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Federal Reserve Releases Final Rule to Implement the Durbin Amendment

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June 07, 2011

On June 29, 2011, the Board of Governors of the Federal Reserve (Board) released its final rule (Final Rule) to implement Section 920 of the Electronic Fund Transfer Act (EFTA), as enacted by Section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act—generally referred to as the "Durbin Amendment."

Among other things, the Final Rule establishes a cap for interchange fees for electronic debit transactions, clarifies the types of payment products that are exempt from the interchange fee cap, and prohibits certain types of activities such as network exclusivity and circumvention and evasion of the interchange fee cap.

The Board also released an interim final rule and request for comment (Interim Final Rule) on an available one-cent adjustment to interchange transaction fees that allows issuers to recoup a portion of fraud-prevention costs.

This advisory briefly summarizes the Final Rule including: key definitions; interchange fee standards and exceptions; standards regarding network exclusivity and routing; remedies; adjustments for fraud prevention activities; and other matters, including an update on the TCF Bank litigation.

The full text of the Final Rule may be accessed here, and the Interim Final Rule here. The full text of the Dodd-Frank Act may be accessed here.

Key definitions

The Final Rule establishes a number of key definitions. In the included Addendum we highlight those with particular significance, as well as those where definitions have been revised from those appearing in the EFTA or in other federal laws or regulations.

Interchange fee capped at 21 cents plus variable recovery fee for fraud loss

The Final Rule establishes a cap on interchange fees, consisting of two components: (1) a fixed base component of 21 cents ($0.21) per transaction, and (2) a variable ad valorem component of five basis points of the transaction value. This cap applies uniformly to all networks, debit cards, or authentication methods and issuers are not required to demonstrate actual transaction allowable costs.

The 21-cent base component is derived from the per-transaction allowable costs of the issuer at the 80th-percentile, as reported on the Board's survey to issuers, merchants acquirers, and payment card networks. Higher reported costs (those above the 80th percentile) were found to involve unique circumstances or small commercial banking operations relative to overall operations, and thus were not deemed to be "reasonable and proportional" to issuers' costs. The five basis point ad-valorem figure corresponds to the average per-transaction fraud loss of the median issuer, also as reported on the Board's survey. The Board's survey had found that per-transaction fraud losses ranged from 0.86 bps to 19.64 bps.

The interchange fee under the Final Rule is substantially higher than that originally proposed by the Board, which would have permitted issuers to receive up to 12 cents in interchange fees. The difference stems from the inclusion of certain cost components in the final fee that were not considered in the proposed fee, namely, network processing fees, fixed electronic debit transaction processing costs, fraud-prevention costs associated with authorization, and the allowance of fraud losses.

Exemption from interchange fee cap

The Final Rule recognizes the statutory exemptions from the interchange fee cap for small issuers, government-administered payment programs, and certain reloadable cards, pursuant to EFTA Section 920(a).

Small issuer exemption

The interchange fee cap does not apply to small issuers, defined as an issuer that, together with its affiliates, has assets of less than $10 billion. This includes total worldwide banking and nonbanking assets (including affiliate assets). The exemption is limited to issuers that hold the asset account that is debited through an electronic debit transaction, thus, the exemption would not apply to issuers of decoupled debit cards. To assist networks in determining an issuer's eligibility, the Board will annually publish a list of institutions that fall above or below the small issuer threshold, based on issuers' year-end asset values. Networks may institute their own processes for identifying eligible issuers if an issuer is not included on the Board's list.

Government-administered programs

The interchange fee cap does not apply to electronic debit transactions made using a debit or general-use prepaid card provided under a federal, state or local government-administered payment program, and where the person uses the card to transfer or debit funds, monetary value, or other assets provided by the program, regardless of whether the government entity operates the program itself, or outsources the program's functions; it also applies regardless of whether the government entity is the source of the funds.[1]

Unlike the small issuer example, networks are responsible for designing their own systems to identify eligible accounts.

