



May 31, 2016

The Honorable Thomas J. Curry
Comptroller of the Currency
United States Treasury Department
400 Seventh Street, SW
Washington, DC 20024

Submitted Via Email: innovation@occ.treas.gov

Dear Mr. Curry:

The Retail Industry Leaders Association (RILA) and Merchant Advisory Group (MAG) very much appreciate the opportunity to submit feedback to the Office of the Comptroller of the Currency (OCC) in regard to responsible innovation in the federal banking sector. As you note in the OCC paper, “mobile payment services and mobile wallets are changing the way consumers make retail payments.” As the primary acceptors of mobile payments, the retail industry is a critical stakeholder in this space. Additionally, as commerce continues to evolve, many traditional retail companies are beginning to offer their own mobile wallet solutions and consumer-facing retail applications.

By way of background, RILA is the trade association of the world’s largest and most innovative retail companies. RILA members include more than 200 retailers, product manufactures, and service suppliers which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distributions centers domestically and abroad.

The Merchant Advisory Group (MAG) was founded in 2008 by a small visionary group of merchants in the payments field dedicated to driving positive change in payments through multi-stakeholder collaboration. Today, the MAG represents over 100 of the largest U.S. merchants who account for nearly \$2.6 trillion in annual sales at over 430,000 locations across the U.S. and online. Roughly \$1.5 trillion of those sales are electronic representing over 41 billion card payments. MAG members employ nearly 11.5 million associates.

Background:

We all have a shared goal of ensuring both business and consumer transactions are faster and safer. This is particularly pressing in the United States, which accounts for just under 25% of worldwide card payments volume, but nearly 50% of the worldwide

payment card fraud.¹ In order to achieve the goal of faster and safer transactions, it is critical to have an open market for innovation and advancement in mobile commerce. Responsible innovation will only flourish in an environment that fosters vigorous competition for faster, more secure, and more efficient payment.

In many instances, we believe fintech companies, retailers, and other non-bank entities have the potential to be some of the greatest innovators in the mobile commerce space. As retailers, we are very in tune to the wants and needs of our customers, and driving a positive customer experience is paramount to running a successful business. The payment portion of mobile commerce is almost an after-thought for most of our customers, and it should be. Our goal is to make the payments process as frictionless as possible because ultimately, the way a customer can pay is not the reason they're shopping in our store, dining in our restaurant, or flying our airline.

As the United States moves toward mobile commerce, it is critical that stakeholders build new products and services geared toward the digital environment – products and services that utilize the added authentication and interactive tools that are available in a digital environment compared to those available for paper or plastic payments. We do think this is a potential shortfall of the financial services industry approach to innovation in payments as some of the largest global payment card networks and financial institutions have demonstrated an interest in bringing legacy analog products into the digital environment instead of building new and innovative products within the digital environment.

As the OCC paper notes, “Start-ups do not have legacy technology systems or large brick-and-mortar infrastructures that can be costly to maintain or change.” In this regard, especially as it pertains to the legacy technology systems, many of the fintech companies and retail wallet providers are able to start with fresher and more innovative platforms for mobile commerce than other stakeholders in the system. We strongly believe any additional regulation in this space could hinder or impede innovation by non-bank entities; however, we would invite additional oversight into how stakeholders can work more closely together to achieve the common goal of responsible innovation, as well as oversight as to how existing legacy banking system and network rules may be inhibiting such innovation.

Again, we very much appreciate the opportunity to provide feedback on responsible innovation in the United States banking sector. We will seek to answer question #'s 1, 4, 5, and 9 in greater detail below.

1. What challenges do community banks face with regard to emerging technology and financial innovation?

¹ *Nilson Report*. July 2015.

It is our observation community banks, and even mid-size financial institutions, may struggle to obtain equal footing with the larger financial institutions with the rollout of digital wallets. This is particularly true when global credit card networks, such as Visa and MasterCard, are at the center of a major deal with digital wallet providers because those companies have historically favored their biggest clients, who are the very largest card issuers.

