April 11, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Rule on Debit Card Interchange Fees, Docket No. R-1404

Dear Ms. Johnson:

On February 22, 2011, a coalition of nine trade associations (the "Trade Associations"), representing every major nationwide bank and credit union trade association in the country, submitted a comment letter to the Board of Governors of the Federal Reserve System (the "Board") relating to the Board's proposed rule (the "Proposed Rule") to implement the debit card interchange provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] In that comment letter, the Trade Associations expressed a number of fundamental concerns, both legal and policy, about the Proposed Rule.

Although the official comment period on the Proposed Rule has closed, the Trade Associations believe it is appropriate to write to emphasize the extraordinary breadth and depth of organizations and Government officials that have expressed concerns similar to those expressed by the Trade Associations. These concerns have been expressed both through the comment process and in communications outside that process.

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[1] A complete list of the Trade Associations is attached as Annex C.

It is noteworthy that these organizations and Government officials, similar to the Trade Associations, cover virtually the entire spectrum of the Nation. We submit that such an unprecedented outpouring of concern makes the fundamental revisions of the Proposed Rule urged by the Trade Associations even more compelling. We particularly urge the Board to take into account the policy concerns of other federal regulators who are involved in the consultation process and the legal views expressed by the Department of Justice as the Board's own counsel.

We have attached as Annex A to this letter a representative sampling of these concerns. For your convenience, they are divided by subject matter.

We also note that there has been some suggestion that governments in other countries have capped or eliminated debit card interchange fees without any negative consequences to consumers or debit card issuers in those countries. In fact, as we noted in our prior letter, government imposed price caps on debit card interchange fees provide no guarantee of lower prices for goods and services for consumers, while forcing issuers to raise banking fees on consumers. Canada provides a good example of this cause and effect: because of government regulation, Canadian banks do not receive debit card interchange fees. Rather, they charge their customers checking account fees that, when considering the number of monthly debit transactions per customer, average slightly *more* than the current debit interchange fee of 44 cents received by U.S. issuers. We believe the Canadian example further demonstrates that the current market-driven debit card interchange fees in the United States are already reasonable and proportional to the costs incurred by issuers in offering debit card products and services. We have attached a chart of these Canadian fees as Annex B.

* * *

Thank you for considering the material submitted with this supplemental letter. We appreciate the opportunity to share this material and would be pleased to discuss any of it further at your convenience. Please feel free to contact Paul Saltzman, President and General Counsel of The Clearing House Association (Paul.Saltzman@theclearinghouse.org, (212) 612-0138), Rob Hunter, Deputy General Counsel of The Clearing House Association (Rob.Hunter@theclearinghouse.org, (336) 769-5314), or Rodge Cohen of Sullivan & Cromwell LLP (Cohenhr@sullcrom.com, (212) 558-3534), who have been coordinating the participation in this letter of all the trade associations listed below.

Sincerely,

______/s/____________________
Frank Keating
President and CEO,
American Bankers Association

______/s/____________________
Paul Saltzman
President
The Clearing House Association L.L.C.

______/s/____________________
James D. Aramanda
CEO,
The Clearing House Payments Company L.L.C.

______/s/____________________
Richard Hunt
President,
Consumer Bankers Association

______/s/____________________
Bill Cheney
CEO,
Credit Union National Association

______/s/____________________
Steve Bartlett
CEO,
Financial Services Roundtable

______/s/____________________
Camden R. Fine
President/CEO,
Independent Community Bankers of America

______/s/____________________
Russell Goldsmith
Chairman and CEO of City National Bank,
Chairman of the Midsize Bank Coalition of America

______/s/____________________
Fred R. Becker, Jr.
President/CEO
National Association of Federal Credit Unions

______/s/____________________
Michael A. Grant
President and CEO,
National Bankers Association

cc: Hon. Timothy F. Geithner
Chairman, Financial Stability Oversight Council and
Secretary, Department of the Treasury

Hon. Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System

Hon. Janet Yellen
Vice Chair
Board of Governors of the Federal Reserve System

Hon. Elizabeth Duke
Member
Board of Governors of the Federal Reserve System

Hon. Daniel Tarullo
Member
Board of Governors of the Federal Reserve System

Hon. Sarah Bloom Raskin
Member
Board of Governors of the Federal Reserve System

Hon. Sheila Bair
Chairperson
Federal Deposit Insurance Corporation

Mr. John Walsh
Acting Comptroller
Office of the Comptroller of the Currency

Mr. William M. Daley
Chief of Staff
White House

Hon. Debbie Matz
Chairman
National Credit Union Administration

Mr. William Haraf
Commissioner
California Department of Financial Institutions,
on behalf of the Conference of State Bank Supervisors

