

November 16, 2016

Charles W. Scharf
CEO

Al Kelly
CEO-Designate
Visa Inc.
900 Metro Center Blvd
Foster City, CA 94404

Dear Mr. Scharf and Mr. Kelly:

We write on behalf of millions of American merchants and our customers who have been enormously impacted by both the undermining of competition and the confusing transition to EMV chip card acceptance. We write seeking information on the immediate steps that Visa will take in response to a declaration from the Federal Reserve Board of Governors that the technical specifications and rules provided to merchants as part of the EMV migration violate federal law.

As you are aware, on November 2nd the Federal Reserve clarified that no payment card network can directly or indirectly force retailers to deploy a technology or enforce a rule that inhibits merchant routing choice, and that any technical specifications that inhibit merchant routing choice do not comply with Regulation II (Appendix A). *

The declaration came in response to willful steps taken by Visa to circumvent merchants' legal right to choose the network over which a debit transaction will travel.

This free market principle of merchants choosing network services and providers is critical to ensuring competition in the debit market. Visa should compete for merchant routing preference in the way that businesses do in a competitive market—by offering superior benefits, lower costs and better security, such as chip and PIN. Visa used its overwhelming market share to impose their proprietary EMV chip technology that stifles competition.

The Federal Reserve's recent clarification calls into question the continued legality of a host of Visa's rules and practices that compelled merchants to install and configure terminals that presented cardholders with a routing option that was limited to Visa and would eliminate merchant control of routing. Those unlawful rules, such as Visa's Selection of Payment System rule (Visa Core Rule 1.5.4.6), compel merchants to offer consumers a prompt to select Visa, even if the merchant prefers to route over a competitor network. Similarly unlawful are Visa's rules that compel terminal manufacturers to ship EMV devices with routing prompts—either a Visa Debit prompt or a Credit prompt—that can only be routed to Visa.

The routing provision of Regulation II is critical to ensuring competition in the marketplace. Now that the Federal Reserve has made clear that Visa's network rules are a violation of the law, we request information on your immediate plans to address the following:

- Make EMV smart card technology open and competitive instead of segregating your network on a chip application that is separate from that of all domestic debit networks (other than MasterCard) in order to gain a market advantage.

- Rescind any rule that leads terminal manufacturers to ship devices that include a prompt that can be routed only to Visa.
- Rescind any rules that require merchants to give up their uninhibited ability to select the debit network of their choice that is active on the card being used.
- Suspend the EMV liability shift while merchants reconfigure point of sale terminals to comply with federal law.
- Ensure merchants are aware of their rights regarding EMV deployment & routing service choice.
- Ensure hardware and software providers are aware that any network-required checkout screen that requires a selection that can only be routed to Visa is against the law.
- Ensure merchants who deployed EMV while the rules that violate Regulation II were in place are able to remove them without fear of EMV chargeback liability while the technology update takes place.
- Make changes to your network operating rules and EMV transaction acceptance guide to ensure merchants are not fined for their EMV deployment decisions.
- Ensure issuers are prioritizing only the technologies on the EMV card that have multiple routing options available for every transaction.
- Ensure innovation is not stifled by, and consumers are not harmed by, the practices your companies have employed to date during the EMV transition.

The roll out of EMV technology has been woefully mismanaged by the card networks. The Federal Reserve declaration is the latest in a long list of examples of that mismanagement.

On behalf of millions of merchants and their customers across the United States, we urge you to present a clear and speedy process for resolving this issue that ensures merchants face no additional costs while they remove these non-compliant, confusing customer checkout screens. And we urge that, moving forward, Visa strictly adhere Regulation II including the declaration laid out by the Federal Reserve.

Sincerely,



Sandy Kennedy
President
Retail Industry Leaders Association



Mark Horwedel
CEO
Merchant Advisory Group



Robert A. Walton
CEO
National Association of College Stores



Peter Larkin
President & CEO
National Grocers Association



Matt Shay
President & CEO
National Retail Federation



Rob Underwood
President
Petroleum Marketers Association of
America



Hank Armour
President & CEO
National Association of Convenience Stores



Jennifer Hatcher
Chief Public Policy Officer
Food Marketing Institute

***Appendix A:**

Q4. After a debit card with an EMV chip is inserted into a point-of-sale terminal, some terminals prompt the cardholder to choose between applications, one that routes to at least two unaffiliated networks and another that routes to a single network. Does a payment card network comply with section 235.7 of Regulation II if it requires the merchant to allow the cardholder to make the choice of EMV chip application, one of which routes only to a single network?

A4. No. Section 235.7(b) of Regulation II implements the requirement in section 920(b)(1)(B) of the Electronic Fund Transfer Act that a "payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person that accepts or honors debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions." A payment card network inhibits a merchant's ability to route electronic debit card transactions if it, by network rules, standards, specifications, contractual agreements, or otherwise, requires the merchant to allow the cardholder to make the choice of EMV chip application on a debit card, where one application routes only to a single network. Such a requirement is not compliant with section 235.7 of Regulation II because it prevents the merchant from directing the routing of electronic debit transactions. (Added November 2, 2016)

Available at <https://www.federalreserve.gov/paymentsystems/regii-faqs.htm>