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August 9, 2021

Submitted by electronic mail to: 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: MetaBank, N.A. Comment on Docket No. R-1748: ***Proposed Changes to Regulation II- Debit Card Interchange Fees and Routing*** (RIN 7100-AG15)

Ladies and Gentlemen:

Thank you for the opportunity to provide the Board of Governors of the Federal Reserve System (the "**Board**") with comments on behalf of MetaBank, N.A. ("**MetaBank**") in response to the Notice of Proposed Rulemaking concerning Debit Card Interchange Fees and Routing issued by the Board on May 7, 2021 and published on May 13, 2021 (the "**Proposed Rule**").[1] The Proposed Rule would modify the Board's Regulation II ("**Reg. II**"), which implements section 920 of the Electronic Fund Transfer Act, as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2]

As a federally chartered bank with assets of less than $10 billion, MetaBank is one of the founders of the prepaid industry and is consistently ranked among the top three prepaid card issuers in the nation. MetaBank sponsors close to 70% of freestanding ATMs in the U.S. The payments division of MetaBank has established relationships with numerous small, mid-sized and large payments partners in the U.S. Through these payments relationships, MetaBank helps small and large, new and well-established processors access financial networks, navigate risk and meet compliance requirements. The consumer and commercial products offered by MetaBank help underserved populations access the financial system. During the COVID-19 pandemic, MetaBank provided solutions nationwide for both small businesses and individuals by participating in the Paycheck Protection Program ("PPP") under the Coronavirus Aid, Relief, and Economic Security Act. MetaBank, through its Crestmark commercial finance division, provided $219 million in funding to 689 small businesses through the PPP, helping to save over 20,000 jobs nationwide.

We are writing to express serious concerns about the unknown economic, financial and operational burdens and risks that compliance with the Proposed Rule may have on MetaBank, our payments partners, and our ability as a financial institution to provide our customers in underserved populations and

[1] *See* 86 Fed. Reg. 26189 (proposed rule) (May 13, 2021).
[2] *See* 12 C.F.R. pt. 235; 15 U.S.C. § 1693o-2; Pub. L. 111–203, title X, § 1075(a)(2).

payments partners with access to the financial system. Indeed, the Board itself acknowledges that the impact of the Proposed Rule on the industry is unknown and the "costs and benefits of the proposed revisions are uncertain…."[3] To mitigate unanticipated and unplanned risks posed by the Proposed Rule, we respectfully request that the Board fully and systematically evaluate the potential impact of Proposed Rule on small and mid-sized financial institutions such as MetaBank and their payments processor partners, including through a formal economic impact analysis that takes into account the views of industry stakeholders through appointed panels. Should the Board ultimately choose to finalize the Proposed Rule, we also request that the Board (i) set a compliance date at least two years after completion of such an economic impact analysis, so as to permit issuers and their payments partners to collaborate with vendors on the development and implementation of compliance solutions and avoid incurring the significant and excessive compliance costs that would be associated with rushed implementation, and (ii) for small and mid-sized financial institutions, limit application of the proposed changes only to new programs established on and after the compliance date, so as to avoid unanticipated financial and fraud risks that bringing existing programs into compliance could pose to financial institutions and other payments participants.

1. **We urge the Board to apply administrative law requirements to substantive changes to Reg. II with entirely new routing requirements for Card Not Present transactions.**

In the Proposed Rule, the Board describes the administrative law requirements that apply to proposed regulatory changes to Reg. II, including the requirement under section 904(a)(2) of EFTA that "the Board, in prescribing regulations to carry out the purposes of EFTA section 920, … prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers."[4] This provision of EFTA, together with the Paperwork Reduction Act, and the Regulatory Flexibility Act, require the Board to prepare an analysis of economic impact of proposed regulatory changes to Reg. II that considers the costs and benefits to financial institutions. We respectfully request that the Board prepare a formal analysis of the economic impact of the Proposed Rule on financial institutions, consumers and other users of electronic fund transfers, as required by section 904(a)(2) of EFTA.

This required analysis is particularly important here, as the Proposed Rule would require financial institutions such as MetaBank that operate as debit or prepaid issuers to enable *two* unaffiliated networks as routing choices, each of which must *also* be capable of processing transactions under an entirely *new* framework of additional expectations for every individual merchant, particular merchant type, particular type of transaction and location that could potentially ever accept an electronic debit or prepaid transaction with a card issued by MetaBank. While presented as a clarification in the Proposed Rule, these additional new requirements would not simply clarify Reg. II, but instead fundamentally alter it by imposing an entirely new and burdensome regulatory structure on financial institutions and other payments participants.

