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## Congress Passes Financial Reform Bill Impacting The Card Processing Business

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**The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") was passed by the Senate yesterday afternoon, and it now goes to the President for signature. Key components of the final bill which could have a specific impact on the card processing business are as follows:**

1) Title X of the Act establishes a Bureau of Consumer Financial Protection. It has the authority to prevent a covered person or service provider from committing or engaging in an unfair or deceptive act or practice in connection with any transaction with a consumer for a consumer financial product or service (this broad protection is in addition to any protection afforded a consumer under state law and also gives the states' attorneys general the power to enforce the provisions of this law). Regulations likely will be promulgated to interpret the interplay of state law and other existing federal law, but this warrants attention as it gives consumers another avenue of redress for financial products or services.

2) Section 1075 of this Title, however, is directly on point for debit transactions, and amends the Electronic Fund Transfer Act by inserting a new Section 920, entitled "Reasonable Fees and Rules for Payment Card Transactions." The Board (Federal Reserve Board) is permitted (no later than 9 months from the date the Act passes) to "prescribe regulations regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction." The amount of such transaction fee is required to be "reasonable and proportional" to the cost incurred by the issuer with respect to the transaction. The Board may allow for an adjustment to the fee amount received

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or charged by an issuer if such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud, subject to certain limitations. Small issuers (with assets of less than \$10 billion) are exempt from the foregoing regulations.

Additionally, these restrictions do not apply to an interchange transaction fee charged or received with respect to a government-administered payment program; OR to reloadable prepaid cards (defined as a card, code or device linked to funds which are purchased or loaded on a prepaid basis, not issued or approved for use to access or debit any account held by the cardholder, redeemable at multiple unaffiliated merchants or ATMs, used to transfer or debit funds, and reloadable and not marketed or labeled as a gift card or gift certificate). HOWEVER, the interchange restrictions will apply to a general use prepaid card after the end of one year following the effective date of the Act if a cardholder is charged overdraft fees or an issuer fee for the first withdrawal per month from an ATM that is part of the issuer's designated ATM network.

3) The Board also is entitled to prescribe regulations (no later than 9 months following the effective date of the Act) to ensure that network fees are not used directly or indirectly to compensate an issuer with respect to an electronic debit transaction.

These limitations are to take effect at the end of the 12-month period beginning on the date of enactment of the Act (so roughly July 31, 2011).

4) The Board has one year to prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor or licensed member of a payment card network, restrict the number of payment card networks on which an electronic debit transaction may be processed to one such network, or two or more such affiliated networks. Within the same time frame, the Board will prescribe regulations providing that an issuer or payment card network shall not directly or indirectly inhibit the ability of any person who accepts debit cards to direct the routing of such transactions over any payment card network that may process such transactions.

5) The Act provides that a payment card network cannot directly or indirectly inhibit the ability of any person to provide a discount for payment by the use of cash, checks, debit card or credit cards, as long as in the case of credit or debit cards, the discount does

not differentiate on the basis of the issuer or the payment card network.

6) The Act also provides that a payment card network cannot directly or indirectly inhibit the ability of any person to set a minimum dollar value for the acceptance by that person of credit cards, as long as such minimum dollar value does not differentiate between issuers or payment card networks and the minimum dollar value does not exceed \$10 (at least for now - the Board can prescribe further regulations to increase this figure).

The term "Interchange Transaction Fee" means 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.

These are the most significant aspects of the Act impacting the card processing business. We will send out further updates as regulations are adopted.

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**For additional information on this issue, contact:**



**Barrie VanBrackle** Ms. VanBrackle practices in the areas of financial institutions and the payments transaction business, with an emphasis on electronic payments, banking and commerce. Ms. VanBrackle counsels financial institutions, payment processors, merchants, and other service entities regarding contractual, transactional and regulatory matters, including compliance with Federal and State law, data security, privacy, information services, and electronic commerce, as well as payment brand compliance.

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