

November 4, 2022

Vol. XXXVIII, No. 22

REGULATION II – PROHIBITION ON NETWORK EXCLUSIVITY

The Federal Reserve Board of Governors (FRB) has adopted a final rule that amends Regulation II to specify that the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions, and to clarify the requirement that debit card issuers ensure that at least two unaffiliated networks have been enabled to process a debit card transaction. **The final rule becomes effective on July 1, 2023.**

As required by the Dodd-Frank Act, a provision of Regulation II known as the “prohibition on network exclusivity” prohibits debit card issuers and payment card networks from restricting the number of networks on which a debit card transaction may be processed to fewer than two unaffiliated networks. This prohibition aims to promote competition among networks by ensuring that merchants have an opportunity to choose between at least two unaffiliated networks when routing debit card transactions, each of which does not, by rule or policy, restrict the operation of the network to a limited geographic area, specific merchant, or particular type of merchant or transaction.

When the Board issued Regulation II in 2011, the market had not yet developed solutions to broadly support multiple networks for card-not-present debit card transactions, such as online purchases. In the ensuing decade, most networks have introduced the technical capabilities to process card-not-present debit card transactions. In those cases where only one network is enabled for card-not-present transactions, merchants do not have an alternative network option that might offer lower fees or better fraud-prevention capabilities.

The final rule underscores that issuers should provide routing choice for card-not-present debit card transactions. The final rule specifies that card-not-present transactions are a particular type of debit card transaction for which issuers must enable at least two unaffiliated networks. The final rule also adds language to emphasize that Regulation II does not require an issuer to ensure that two unaffiliated networks will actually be available to the merchant to process every transaction.

Under the final rule, an issuer must configure each of its debit cards so that card-not-present transactions performed with those cards can be processed on at least two unaffiliated networks. As a practical matter, an issuer will first need to determine whether card-not-present transactions

performed with its debit cards can already be processed on at least two unaffiliated networks. If the issuer is not already compliant with the final rule, then the issuer will need to adjust its debit card processing arrangements to meet the final rule's requirements.

The final rule includes certain changes that make it easier for issuers to determine whether they are already compliant with the prohibition on network exclusivity. Specifically, the final rule retains the approach in current Regulation II that allows issuers to rely on network rules or policies in determining whether the networks enabled by an issuer may be used to satisfy the prohibition on network exclusivity.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.