2. **New Card Not Present routing requirements would impose new financial burdens and impose new fraud risks on small and mid-sized financial institutions and their payments partners.**

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[3] Proposed Rule at 26193.
[4] Proposed Rule at 26193.

The Proposed Rule would also extend Reg. II's two-network routing requirements to Card Not Present transactions as a new particular type of transaction. Card Not Present transactions require different operational support and present different risks and costs, including fraud risks and economic and financial costs, than Card Present transactions. Support of new routing requirements for Card Not Present transactions requires updates by a third party vendor to each Bank Identification Number ("BIN") range assigned to Card Not Present transactions. Even if an alternative network currently supports Card Not Present transaction routing, each individual BIN must be enabled by a third party to support routing of Card Not Present transactions, which requires a new project for each individual BIN. Although the costs associated with each project are currently unknown, those costs could be significant where a large number of BINs must be supported. Before requiring financial institutions to comply with either the complex new routing requirements for Card Not Present transactions or the new issuer responsibility requirements of the Proposed Rule, we request that the Board analyze the impact of these new requirements on financial institutions that operate as prepaid and debit issuers and other payment network participants. Small and mid-sized bank issuers operate on thin margins and are far less equipped to absorb unanticipated compliance costs and risks than larger banks. Further study is necessary to understand the costs and compliance impact on small and mid-sized financial institutions of requiring new routing requirements for each prepaid and debit card issuance program currently in effect.

3. **We urge the Board to conduct an economic impact analysis to demonstrate that consumer benefits of the Proposed Rule outweigh the burden on small and mid-sized financial institutions and payments partners.**

In the Proposed Rule, the Board's own standard for evaluating whether regulatory changes shall move forward is that the Board must demonstrate that the "consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions."[5] However, the Board acknowledges that it currently has insufficient information to meet this regulatory compliance standard and that the Proposed Rule would not enhance consumer protections: "The proposed rule does not relate to consumer protections, and therefore the Board cannot, at this time, determine whether the benefits to consumers exceed the possible costs to financial institutions."[6] Because the Board is unable to demonstrate that consumer protections are present and the Board further has insufficient information to identify the compliance costs on consumers and financial institutions, we respectfully suggest that the Board demonstrate compliance with the previously stated standard before moving forward with the Proposed Rule.

While the Board indicates its belief that the Proposed Rule "will not have a significant impact on a substantial number of small entities,"[7] we respectfully request that Board conduct a study to formally evaluate the potential economic, financial and operational burdens and increased risks including fraud risks that may be experienced by small and mid-sized financial institutions and other payments participants as a result of compliance with the Proposed Rule ("Economic Impact Analysis"). While the Board requests that commenters "...provide empirical data to illustrate and support the extent of the impact..."[8] on small entities, we respectfully suggest that the Board is required by section 904 of EFTA

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[5] *Id.*
[6] *Id.*
[7] Proposed Rule at 26194.
[8] *Id.*

to perform an Economic Impact Analysis to demonstrate that the burden of the regulatory changes does not outweigh the benefit to consumers. An Economic Impact Analysis will identify the industry impact and allow small financial institutions to better understand and prepare for the costs and risks associated with the Proposed Rule that the Board acknowledges are currently unknown. To address the impact of substantive regulatory changes to Reg. II proposed by the Proposed Rule, the Economic Impact Analysis should include an assessment by industry experts representing each category of payment network participant.

4. **We urge the Board to delay the effective date of Proposed Rule until at least two years after completion of an Economic Impact Analysis.**

We request that the Board delay the effective date of the Proposed Rule while it satisfies its administrative law and statutory obligation to conduct an Economic Impact Analysis. To minimize the safety and soundness concerns arising from financial institutions incurring unanticipated costs arising from compliance with the Proposed Rule, we request that the Board establish a compliance date that is at least two years after the publication of the Economic Impact Analysis. A delayed compliance date will allow small and mid-sized financial institutions to develop compliance plans, to engage necessary vendors for compliance support at the individual BIN level, and to absorb currently unknown burdens and risks that may arise from compliance with the Proposed Rule, thereby reducing a range of safety and soundness concerns otherwise posed by rushed implementation of the Proposed Rule.

