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August 10, 2021

By electronic delivery via 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 ID No. R–1748, RIN 7100–AG15; Debit Card Interchange Fees and Routing

Dear Board of Governors:

This letter is submitted by Walmart Inc., on behalf of itself and its affiliates[1] ("Walmart") in response to the request by the Board of Governors ("Board") for comment on proposed clarifications to Regulation II confirming that the debit routing provisions in Regulation II apply to all transactions including transactions commonly known as "eCommerce" or "card-not-present."

Walmart appreciates the opportunity to provide feedback as the Board works to develop and finalize the proposed clarification. Walmart applauds the Board for acting on this critical issue and encourages swift action to finalize the clarifications and begin robust enforcement.

Over the last decade, merchants have seen a reduction in competition that limits their debit routing options, which has been compounded by the dramatic growth of eCommerce. In 2020, Walmart U.S. eCommerce sales grew 79%, and we expect our business, and U.S. retailers more broadly, to maintain significant eCommerce growth for years to come. Of the significant eCommerce growth that we experienced in the past year, debit more than doubled year-over-year. Retailers like Walmart suffer increased costs as a result of the current implementation of Regulation II and the lack of PINless debit adoption by available debit networks. It is essential that the Board finalize the clarification to the rule to reduce costs through increased competition for debit routing options.

[1] Walmart Inc. operates approximately 4,700 Walmart stores and 600 Sam's Club locations in all 50 states and Puerto Rico. Walmart eCommerce brands include: Walmart.com, Samsclub.com, Hayneedle.com, Moosejaw.com, Bonobos.com, Eloquii.com and Art.com.

As history has shown, the U.S. payment card system is broken and lacks the fundamentals of a competitive market. A key indicator of a functioning and competitive market is that costs go down with increasing volumes, technological advancements and gained efficiencies. Yet, the exact opposite has been the case with payment cards in the U.S.- as usage has increased and technology has advanced, costs have increased due to the severe lack of competition among debit routing options.

In 2010, Congress addressed the staggering lack of competition, specifically in the debit routing space, and passed essential reforms to bring competition into the market. However, over the past decade, merchants have faced repeated attempts by the largest entrenched participants to subvert the law and inhibit routing rights. Some dominant payment card networks claim that the market will develop organically on a free-market basis and that there is no need for clarification or enforcement by the Board. History has proven time and again that this is blatantly false and not based in fact. There has been limiting of routing options and consolidation of market power, leading to higher costs to merchants and, as a result, higher costs to consumers as well. The lack of a working open market solution is why it is imperative for the Board to finalize the proposed clarifications to Regulation II.

The law prohibits issuers and payment card networks from infringing on merchant routing choice. Walmart strongly supports the clarification that an issuer satisfies the requirements of section 235.7(a)(1) only if, for every particular type of transaction (as well as every geographic area, specific merchant, and particular type of merchant) for which the issuer's debit card can be used to process an electronic debit transaction, the *issuer has enabled* at least two unaffiliated payment card networks to process the transaction. The proposed clarification aligns with the letter of the law and will help protect merchants' routing rights. The duty of the issuer is to enable multiple networks for all transaction types, and it is the merchant's choice which network it uses.

Along with Walmart's support for the clarifications, we offer recommendations to help the Board achieve its goal of enforcing the law. Walmart respectfully requests that the Board consider including the following in its final rule clarification:

1) Specify that no issuer or network-imposed security methods, formats, codes, products or loyalty programs may be used to limit a merchant's right to access or route a debit transaction over a competitive network;
2) Prohibit using authentication or any other process to restrict merchant routing choice;
3) Explicitly prohibit volume requirements and incentives that could restrict merchant routing choice;
4) Vigorously enforce the law to ensure that all stakeholders and products comply with applicable requirements; and
5) Act swiftly to reduce the regulated rate to make it both reasonable and proportional to the issuer costs.

Each point is discussed in turn below.

1.) The Board should make clear that no issuer or network-imposed security methods, formats, codes, products or loyalty programs may be used to limit a merchant's right to access or route a debit transaction over a competitive network.

Walmart appreciates the Board's important clarification that unaffiliated routing options must be available "regardless of means of access." By including "means of access" the Board is showing foresight into future innovation and technology solutions that are not currently in market. We recommend that the Board clarify that security methods including but not limited to tokenization, as well as any other issuer or network-imposed scheme (e.g., network-required formats or QR codes, loyalty, sweepstakes or digital wallet programs) cannot be used to limit a merchant's right to route debit transactions.

EFTA section 920(b)(1)(B) directs the Board to prescribe regulations to prohibit an issuer or payment card network from restricting the ability of a merchant or its acquirer from choosing among the networks enabled on a card when deciding how to route a debit card transaction. Despite this clear requirement, it is common for only one routing option to be available when a card is tokenized and stored on file at a merchant website ("card on file") or when an e-wallet is used in-app on a mobile device or as enabled on a merchant website.

Walmart urges the Board to keep "means of access" in the final clarifications and clarify that a network token is a "means of access" that must have routing options available. This can be accomplished by prohibiting limitations on who can detokenize with a token service provider, or TSP. The Board could also consider requiring detokenization once a transaction arrives at the issuer and not in transit, creating greater security in the payment ecosystem.

In addition, Walmart strongly encourages the Board to clarify that neither an issuer nor payment card network may:

1) restrict the data set within an authorization, clearing or settlement message, or
2) charge incremental fees for access or detokenizing debit transaction details.

2.) The final clarifications should prohibit using authentication or any other process to restrict merchant routing choice.

