



*By electronic delivery*

February 22, 2011

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

**RE: Docket No. R-1404 – Proposed Rules Concerning Addition of Section 920 to the Electronic Funds Transfer Act (EFTA) Limiting Amounts of Interchange Fees**

Dear Ms. Johnson,

Best Buy Stores, L.P. (“Best Buy”), one of the largest specialty retailers of consumer electronics and an industry leader with more than 40 years of history, respectfully submits these comments in response to the rules proposed and published by the Federal Reserve Board (the “Board”) on December 28, 2010.

Best Buy is a strong supporter of the statute enacted as part of the bipartisan amendment of Senator Durbin to the Dodd-Frank law and we appreciate the challenges presented for all parties with these reforms. We applaud the Federal Reserve staff and Governors for your diligent work to implement these regulations and law.

Additionally, we are grateful for the opportunity to provide comments on the proposed rule set forth in Docket No. R-140. Specifically, we would like to provide comments on the following topics:

- Section 235.3 of the proposed regulation – Reasonable and proportional interchange fees
- Section 235.7 of the proposed regulation – Limitations on payment card restrictions
- Section 235.6 of the proposed regulation – Prohibition on circumvention or evasion
- Reserved Section 235.4 of the proposed regulation – Fraud prevention adjustment
- Small issuer exemption



## Background

As the Board accurately states in its Overview of the Debit Card Industry in the opening remarks of the NPRM, “debit card usage...has increased markedly during that same period [mid 1990s through today]...Debit card payments have grown more than any other form of electronic payment over the past decade, increasing to 37.9 billion transactions in 2009...In 2009 debit card transactions represented almost half of total third party debits to deposit accounts, while approximately 30 percent of total third party debits to deposit accounts were made by checks.” Best Buy agrees completely with that assessment by the Board and our own experience conforms with the Board’s facts. Customers at Best Buy’s stores and websites conduct millions of retail transactions every year. In 2010, approximately 25% of those transactions were with debit card as the customer’s preferred form of payment. This represents an increase of over 150% in the past seven years.

As detailed in the comment letter submitted by the Merchant’s Payment Coalition (“MPC”), until the mid-1990s banks did not charge interchange fees for debit card use. It wasn’t until VISA and MasterCard began aggressively influencing and incentivizing their members to force merchants into paying interchange fees through their “Honor All Cards” Rule. As banks became accustomed to receiving high interchange rates for signature debit – rates which bore no relationship to costs – a dynamic of merchants being forced to pay ever increasing interchange rates to underwrite network competition for issuers became the norm for the industry. (See MPC Comment Letter Pgs 2 & 3.) Again, Best Buy’s experience has tracked with those findings. The effective rate of the interchange fees paid by Best Buy and our customers on these transactions has increased 38% in the past 3 years. Best Buy experienced 16 rate increases in 2010 alone.

## Section 235.3 of the proposed regulation – Reasonable and proportional interchange fees

Best Buy was pleased to see the process by which the Board studied the industry to determine what would be a ‘reasonable and proportional’ interchange fee for an electronic debit transaction. We found it to be well thought out and founded in data presented by the impacted banks themselves. Although, we note that it is disappointing that not all impacted banks responded as this may have pushed the numbers down even further.

Best Buy favors Alternative 1 over Alternative 2. Alternative 1 allows banks a safe harbor amount of \$0.07 per transaction while also allowing a bank to charge up to \$0.12 per transaction based on the allowable costs attributable to its role in authorization, clearance and settlement of electronic debit transactions. Best Buy believes Alternative 1 aligns more closely with the statute, is more flexible to account for the differences in costs between issuers, and the safe harbor is much closer to the true ACS costs.



That being said, Best Buy believes that the safe harbor amount should actually be significantly lower than \$0.07. The Board's own research shows that the actual costs to an issuer are closer to \$0.04 per transaction. That represents a 75% allowance above actual average costs for a bank under Alternative 1 and 200% allowance under the cap of Alternative 2. Best Buy asks the Board to reconsider the safe harbor amounts to be more in line with the actual costs of an issuer.

