August 11, 2021

By Email to regs.comments@federalreserve.gov

Ann E. Misback

Secretary

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue NW

Washington, DC 20551

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

Dear Federal Reserve Chairman Powel, Vice Chairs Clarida and Quarles, and Governors Bowman, Brainard and Waller:

On behalf of Best Buy Co., Inc. (Best Buy), I am pleased to submit these comments in response to the Federal Reserve's Notice of Proposed Rulemaking on Debit Card Interchange Fees and Routing (Docket No. R-1748, RIN 7100-AG15). Best Buy supports the proposed clarifications and wishes to thank the Federal Reserve for issuing these rules which would, importantly, provide additional competition through routing choice for online debit transactions and which have taken on enhanced importance throughout the pandemic.

Best Buy is a multi-national retailer, based in the United States, who sells consumer electronics, home appliances, mobile phones, cameras, and a variety of other merchandise, and related services for installing, fixing, and maintaining these products. Best Buy operates approximately 980 stores in the United States, and sells products and services through physical stores, BestBuy.com, business-to-business channels, and through partnerships with other retailers.

Consumers choose to shop at Best Buy using multiple payment options, including cash, check, credit cards, debit cards, mobile payments, and through Best Buy's own credit and financing options. As a merchant that accepts various payment tenders, we are deeply familiar with the costs of accepting credit and debit cards, namely interchange "swipe fees" and other related fees assessed by card networks.

As discussed further below, Best Buy encourages the Federal Reserve to carefully adjust the final rule so that stakeholders cannot circumvent the letter and spirit of the Durbin Amendment (Section 1075 of the Dodd-Frank Act) by creating technology obstacles or market-distorting incentives that would effectively limit competition and/or increase a merchants' costs of accepting debit cards. Best Buy also urges you to implement the regulations before the coming holiday season starts.

BEST BUY SUPPORTS THE FEDERAL RESERVE'S RULEMAKING

Best Buy joins the broader retail community in applauding the Federal Reserve for clarifying that debit card issuers must enable, and allow merchants to choose from, at least two unaffiliated networks for card-not-present debit card transactions, such as online purchases. Online sales have grown rapidly over the past decade but were accelerated during the pandemic. At the same time, debit card penetration continues to grow, underscoring the need for this clarification. If the Federal Reserve does not address the loopholes that exist in the current regulations, the loopholes would continue to be used by card networks and debit card issuers to drive costs higher for merchants, while restraining routing competition and the ability of merchants to route online debit card transactions to lower-cost independent card networks.

Best Buy was uniquely impacted by the pandemic and the inability to route online debit card transactions over multiple competitive networks. At the onset of the pandemic, Best Buy voluntarily closed our stores for the safety of our customers and associates to in-person foot traffic for approximately 8 weeks, moving entirely to curbside pick-up and home delivery. As a result, nearly 100 percent of Best Buy's transactions during this period moved online. Once stores gradually opened back up for in-person shopping, in-store transactions were normalized; however, online sales have continued to remain high. As the company shared in its Q4 2020 earnings call for fiscal year 2021 (Best Buy's fiscal year runs from February 1 through January 31), our total domestic sales were $43.293 billion with online sales accounting for 43% of our domestic sales. In fiscal year 2022, Best Buy expects this number to normalize a bit, and reported 33% of our domestic sales coming from online transactions in the first quarter of our 2022 fiscal year. For comparison, online sales accounted for 19% of our total sales in fiscal year 2020 and just 5% just 10 years ago. Recently, industry sources have observed and estimated that the pandemic has accelerated the shift to online sales by 3-5 years, underscoring the necessity and importance of this rulemaking.

RULEMAKING WOULD BENEFIT FROM STRONGER ANTI-CIRCUMVENTION PROVISIONS

As mentioned earlier, Best Buy strongly supports the proposed clarifications to Regulation II, but the rulemaking would benefit by being future-proofed with strong anti-circumvention protections. Our experience has been that card networks and debit card issuers oftentimes engage in practices that either directly circumvent the intent of regulations, or create new technological barriers, and that have the practical effect of limiting competition and increasing costs. In order to preserve the intent of the statute, we highlight below several suggested clarifications and examples of current practices in the market in order to illustrate the need for strong anti-circumvention rules to prevent card networks and debit card issuers from limiting merchant routing rights.

- Regulation II, as currently written, does not require the availability of more than one *authentication method* per unaffiliated network. Without the availability of multiple authentication methods for each unaffiliated network, there could be unintended consequences for merchant routing rights if a merchant cannot send a transaction to a network that does not support *all* authentication methods of the debit network. For example, in the card-present environment (e.g. in-store transactions), if card issuers do not support and enable PINless functionality, merchants, like Best Buy, would only be able to route to unaffiliated networks when a PIN is obtained. Networks and issuers could limit the number of transactions with multiple routing options by restricting those options to only authentication methods that are less prevalent than PIN (like biometrics) and then enable only a single network for more established methods (e.g. signature or no CVM (cardholder verification method)). Therefore, we strongly encourage the Federal Reserve to clarify that a debit card issuer *must* enable *all* authentication functionality that *any* domestic debit network provides and thereby not allow cardholder authentication methods to limit a merchant's right to route.

