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New Dodd-Frank Act Rules Cap Debit Card Fees, Increase Consumer Choices

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The Federal Reserve Board's final rule affecting debit card transactions, mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), took effect on October 1, 2011. The new rule sets a cap for debit card interchange - or "swipe" - fees and prohibits network exclusivity arrangements and routing restrictions. Dodd-Frank also prohibits payment card networks from denying merchants the ability to offer consumers discounts for paying in specific ways - using a debit card rather than a credit card, for example - or setting minimum dollar amounts for credit card purchases.

Debit Card "Swipe" Fees

The new rule caps the maximum permissible swipe fee that the issuer of a debit card can charge for an electronic debit transaction at 21 cents per transaction, plus 0.05 percent of the amount of the transaction. However, the cap applies only to large card issuers - those with \$10 billion or more in assets, including the assets of their affiliates. The Board will publish annually lists of institutions that are above and below the small issuer exemption threshold.

Under an interim final rule, issuers that develop and implement policies and procedures reasonably designed to achieve the fraud-prevention standards set by the Federal Reserve can receive an additional one cent per transaction adjustment. Issuers that meet these standards and seek the one-cent adjustment must certify their eligibility to the payment card networks in which they participate.

The debit card swipe fee cap does not apply to credit card fees, automatic teller machines transaction fees, fees associated with government benefit cards, certain reloadable, general-use prepaid cards or prepaid store cards, or other fees charged to



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merchants as part of the merchant discount (the total fees assessed to the merchant for processing the transaction).

Prohibition on Network Exclusivity

The Board's final rule also prohibits card issuers and payment card networks from restricting the number of networks over which merchants can process electronic debit transactions to less than two unaffiliated networks. The effective date for the network exclusivity prohibition is April 1, 2012, with respect to issuers, and October 1, 2011, with respect to payment card networks.

Issuers and networks are also prohibited from inhibiting a merchant's ability to direct the routing of the electronic debit transaction over any network that the issuer has enabled to process them.

Payment Discounts and Credit Card Minimums

Under the new rules, payment card networks may no longer prevent merchants from offering discounts or other incentives for paying a certain way - such as for using a debit card rather than a credit card - so long as the offer is made to all customers and is clearly and conspicuously disclosed. The rules also prohibit payment card networks from preventing merchants from setting minimum dollar amounts for accepting credit cards for payment, so long as the minimum is the same for all credit card issuers and networks, and does not exceed \$10.

Loeb & Loeb's Dodd-Frank Financial Reform Task Force monitors key issues surrounding approval of the Dodd-Frank Wall Street Reform and Consumer Protection Act that are relevant to a broad spectrum of firm clients in the financial services industry. The multidisciplinary Task Force is comprised of attorneys across core practice areas -



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including general corporate, private equity, securities, mergers and acquisitions, consumer protection and banking and finance - who are focused on analyzing the historic legislation and interpreting the significant business implications for financial institutions and commercial companies nationwide.

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