Certain reloadable prepaid cards

The interchange fee cap does not apply to certain reloadable "general-use prepaid cards." A "general-use prepaid card" means a plastic card, payment code, or other device that is (1) linked to funds, monetary value, or assets purchased or loaded on a prepaid basis; (2) does not permit a person to access or debit any account held by or for the benefit of the cardholder (e.g., bank account), except for omnibus accounts that hold funds, with a series of "subaccounts" or other recordkeeping means to track amounts attributable to each cardholder; (3) redeemable at multiple, unaffiliated merchants or service providers (i.e., not closed loop), or ATMs; (4) used to transfer or debit funds, monetary value, or other assets; and (5) reloadable and not marketed or labeled as a gift card or gift certificate.

The Final Rules clarified a number of issues related to this exemption, including: (1) prepaid cards that provide regulated access to funds through other means (e.g., ACH or check) are not eligible; (2) similar to the Board's Gift Card Rule (which we reviewed here), exempt prepaid cards must not be marketed and labeled as a gift card or gift certificate; and (3) temporary, non-reloadable cards issued solely in connection with a reloadable general-use prepaid card are eligible for the exemption. Like government-administered programs, networks must develop and administer their own processes to determine whether a prepaid card account is eligible for the exemption.

Sunset for certain government-administered and reloadable general-use prepaid card exemptions

After July 21, 2012, the exemptions for government-administered programs and reloadable general-use prepaid cards will not apply if either of the following is charged for use of the card:

> **1. An overdraft fee.** The Final Rule clarifies that an overdraft fee includes any fee charged for a shortage of funds or a transaction processed for an amount exceeding the account balance, but does not include a fee or charge for transferring funds from another asset account to cover a shortfall in the account accessed by the card.
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> **2. A fee charged by the issuer for the first withdrawal each month from an ATM that is part of the issuer's network.** The Final Rule also clarifies that the exemption will still apply if the issuer charges a fee for the first withdrawal from an ATM outside the issuer's designated ATM network. In addition, a "designated ATM network" can include any network of ATMs that the issuer identifies as providing reasonable and convenient access to the issuer's customers, thus, an issuer that does not have a proprietary network of ATMs can maintain exempt status by entering into arrangements with a nonproprietary network where a fee will not be charged for the first ATM withdrawal each month.
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> The Board rejected comments that sought to maintain the exemption for issuers that charge a fee and then reimburse the customer, since the reimbursement does not otherwise "reverse the negative consequence of the fee being imposed in the first place." The Board also refused to extend additional consumer protections on top of these conditions, including extension of Regulation E, primarily because the Board deemed such issues to be outside the scope of the rulemaking.

Circumvention/evasion

The Final Rule establishes two categories of prohibited acts. First, issuers are generally prohibited from circumventing or evading the interchange transaction fee cap. A finding of such circumvention or evasion will be fact-specific. The Final Rule provides examples of what would constitute circumvention or evasion, including decreasing network fees paid by issuers while increasing network fees charged to merchants or acquirers in the same amount. Nevertheless, the Board emphasized that shifts in the relative proportion of network processing fees paid by issuers and merchants, are not, by themselves, per se indicators of circumvention or evasion. Such shifts will, however, be examined as part of the overall facts and circumstances from which evasion may be found.

Similarly, the Board noted concern that issuers may encourage customers to shift purchases to prepaid cards linked to deposit accounts from which funds could be swept to cover purchases. Like shifts in fees, such use of prepaid cards would not constitute a per se violation of the rules but would raise additional regulatory scrutiny.

The Final Rule also prohibits issuers from receiving net compensation from payment networks related to debit card transactions. The Board indicates that networks often reward issuers for the transaction volumes that are processed on the networks. Such rewards, whether in the form of per-transaction rebates or incentive payments will not be permitted, to the extent such payments exceed the total amount of fees paid by an issuer to a network. Issuers may exclude, however, any interchange fees passed through by the network to the issuer and funds received as a result of chargebacks or fines paid by merchants or acquirers for violations of network rules. Fees paid by an issuer to a payment-card network might include payments for network membership, licensing, network administration, or optional items such as risk management services.

Standards regarding network exclusivity and routing

The Final Rule requires issuers and networks to permit processing of any given transaction over at least two unaffiliated networks without regard to method of authentication used (i.e., PIN or signature). This requirement will eliminate the current practice of requiring PIN debit transactions to be routed over the issuer's preferred network even when other networks are available that could process the transaction. A debit card that could be used on one network for signature-based transactions and another (unaffiliated network) for PIN-based transactions would satisfy the rule's requirements.

