Merchants Payments
COALITION

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551
August 10, 2021

Re: Comments on Clarification of Regulation II, Docket No. R-1748, RIN 7100-AG15

Dear Ms. Misback:

The Merchants Payments Coalition (MPC) is grateful for the opportunity to provide comment on the Board's proposed clarification of Regulation II. The language of Regulation II is clear that two unaffiliated networks must be available for all debit transactions, yet for too many years many of the largest issuers have failed to meet that requirement. MPC respectfully requests swift implementation of the clarification and recommends several additional changes to strengthen the Board's proposal and to ensure that card networks and debit card issuers follow the law in the future.

By way of background, the Merchants Payments Coalition is a group of retailers, supermarkets, restaurants, drug stores, convenience stores, gas stations, online merchants, and other businesses focused on reforming the U.S. payments system to make it more transparent and competitive. MPC firmly believes in opening up the payments market and introducing competition, which in turn would lower costs and drive innovation. MPC is dedicated to fighting unfair credit and debit card fees and advocates for a more competitive and transparent payments system.

The statutory language banning network exclusivity is clear, and yet the Board's own findings demonstrate that many debit cards do not allow a second, unaffiliated network to function when it comes to online and other card-not-present (CNP) transactions. In 2017, only 8 percent of CNP transactions went through single-message networks, and that figure shrank to 6 percent in 2019.

As merchants have adapted to serve their customers during the pandemic, there has been a dramatic shift to e-commerce, as well as mobile apps and wallets, that have made the lack of routing options for merchants a more pressing issue than ever. Economists estimate that the lack of routing costs merchants and their customers billions of dollars each year, with payments consulting firm CMSPI placing the amount at $2 to $3 billion annually.

The very reason Congress passed the Durbin Amendment is because the U.S. payments market was broken, and the largest banks and card networks are trying to keep it that way. It is imperative that the Board move forward and clarify its regulations in order to protect the competition and merchant routing choice that was intended by Congress.

The Board's clarification recognizes the innovations made in the decade since the initial rule was promulgated. Debit networks have invested in developing new innovations including

“PINless” technology, which would afford merchants the ability to route online transactions through competitive networks if it were enabled by card issuers and if the major card networks did not interfere. The Board’s clarification will ensure that the law is followed, and MPC urges its swift finalization.

MPC would also recommend further clarification to ensure that multiple networks are available regardless of method of authentication. The technological abilities of debit networks have evolved in the years since initial implementation of Regulation II and many are capable of handling both PIN and non-PIN transactions. The lack of clarification that competitive networks must be available regardless of authentication method could allow issuers to block debit networks from handling non-PIN transactions. This undermines the intent of the Board, and MPC urges the Board to clarify that issuers may not limit a debit network from processing any type of transaction based on authentication. As an example, if a network is capable of processing PIN, biometric and PINless, the issuer should be required to enable the network to complete all three.

Finally, MPC urges the Board to reduce the regulated debit rate. The Electronic Funds Transfer Act states that the Board should set a rate that is “reasonable and proportional” to the cost of authorization, clearance, and settlement of the transaction. In the years since implementation of Reg II, issuer costs have been nearly halved to less than $.04 per transaction, but the allowable interchange rate remains at $.21 plus .05% of the transaction, plus 1 cent for fraud. The current rate far exceeds what is reasonable and proportional to issuer costs. Merchants and consumers paid $26.8 billion in debit card processing fees in 2020 alone. It is time for the Board to reduce the regulated debit rate to reflect issuer costs more accurately and to adhere to the intent of the law.

MPC is grateful for the opportunity to provide comment and we strongly urge the Board to act quickly to finalize their clarification with the changes suggested above. And we further request that the Board reduce the allowable debit interchange rate to accurately align with issuer costs.

Sincerely,

Merchants Payments Coalition