

July 20, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitutional Avenue NW
Washington, DC 20551

RE: Docket No. R-1748, RIN 7100-AG15
NPRM on Debit Card Interchange Fees and Routing

Dear Ms. Misback,

BOKF, NA is the banking subsidiary of BOK Financial Corporation, a \$47 billion bank holding company. BOKF, NA provides a full array of products and services through Commercial, Consumer, and Wealth Management divisions and has full-service locations in Oklahoma, Texas, Arkansas, Missouri, Kansas, Colorado, New Mexico and Arizona. We appreciate the opportunity to comment on the Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing.

We currently do offer two unaffiliated networks for both card-present and card-not-present transactions. We believe that the objective of the NPR is to require all banks to offer at least two unaffiliated networks on all transactions, including card-not-present, as we do currently. However, we are concerned that the specific language proposed in the NPR would require banks to provide much more than just two networks to satisfy the requirement as articulated, and further that this would be highly impractical, if possible at all, for BOKF and similar banks.

The NPR describes the objective of the revisions as being: to “allow[] merchants or their acquirer to choose among multiple competing networks to process the transaction,” and to “clarify that the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions.” (86 F.R. p. 26193). To that end, the NPR proposes to amend 12 CFR § 235.7 to state that an issuer complies with the rule:

only if, for every geographic area, specific merchant, particular type of merchant, and particular type of transaction for which the issuer’s debit card can be used to process an electronic debit transaction, such issuer enables at least two unaffiliated payment card networks to process an electronic debit transaction.

The NPR proposes to revise the Official Commentary to this section as well, to illustrate that card issuers must “configure each of its debit cards so that each electronic debit transaction initiated with such card can be processed on at least two unaffiliated payment card networks,” and that “this condition [must] be satisfied for every geographic area, specific merchant, particular type of merchant, and particular type of transaction for which the issuer’s debit card can be used to process an electronic debit transaction.” (86 F.R. p. 26194).

Updating the regulation to clarify that card-not-present transactions are included in a card issuer's obligation to enable two unaffiliated networks is reasonable and consistent with the goals of the Regulation. The implementing language proposed by the NPR however, appears to place the burden on card issuers not only to enable the unaffiliated networks (which banks can do), but also to ensure that the networks can be used for every transaction for every merchant and geographic area in which the issuer's card can be used (which banks cannot do).

We believe this intended outcome, and is not consistent with the underlying language found in Dodd-Frank on this topic. This would be extremely difficult, if not impossible for BOKF to implement for two key reasons. First, while BOKF can and already has enabled two unaffiliated networks on each of its cards, each of which can process card-present and card-not-present transactions, it is not within BOKF's power to ensure that every merchant has access to both networks for every transaction. A multitude of factors could create conditions where a merchant will not have access to a network we have enabled, including, but not limited to:

- Merchants are free to choose which acquirer they do business with, and through that decision which networks they connect with. This is not something the card issuing bank can control at all. A merchant may choose to be equipped to accept and process only *one* of the two enabled networks for the debit card presented.
- Network outages
- Ongoing innovation within the payments space may result in new technologies which are only supported by one network at launch or even for a period of time after launch.

If the Regulation requires debit card issuers to *ensure* access to two unaffiliated networks for every transaction with every merchant, BOKF and other issuers would each be obligated to enable every network on their cards. The practical hurdles this obligation would create would be insurmountable. Contracting with and monitoring each and every existing network on an ongoing basis would be an enormous task. Knowing the capabilities of every merchant to whom any BOKF card customer could potentially present a debit card would be extremely difficult even at one specific point in time. Attempting to track an ever-changing population of merchants, each with its own fluctuating levels of access to some but not all networks would not be feasible.

In addition, even if BOKF were able to overcome these practical hurdles, enabling all card networks on every debit card would result in elevated levels of fraud. The quality of the data and tools provided to combat fraud varies significantly among network providers. The effects of this additional fraud on our customers would be harmful: more interrupted transactions, more claims, and more card closures. And the impact on BOKF would be significant: coverage of fraud losses, increased costs of administering error resolutions, and the reputational harm caused by the deteriorated customer experience. We believe the harm to BOKF would be less than that suffered by some other banks. While BOKF's fraud prevention practices are strong, many small to mid-sized banks rely heavily on the fraud tools provided by the card networks to support their processes for protecting consumers and business owners from bad actors. The beneficiary in this scenario would be the fraudsters themselves, who would likely take advantage of this situation.

It is for these reasons that we believe it is not the intention of the Federal Reserve to create the burden that the proposed new language seems to impose. To address this issue in the proposed revisions, we recommend the following clarifications to the final rule, to ensure effective implementation of the revised Regulation and ongoing security in the card payments landscape:

- 1) Modify language to clarify that the Issuer's obligation is to enable unaffiliated card networks on each card such that each card has two networks enabled to process card-present transactions, and two networks enabled to process card-not-present transactions.
- 2) Clarify that the availability of those networks for a particular transaction with a particular merchant is subject to the merchant and that merchant's acquirer's access to those networks.
- 3) Add language allowing temporary exceptions to the availability of two networks for instances such as elevated fraud attacks on a particular network, merchant or payment method, as well as network outages or other non-standard events.

We appreciate the opportunity to comment on this proposed rule and hope our recommendations have been helpful and can be reflected in the final rule. If you have any questions or would like any clarification on the comments provided, please contact me at 918-588-6206 or dmartin@bokf.com.

Sincerely,



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