Hon. Timothy P. Johnson
Chairman
United States Senate Committee on Banking, Housing and Urban Affairs

Hon. Richard C. Shelby
Ranking Member
United States Senate Committee on Banking, Housing and Urban Affairs

Hon. Spencer Bachus
Chairman
United States House of Representatives Committee on Financial Services

Hon. Barney Frank
Ranking Member
United States House of Representatives Committee on Financial Services

H. Rodgin Cohen, Esq.
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ANNEX A

I. Policy Considerations

A. Adverse Impact on Consumers

"Consumers who are financially vulnerable, especially low- and moderate-income individuals and families, may feel the hardest impacts as they are least able to handle additional expenses. In addition, an increase in fees for basic banking services could easily drive such consumers to non-bank financial service providers. Such developments would be a financial step backwards for consumers, as non-bank service providers do not provide the security and consumer protections offered by more traditional accounts at insured financial institutions and do not help consumers build a credit history." FDIC Comment Letter (March 10, 2011).

"I am concerned that without a thorough examination of the unintended effects of [the Durbin] amendment, the Hispanic community – which relies heavily on debit cards – will suffer a significant burden." Hispanic Chamber of Commerce Letter to Congressional Leadership (March 14, 2011).

"The impact of any higher bank fees [resulting from a cap on debit card interchange fees] will be especially onerous for low income bank customers, who will thus have incentives to return to the ranks of the 'unbanked', or if they are already in that category, not to enter into a banking relationship. Both outcomes are clearly inconsistent with another part of the Dodd-Frank Act that explicitly is designed to encourage movement of the unbanked to formal banking relationships." Martin Baily and Robert E. Litan, *Toward Reasonable Regulation of Debit Card Interchange Fees: The Case for Modifying the Federal Reserve Board's December 16, 2010 Proposals* (February 22, 2011).

"We believe that [the Durbin] amendment, while well-intentioned, could have a significant negative impact on the cost of mainstream banking services to middle and lower-income consumers, including teachers and education support professionals, because of the benefits currently made possible by debit cards." National Education Association Letter to Congressional Leadership (March 21, 2011).

"With the reduction of the fee, small community banks and credit unions will no longer be able to cover the fraud risk. They have already indicated they will respond by either ceasing to offer debit cards or limiting debit card transactions to $50 or less. A large portion of community bank and credit union customers are so called 'risky' customers who tend to reside in historically underserved communities and are already banking at the margins. These 'risky' customers, already have limited to no access to credit cards and now, without debit cards, will be cut off from a large portion of retail purchases or will be forced to make large payments in all cash." Bay Area Council Letter to Senator Diane Feinstein (March 22, 2011).

"Though costs imposed on the industry are almost always borne by the consumer, it has perhaps never been truer than in this instance. Make no mistake about it: the cap of $.12 per transaction on debit cards will push modest-to-middle income consumers out of traditional banking relationships and into the 'unbanked.'" American Financial Services Association Comment Letter (February 22, 2011).

"The Federal Reserve rule to fix prices on debit cards … threatens the flow of credit to low-income Americans and promises higher fees on bank services for nearly everyone else." *Debit Card Debacle*, The Wall Street Journal (March 17, 2011).

B. Adverse Impact on Small Banks

"[T]he FDIC is concerned about the potential impact of the Board's proposed rule on small bank issuers of debit cards and their customers in contravention of Congressional intent. Specifically, we are concerned that these institutions may not actually receive the benefit of the interchange fee limit exemption explicitly provided by Congress, resulting in a loss of income for community banks and ultimately higher banking costs for their customers." FDIC Comment Letter (March 10, 2011).

"Although small banks are statutorily exempt from the fee caps set by the Dodd-Frank Act, the exemption may be unavailable in practice because of market-driven factors not addressed by the Board's proposal." FDIC Comment Letter (March 10, 2011).

"Additionally, there is a misconception that the small bank exemption included in the Amendment will level the playing field for institutions under $10 billion." Multiple Senators Comment Letter (December 9, 2011).[2]

"We are very concerned that the rule might prevent small issuers from benefiting from the exemption set forth in the Act." Senators Hagan and Bennet Comment Letter (February 23, 2011).

"The current rule's prohibitions against network exclusivity and merchant routing restrictions could significantly increase both fixed and variable costs for these small institutions, resulting in an inability to remain competitive with larger card issuers." National Credit Union Administration Comment Letter (February 16, 2011).