As long as traditional card networks are central to any wallet product launch, community banks and mid-size financial institutions are unlikely to get equal treatment and access compared to larger financial institutions. In the decade since Visa and MasterCard – previously bank-owned associations – became for-profit entities, this trend has accelerated. The OCC would likely gain valuable feedback on this dynamic by inquiring with small banks about how they were treated during the launch of specific wallet products, and whether or not they received fair and timely access to both the contracts and technology to participate in those roll outs, as well as whether or not they had any real input into the wallet deployment to ensure the product could be successfully incorporated into their business.

4. How would establishing a centralized office of innovation within the OCC facilitate more open, timely, and ongoing dialogue regarding opportunities for responsible innovation?

We would support the establishment of a centralized Office of Innovation within the OCC to facilitate a more open, timely and ongoing dialogue regarding responsible innovation. Such an office could serve as a clear entry point for voluntary, non-bank communication and dialogue with the OCC.

A current example of an area in which non-bank entities are interested in opening a dialogue with the OCC is surrounding signature payment card fraud chargeback² rules, practices, and procedures. With the U.S. transition to EMV chip card technology – one of

² “When consumers make purchases with a credit, debit, or prepaid card at merchants, the merchants typically receive funds of those payment card transactions a few days after the transaction date. However, even after merchants received the funds, those funds are not necessarily guaranteed for the merchants due to chargebacks. Chargebacks are full reversal of transactions by card issuers. When a card issuer initiates a chargeback to the merchant, the merchant processor, which is an entity that provides payment card processing services for the merchant, returns the funds to the issuer from the merchant’s account. The funds may again be deposited to the merchant account if the merchant successfully reclaims the funds by disputing the chargeback. When a cardholder disputes a transaction on his payment card statement, either his card issuer or the merchant at whom the transaction was made typically incurs the loss.” See “Chargebacks: Another Payment Card Acceptance Cost for Merchants.” Kansas City Federal Reserve Bank. January 2016. <https://www.kansascityfed.org/~media/files/publicat/reswkpap/pdf/rwp16-01.pdf> at pg. 2.

the most recent payment innovations in the United States – there is a tremendous need by a variety of payment system stakeholders for added transparency in the payment card chargeback process. This is even more critical as U.S. consumer’s adoption of mobile commerce and e-commerce/Internet shopping continues to grow. The policies that exist today in legacy card payment acceptance rules between those m-commerce and e-commerce transactions and in-store transactions will become even more opaque in regard to chargeback liabilities, fraud and overall cost and efficiency. An Office of Innovation at the OCC would provide a venue for non-bank stakeholder to begin a dialogue surrounding this and other key issues.

5. How could the OCC provide guidance to nonbank innovators regarding its expectations for banks’ interactions and partnerships with such companies?

As noted in question #4, we believe an Office of Innovation could help foster an ongoing dialogue for non-bank innovators, bank partners, and the OCC. Having a centralized point of contact within the OCC to manage the dialogue between voluntary stakeholder participants in the innovation space will help promote a forum to discuss the challenges and opportunities that arise in the mobile commerce marketplace.

The current environment is a challenging one for non-bank providers to participate in, especially when faced with an emerging issue that perhaps benefits the banking stakeholders in the system at the expense of other stakeholders and the overall efficiency of the payments or mobile commerce ecosystem. For example, supra-competitive payment card acceptance fees – revenue to financial institutions – may disincentivize those parties from moving away from the current system toward faster, lower fee, more secure, and overall more efficient payments.

This is evident in the recent activity by NACHA where the large financial institutions agreed to move toward same-day ACH payments, but only with the promise of a fixed interbank fee that will effectively become a price-fixed market floor even though fintech companies could likely offer the same service faster and cheaper. Not to mention, in order to remain competitive in a 21st century economy, the United States should focus efforts toward near real-time consumer-to-business payments, which are already prevalent in many other countries around the world, including Mexico, India, the UK, Sweden, and Poland.

