at nearly 75% of merchant locations, as only about 2 million of the 8 million merchants that accept debit cards in the U.S. are capable of accepting PIN-based electronic debit transactions.[21] For many of these merchants, (e.g., car rental agencies, kiosk entertainment vendors, lodging establishments, and online retailers) PIN-based debit is unavailable or impractical.[22] As the Board correctly recognized in the Proposed Regulations, "in those locations that accept only signature debit, potentially under Alternative A only a single payment card network would be available to process electronic debit transactions."[23] In addition, as the Board acknowledged, adoption of Alternative A will fail to achieve the objectives of the Network Exclusivity Restrictions "because once the cardholder has authorized the transaction using either a signature or PIN entry, the merchant would have only a single network available for routing the transaction."[24] For these reasons, implementation of Alternative B, which requires the availability of at least two unaffiliated networks for *all* electronic debit transactions, is necessary to achieve the statutory intent of the Durbin Amendment.

B. Routing Restrictions

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[18] 75 Fed. Reg. at 81,749.
[19] 156 Cong. Rec. S5926 (2010).
[20] 75 Fed. Reg. at 81,749.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.* at 81,749-50.

The Durbin Amendment requires the Board to prescribe regulations "providing that an issuer or payment card network shall not . . . inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions."[25] In conformity with the mandate prescribed by Congress, the Proposed Regulations would prohibit debit card issuers and payment card networks from inhibiting, directly or indirectly, the ability of a merchant to route an electronic debit transaction for processing over any network capable of processing the transaction.[26] However, the Proposed Regulations also reflect additional restrictive steps by the Board that unjustifiably undermine the Routing Restrictions as enacted by Congress. Specifically, the Board (i) limited the permissible routing choices to only those payment card networks that have been affirmatively enabled by the debit card issuer on the particular debit card used for the electronic debit transaction, and (ii) limited the permissible routing choices to only those networks that satisfy the Board's narrowed definition of "payment card network."[27] These unauthorized limitations will hamper the effectiveness of the Routing Restrictions and will prevent the true merchant routing flexibility Congress intended.

A plain reading of the statutory text shows that Congress intended merchants to be able to process electronic debit transactions over "*any* payment card network that may process such transactions" (emphasis added). [28] Congress did not limit its routing choice mandate to those payment card networks enabled by the issuer on a particular debit card. Had Congress intended to limit the routing choices to only those networks enabled on the debit card, it could have easily and plainly done so through the statute. Since Congress did not so limit merchant routing choice in the Durbin Amendment, the Board should not have done so in the Proposed Regulations.

Further, the Durbin Amendment does not require or authorize the Board to limit the definition of "payment card network" to include only the major debit card networks that exist in the market today. Under the Durbin Amendment, the term "payment card network" is defined as "an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions."[29] This broad definition leaves open the opportunity for entities (such as processors, gateways and others) that may not be traditional payment network operators to fall within the statutory definition of "payment card network," thereby broadening merchants' options when considering how best to route an electronic debit transaction.

The Board, however, chose to narrow the definition of "payment card network" by adding a qualifier that only those entities that "[e]stablish[] the standards, rules, or procedures that govern the rights and obligations of issuers and acquirers involved in processing

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[25] § 920(b)(1)(B).
[26] 75 Fed. Reg. at 81,751.
[27] *Id.*
[28] § 920(b)(1)(B).
[29] § 920(c)(11).

electronic debit transactions through the network"[30] are payment card networks for purposes of the Proposed Regulations. The Board did so despite acknowledging that the Durbin Amendment's definition "could be interpreted broadly to include *any* entity that is involved in processing an electronic debit transaction, including the acquirer, third-party processor, payment gateway, or software vendor that programs the electronic terminal to accept and route debit card transactions. Each of these entities arguably provide 'services, infrastructure, and software' that are necessary for authorizing, clearing, and settling electronic debit transactions."[31] The Board exceeded its authority in so limiting the definition of "payment card network" in the Proposed Regulations, and the result of the unauthorized limitation would be more limited merchant routing choice and less competition among payment card networks.

IV. Timing of Implementation of Durbin Amendment Requirements

The Durbin Amendment requires the Board to implement the Interchange Fee Restrictions by July 21, 2011, which is one year after the enactment of the Durbin Amendment.[32] The Durbin Amendment sets no effective date for the Network Exclusivity and Routing Restrictions, but the Board seeks comment on two possible effective dates for these restrictions, depending on which Network Exclusivity Restriction alternative is adopted. If the Board adopts Alternative A, it proposes an effective date of October 1, 2011. If the Board adopts Alternative B, it proposes an effective date of January 1, 2013.[33]

We believe that these deadlines represent realistic timeframes for implementing the respective provisions of the Durbin Amendment. The effective date for the Interchange Fee Restrictions under Section 920(a) should not be open to debate – Congress mandated that these restrictions become effective on July 21, 2011. Further, the Board's proposed effective dates for the Network Exclusivity and Routing Restrictions under Section 920(b) provide sufficient implementation time and should not be altered. The Board, through its meetings with and surveys of numerous debit card issuers, payment card networks, and merchant acquirers, obtained and analyzed an adequate amount of information on which to base its proposed effective dates.[34] Therefore, we submit that there is no basis for delaying implementation of the Proposed Regulations beyond the congressional mandate for the Interchange Fee Restrictions and beyond the Board's proposed dates for Network Exclusivity and Routing Restrictions.

Further, while the Board's approach under Alternative A was thoughtful and could potentially serve as an interim solution while Alternative B is implemented, it does not adequately satisfy the Durbin Amendment's prescription of merchant routing choice. Thus, we submit that the Board should consider adopting Alternative A as an interim solution to provide some additional routing flexibility while Alternative B is implemented.

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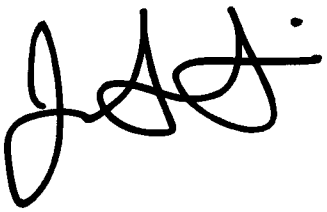
[30] 75 Fed. Reg. at 81,755.
[31] *Id.* at 81,732.
[32] § 920(a)(9).
[33] 75 Fed. Reg. at 81,753.
[34] *Id.* at 81,724-25.

We appreciate the Board's efforts to address this complex and challenging issue in a manner that will satisfy the objectives of the Durbin Amendment and will not hinder commerce or harm consumers. As the Board develops its final rules, we hope that it will thoughtfully consider their impact on merchants that accept Small-Ticket Transactions and Micro-Payments and their customers. Please do not hesitate to contact us if you should have any questions or wish to discuss the contents of this letter in greater detail.

Sincerely,



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