"The Durbin Amendment … simply will not work as it pits small community institutions against the big box retailers – a fight our local institutions are sure to lose." National Black Chamber of Commerce Letter to Hon. Shelley Moore Capito (February 17, 2011).

"Even if one or both of the two major debit card networks adopt different interchange fee schedules for banks that are and are not subject to the standards, merchants won't

[2] Senators Carper, Gregg, Vitter, Coons, Roberts, Bayh, Warner, Shelby, Bennett, Tester, Crapo, Brownback and Corker.

have a financial incentive to accept cards from smaller banks that attempt to charge fees above the standard, or will aggressively steer consumers away from such cards. This is one of the reasons that smaller issuers appear to be just as concerned about the proposed fee caps as the larger issuers." Martin Baily and Robert E. Litan, *Toward Reasonable Regulation of Debit Card Interchange Fees: The Case for Modifying the Federal Reserve Board's December 16, 2010 Proposals* (February 22, 2011).

C. Adverse Safety and Soundness Consequences

The Proposed Rule "has long-term safety and soundness consequences – for banks of all sizes – that are not compelled by the statute." Comptroller of the Currency Comment Letter (March 4, 2011).

The Proposed Rule "would place significant pressure on community bank bottom lines, as well as their competitive positions." FDIC Comment Letter (March 10, 2011).

"Considering the magnitude of this regulation, we do not believe the full impact on the industry is understood. If economic pressures force small debit card issuers to operate at a 12 cent interchange fee, it is possible that many banks will stop issuing cards because their costs do not utilize the same economies of scale as larger financial institutions. This scenario raises safety and soundness concerns as a large revenue stream will be ceased." Conference of State Bank Supervisors Comment Letter (February 22, 2011).

"Banks, electronic network payment companies and government partners have built and continuously improved security protocols around the more than 100 billion transactions handled each year. The Durbin amendment allows transactions to suddenly be routed over the lowest-cost network available regardless of functionality, security and data protection considerations. With interchange rates being forced to drop from 44 cents a transaction to 12 cents a transaction, new networks will look for cost-savings anywhere, and these pressures will reduce the incentive for ongoing investment in security protections by networks. Second, as more and more networks pop up, and transactions spread thinly across them, financial institutions' ability to quickly and efficiently identify fraud and other risk patterns will be materially reduced. Third, the routing provisions of the Durbin Amendment puts retailers in charge of the payment systems. These retailers are largely unregulated by financial regulators nor have the financial prudence requirements of financial institutions." Bay Area Council Letter to Senator Diane Feinstein (March 22, 2011).

D. Adverse Impact on Small Merchants

"Merchants, irrespective of size, are generally considered to be the beneficiaries of the proposed rule. The [Proposed Rule] states that 'the Board expects any economic impact on small merchants and acquirers to be positive.' The [Proposed Rule] statement is not necessarily correct. Small retailers could find their competitiveness eroded by the rule.

…. The Federal Reserve rule . . . would provide the large retailer with almost four times the reduction in debit card processing costs as the small merchant receives." Center for Regulatory Effectiveness Comment Letter (February 18, 2011).

"[A] significant portion of the proposed lower interchange fees for merchant processors is unlikely to be passed through to smaller merchants, but rather retained by the processors or their agents (because these merchants have "blended pricing" from acquiring institutions or their agents, and also have higher switching costs). In fact, the vast majority of the reduction in interchange fees will flow to the largest merchants, making it even more difficult for smaller merchants to compete." Martin Baily and Robert E. Litan, *Toward Reasonable Regulation of Debit Card Interchange Fees: The Case for Modifying the Federal Reserve Board's December 16, 2010 Proposals* (February 22, 2011).

E. Price Controls Are Undesirable

"We should all agree that having the government fix prices in almost any venue is a bad idea. There are any number of products that American merchants might prefer in the short term to have their suppliers prohibited from charging more than cost. But in the long term, price fixing creates more problems than it solves and is antithetical to our capitalist system and the notion of free enterprise. More importantly, price fixing harms consumers." Multiple Senator Comment Letter (December 9, 2010).[3]

"[T]here is no convincing evidence that employing federal pricing controls on interchange fees for debit swipes will meaningfully benefit merchants and their customers." Hispanic Chamber of Commerce Letter to Congressional Leadership (March 14, 2011).

"Unforseen consequences are an inevitable outcome of price controls." Center for Regulatory Effectiveness Comment Letter (February 18, 2011).

