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August 11, 2021

VIA E-MAIL AT regs.comments@federalreserve.gov

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20511

Re: Docket No. R-1748, RIN 7100-AG15 – Comments from The Home Depot on Debit Card Interchange Fees and Routing NPRM

Dear Ms. Misback:

The Home Depot, Inc. (“Home Depot”) welcomes this opportunity to respond to the Board of Governors of the Federal Reserve’s (“Board’s”) request for comments on the Notice of Proposed Rulemaking (“NPRM”) concerning Debit Card Interchange Fees and Routing, a proposed clarification to Regulation II that would require the enablement of—and merchant choice between or among—at least two unaffiliated networks for *all* debit transactions, including Card-Not-Present (“CNP”) transactions. This proposed clarification follows directly from the text, history, and purpose of both the Durbin Amendment and Regulation II; it is necessary now only because of the ongoing efforts of networks and issuers to frustrate that legislative design. Home Depot fully supports the Board’s efforts outlined in this NPRM, and encourages the Board’s continued protection of routing choice, the benefits of which flow not merely to merchants but ultimately to the American consumer.

As background for its interest here, Home Depot is the nation’s largest home improvement retailer, selling a wide assortment of building materials, home improvement products, and more. Home Depot operates nearly 2,000 retail stores throughout the United States and—led by our customers—also provides a range of e-commerce alternatives to in-store purchase. Across these channels, Home Depot seeks to provide the highest level of service, the broadest selection of products, and the most competitive prices.

Accordingly, Home Depot has long been engaged in ensuring that barriers to competition not disrupt our ability to deliver on that value proposition. Unfortunately, the artificially-high cost of payment acceptance has been one area where—despite these efforts—decisive government action has proved necessary to address a persistent market failure. A decade ago, the Durbin Amendment and Regulation II—the means by which this Board enforces the Durbin

Amendment's mandate—took aim at a central barrier to competition: network exclusivity in debit transactions. Regulation II targeted that barrier with the simple, market-led solution of routing competition. By requiring that issuers and networks provide merchants a choice between at least two unaffiliated networks when processing debit transactions, Regulation II introduced much-needed competition into the marketplace.

The rationale could not have been clearer: only where merchants have the ability to route transactions away from artificially high-cost routing options will the networks and issuers be properly incentivized to compete. As the Board has previously noted, the savings that flow from such competition are neither hypothetical nor limited to the merchant. As in any part of the business, a merchant's ability to limit the imposition of cost (particularly cost that bears no relation to the value of a product or service acquired) yields benefit for the consumer, whether in the form of lower prices or improved service.

Developments over the last decade, however, now demonstrate that Regulation II's proscriptions on network exclusivity should be restated. This is due not to any actual uncertainty over the scope of the Durbin Amendment's intended reach, but for a more practical reason: networks and issuers have eroded, by a variety of means, the relief Regulation II sought to provide. They have done so broadly, through the imposition of new fees and fee structures. But they have also done so narrowly—and in direct contravention of Regulation II's exclusivity prohibitions—by interposing technical hurdles that inarguably limit merchant routing choice. They have done so especially—though not exclusively—for CNP transactions.

As the Board has noted, the explosive growth in online commerce since the adoption of Regulation II highlights a set of concerns that were addressed only limitedly a decade ago. As the Board's own published data reflect, CNP transactions represent an increasing proportion of all transactions across the country. In this, Home Depot is no exception. Home Depot's sales via digital channels grew 100% from Q1 2019 to Q1 2021. As we continue to pursue an interconnected retail strategy that best meet our customer's changing needs, Home Depot expects that the volume of online transactions will continue to grow.

Against this backdrop, or perhaps because of it, networks and issuers have thrown up hurdle after hurdle to effective merchant routing choice for CNP transactions by limiting the ability of merchants to access the unaffiliated networks that the Durbin Amendment and Regulation II require. As one prominent example, networks and issuers have inhibited the enablement of PINless as a routing technology for debit transactions. Despite the wide availability of this technology among the unaffiliated, regional debit networks, large issuers have simply chosen not to enable it. Home Depot's own transaction data shows the stark divide between regulated and unregulated issuers here: PINless options are enabled for 80% of unregulated issuers' volume but only 27% of regulated issuers' volume. That reflects decisions by the major card networks and issuers to inhibit a technology that would—in practice—create additional merchant routing options for CNP transactions.

And further attempts to undercut Regulation II may be on the horizon. As explored in greater detail in comments provided by merchant trade associations, there is increasing concern in the merchant community that networks and issuers intend to use new technologies—particularly novel authentication methods and still-developing tokenization technology—that

would directly limit merchant routing capabilities. To be clear, this is not technological innovation designed to address the cost of fraud, the bulk of which is borne by merchants in any event. Instead, this is authentication used as sword rather than shield. Merchants should not be forced into this false choice between payment security and routing competition.

These and other attempts by networks and issuers to dictate merchant routing choices threaten to undermine the very purpose of the Durbin Amendment and Regulation II. So, clarification of Regulation II's proscriptions on network exclusivity is now both timely and necessary. What the NPRM proposes is consistent with the long-stated view of Home Depot and the broader merchant community. When the statute imposed a requirement that every debit card be capable of processing transactions over at least two networks—and that merchants should be able to choose between or among those networks—Congress meant what it said. The Board's implementation of that congressional design through Regulation II has always reflected that purpose—"that merchants, not issuers or networks, will be able to direct the routing of transactions." Debit Card Interchange Fees and Routing, 76 Fed. Reg. 43,394, at 43,452 (July 20, 2011). The NPRM merely clarifies the plain applicability of Regulation II to all debit transactions.

Home Depot appreciates the Board's active oversight on these issues. While the NPRM does not directly comment on the Board's supervision of the regulated rate for debit transactions, we do also take this opportunity to encourage the Board to continue to closely scrutinize the relationship between the regulated rate and the costs actually borne by issuers in facilitating transactions. Given the degree to which merchants presently bear liabilities associated with CNP channels, the portion of the regulated rate designed to compensate issuers for the cost of fraud may now be obsolete. We also support the Board's endeavors to better understand and supervise new and emerging instances of routing choice inhibition that may arise in both Card-Present and CNP channels, including but not limited to digital wallets, tokenization, and novel debit-account business models that may expressly seek to evade the proper coverage of Regulation II.

To conclude, Home Depot fully supports the clarifications proposed in the NPRM and encourages aggressive enforcement of Regulation II in defense of those much-needed clarifications. To the extent Home Depot may provide additional information that the Board would find useful in reaching its final determination, please contact us directly.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Anderson", written in a cursive style.

Scott Anderson
Vice president, Financial Services and Payments