



August 11, 2021

*Via email to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)*

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

**Re: Financial Innovation Now – Comments on R-1748 (RIN 7100-AG15): Debit Card Interchange Fees and Routing**

Dear Ms. Misback:

Financial Innovation Now (“FIN”)<sup>1</sup> offers the following comments regarding the proposed rulemaking on *Debit Card Interchange Fees and Routing [R-1748]* (the “Proposed Rule”) issued by the Board of Governors of the Federal Reserve System (the “Board”) on May 13, 2021, which would (i) amend Regulation II to clarify that the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions and (ii) standardize and clarify the use of certain terminology.

FIN members are uniquely situated to provide input on the issues addressed by this rulemaking. FIN members provide services to merchants accepting card payments in both card-present and card-not-present environments. Following the onset of the COVID-19 pandemic, card-not-present transactions have become an increasingly large portion of all debit card transactions. Throughout the pandemic, FIN members have provided services that helped American businesses and their customers make and process transactions online and have observed how limited routing options for card-not-present transactions have reduced competition for online transactions. While FIN members also understand the challenges that issuers have faced in satisfying Regulation II’s network routing requirements for card-not-present transactions, it is essential that the industry provide viable alternate routing options for all electronic debit transactions, as intended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and Regulation II.

FIN is therefore supportive of the Board’s efforts to clarify that Regulation II’s network routing requirements apply to all debit card transactions, including card-not-present transactions, which would provide FIN members and FIN members’ merchant customers with meaningful choices with respect to payment card networks. Below we provide observations and comments that are of particular relevance to FIN members.

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<sup>1</sup> FIN is an alliance of leading innovators - Amazon, Apple, Google, Intuit, PayPal, Square, and Stripe (each entity, a “FIN member”). For more information regarding FIN’s policy priorities and principles, please visit <https://financialinnovationnow.org>.

## **1. Consistency with the Intent of the Dodd-Frank Act and Regulation II**

The Proposed Rule is consistent with the intent of the Dodd-Frank Act, which created Section 920(b) of the Electronic Fund Transfer Act (“EFTA”), as implemented by Regulation II. Section 920(b) of the EFTA directed the Board to promulgate a rule that provides that issuers and payment card networks may not restrict the number of payment card networks on which an electronic debit transaction may be processed to fewer than two unaffiliated networks and may not inhibit the ability of persons who accept debit cards to direct the routing of electronic debit transactions over any payment card network that may process such transactions. The Board implemented these requirements in Regulation II. The intention of Section 920(b) of the EFTA and Regulation II is to require that at least two unaffiliated payment card networks are enabled to process each electronic debit transaction, supporting competitiveness with respect to processing electronic debit transactions. The Proposed Rule’s clarification is consistent with the Dodd-Frank Act’s and Regulation II’s purposes of promoting routing competition for each electronic debit transaction, regardless of whether that transaction takes place in a brick-and-mortar store or in a digital storefront of the same retailer.

## **2. Clarification of Issuer Responsibilities**

FIN supports the Board’s clarification that the issuer is responsible for ensuring that two unaffiliated payment card networks are enabled to process each type of electronic debit transaction. We agree that issuers should play a significant role in creating a competitive environment given their unique position in processing debit card transactions. In this regard, issuers should be required to proactively find different payment card networks and enable those networks to process all debit transactions, including card-not-present transactions. In addition, FIN believes that the Board should provide commentary that describes how 12 C.F.R. § 235.7(a)(3) and 12 C.F.R. § 235.7(b) impact issuers’ ability to fulfill responsibilities under Regulation II. Exclusivity provisions and restrictions on the ability of issuers to contract can effectively limit the ability of issuers to provide meaningful routing choice for each type of electronic debit transaction. FIN understands that certain issuers have raised concerns that providing two unaffiliated network options for card-not-present transactions is operationally burdensome, and, therefore, would encourage the Board to independently explore the contributors to these burdens.

## **3. Enhancement of Data Security Through Routing Choice**

FIN understands that technology exists for issuers to comply with the Proposed Rule and believes that routing choice requirements enhance data security. As the Board observes in the supplemental information accompanying the Proposed Rule, technological developments, spurred in part by the competitive dynamics created by Regulation II, have enabled networks to evolve beyond their traditional methods of authentication. Particularly in card-not-present environments, neither signatures nor PINs are used to authenticate transactions. Accordingly, other methods have been established to authenticate such transactions. Examples of authentication available to both signature debit and PIN debit networks in card-not-present environments include biometric (e.g., voice, fingerprint, facial recognition), multi-factor authentication, geolocation, address verification, and non-authentication methods. Moreover, in some instances FIN has observed that PIN debit networks offer advantages over signature debit networks because single-message networks do not stagger authorization and clearing and settlement of transactions.

As a result, claims that PIN debit networks inherently offer less security are not accurate. Instead, routing choice offers less security only when security standards are not made interoperable, as discussed further in Section 4 herein.