"In our view, federal entities such as the Federal Reserve have a special responsibility to use their regulatory authority to enhance the ability of financial institutions to borrow and lend money consistent with the principles of our free market economy. Unfortunately, the price control scheme imposed in the Proposed Rule is inconsistent with this responsibility and, if left unchanged, will limit job growth, further restrict lending and threaten the profitability and possibly the survival of many community banks, thereby leading to increased consolidation in the banking sector. Delaware Secretary of State Comment Letter (February 22, 2011).

"It is clear that the debit card amendment amounts to government price-fixing, and such intervention into the free market system is very concerning and should always be

[3] Senators Carper, Gregg, Vitter, Coons, Roberts, Bayh, Warner, Shelby, Bennett, Tester, Crapo, Brownback and Corker.

analyzed with a high-level of skepticism and reservation. Even more concerning is that such a significant measure was adopted on the Senate floor with very little discussion and no consideration in a Congressional committee as to the overall impact on consumers, the banking system, merchants and the overall economy." Congressmen Rodney Alexander and Jeff Landry Letter to House Financial Services Committee (February 17, 2011).

II. Legal Considerations

A. Caps Are Not Mandated.

The statute "does not say that the Board should set the allowable fee." Comptroller of the Currency Comment Letter (March 4, 2011).

"[T]he statute's requirement that the Board 'establish standards' for assessing debit interchange fees does not obligate the Board to set a specific rate for debit interchange fees." Brief filed by the Department of Justice on behalf of the Federal Reserve and Comptroller (February 18, 2011).

B. Allowable Costs Are Not Included

"[W]e believe the proposal takes an unnecessarily narrow approach to recovery of costs that would be allowable under the law and that are recognized and indisputably part of conducting a debit card business." Comptroller of the Currency Comment Letter (March 4, 2011).

"[W]e urge the Federal Reserve to ensure that financial institutions are reimbursed for legitimate, incremental costs associated with the provision of debit cards." Comments of Travis B. Plunkett, Legislative Director for the Consumer Federation of America, to the Federal Reserve Board of Governors (February 22, 2011).

C. Costs Are Not Limited to ACS

"The statute also allows costs in addition to those related to authorization, clearance, and settlement (ACS)." Comptroller of the Currency Comment Letter (March 4, 2011).

"Under the statute, the Board can consider non-ACS costs that are specific to a particular electronic debit transaction." Brief filed by the Department of Justice on behalf of the Federal Reserve and Comptroller (February 18, 2011).

D. Fraud Prevention Costs

"We would also like the Board to adequately account for fraud prevention costs, which all issuers typically absorb, when determining the final rule." Senators Hagan and Bennet Comment Letter (February 23, 2011).

E. Absence of Sufficient Cost Data

"The FDIC has been unable to identify any research that shows the incremental costs for small bank issuers. Consequently, we are concerned that the proposed 12 cent fee cap may not fully consider the incremental costs for small issuers and encourage the FRB to conduct more work in this area." FDIC Comment Letter (March 10, 2011).

"Particularly troubling, it was brought to light that the Federal Reserve did not survey community banks and credit unions as part of the study mandated by section 1075. Such a survey would have likely revealed these institutions' concern that they would be practically unable on their own to ensure the development of two-tiered market. It would also likely reveal their uncertainty regarding the implementation of the anti-discrimination provisions and fraud-related costs." Senator Merkley Comment Letter (March 3, 2011).

F. Need for Additional Study

"It is my understanding no conclusive studies have been offered to fully predict the impact of this rule. This policy was adopted to provide well needed protections for American consumers. Given the complexity of this issue, we believe that it should be further examined fully to ensure that it does not have a negative impact on the communities it was meant to help. We believe this rule should be thoroughly and expeditiously reviewed prior to implementation, allowing a full and appropriate impact study to be performed to ensure it will not raise fees or otherwise harm at-risk communities, including communities of color." NAACP Letter to House Speaker Boehner (March 7, 2011).

"Further study is warranted to determine if the proposed federal controls on interchange fees for debit swipes as currently mandated by the amendment will meaningfully benefit merchants and their consumers, or if such controls will instead result in consumers paying higher prices for the banking services critical to their financial well being." National Education Association Letter to Congressional Leadership (March 21, 2011).