5. **We request that the Board apply new Card Not Present routing requirements exclusively to new programs established by small and mid-sized issuers after the compliance date.**

We request that the Board apply the new routing requirements for Card Not Present transactions exclusively to new programs after the implementation date. An exemption for each prepaid and debit card issuance program already in operation by a small or mid-sized bank from the routing requirements in the Proposed Rule will address the disproportional financial, economic and other burdens on small and mid-sized issuers. While the Board asserts that "…Because the proposed amendments apply to all issuers regardless of their size, they are unlikely to have an effect upon competition among large and small financial institutions in the provision of electronic fund transfer services…"[9], small and mid-sized financial institutions have fewer resources than large financial institutions and less of an ability to quickly accommodate unanticipated expenses and burdens associated with compliance.

The new routing requirements for Card Not Present transactions that debit and prepaid issuers such as MetaBank must make available to each card issuance program currently in effect have the potential to disrupt such card issuance programs and relationships with payments processors. This Card Not Present extension has the potential to significantly disrupt current card issuance programs and relationships in ways that are currently unknown. This burden is further exacerbated by the reliance by small and mid-sized financial institutions on vendors to support compliance and the position in which such institutions find themselves in which they have less bargaining power to negotiate timely or cost-effective services with such vendors. While the financial and operational impacts of these new regulatory compliance obligations are unclear without an Economic Impact Analysis, compliance obligations will likely disproportionately impact small and mid-sized financial institutions along with small and mid-sized

[9] Proposed Rule at 26193.

payments partners. Prioritizing compliance and associated costs will displace other priorities in relationships between such financial institutions, payments partners and vendors. Given the disproportionate compliance burden on small and mid-sized financial institutions, we request that the Board apply new routing requirements exclusively to new issuing programs operated by small and mid-sized financial institutions after the compliance date.

6. **We urge the Board to amend the Proposed Rule to eliminate introduction of an unnecessary and unattainable obligation of prepaid and debit issuers to ensure acceptance by every merchant in every industry.**

As revised by the Proposed Rule, section 235.7(a) of Reg. II would require an issuer to configure each of its debit cards so that each electronic debit transaction initiated with such card can be processed on at least two unaffiliated payment card networks, and would require this condition to be satisfied 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 to process an electronic debit transaction.[10] If the Board moves forward with the Proposed Rule, we request that the Board eliminate the proposed introduction of a new obligation that issuers ensure that two unaffiliated payment network-enabled cards are accepted by every merchant in every industry and every geographic area and to control payment network rules. Not only are these substantive changes to Reg. II, enforcement of these obligations by small and mid-sized issuers is not practical given the current payment network ecosystem.

The reality of the current payments network ecosystem is that decisions regarding card acceptance and payment network rules are not made or even influenced by small and mid-sized financial institutions such as MetaBank. Instead, acquirers that offer card acceptance to merchants determine whether to offer acceptance of payment networks and which merchants are offered debit or prepaid card acceptance and other parties such as terminal and software providers support transaction routing choices by merchants. Small and mid-sized financial institution issuers such as MetaBank have little control or bargaining power with respect to decisions made and contracts entered into between merchants and acquirers regarding the acceptance and routing of debit transactions. MetaBank, as an issuer, has no visibility into the options offered by a merchant's acquirer or terminal provider with respect to transaction routing choices. Yet the Proposed Rule impractically would require issuers to control merchant acceptance of unaffiliated network-enabled cards. It is unclear how issuers such as MetaBank can ensure that cards and networks are accepted by every single merchant and every single particular type of merchant in every geographic area, as would be required by the Proposed Rule. As a result, the Proposed Rule should be modified to strike the obligation of issuers to ensure acceptance of cards by every merchant across all transactions and geographies.

7. **We urge the Board to assess the potential fraud impact on issuers of Reg. II routing changes and obligation to ensure acceptance by high risk merchants.**

We also request that the Board use an Economic Impact Analysis to identify potential financial risks including fraud risks arising from the Proposed Rule. The Proposed Rule would include complex new routing requirements that require issuers to enable debit or prepaid cards for acceptance by every category of merchant *including high risk merchants*. We are concerned that these mandatory merchant acceptance

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[10] Proposed Rule at 26192.

provisions could expose MetaBank and other mid-sized financial institutions to additional fraud and losses and potentially reduce the overall level of security with respect to Card Not Present transactions on cards issued by MetaBank. Compelling acceptance of debit card transactions by high-risk merchants may increase chargeback risks resulting in higher costs and expenses associated with debit card acceptance along with merchant defaults and fraud losses.

