RETAIL INDUSTRY LEADERS ASSOCIATION

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December 2, 2023

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R–1818, RIN 7100–AG67

Dear Ms. Misback:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit extensive comments on the Federal Reserve's (Board) proposed rule assessing a reasonable and proportional standard for debit interchange, but this letter focuses on the need for the Board to adhere to the ninety-day deadline as delineated in the notice of proposed rulemaking (NPRM). Any extension of the comment period will negatively impact consumers and retailers of all sizes from receiving relief from the Board's carefully constructed reduction in debit interchange fees.

RILA is a trade association of the world's largest, most innovative, and recognizable retail companies and brands. We convene decision-makers, advocate for the retail industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic retail industry by transforming the environment in which retailers operate. RILA members include more than two hundred retailers, product manufacturers, and service suppliers, who together employ over 42 million Americans and account for $2.7 trillion in annual sales and hundreds of thousands of stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA members fully support a competitive market that provides consumers with dynamic payments to choose for their purchases that support the economy. While the retail industry itself is hypercompetitive and retail companies vigorously compete for a share of consumer spending, the absence of competition in the payments ecosystem has resulted in excessive fees that every U.S. merchant pays to accept credit and debit cards. These rising fees were the catalyst for the passage of the critical debit reforms—more commonly known as the Durbin Amendment—under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

One of the paramount reasons for rejecting any extension or delay under the current timeline stated in the NPRM has been the harmful and deliberate actions over the past twelve years by the largest issuing banks and the two dominant card networks. These entities have deliberately sought to circumvent, overturn, and inhibit congressional intent as well as regulations codified by the Federal Reserve regarding the Durbin Amendment that has directly harmed every retailer in America.

The Federal Reserve found it necessary to issue clarifying regulations to financial institutions in 2016 who had demonstrated actions that knowingly circumvented the regulation. The Federal Trade Commission also worked in concert with the Federal Reserve on these clarifications after reviewing directives by the dominant card networks instructing banks on how to evade the regulations promulgated by the Federal Reserve. Due to these actions alone, granting any extension in the comment period or delay in the rule making process will embolden large issuing banks and card brands while excluding relief for retailers and consumers. The largest financial institutions have used every opportunity to exploit, ignore, and challenge this critical law until enforcement action is taken against their companies. By providing an extension, these institutions will be allowed to continue to operate under the current regulations that are set to be revised under the proposed NPRM.

The Board is intimately aware of other numerous violations perpetuated over the years by these entities including but not limited to the creation of new phantom fees to offset lost revenue, the exploitation of the EMV transition to circumvent merchant routing rights, and the use of proprietary technology to inhibit and evade the full tenets of the law. Combined, these violations have highlighted and exposed how these dominant market participants will never let an opportunity to go to waste to elude the core pillars of the Durbin Amendment.

RILA applauds the initial actions taken by the Board to realign the reasonable and proportional standard regarding debit interchange. We look forward to providing more comprehensive comments in the coming months on the key tenets in the NPRM. However, it must be reiterated that any extension or delay will only benefit the largest financial institutions and the dominant card networks who have only displayed their disdain for this law over the years. It is imperative that, after 12 years, the Board stay the course on updating the Durbin Amendment to reflect the actual costs in the market and then move forward on a biannual process to ensure a reasonable and proportional standard is set.

Sincerely,

Austen Jensen
Executive Vice President, Government Affairs
Retail Industry Leaders Association