ANNEX B

Canadian Banking Fees: Hypothetical Transaction Costs for 25 and 30 Transactions Per Month[1]

					25 Transactions			30 Transactions		
Bank	Account Name	Monthly Fee	Free Transactions Included	Additional Transactions Fee	Hypothetical Total Cost	Unlimited Cheaper	Effective Transaction Rate	Hypothetical Total Cost	Unlimited Cheaper	Effective Transaction Rate
	RBC Day to Day Banking	$4.00	15	$0.65	$10.50		$0.42	$13.75		$0.46
RBC[A]	RBC No Limit Banking	$10.95	unlimited	n/a	$10.95	No	$0.44	$10.95	Yes	$0.37
	Value	$3.95	10	$0.65	$13.70		$0.55	$16.95		$0.57
TD[B]	Infinity	$12.95	unlimited	n/a	$12.95	Yes	$0.52	$12.95	Yes	$0.43
	Basic Banking Account	$3.95	12	$0.65	$12.40		$0.50	$15.65		$0.52
Scotiabank[C]	Scotia One Account	$11.95	unlimited	n/a	$11.95	Yes	$0.48	$11.95	Yes	$0.40
	Practical Plan	$4.00	10	$0.60	$13.00		$0.52	$16.00		$0.53
BMO[D]	Performance Plan	$13.95	unlimited	n/a	$13.95	No	$0.56	$13.95	Yes	$0.47
	CIBC Everyday	$3.90	10	$0.65	$13.65		$0.55	$16.90		$0.56
CIBC[E]	CIBC Unlimited	$12.95	unlimited	n/a	$12.95	Yes	$0.52	$12.95	Yes	$0.43

1. 20 Debit Card Transactions and 5 Check Transactions, and 25 Debit Card Transactions and 5 Check Transactions

Notes:
[1] For this analysis, as it currently stands, information for cheapest basic account with per transaction fees and the cheapest unlimited plan are listed.

Sources:
[A] http://www.rbcroyalbank.com/products/deposits/index.html
[B] http://www.tdcanadatrust.com/accounts/index_chequing.jsp
[C] http://www.scotiabank.com/cda/content/0,1608,CID13194_LIDen,00.html
[D] http://www.bmo.com/home/popups/personal/banking-plan-chart
[E] http://www.cibc.com/ca/chequing-savings/account-comparison-results.html?uca,epca,eca,psa

ANNEX C

The American Bankers Association

The American Bankers Association ("ABA") represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

The Clearing House

Established in 1853, The Clearing House is the nation's oldest banking association and payments company. It is owned by the world's largest commercial banks, which employ 1.4 million people in the U.S. and hold more than half of all U.S. deposits. The Clearing House is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs and white papers the interests of its owner banks on a variety of systemically important banking issues. The Clearing House Payments Company provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House's web page at www.theclearinghouse.org.

The Consumer Bankers Association

The Consumer Bankers Association ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include most of the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry's total assets.

The Credit Union National Association

The Credit Union National Association ("CUNA") is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation's nearly 7,700 state and federal credit unions, which serve approximately 93 million members. CUNA benefits its members by partnering with our state leagues to provide proactive representation, the latest information on credit union issues, economic reports, regulatory analyses, compliance assistance, and education. Visit www.cuna.org for more information about CUNA.

The Financial Services Roundtable

The Financial Services Roundtable ("Roundtable") represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $74.6 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

The Independent Community Bankers of America

The Independent Community Bankers of America ("ICBA"), the nation's voice for community banks, represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold over $1 trillion in assets, $900 billion in deposits and $750 billion in loans to consumers, small businesses and the agricultural community. Visit ICBA at www.icba.org.

Midsize Bank Coalition of America

The Midsize Bank Coalition of America ("MBCA") is a group of 22 US banks formed for the purpose of providing the perspectives of midsize banks on financial regulatory reform to regulators and legislators. The 22 institutions that comprise the MBCA operate more than 3,300 branches in 41 states, Washington, D.C., and three U.S. territories. Our combined assets exceed $322 billion (ranging in size from $7 to $25 billion) and, together, we employ approximately 60,000 people. Member institutions hold nearly $241 billion in deposits and total loans of more than $195 billion.

The National Association of Federal Credit Unions

Founded in 1967, the National Association of Federal Credit Unions ("NAFCU") exclusively represents the interests of federal credit unions before the federal government. Membership in NAFCU is direct; no state or local leagues, chapters or affiliations stand between NAFCU members and its headquarters in Arlington, VA. NAFCU provides its members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU represents nearly 800 federal credit unions, accounting for 63.9 percent of total FCU assets and 58 percent of all FCU member-owners. NAFCU represents many smaller credit unions with limited operations as well as many of the largest and most sophisticated credit unions in the nation, including 82 out of the 100 largest FCUs. Learn more at www.nafcu.org.

National Bankers Association

The National Bankers Association was founded in 1927 as the trade association to serve as an advocate for the nation's minority and women owned banks on legislative and regulatory matters concerning and affecting the members and the communities they serve.