#### **4. Applicability to Tokenization and Other Security Technologies**

As discussed in Section 3, the same authentication and security technologies are theoretically available for both signature debit and PIN debit networks in a card-not-present environment. However, for an issuer to satisfy its responsibilities under Regulation II, security standards must be interoperable between each network that is made available to process an electronic debit transaction.

Tokenization provides a useful illustration of this point. Acquirer tokenization has become a common practice for securing consumers' personal information whether stored or in transit, particularly in connection with merchants who use card-on-file solutions. Card networks have also developed their own proprietary tokenization solutions ("network tokens") that can be used in conjunction with or in lieu of acquirer tokenization solutions. FIN members understand that it may be difficult for issuers to meet routing requirements given certain payment card network limitations concerning the continued storage of primary account numbers ("PANs") for merchants who participate in network token solutions. Based on industry knowledge and practices, FIN members also understand that some merchants who use network tokenization may have limited options with respect to processing card-on-file transactions in connection with network tokens because these network token credentials cannot be processed by secondary payment networks. In light of this issue and in line with prior comments from FIN on similar issues, FIN respectfully requests that the Board consider clarifying that the routing requirements are not satisfied if transactions cannot be processed through a second payment card network because the network tokens cannot be successfully processed by the second, unaffiliated payment card network. In other words, both network tokens and raw PAN data must be able to be processed by alternative networks. If neither is the case for an issuer's debit card, the Board should clarify that the debit routing requirements are not sufficiently satisfied for Regulation II purposes.

#### **5. Maintaining Commentary Related to Enabling Two Unaffiliated Signature Networks or Two Unaffiliated PIN Networks**

Section 7(a)(1) of the Commentary to Regulation II currently provides that "an issuer may issue a debit card that is accepted on two unaffiliated signature-based card networks or on two unaffiliated PIN-based card networks." The proposed revisions to the Commentary delete this statement without clear explanation. Accordingly, FIN respectfully requests that the Board maintain this statement in the Commentary and clarify that industry practice to enable one signature network and one PIN network to satisfy the network routing requirements should not be determinative of how issuers comply with the rule in the future. While FIN acknowledges that the language in the Commentary of the Proposed Rule indicates that at least two unaffiliated payment card networks are required for each type of transaction, not necessarily each authentication method, to the extent that the examples in the current rule are still permissible, FIN believes they should remain. An electronic debit transaction that can be routed over multiple signature networks benefits from competition to the same extent as an electronic debit transaction that can be routed over a mixture of signature and PIN networks. Further, FIN suggests reiterating that under 12 C.F.R. § 235.7(a)(3), payment card networks may not restrict the ability of issuers to enable two signature networks or two PIN networks on a debit card.

#### **6. Clarification of the Applicability to Rerouting Services**

The Proposed Rule clarifies that regardless of the means of access, including supplemental devices issued in connection with a plastic card and information stored on an e-wallet, issuers are required to enable two unaffiliated payment card networks for card-not-present transactions. However, in certain instances, financial institutions may use rerouting services to process such transactions. FIN requests that the Board explicitly clarify that the debit routing requirement is still met if an issuer uses a rerouting

service – for example, when debit card credentials are provisioned in a digital wallet – so long as the merchant has the ability to choose between at least two unaffiliated payment card networks. Specifically, FIN proposes that the Board clarify that a merchant is not required to have a choice with respect to each transaction at the time the transaction takes place, but rather at some point throughout the transaction.

## **7. Principles-Based Approach to Regulation II**

FIN acknowledges and supports the Board’s continued efforts to ensure that the intent and purposes of Section 920(b) of the EFTA are fulfilled as it relates to merchant choice and routing options. Still, FIN understands that continued innovation and everchanging business strategies may impede such efforts. To ensure that both financial institutions and non-financial institution entities continue to comply with Regulation II and the letter and spirit of the law, FIN respectfully requests that the Board consider implementing quantitative benchmarking, whether formal or informal, to gauge whether the goals and objectives of the statute are being achieved. For example, the Board may consider the level of market shares and fees (and volatility of such measures) that would be consistent with full choice for merchants and fair competition. After the Proposed Rule becomes effective, the Board may also consider taking stock of the industry, as part of the biannual information collection required under Regulation II or supplemental measures, to determine whether the final rule has succeeded in creating the competitive market intended or whether there are still meaningful obstacles to enabling and using two unaffiliated payment card networks. FIN recommends that the Board note its intent to conduct such a review in the supplemental materials accompanying the final rule.

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FIN appreciates the opportunity to comment on the Board’s proposed debit card interchange fee and routing rule and looks forward to continued engagement with the Board on these issues. We support fair competition and full compliance with debit card routing rules promulgated by the Board and believe that the suggestions provided herein are consistent with those goals.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Peters", with a stylized flourish at the end.

Brian Peters, Executive Director  
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