

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE

MUMBAI, INDIA

September 30, 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: Debit Card Interchange Fees and Routing,
Docket No. R-1404, RIN7100-AD63**

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System ("Board") on behalf of VeriFone, Inc. ("VeriFone") in response to the Board's request for comment on the Interim Final Rule published in the Federal Register on July 20, 2011 at 76 *Fed. Reg.* 43478-43488 ("Interim Final Rule"). Specifically, the Interim Final Rule and Final Rule, when issued (collectively the "Rule"), seek to implement the Electronic Fund Transfer Act ("EFTA") by establishing standards for assessing an interchange transaction fee that are reasonable and proportional to the cost incurred by the issuer with respect to the transaction and that allow an adjustment to the fee based on adoption of and compliance with certain fraud-prevention measures.

VeriFone is an industry leader in secure electronic payment technologies. It focuses specifically on services at the point of sale, and its systems process a broad spectrum of payment types, including signature and PIN-based debit cards, credit cards, EMV smart cards, contactless, value-added application, and signature capture. Accordingly, VeriFone is highly concerned about electronic fraud and is active in identifying and developing technology to address and prevent credit and debit card fraud. For example, VeriFone has developed a method currently being implemented by many merchants and payment processors that encrypts critical card data as soon as it enters VeriFone terminals. The data is then de-encrypted only at the payment processor thus preventing interception of data at the merchant's location. This method addresses a common source of fraud.

Jennifer J. Johnson, Secretary
September 30, 2011
Page Two

As an initial matter, VeriFone notes that the Dodd-Frank Act permits an adjustment to the fee amount received or charged by an issuer if the fraud-related standards established by the Board “require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transaction...” 15. U.S.C. § 1693o-2(a)(5)(A)(ii)(II). The Board’s initial request for comment sought, among other issues, input regarding whether the overall framework for the adjustment should be technology-specific or non-prescriptive. In response, VeriFone filed a proposal based on mandating a specific technology solution to address concerns about security and fraud, and it continues to believe such an approach is crucial to prevent electronic fraud.

As is clear from the Interim Final Rule, the Board adopted a non-prescriptive, rather than a technical, approach for its framework, although the Board recognized that a significant segment of commenters advocated a technology-specific approach. As a result of the Board’s decision, VeriFone remains concerned that the Rule will not sufficiently protect issuers, merchants, and card users against fraudulent practices. VeriFone, however, recognizes and appreciates the Board’s substantial work on this topic and files this comment to address the Board’s implementation of the Rule. Its objective is to work within the framework of the Rule to maximize protections against electronic debit card fraud as well as to gather data to identify and then to address continuing and new problems.

First, as part of the required rulemaking, the Board surveyed bank holding companies and other financial institutions to collect information on a number of fraud related measures, including the nature, type, and occurrence of fraud in electronic debit transactions and associated losses. VeriFone appreciates the Board’s information collection efforts and believes that, as part of implementation of this Rule, the Board should engage in continued collection of information so that it can assess the progress of the industry in solving fraud problems. Reporting on the collection of information will allow industry participants and the Board to respond to changes in security threats and to assess more or less effective technical responses. More specifically, the Board should collect the following type of information, which it already solicited in its information-gathering process for the Rule:

- Nature, type, and occurrence of fraud in electronic debit transactions, including source of fraudulent transaction (*e.g.* major retailers, gas stations, small retailers)
- Losses due to fraudulent transactions
- Fraud-prevention and data-security activities with related research and development costs

Jennifer J. Johnson, Secretary
September 30, 2011
Page Three

Collecting information on an ongoing basis should not pose a significant burden for industry participants since the Interim Final Rule requires issuers to monitor the incidence of, reimbursements received for and losses incurred from fraudulent electronic debit transactions Appendix A, Section 235.4(b)(1)(ii). Additionally, issuers are required to have policies and procedures in place designed to monitor the types, number, and value of fraudulent electronic debit transactions, as well as its and its cardholders' losses from fraudulent electronic debit transactions, its fraud-related chargebacks to acquirers, and any reimbursements from other parties. Thus, issuers should have the type of information that VeriFone suggests the Board collect on an ongoing basis.

Second, VeriFone urges the Board utilize its collection of information to issue annual public reports, in aggregate or summary form, on trends in the industry. Publication of information will increase transparency for the industry, encourage development of better policies and procedures, and permit industry participants to stay abreast of emerging problems and potential avenues of progress.

Third, the Board requested comment on whether the Rule should establish a consistent certification process and reporting period for an issuer to certify to a payment card network that the issuer meets the Board's fraud prevention standards. VeriFone believes that the Board should establish a consistent certification process and, as part of the certification process, may require the collection of information on the incidents of fraud. Greater uniformity in certification and reporting will enable the Board, as well as the industry, to compare the utility of particular systems to prevent fraud. Foregoing this type of certification and reporting process will represent a lost opportunity for the Board and the industry. For example, VeriFone has noted from numerous press articles that a significant amount of fraud arises from tampering with relatively unsecured credit card readers in gas pumps and has designed new equipment to prevent fraud in this location. As each weakness in the payment system is addressed, the industry would benefit from a statistical view that reveals where fraud is moving.

In conclusion, monitoring and requiring reporting will permit the Board to use the information already collected for developing the Rule as a baseline against which to judge progress in the industry. Ongoing monitoring, data collection, and reporting will also create incentives regarding merchants or types of technology that are more prone to fraud than others to improve systems, and will provide the Board with the information necessary to potentially to strengthen the Rule over time. VeriFone's comment urges the Board to develop and adopt a monitoring and reporting regime because the increased transparency from this regime will

KELLEY DRYE & WARREN LLP

Jennifer J. Johnson, Secretary
September 30, 2011
Page Four

enhance the opportunity for the Final Rule to be successfully implemented and to achieve the Board's objectives. Verifone stands ready to work with the Board in this process and will continue to work on improvements to card security and solutions to fraudulent transactions.

Respectfully submitted,



Thomas Cohen
Kristin McPartland
KELLEY DRYE & WARREN LLP
3050 K Street NW, Suite 400
Washington, D.C. 20007
(202) 342-8518 (telephone)
(202) 342-8451 (facsimile)
TCohen@kelleydrye.com
Kmcpartland@kelleydrye.com

Counsel to VeriFone, Inc.