Alternatively, cards enabled on two unaffiliated PIN-based networks but not signature networks or two unaffiliated signature networks but not PIN-based networks, would also satisfy the rule. The Board rejected an alternative proposal advocated by merchant commenters that would have required at least two networks *for each* method of authentication, an option the Board concluded would result in excessive compliance and logistical burdens.

The rule requires that the two networks enabled on cards for processing transactions be operable throughout the United States. A regional network could meet the standard if the issuer does not take steps to limit its use. Similarly, payment networks accepted only at limited merchant locations or for limited types of transactions fall short of the requirement to have at least two unaffiliated payment networks enabled on a debit card. Also, the Board clarifies that to meet the two-network standard, any network enabled on a card must take steps reasonably designed to enable it to meet the demand for processing transactions. The Board also rejected a request from issuers and one payment-card network to require merchants to continue to honor consumers' choice of routing network, or, in the alternative, to require merchants to inform cardholders of the network used to carry the transaction.

Under the new network-exclusivity limits, payment-card networks may not restrict issuers' ability to contract with other payment networks or contractually limit issuers from including network brands, logos, or marks on the card itself. The rule does not, however, require the logo or mark of networks enabled on a card to be displayed on the card.

In addition, the rule prohibits issuers and networks from inhibiting merchants' ability to route transactions over any network actually enabled on a card in accordance with the Final Rule. Offering payments or other incentives to merchants to encourage them to route transactions to a network would not violate this prohibition.

Enforcement and remedies

The Board did not set forth penalties for noncompliance with the new rules. §920(d) specifies that the debit interchange fee requirements of §920 may only be enforced administratively by relevant Federal agencies. Therefore, the Final Rule and the Interim Final Rule are enforced pursuant to EFTA §918 (15 U.S.C. 1693o), which enumerates the administrative agencies that are permitted to enforce its requirements. Unlike other provisions in EFTA, however, the requirements of §920, and, accordingly, of §§235.2, 3, 4, 6, 7 and 8, are not subject to civil or criminal liability.

For national banks, federal savings associations, federal branches and federal agencies of foreign banks, member banks of the Federal Reserve System, and nonmember banks, enforcement is effected through §8 of the Federal Deposit Insurance Act (FDIA). The appropriate federal banking agency, as defined in §3(q) of the FDIA (12 USC 1813(q)) (i.e., the OCC, the Board, the FDIC, and the NCUA), will control enforcement actions.

If a banking entity violates a provision in the Final Rule or Interim Final Rule, such violation would be deemed to be a violation of the FDIA. Additionally, the applicable banking agency may exercise, for the purpose of enforcing compliance with the provisions of the Final Rule or Interim Final Rule, any other

authority conferred on it by law.

Enforcement authority was not otherwise specifically granted to another government agency. Therefore, the Federal Trade Commission (FTC) and the Bureau of Consumer Financial Protection will share authority to enforce the provisions of the new rules. A violation of any rule may be deemed to be a violation of the Federal Trade Commission Act. All of the functions and powers conferred upon the FTC under the FTC Act are available to enforce compliance against any person subject to its jurisdiction (i.e., nonbanking entities and their affiliates), regardless of whether that person otherwise meets the jurisdictional tests under the FTC Act.

Adjustments for fraud prevention activities

In addition to the Final Rule, the Board issued an Interim Final Rule that allows issuers an adjustment of one cent per transaction to interchange fees to recoup a portion of their fraud-prevention costs. Eligibility for the one-cent adjustment is conditioned on the issuer adopting effective fraud prevention policies and procedures reasonably designed to (1) identify and prevent fraudulent transactions; (2) monitor the incidence of, reimbursements received for, and losses incurred from, fraudulent electronic debit transactions; (3) respond to suspicious transactions to limit fraud losses and prevent future fraudulent transactions; and (4) secure debit card and cardholder data. The one-cent adjustment is in addition to the ad valorem fraud-loss recovery of five basis points allowed under the Final Rule.