#### Section 235.7 of the proposed regulation – Limitations on payment card restrictions

EFTA Section 920(b)(1)(A) directs the Board to prescribe rules prohibiting an issuer or a payment card network from directly or indirectly restricting, through any agent, processor, or licensed member of a payment card network, the number of payment card networks on which an electronic debit transaction may be processed to fewer than two unaffiliated payment card networks. Therefore, the Board has asked for comment regarding two proposals for complying with this requirement.

Alternative A requires a debit card to have at least two unaffiliated payment card networks available for processing an electronic debit transaction. Under this alternative, an issuer could comply, for example, by having one payment card network available for signature debit transactions and a second, unaffiliated payment card network available for PIN debit transactions. Alternative B requires a debit card to have at least two unaffiliated payment card networks available for processing an electronic debit transaction for each method of authorization available to the cardholder.

Best Buy prefers Alternative B as the long term solution. We feel Alternative B aligns much better with the true legislative intent of the law. Given the market dynamics, true competition, routing choice, and relief for our customers is only truly enabled by this option.

In the short term, we request that the board implement Alternative A immediately. There are many "exclusive deals" in the marketplace for each method of authorization – signature or pin - that have increased costs in an unjustifiable manner. Because of this, Best Buy believes that, although not the preferred end state, Alternative A is a good stepping stone to Alternative B that will provide for some much needed near term relief for merchants and their customers.

#### Section 235.6 of the proposed regulation – Prohibition on circumvention or evasion

EFTA Section 920(a)(8) authorizes the Board to prescribe rules to ensure that network fees are not used "to directly or indirectly compensate an issuer with respect to an



electronic debit transaction” and “to circumvent or evade” the interchange transaction fee restrictions under the statute and this proposed rule

Best Buy has experienced significant increases in Network fees over the past few years and is concerned that the statute did not attempt to regulate the network fees that a network may charge for its services. Because of this, the rules on circumvention are extremely important to Best Buy. We believe that the implementation of Alternative B will naturally solve for our concerns but we would respectfully suggest that Network fees are capped at the current rate until Alternative B is implemented.

#### Section 235.4 of the proposed regulation – Fraud prevention adjustment

Like all merchants we bear considerable expense in combating fraud which we believe is important for your consideration. Compliance with Payment Card Industry , burdensome chargeback liabilities, industry mandated system updates, and our own fraud prevention tools (which are required because we cannot rely on the authorization provided us by the issuers in our card-not-present environments) all add up to multiple tens of millions of dollars each year in addition to the interchange fees we pay. We also experience the frustration of hearing the banks concern about fraud yet seeing them push consumers to the use of the more fraud prone signature debit product over PIN. That said, we believe that there is opportunity to participate in the improvement of the security in the overall payment system and concur with the MPC submission dated January 20, 2011.

#### Small issuer exemption

Small banks have made assertions that merchants will begin to discriminate against their debit cards in favor of the debit cards of large banks in order to achieve lower total interchange fee costs. We strongly believe this is a foundationally inaccurate assessment. Congress specifically intended to exempt financial institutions with less than \$10 billion in assets from the “reasonable and proportional” aspects of the statute and the industry will comply. Multiple networks, including Visa, have announced their intent and ability to support a tiered pricing concept based on issuer size. We also believe the Visa and MasterCard “honor all cards” rule prohibits merchants from attempting to discriminate between cards. And, lastly, from a customer service perspective, a merchant asking a customer for a different debit card at the point of transaction is not practical and we would not do so. Keep in mind that: 1) a debit card isn't like a credit card, most customers only carry one debit card; 2) in most cases, the debit card is used at an electronic signature/PIN pad and a Best Buy employee never sees or touches the debit card; and 3) such a practice would not be an acceptable customer experience within Best Buy.



In conclusion, we believe the proposed regulations accurately reflect the goals of the statute and we strongly support their completion by the statutory deadlines of April and July 2011. On behalf of Best Buy, I thank you for this opportunity to comment on the Board's proposed rules implementing Section 1075 of the Dodd-Frank law by adding Section 920 to the EFTA. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to contact me or Dee O'Malley (Director, Best Buy Financial Services)

Sincerely,

James Muehlbauer  
Executive Vice President and Chief Financial Officer  
Best Buy Co., Inc.