



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

July 12, 2021

Via Electronic Mail (to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov))

*Re: Docket No. R-1748 – Request for Extension of NPRM on Debit Card Interchange Fees and Routing and expansion of the Scope of the Proposed Rules*

*Re: Federal Reserve Proposed Amendments to Regulation II (Proposed April 30, 2021) Statutory Authority provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (enacted July 21, 2010)*

Dear Ms. Misback,

Community Financial institutions are largely being ignored. Regulation II, in regard to exempt financial institutions, is being manipulated to adversely impact the community financial institutions (exempt Banks and Credit Unions) by increasing their fraud losses and reducing their interchange income using PINLess Debit Rules (Card Present Transactions).

Dodd-Frank (The Wall Street Reform and Consumer Protection Act) never gave processors the authority to eliminate the use of the PIN. The same act did not authorize processors to shift fraud liability to the issuer, but this is what is occurring.

Note: Merchants love this feature because they have no risk. As an example: At these merchants, a chip-enabled stolen card can be used without the embedded PIN and there are no charge-back rights for the issuers. Additionally, there is no responsibility for the merchant or their employees to verify identity of the cardholder. That fraud cost is completely the responsibility of the issuer. The additional security that a PIN and the tokenization from the card's chip was a factor in our support of that technology.

Furthermore, these merchants do not give the cardholder an opportunity to enter their PIN or sign for the transaction to reduce the possibility of fraud.

The community financial institutions (Regulation II Exempt Institutions) need change and now.

#### Needed Reforms (Community Financial Institutions)

1. Financial processors should not be allowed to own Merchant Acquirer Networks and Card Payment Networks at the same time.
2. Exempt Financial institutions should have the right to join any network they choose, and only the networks they choose.
3. Exempt Financial institutions should have the right to select how their debit card payments are processed, and the order in which it is processed as long as it complies with Regulation II. Card payment networks should not be allowed to usurp these preferences or enable merchants to go around through processing back-doors.



Example: Special contracted switching relationships via merchant acquirer networks when a card payment network is owned by the same vendor. Because of this, that vendor diverts transactions through the manipulation of its own network operating rules.

4. PINLess Debit Transactions (Card Present) that unilaterally shift transaction liability from the merchant to the issuer should be banned. If the exempt institution does not want to participate in this product that should have the right to opt out (no charge-no penalty).
5. Linkage Language in membership agreements and Network Operating Rules that force financial institutions to join Card Payment Networks that they do not choose should be banned.
6. Exempt financial institutions should have the option to require the use of a PIN on all Card Present POS transactions. *Covered financial institutions have this option and they insist that a PIN be used at the P.O.S. for card present transactions which gives them a distinct advantage of exempt institutions.*

Federal Reserve System 12 CFR Part 235 (Regulation II: Docket No. R-1748) Proposed Rules (Federal Register Vol. 86 No. 91 Thursday, May 13, 2021)

The proposed rules do not go far enough to correct this adverse situation as it relates to the perceived anti-trust activities imposed by processors that own card payment networks and merchant acquirer networks. Issuers have a right to require the PIN be used on Card Present Transactions to reduce the risk of Debit card fraud.

The Federal Reserve should expand the proposed rules to include the above reforms for Exempt institutions and ask the Department of Justice to investigate the tactics associated with the manipulation of Network Operating Rules of Card payment Networks (Switch Networks) and the connection with Merchant/Acquirer networks that are specifically designed to mitigate the benefits Durbin intended to help community financial institutions in preserving interchange income (include card present and card not present transactions).

Sincerely,

**Joann Bergrud**

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