The Board did not prescribe specific technologies issuers should use to implement those policies and procedures. To maintain eligibility for the adjustment, issuers must review their fraud-prevention policies and procedures at least annually, update them as needed, and certify annually to the payment networks with which they participate that their practices comply with the Board's standards.

The Board seeks comment on all aspects of the Interim Final Rule but specifically requests comment on the following questions:

> 1. Whether the rule should include a definition of "fraud" or "fraudulent electronic debit transaction," and if so, what would be an appropriate definition.
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> 2. Whether an issuer's policies and procedures should require an issuer to assess whether its customer rewards or similar programs provide inappropriate incentives to use an authentication method that is demonstrably less effective in preventing fraud.
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> 3. 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 and is eligible to receive or charge the fraud-prevention adjustment.

Like the Final Rule, the Interim Final Rule providing for the fraud-prevention adjustment is effective Oct. 1, 2011. Comments are due Sept. 30, 2011.

Effective dates

The Final Rule, including the interchange fee cap, becomes effective, and compliance mandatory, on *Oct. 1, 2011*, except in certain cases involving the network exclusivity rule, such that the network exclusivity rule will not apply to:

- Issuers, until April 1, 2012. (Payment networks must comply by the Oct. 1 deadline.)
- Debit cards that use transaction qualification or substantiation systems (e.g., health benefit cards), until

April 1, 2013.

- Non-reloadable general-use prepaid cards, until April 1, 2013, and only if sold after April 1, 2013.

- Reloadable general-use prepaid cards, until April 1, 2013. For such cards sold and reloaded before April 1, 2013, the network exclusivity rule will apply on May 1, 2013. For such cards sold before April 1, 2013, but reloaded after April 1, 2013, the network exclusivity rule will apply within 30 days after the date of reloading.

TCF Bank litigation

On June 30, 2011, TCF National Bank withdrew the litigation it had commenced following the issuance of the Federal Reserve Board's proposed Regulation II. The withdrawal followed by a day the announcement of the Final Rule and the decision of the U.S. 8th Circuit Court of Appeals denying its appeal of the lower court's determination to deny a motion for a preliminary injunction against implementation of the Durbin amendment.

The CEO of TCF National Bank, William A. Cooper, was quoted as stating: "While we continue to believe that the Durbin Amendment is unconstitutional because it requires below cost pricing and exempts 99% of all US Banks, we believe our lawsuit has served its purpose in demonstrating the unfairness of the Durbin Amendment and that it is time for us to move on."

TCF's complaint had alleged (1) a substantive due process violation of the U.S. Constitution in that the Durbin Amendment prohibits the opportunity to charge debit interchange fees that allow TCF to recover all of its costs plus a reasonable return; (2) an unlawful regulatory taking in that the Durbin Amendment "frustrates TCF's ability to compete on even ground with the exempt banks, savings and loans, and credit unions and ... singles out a small number of banks, including TCF, to bear a substantial competitive and financial burden," and (3) a denial of equal protection in that the Amendment exempts debit card issuers, which, together with their affiliates, have assets of less than $10 billion.

Conclusion

The Final Rule effectively doubles the interchange reimbursement fee that large financial institutions will receive from that which would have been permitted by the Proposed Rule. Is this good or bad? Time will tell, but the "noise" around the interchange fee is not likely to subside significantly. Observers have already said banks are still likely to lose significant revenue in the next two to three quarters, or at least until they determine how they will make up the lost revenue.

Consumer groups will watch closely and likely object as banks take actions to recover this revenue. Smaller institutions (and the Board) will watch to see if the exemptions provided with respect to the interchange reimbursement fee limitations are operational zed successfully or if, as many observers suggested, these smaller institutions would suffer revenue losses in greater proportion than their larger competitors. And some merchants, concerned about the increase in the fee cap from that proposed in the Proposed Rule, are threatening litigation.

Judging by the number and diversity of dissatisfied parties, the Final Rule may be close to the best the Board could have achieved under the circumstances. Clearly, the saga is not over.

FOOTNOTE

1 In addition to this exemption, Section 1075(b) of the Dodd-Frank Act exempts electronic benefit transfer or reimbursement systems established under the Food and Nutrition Act of 2008, the Farm Security and Rural Investment Act of 2002, and the Child Nutrition Act of 1966 from any of the restrictions in the Proposal.

