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Implementing the Durbin Amendment: The Proposed Rule on Debit Network Interchange Fees and Rules

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Introduction

Signed into law July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or the "Act")[1] required implementation of almost all of its provisions through regulations to be promulgated by various agencies over the ensuing 18 months. As the agencies work through the administrative process to craft these implementing regulations, the affected providers of financial services and their customers are seeing the anticipated impacts become more concrete, while through this process they are afforded an opportunity to participate in shaping the regulatory environment that will affect them immediately and well into the future. Stakeholders' participation, by submitting comments directly to the Board of Governors of the Federal Reserve System (the "Board") or by working with trade groups to do so, provides an important means for achieving legislative and regulatory objectives without undue disruption of markets and services.

The so-called Durbin Amendment, entitled "Reasonable Fees and Rules for Payment Card Transaction," added Section 1075 to the Act.[2] It requires the Board to prescribe standards for "reasonable" interchange fees payable to certain debit card issuers in connection with debit card purchases and to limit certain payment network rules and practices that restrict merchants' ability to prescribe the processing routing of debit transactions to the issuer for settlement. The Board has responded by publishing a detailed proposed rule with accompanying explanation. The bottom line is that for covered transactions, the proposed maximum interchange fee initially will be 12 cents. This article outlines the Notice of Proposed Rulemaking issued by the Board on December 16, 2010[3] (the "Proposed Rule"). The regulation would establish a new Federal Reserve Regulation II ("Reg II").[4]

The Act sets a deadline of nine months from the date of enactment for adoption of final regulations implementing the "reasonable fee" and fraud control adjustments. This deadline expires on April 21, 2011. However, the fee regulation provisions of EFTA Section 920 take effect on July 21, 2011.[5] The Board is proposing effective dates for rules implementing the prohibition of routing restrictions to take effect either October 1, 2011 or January 1, 2013, depending on which of the proposed alternative proposals for network rules is adopted.[6] Comments on the Proposed Rule must be submitted to the Board by February 22, 2011.

Standards for Reasonable Interchange: Safe Harbor and Cap

What Are Interchange Fees?

"Interchange Transaction fees" refers only to the portion of fees charged a merchant for accepting a payment card that is passed through the system to the issuer of the card. The Act does not directly regulate the fees that acquirers, networks or other service providers may charge for their services in providing card payments. In fact, in the typical network payment system, interchange fees actually are not payable by the merchant but by the acquirer, which is the party that contracts with the merchant for acceptance of a particular network-branded card. The Board's rule is based on the assumption underlying the legislative mandate that these fees are invariably passed through to the merchant by the acquirer as either an explicit or a non-transparent component of the fees charged to the merchant by the acquirer. The proposed rule therefore defines interchange transaction fees as ''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.''[7]

Which Payment Transactions Are Covered?

The Durbin Amendment provisions apply to only certain payment transactions, although those transactions represent the great majority of debit transactions. They apply only to "**electronic debit transactions**," which are defined as "those transactions where a person uses a debit card for payment in the United States."[8] Coverage therefore depends largely on how "debit card" is defined. Proposed § 235.2(f)(1) generally defines the term ''debit card'' as ''any card, or other payment code or device, issued or approved for use through a payment card network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means." Both consumer and business debit cards are covered. In addition, the term applies regardless of whether the issuer holds the underlying account and includes a "general use prepaid card" (certain of which are subject to exemptions, discussed below). The restrictions will apply therefore to mobile phone and embedded chip transactions. The definition of debit card will also encompass "deferred debit" cards on which the funds representing settled transactions are made unavailable for other uses until the charges are posted to the customer's account at some later time, such as at the end of the month.[9] "Decoupled" debit cards are also included within the definition of debit cards. These are cards in which the initial payment transaction does not result in a direct debit to the cardholder's account held by the issuer but triggers another transaction initiated by the issuer, typically through the ACH, that obtains funds from the cardholder's asset account held by another institution.[10]

There are several exclusions from the definition of debit card. Single merchant prepaid cards, so-called "closed-loop" cards, are excluded, including cards accepted by affiliated or franchised merchants.[11] Paper checks and electronic checks are excluded.[12] ACH transactions are not included even when a code or card is used by the account holder to initiate a transfer.[13]

The application of the interchange fee rules to **general-use prepaid cards** is more complex. As mentioned, once a card (or covered prepaid payment service delivered through non-card means, such as mobile phone payments) is determined to fall within the definition of covered general-use prepaid cards, it is then subject to a set of complex exemptions from coverage. The Proposed Rule starts by defining a general-use prepaid card ("GUPC") as "a card, or other payment code or device, that is (1) issued on a prepaid basis in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (2) redeemable upon presentation at multiple, unaffiliated merchants or service providers for goods or services, or usable at ATMs."[14] The Board notes that although the Dodd-Frank Act adopts the definition from the earlier Credit CARD Act,[15] the Dodd-Frank Act definition does not include any of the exceptions from the definition that were included in that legislation, but adopts a different set of exemptions that apply only to the interchange fee

regulations.[16] GUPC includes cards (or codes or devices) whether the amount is predetermined by the issuer or determined by the cardholder in a particular transaction. Mall cards that carry a network brand are covered, but the Board requests comments as to whether non-network branded mall cards (which it calls "selective authorization cards") should be covered.

