



# National Grocers Association

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September 30, 2011

Jennifer J. Johnson

Secretary

Board of Governors of the Federal Reserve System

20th St. and Constitution Avenue, NW

Washington, DC 20551

*Submitted Electronically*

**Re: Docket No. R-1404**

Dear Ms. Johnson:

The National Grocers Association (N.G.A.) takes this opportunity to submit the following comments in response to the Federal Reserve Board's (Board) interim final rule published for federal comment in the Federal Register of July 20, 2011. The Federal Reserve specifically requested comments on *Debit Card Interchange Fees and Routing, 76 Fed. Reg. 43,478* (interim rule).

N.G.A. is the national trade Association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or wholly self – distributing. Some are publicly traded but with controlling shares held by the family and others are employee owned. Independents are the true “entrepreneurs” of the grocery industry and are dedicated to their customers, associates and communities.

Debit card transactions are an important part of the methods of payments consumers use in supermarkets and grocery stores, and that independent grocers receive.

While the total costs for interchange fees charged to independent grocers for debit transactions are not large as those for credit cards transactions, the debit interchange costs have been anti-competitively set and charged by the banks and their networks.

Thus, the reason for enactment of the Durbin amendment requiring the Federal Reserve to establish reasonable and proportional rates and create incentives for reducing fraud costs. The grocery business is a low margin one in which every penny counts. In fiscal year 2010 net profits before taxes fell to an average of 1.08 percent across company sizes in the independent grocer sector. For single store operators, true small business entrepreneurs, net profit fell below one-percent to .90 percent.<sup>1</sup> As a result, the Federal Reserve's interim rule permitting a 1cent fraud adjustment on each debit transaction harms consumers and the independent grocers that service them, while providing no incentive for the banks to reduce fraud costs.

In addition to the comments filed here, N.G.A. is a member the Merchants Payment Coalition (MPC) and endorses the comments that have been submitted on behalf of the MPC.

### **The Board Disregards Fraud Prevention Adjustment Requirements**

The fraud prevention adjustment provision contained in Section 920(a)(5) of the Electronic Funds Transfer Act allows for an adjustment in the fee amount received by an issuer "if such adjustment is reasonably necessary to make allowance for cost incurred by the issuer in preventing fraud in relation to the electronic debit transactions involving that issuer." It is clear from the statute that the fraud adjustment must be specific to an individual issuer and in Section 920 (a)(5)(B) must take into consideration, the extent to which the fraud occurrence depends upon whether the authorization is based upon signature, PIN, and other means. It is well recognized that issuers have promoted more fraud prone signature transactions over PIN transactions in order to produce more interchange revenue. Section 920(a)(5)(B)(ii)(VI) also provides that the Board must consider "the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions."

Independent grocers and N.G.A. take strong exception to the interim final rule that established a 1 cent fraud prevention adjustment for issuers. The Board failed in its obligation to follow the clear unambiguous statutory language and Congressional intent of the Durbin amendment, which set the parameters for each issuer to have to justify its fraud adjustment. Instead the Board provided a monetary incentive for the issuers to continue their current practices and not take action to adopt fraud prevention safeguards. Unless modified by the Board, independent grocers and other merchants will continue to have to bear the unjustifiable fraud costs that should be the responsibility of the individual issuers and banks will have no incentive to make investments to reduce fraud.

### **The Board Ignores Merchant Fraud Costs**

The Board is required under the law to consider the fraud costs borne by other parties, such as merchants. For example, the Board in its analysis and issuer survey disclosed that 38% of fraud losses

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<sup>1</sup> 2011 National Grocers Association Financial Management Solutions Independent Grocers Financial Survey

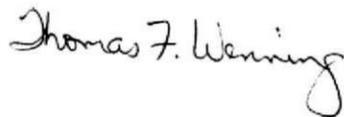
were shouldered by merchants. However, the board did not take into account the merchant fraud costs as an offset to the adjustment allowed for issuers. The Mott Report, which was submitted to the Board by the Merchants Payment Coalition in October 2010, disclosed that merchants carried the burden of PCI DSS costs exceeding \$10 billion to date and continued to escalate, and chargeback costs for the last three years of more than \$2 billion. The Board's disregard of merchant costs is contrary to the law's mandate. This failure by the Board enables virtually all issuers to qualify for the fraud adjustment without having to take any action to demonstrate efforts or investments in fraud prevention. The fraud prevention provisions were enacted in order to reduce fraud for the benefit of consumers, independent grocers and other merchants.

### **Conclusion**

As result, the Board's misinterpretations and failed applications of the Section 920 of Electronic Funds Transfer Act the Board should reconsider and modify the fraud adjustment to take into consideration the provisions mandated by the statute. The Board should not only take into consideration those enumerated here but also should consider the advancements that could be adopted by issuers through low-fraud technology and incentivizing PIN debit versus fraud prone signature debit.

N.G.A. appreciates the Board's consideration of the views of independent sector of the retail grocery industry and looks forward to the Board's revision of its interim fraud-prevention adjustment rule to more accurately reflect the concerns of consumers and merchants.

Sincerely,

A handwritten signature in cursive script that reads "Thomas F. Wenning".

Thomas F. Wenning

Executive Vice President and General Counsel