Addendum: Relevant Definitions

A. Account. §235.2(a). EFTA §920(c) defines the term debit card in reference to a card, or other payment code or device, that is used to debit an asset account (regardless of the purpose for which the account is established) . . . . but it does not define the terms ”asset account” or “account.” EFTA §903(2) defines the term “account” to mean “a demand deposit, savings deposit, or other asset account” (other than an occasional or incidental credit balance in an open end credit plan), as described in regulations of the Board established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement.

Similar to EFTA §903(2), §235.2(a) defines “account” to include a transaction account (which includes a demand deposit account), savings, or other asset account. The proposed definition differs from EFTA §903(2) because EFTA §920(c) does not restrict the term debit card to those cards, or other payment codes or devices, that debit accounts established for a particular purpose. Accordingly, the proposed definition includes both an account established primarily for personal, family, or household purposes and an account established for business purposes. The proposed definition excludes an account held by a financial institution under a bona fide trust arrangement. These distinctions are clarified in comment 2(a)-1 and comment 2(a)-2, which addresses the exclusion of trust accounts.

The definition is limited to accounts that are located in the United States. Debit card transactions that debit an account not located within the U.S. will be excluded from the limitations found within the proposal.

B. Acquirer. (§235.2(b). The Board defines “acquirer” to mean only those entities that acquire (or buy) the electronic debit transactions from the merchant. §235.2(b) defines “acquirer” as a person that contracts directly or indirectly with a merchant to receive and provide settlement for the merchant’s electronic debit transactions over a payment card network. The definition limits the term to entities serving a financial institution function with respect to the merchant, as distinguished from a processor function, by stipulating that the entity receive and provide settlement for the merchant’s transactions.

C. Cardholder. (§235.2(d). §235.2(d) defines the term “cardholder” as the person to whom a debit card is issued. Comment 2(d) clarifies that if an issuer issues a debit card for use to debit a transaction, savings, or other similar asset account, the cardholder usually will be the account holder. In some business accounts, especially, there may be multiple persons who have been issued debit cards and are authorized to use those debit cards to debit the same account. Each employee issued a card would be considered a cardholder. In the case of a prepaid card, the cardholder is the person that purchased the card or a person who received the card from the purchaser. See comment 2(d)-1.

D. Debit card and general-use prepaid card. §§235.2(f) and 235.2(i). EFTA §920(c)(2) defines “debit card” as any card, or other payment code or device issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means. The term includes a general-use prepaid card, as previously defined by the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (“Credit CARD Act”). The statute excludes paper checks from the definition.

§235.2(f) defines “debit card” and generally tracks the definition in the EFTA. Thus, §235.2(f)(1) generally defines the term as any card, or other payment code or device, issued or approved for use through a

payment card network to debit an account, regardless of whether authorization is signature-based, PIN-based, or other means. The term applies regardless of whether the issuer holds the underlying account. This part generally applies to any card, payment code, or device, even if it is not issued as a physical card form. Similarly, the term "debit card" would include a device with a chip that links the device to funds held in an account, such as a mobile phone or sticker containing a contactless chip that enables the cardholder to debit an account. Comment 2 (f)-1 clarifies that cards or other payment codes or devices are not debit cards if used only for purposes of authenticating the cardholder and used in addition to a payment card or device.

E. Deferred and decoupled debit cards. These types of cards are addressed in comments 2(f)-2 and -3. The Board believes these card products fall within the statutory definition of "debit card." Deferred debit transactions do not immediately post to a cardholder's account when the transaction is received by the account-holding institution for settlement. The funds in the account are held and made unavailable for other transactions for a specified period of time, perhaps until the end of the day or month. Upon expiration of the time period, the cardholder's account is debited for the amount of all transactions made using the card which were submitted for settlement during that period. Deferred debit cards will be considered debit cards for purposes of the requirements of this part. See comment 2(f)-2.