The U.S. Federal Reserve Faster Payments Task Force is a sound example of a forum in which multiple system stakeholders – including the merchant community – have voluntarily coalesced around exploring solutions to bring faster and more secure payments to the United States. While the outcome is still forthcoming, the Federal Reserve should be commended for their efforts to drive an open and inclusive dialogue, and we believe the OCC has the potential to play a similar stakeholder organization role.

9. What should the OCC consider with respect to innovation?

One item we would highlight with respect to innovation is the recent failure of EMVCo³ and its governing card networks to foster a smooth transition to EMV smart card technology in the United States. We believe the EMV transition, which has come under scrutiny by several lawmakers, demonstrates the inadequacy of EMVCo as an organization, and its member companies, to successfully deploy new technologies in the United States. We would encourage the OCC to heavily scrutinize any efforts by EMVCo to play a role in bringing mobile payment innovations to the United States until the plastic chip card transition is fully carried out.

We would also caution that payment card network acceptance rules and business practices are an inhibitor to innovation in the mobile commerce space. Currently, merchants are not receiving enough transaction detail to know which mobile wallets are being presented for payments in their store with Near Field Communication or NFC wallets. As such, many merchants are reluctant to turn on NFC contactless acceptance technology at the point-of-sale, inhibiting the growth and innovation of contactless payments.

Additionally, Visa rules say if a merchant accepts any type of plastic swipe or dip Visa credit card, that merchant has to accept any type of contactless or digital Visa credit card, including a contactless Visa credit card presented inside ANY digital wallet if the merchant has turned on NFC contactless technology at the point-of-sale. This prohibits a merchant from choosing to accept just one NFC wallet without accepting them all. So effectively, if a merchant wants to accept Android Pay (an NFC wallet), Visa acceptance rules require that merchant to also accept Apple Pay (another NFC wallet). Given the choice a merchant may choose to accept either or both wallets, but it is critical to competition and innovation that merchants have the flexibility to choose, and are able to have a direct business relationship with that wallet provider to ensure the best experience for the joint customer.

There are many business ramifications of forced wallet acceptance, including tremendous uncertainty about the security of the wallet, cost of acceptance inside the wallet - including the cannibalization of retail private label bank or gift card programs - and the access, use and management of data. The last item, in particular, could result in significant harm to merchants, networks, and banks as it could result in sales

³ EMVCo exists to facilitate worldwide interoperability and acceptance of secure payment transactions. It accomplishes this by managing and evolving the EMV^{®1} Specifications and related testing processes. This includes, but is not limited to, card and terminal evaluation, security evaluation, and management of interoperability issues. Today there are EMV Specifications based on contact chip, contactless chip, common payment application (CPA), card personalisation, and tokenisation. This work is overseen by EMVCo's six member organisations—American Express, Discover, JCB, MasterCard, UnionPay, and Visa—and supported by dozens of banks, merchants, processors, vendors and other industry stakeholders who participate as EMVCo Associates. https://www.emvco.com/about_emvco.aspx

information and transaction volume details being sold to competitors.

In particular, as it pertains to transaction volume details being sold to or obtained and utilized by competitors, the OCC should investigate the EMVCo organization's tokenization specifications. The tokenization specifications are already deployed at market as the back-end security feature of certain mobile wallets; yet, there is no clear path for the majority of domestic debit networks or smaller financial institutions to manage the tokenization technology on their own without going through Visa, MasterCard or one of the other EMVCo global payment card brands. The way the EMVCo tokenization solution is set-up and currently deployed, it has tremendous potential to severely disadvantage U.S. domestic debit card networks, and mid-size and small financial institutions over the long-term. Meanwhile, it can reduce the overall efficiency and security for other stakeholders in the payments chain, including merchants and our customers.

Conclusion:

In conclusion, as both acceptors of mobile payments and providers of wallet apps and services, the merchant community would welcome an ongoing dialogue with the OCC regarding innovation in mobile commerce and payments.

We look forward to the opportunity for further dialogue on these important industry issues. Please feel free to contact Liz Garner at liz.garner@merchantadvisorygroup.org or Austen Jensen at austen.jensen@rila.org with any additional follow-up questions or concerns.

Thank you again for the opportunity to provide feedback on the important topic of responsible innovation.

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