Which Transactions Are Exempt?

There are two general categories of exemptions that apply to the interchange fee restrictions of the Durbin Amendment.[17] The first exempts covered cards issued by **small issuers**. The interchange fee limitations, permitted fraud adjustments and anti-evasion provisions will not apply to a "small" issuer, defined as one that (i) holds the account that is debited by use of the card, and (ii) which, together with its global affiliates, has assets, banking and non-banking, of less than $10 billion as of the end of the previous calendar year.[18] The Act does not require networks to implement the exemption for small institutions permitting higher interchange fees. However, neither the Act nor the Board addresses in this Notice whether failure to do so in spite of having the capability would be subject to competition law concerns.[19]

The second group of exemptions applies to certain types of cards regardless of the issuer's size. Cards issued to access funds provided to the cardholder pursuant to federal, state or local **government-administered programs** are exempt so long as such funds can only be accessed by the card. However, the funds do not have to be provided by the government; the Board cites child support programs as an example of private funds that are provided pursuant to a government-administered program that would qualify for this exemption.[20]

A third exemption relieves certain **reloadable prepaid cards** from the restrictions on interchange transaction fees.[21] To qualify for this exemption, the card must meet the definition of general-use prepaid cards and also: (i) may not access the cardholder's separate account held by the issuer (other than a sub-account identified for accounting purposes); (ii) must be reloadable; and (iii) must not be marketed (by any party) as a gift card or gift certificate.[22] To be considered reloadable, the cardholder terms and conditions must specify that reloading is permitted; it is not sufficient if the issuer's processor merely has the technical capability to accept reloads.[23] Issuance of a temporary non-reloadable card until the reloadable permanent card is issued later will not disqualify a card from the exemption.

To determine whether a card is "not marketed as a gift card or gift certificate," the Board proposes to use the same standards that it applied to determine whether a card is within the gift card regulations adopted pursuant to the Credit CARD Act. "The proposed comment provides that the term means directly or indirectly offering, advertising, or otherwise suggesting the potential use of a general-use prepaid card as a gift for another person. The proposed comment also states that whether the exclusion applies does not depend on the type of entity that is making the promotional message. Therefore, under the proposed comment, a general-use prepaid card is deemed to be marketed or labeled as a gift card or gift certificate [– and disqualified from the exemption –] if anyone (other than the consumer-purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate."[24] Since it would be difficult to know at the time that a network identifies the interchange fee for a particular transaction whether a card has been marketed at any point in the distribution chain by any party, directly or indirectly, as a gift card, the Board proposes to permit the issuer to rely on the existence of reasonable measures to ensure that the cards are not marketed improperly.[25]

This exemption for qualifying reloadable prepaid cards sunsets on July 21, 2011, unless certain additional conditions are met. The exemptions will not be available after that date if any of the

following fees may be charged to a person with respect to the card: (i) an overdraft fee, including a shortage of funds or a transaction processed for an amount exceeding the account balance; and (ii) for [a] fee charged by the issuer for the first withdrawal per month from an ATM that is part of the issuer's designated ATM network.[26] ''Designated automated teller machine network'' is defined as either (1) all ATMs identified in the name of the issuer or (2) any network of ATMs identified by the issuer that provides reasonable and convenient access to the issuer's customers.[27]

What Are "Reasonable and Proportional" Interchange Transaction Fees?

The main thrust of the Durbin Amendment requires that the amount of an interchange fee that an issuer receives or charges with respect to an electronic debit transaction shall be reasonable and proportional to the costs incurred by the issuer with respect to the transaction and requires the Board "to establish **standards** for assessing whether the amount of any interchange transaction fee … is reasonable and proportional …."[28] Although the Act does not mandate or expressly authorize the Board to set a specific fee level for interchange, the Board has arguably done so by setting a cap on fees that, from its own survey information, is below the median of issuers' variable costs for processing signature debit transactions, which are the majority of debit transactions.[29] The Board's rationale for setting a cap (although not for the specific level chosen) is that without a cap, a rule permitting the charging of interchange fees equivalent to costs would not provide an incentive to issuers to control costs which can be passed on to acquirers and ultimately to merchants. [30]