Decoupled debit cards are addressed in comment 2(f)-3. In decoupled debit card transactions, the issuer is not the institution that holds the underlying account that will be debited. Transactions are not posted directly to the cardholder's account when presented for settlement with the card issuer. The issuer sends an ACH debit instruction to the account-holding institution in the amount of the transaction in order to obtain the funds. The Board determined that decoupled debit cards should be treated as subject to the requirements of this part. See comment 2(f)-3.

F. General-use prepaid cards. (§235.2(i). The statutory definition of "debit card" includes a general-use prepaid card as that term is defined under EFTA §915(a)(2)(A). §235.2(i) defines "general-use prepaid card" as a card or other payment code or device that is (1) issued on a prepaid basis in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (2) redeemable upon presentation at multiple, unaffiliated merchants for goods or services. The definition of "general-use prepaid card" generally tracks the definition as it appears under EFTA §915(a)(2)(A), with modifications to simplify and clarify the definition.

The inclusion of general-use prepaid cards in the definition of "debit card" under EFTA §920(c)(2)(B) refers only to the term "general-use prepaid card" as it is defined in EFTA §915(a)(d)(A). It does not incorporate separate exclusions to that term that are set forth in the gift card provisions of the Credit CARD Act. Comment 2(i)-2 provides that a mall gift card, which is generally intended to be used or redeemed at participating retailers located within the same shopping mall or in the same shopping district, would be considered a general-use prepaid card regardless of whether it is also network-branded if the card can be used at any retailer that accepts that card brand, including retailers located outside the mall.

G. Electronic debit transactions. §235.2(h). EFTA §920(c)(5) defines the term "electronic debit transaction" as a transaction in which a person uses a debit card. The Board's definition in §235.2(h) adds two clarifying provisions. First, §235.2(h) clarifies that the term reflects a transaction in which a person uses a debit card as a form of payment. The statute defines "payment card network," in part, as a network a person uses to accept a debit card as a form of payment. For clarity, the Board incorporates that requirement into the definition of "electronic debit transaction." Second, the statutory definition is silent as to whether use of the debit card must occur within the United States. § 235.2(h) limits electronic debit transactions to those transactions where a person uses a debit card for payment in the United States. Comment 2(h)-1 clarifies that the account debited could be the cardholder's asset account or the omnibus account that holds funds used to settle prepaid card transactions, and comment 2(h)-2 is added to specify that payment may be made in exchange for goods or services, as a charitable contribution, to satisfy an obligation, or for other purposes.

H. Interchange transaction fee. §235.2(j). §235.2(j) generally incorporates the EFTA §920(c)(8) definition

that defines the term as any fee established, charged, or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction. The definition clarifies that interchange transaction fees are paid by merchants or acquirers. See comment 2(j)-1. Comment 2(j)-2 restates the rule that interchange fees are limited to those fees established, charged, or received by a payment card network for the purpose of compensating the issuer, and not for other purposes, such as to compensate the network for its services to acquirers or issuers. Comment 2(j)-3 explains that fees set by an issuer but charged by a payment-card network are considered interchange transaction fees.

I. Issuer. §235.2(k). §235.2(k) incorporates the statute's definition of "issuer" that defines the term as any person who issues a debit card or the agent of such person with respect to the card. §235.2(k) follows the statutory definition, but removes the phrase "or the agent of such person with respect to the card" as being unnecessary. As agents are held to the same restrictions as their principals, the Board did not believe that removing this clause will have a substantive effect. Under the definition, the identity of the issuer is determined by which entity authorized the cardholder to use the card (as opposed to which entity performs issuer processing). Although the definition does not specifically address mobile payments, the issuer in a mobile payments setting is the entity that provided the device that ultimately accesses the underlying funds.

J. Payment card network. §235.2(m). EFTA §920(c)(11) defines the term "payment card network" as (1) an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and (2) that a person uses in order to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions. §235.2(m) follows this definition, with revisions for clarity. Because the interchange fee restrictions and network exclusivity and merchant routing provisions of the Dodd-Frank Act do not apply to credit card transactions, the Board believed it is appropriate to exclude from the proposed definition the reference to credit cards in the statutory definition to avoid unnecessary confusion. No substantive change was intended. The Board did not specifically include emerging payment systems, such as those using mobile phones or PayPal, in its definition.