With respect to new routing changes for Card Not Present transactions with the Proposed Rule, we note that instances of fraud are higher for card-not-present transactions than for in-store purchases[11] and the increase in ecommerce transactions during the COVID-19 pandemic highlights the greater risk of fraud in ecommerce transactions. Managing and preventing fraud in a card-not-present environment takes significant resources, expertise, investment in cybersecurity, and time. We are concerned that the expansion of Reg. II requirements in the Proposed Rule could compel us to take on additional risks on some transactions, which if not appropriately considered in any rulemaking, may have the unfortunate result of increasing fraud, harming us, our payments partners and consumers.

This has the potential to impact the safety and soundness of debit card transactions and participants in the payments ecosystem. An Economic Impact Analysis that evaluates the potential burden of fraud transactions on small and mid-sized issuers arising from ensuring acceptance support by every merchant including high-risk merchants will allow us and our payments partners to more effectively anticipate and mitigate the risks of and liabilities arising from additional fraudulent transactions.

8. **We urge the Board to assess the impact on financial institutions of supporting all authentication options offered by alternative payment networks.**

We also request that the Board use an Economic Impact Analysis to evaluate the impact on small and mid-sized financial institution issuers such as MetaBank of potential costs due to the obligation to support all authentication options offered by each payment network. The Proposed Rule would require issuers to support all acceptance and authentication options offered by each payment network. In the current payments network ecosystem, small and mid-sized issuers have little bargaining power or control over the pricing of products such as authentication options made available by payment networks. By requiring issuers to support all payment network acceptance and authentication options, the Proposed Rule would provide payment networks with the ability to develop and require authentication options that must be accepted by issuers regardless of alternative security controls and regardless of cost. This unreasonably favors payment network interests by requiring issuers to bear the expense of any new authentication method. Before moving forward with the Proposed Rule, the Economic Impact Analysis should analyze the economic impact on issuers of the obligation to support all acceptance and authentication options offered by payment networks. Alternatively, we ask that the Board strike this obligation to provide small

[11] *See, e.g., A View of Payments Security: Trends, Gaps and Vulnerabilities*, Boston Consulting Group (May 29, 2018) (finding in a study commissioned by the Board that fraud has migrated in recent years from in-person transactions to remote (online) transactions); *Changes in U.S. Payments Fraud from 2012 to 2016: Evidence from the Federal Reserve Payments Study*, Board of Governors of the Federal Reserve System (October 2018) (noting that "remote card payments fraud" is likely to be of increasing concern for the U.S. payments system moving forward).

issuers with the opportunity to evaluate whether authentication options offered by payment networks truly increase security.

9. **The Board should remove the blanket requirement on financial institutions to support future technological capability from the Proposed Rule.**

The Board should remove the blanket requirement on financial institutions to support future technological capability from the Proposed Rule. We are concerned about the Board's proposed requirement that issuers support the enablement of at least two unaffiliated payment card networks for each means of access, including any "means of access that may be developed in the future."[12] We do not think a blanket obligation on financial institutions to support future innovation and capability is appropriate given that neither the Board nor financial institutions themselves can predict what such future innovation and capability will look like and what resources and efforts would be required of financial institutions to support them. Rather than imposing a blanket obligation on financial institutions to support any potential future technological capability, we believe the Board should address such innovations, and a financial institution's ability to support them, as they develop before making any determination on what role emerging technologies will play on the current regulatory scheme for payments. We therefore urge the Board to remove this requirement from the Proposed Rule.

10. **Conclusion**

In summary, to address administrative law requirements, we ask that the Board undertake a formal Economic Impact Analysis evaluating the impact of the Proposed Rule on small and mid-sized financial institutions including MetaBank that operate as prepaid and debit issuers and other payments processors. To permit time to conduct such an Economic Impact Analysis and analyze potential impacts on small and mid-sized financial institutions, we strongly encourage the Board to delay the compliance date for the Proposed Rule until the Board has the opportunity to formally evaluate and publish updates to the Proposed Rule addressing the impacts identified in the Economic Impact Analysis on small and mid-sized financial institutions operating as prepaid and debit issuers. Thank you for the opportunity to submit comments on this matter.

Sincerely,

John Hagy
Senior Vice President and Head of Public Policy
MetaBank, National Association[13]

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[12] Proposed Rule at 26192-93.

[13] At MetaBank, our mission is Financial Inclusion for All®. We strive to remove barriers to financial access and promote economic mobility by working with third parties to provide responsible, secure, high quality financial products that contribute to the social and economic benefit of communities at the core of the real economy. MetaBank works to increase financial availability, choice, and opportunity for all.