- Payment networks are using technology, such as tokenization and other technology-inhibiting mechanisms, to make it difficult, if not impossible, to process transactions via an independent debit network. Using tokenization as an example, one payment network has stated it will not detokenize network tokens from payment wallets or Click-to-Pay wallets to PANs (primary account number) from a debit transaction that takes place online at a merchant. Conversely, another payment network allows detokenization of the token to PAN, but then strips out the cryptogram prior to sending it to the debit network, so that when the debit card issuer receives the PAN they may have a higher rate of declines based on the lack of a cryptogram (which helps provide security to the transaction). Because some types of transactions are tokenized (e.g. mobile wallets), merchants have no option but to accept tokenized transactions. Under the current practices of the two dominant payment networks, merchants are put in the untenable position of having to choose between the security of the transaction and the ability to competitively route debit card transaction. The proposed commentary properly requires that for any means of access that carries debit transaction information (whether by a debit card or other device), two unaffiliated payment networks must be enabled by the debit card issuer. It is important that the Federal Reserve clarifies that debit card transactions taking place in-app or as part of a card-on-file solution, are types of transactions where two unaffiliated networks must be enabled and available (including those transactions that may be tokenized).
- A prominent example of the dominant payment networks using technology to inhibit debit routing rights was the implementation of EMV transactions at payment terminals where consumers were prompted to choose between "Global AID" (Visa Debit

/Mastercard Debit) or "Visa/MasterCard Common AID" (US Common Debit). These prompt options served no other purpose than to frustrate the competitive routing rights of merchants like Best Buy, while confusing consumers and pushing them to the dominant payment networks due to brand name awareness. Appropriately, the Federal Reserve and Federal Trade Commission investigated these anticompetitive practices, resulting in the issuance of a Frequently Asked Questions (FAQ) document by the Federal Reserve. This underscores the need for clarifying that the use of technology or new technology improvements (including tokenization or the use of technology as a constraint to debit routing) cannot limit merchants' debit routing rights.

- Because debit card issuers and the dominant payment card networks often use third-party solution providers to implement elements of transactions, the Federal Reserve should clarify that these third parties are agents of the debit card issuers and payment card networks, and therefore be subject to the same regulations. For example, card networks and card issuers have worked with various third parties on mobile wallet solutions that have implications for how merchants route debit card transactions. If consumers use an in-app mobile wallet, merchants like Best Buy are unable to route these transactions to an independent debit network. The Federal Reserve should further clarify that the use of third parties in a payment solution, by any stakeholder (e.g. card networks, card issuers, merchant acquirers, third-party providers, etc.) in the transaction, should not limit merchants' routing rights.
- Unfortunately, payment networks use market-distorting incentives to debit card issuers that can lead to less innovation and less competition. Specifically, the dominant payment networks seek to maintain and strengthen their market share of dual message debit card transaction volumes on online transactions (card-not-present), which has the effect of hurting competition and locking out independent debit networks. These incentives, which seek to circumvent the letter and spirit of Regulation II, should be addressed in the clarifying regulations so that a debit card issuer or payment card network cannot "directly or indirectly" inhibit the ability of merchants to direct the routing of electronic debit transactions for processing over any payment card network of the merchants' choosing.

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In conclusion, Best Buy again commends the Federal Reserve for issuing this Notice of Proposed Rulemaking and wishes to thank it for taking this important step clarifying that the routing provisions of Regulation II apply to online transactions. Merchants like Best Buy have been hampered by the inability to competitively route online transactions for nearly a decade, and we urge the Federal Reserve to finalize and implement its clarification before the all-important holiday season begins later this year. The Federal Reserve's proposed changes come at an important time with the acceleration of online sales during the pandemic as consumers relied on online sales of electronics, appliances, clothing, food and other essentials to meet their needs during these challenging times. Furthermore, as competition and innovation continue to accelerate, we hope that in the near future the regulated rate will be revisited and adjusted downward such that it reflects the historically low actual costs debit card issuers are incurring today to authorize, clear and settle transactions. Finally, we urge the inclusion of strong anti-circumvention rules, and wish to express our support for the detailed comments submitted by our industry associations the Retail Industry Leaders Association (RILA), National Retail Federation (NRF) and Merchant Advisory Group (MAG).

We thank you for this opportunity to comment and for your consideration of Best Buy's concerns. We are happy discuss any of the content included herein, or to provide other assistance, as the Federal Reserve finalizes and implements these changes.

Sincerely,

Jai Holtz

Jai Holtz
Vice President, Financial Services
Best Buy Co., Inc.