Walmart supports the proposed revision adding biometrics and "any other method of cardholder authentication that may be developed in the future" to the list of cardholder authentication methods set out in the regulation at 235.7(a)-1 *Scope of Restriction*. This addition leaves room for market innovations that will supersede the antiquated and ineffective signature method of authentication. In the proposed clarification, the Board also explains that the requirements must be met 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…" However, an exception is created when the Board then says that issuers are not required to have two or more unaffiliated networks available for each method of cardholder authentication. Walmart is concerned that this exception will allow issuers and networks to further flout the law by continuing to limit merchant choice by authentication method. For example, as proposed, the amendment does not clearly prohibit an issuer from enabling only a dual-message signature network and a biometric-only single-message network on a card when the card is presented in an electronic debit transaction. This would have the practical effect of leaving the merchant with no routing options when a card is presented. Walmart seeks additional clarity on how the Board will enforce in such a scenario.

When the original regulations were drafted, there were two primary authentication methods readily available in the market: signature and PIN. The Board decided at the time not to require multiple networks by authentication type. However, the landscape has changed, and technology has advanced in a way that merits the Board taking a broader view and ensuring the method of authentication is not used as a tool to restrict merchant routing choice.

The Board predicted in the initial rule and noted in the clarification that "it [the Board] expected the market to develop solutions to facilitate the use of single-message networks for card-not-present transactions in the years following the adoption of Regulation II." That prediction was proven correct when the single-message debit networks enabled PINless solutions in order to compete for card-not-present debit routing business. Unfortunately, issuing banks are using the practice of limiting an authentication method to a single network to stifle PINless enablement and inhibit merchant routing choice.

Previously, some large issuers had enabled two routing options for eCommerce transactions but later disabled one of those options. The lack of enablement has hindered the market. As the Board noted, "covered issuers accounting for approximately 50 percent of all debit card transactions and 50 percent of all card-not-present transactions *did not conduct any card-not-present transactions over single-message networks in 2019*." Board Memo at 5 (emphasis added). The disablement of PINless is further evidence that the market will not self-correct and that the Board must act swiftly to enforce the law.

As noted above, the global networks and some of the largest issuing banks are using "one network by authentication type" to inhibit merchant routing rights and eliminate competition. Walmart requests that the Board modify the proposed clarification to reflect advancements in this space and remove the caveat about a single network per authentication type. Instead, the Board should clearly state that an issuer must not limit a network's ability to authenticate a transaction if the network is capable of supporting it. This will foster innovation and adoption of future authentication methods while protecting merchant's routing rights.

3.) The Board should explicitly prohibit volume requirements and incentives that could restrict merchant routing choice.

EFTA section 920(b)(1)(B) specifically directs the Board to prescribe regulations that forbid issuers and payment card networks from directly or indirectly inhibiting any person that accepts debit cards as a form of payment from directing the routing of an electronic debit transaction over any network that may process that transaction. Incentives and penalties to issuers from payment card networks conflict with this section and provide motivation for issuers to make decisions outside the intent of the final rule.

The lack of enablement of single-message options for eCommerce transactions is indicative of the influence these incentive agreements play in issuer decisions. Stronger evidence still is that some issuers previously offered single-message routing options for eCommerce transactions but later disabled them presumably due to incentive agreements with payment card networks. These agreements incentivize issuing banks to implement processes which inhibit merchants' routing options.

Walmart respectfully suggests including "any incentives or penalties" to the sections listed in comment 235.7(a)(3): Examples of prohibited network restrictions on an issuer's ability to contract with other payment card networks.

4.) The Board should vigorously enforce the law to ensure that all stakeholders and products comply with the applicable requirements.

The Board previously issued an updated FAQ to clarify that U.S. issued EMV, or chip cards, must comply with the law. The FAQ was an essential tool as merchants invested billions of dollars to comply with the global card brand requirements for EMV and risked losing their routing rights absent the Board's enforcement effort. The challenges with EMV continue today as the global card brands mandate two separate Application Identifiers ("AIDs") that are unnecessary for any technological or operational reason and dictate that the global AID, which is not required for U.S. law purposes, is prioritized ahead of the common AID, which is required. As a result, merchants must still invest additional resources to create a work-around to access the compliant common AID that houses the single-message debit networks on the card.

The unnecessary requirement for two separate AIDs and prioritization of the AIDs continues to tilt the market away from merchant routing choice in favor of the global brands' signature networks. This is further evidence that the market will not correct itself and vigorous oversight and enforcement of the law is needed. Walmart requests the Board clarify that the requirement to prioritize the global AID is not compliant and should cease immediately. Enforcement of the law and clarifications that merchants have a right to route on every debit transaction may require issuing banks to either reconfigure existing cards or even reissue cards to consumers. While we do not feel it is the Board's place to mandate that the card networks license their global AID to other networks, it is the Board's responsibility to enforce the law and ensure that merchant routing choice is real. This is true even if banks must reissue cards to replace those that do not allow meaningful choice.

Additionally, as new payment solutions, participants and products continue to enter the market, the Board must remain vigilant to ensure that none limit or restrict merchant routing choice. Walmart requests the Board act swiftly enforce the law anytime an issuer, network, or third party creates barriers to limit merchant routing choice.

5.) The Board should act swiftly to reduce the regulated rate to make it both reasonable and proportional to the issuer costs.

Walmart requests that the Board reduce the regulated debit rate to bring it into alignment with the law's requirement that it be both reasonable and proportional to issuers' costs. Since the law went into effect ten years ago, issuer costs for processing debit transactions have decreased by about half. Walmart requests that the Board lower the regulated rate to reflect this decrease.

Implementing these changes will bring Regulation II into alignment with both the intent of Congress and the letter of the law. Walmart appreciates the Board's efforts and welcomes the opportunity to discuss our comments and need for enforcement at the Board's convenience.

Kind regards,

Michael A. Cook

Michael A. Cook
Senior Vice President & Assistant Treasurer
Walmart Inc.