The Board proposes two alternative rules for determining whether interchange fees are reasonable and proportional and asks for comments on which should be adopted. In proposed **Alternative 1**, the Board would set two specific levels of interchange fees that would be considered "reasonable and proportional" for purposes of compliance: 1) **7 cents** per transaction will always be considered "reasonable" without cost justification (the "Safe Harbor"); and 2) an issuer-specific fee, capped at **12 cents** per transaction, based on certain allowable items of issuer costs that must be calculated annually and substantiated by each issuer wishing to receive more than 7 cents per transaction.[31] The cost items that may be included are specified in detail; only the specified direct variable costs of the issuer's role in authorization, clearing and settlement of transactions are permitted. [32] There is no express differentiation between card-present and card-not-present transactions or between PIN-authenticated and signature-authenticated transactions. Network processing fees are specifically excluded from the issuer's cost calculation, but fees that an issuer pays to a network for acting as its third party processor are allowable.[33] Under Alternative 1 (for covered cards and issuers), the networks would set each issuer's interchange fee at 7 cents unless the issuer certifies to the network costs above 7 cents, in which case the interchange fee would be set at the level of the issuer's costs, up to 12 cents per transaction. If an issuer can demonstrate costs of at least 12 cents per transaction, the 12-cent fee would be considered "reasonable and proportional to costs" as required by the Act.[34] The per transaction costs are calculated annually by each issuer using data with respect to the prior calendar year. Each issuer wishing interchange fees above the Safe Harbor must report its per transaction costs to payment networks by March 31 of each year for purposes of setting its interchange rate for the annual period beginning the following October 1. To provide a transition period, the Board proposes to permit issuers to use data from 2009 instead of 2010 to support interchange rates effective July 21, 2011 through September 30, 2012. From then, annual data starting with calendar year 2011 must be used. The Board requests comments as to whether standard certification methodology should be promulgated.

In **Alternative 2**, the Board would simply impose a cap of **12 cents** per transaction based on data that the Board would collect itself on a periodic basis. The Board points out that this approach would lessen administrative burdens: "Although the issuer would have to report its costs to the Board every two years in accordance with [12 CFR] § 235.8, an issuer would not have to calculate or report to the

networks its maximum allowable interchange transaction fee. Similarly, a payment card network would not need to incorporate issuer specific fees into its fee schedule, as the cap would apply uniformly to all covered issuers in that network."[35]

The Board also requests comments on **two additional methods** of implementing interchange fee standards that would allow more flexibility in interchange fees for particular types of covered transactions. For example, this might allow interchange fees to reflect differential risks inherent in different types of transactions. One method would allow each issuer to set interchange fees so that, on average, all transactions over a period of time over a particular network would meet the standard. The second approach would allow the same type of interchange fee averaging but over all covered transactions at the payment network level.[36] Recognizing the complexity of managing these approaches, the Board suggests that it might be appropriate to allow the issuer or network to use data regarding the transaction mix in a prior period to establish that the interchange fees averages to an acceptable level. The Board also requests comments on the acceptable range of deviation in interchange fees from the allowable interchange fee level.

What Adjustments to Interchange Fees Are Permitted for Fraud Prevention Measures?

The Durbin Amendment specifically permits the Board to allow certain tightly controlled adjustments for fraud control measures. The Board cites results of its survey of fraud losses incurred by issuers on covered transactions showing that on average across both PIN- and signature-authenticated transactions, the losses in 2009 were 9.4 basis points per transaction, with losses on signature-based transactions averaging approximately 3.7 times the losses per transaction incurred on PIN-based transactions.[37] Although the fraud prevention adjustment provisions also carry a deadline for finalization of April 22, 2011,[38] the Board has temporarily deferred proposing specific regulations until it receives comments on two proposed approaches.[39] The first, called the "technology-specific approach," would prescribe certain specific technology measures that an issuer must employ in order for its covered transactions to qualify for the fraud prevention adjustment. The Board would identify "paradigm-shifting" technologies and permit issuers to receive compensation for their deployment. The Board points out that this approach might pose a disincentive for the development of new technologies that have not gained Board approval.[40] The second approach, called the "non-prescriptive" approach, would simply compensate issuers by allowing a set adjustment to reimburse the issuer for some or all of the costs of its current fraud-prevention and data-security activities and of research and development for new fraud-prevention techniques, perhaps up to a cap. The Board points out that this approach would permit more flexibility and provide incentive for innovation, but would shift costs to merchants who already bear substantial costs for fraud prevention.[41] The Board poses ten specific questions for comment in relation to fraud prevention adjustments.

How Will Evasion of the Rules Be Prevented?

The Durbin Amendment authorizes the Board to prevent circumvention and evasion of the rule limiting issuers' compensation through networks for participation in a covered transaction.[42] While not directly regulating payment network fees, the Board explains that through manipulation of pricing policies, networks could use fees collected from acquirers to augment interchange compensation to issuers.[43] The proposed rule states a catch-all prohibition of circumvention of the limits on interchange compensation to issuers on covered transactions. Any finding of evasive behavior would depend on analysis of all the relevant facts and circumstances.[44] The proposed rule would also specifically prohibit issuers from receiving in any year **net compensation** with respect to electronic debit transactions from the network (i.e., payments from the network), including discounts and incentives but excluding interchange fee compensation, greater than the amount of the fees the issuer pays to the network for such transactions.[45] A proposed comment further clarifies that fees paid by an issuer to a payment card network include, but are not limited to, network processing, or switch, fees paid for

each transaction, as well as fees charged to issuers that are not particular to a transaction, such as membership, licensing and network administration fees. Fees paid by an issuer could also include fees for optional services provided by the network.[46] The anti-evasion prohibitions do not apply to issuers or products that are exempt from the interchange fee restrictions. The Board acknowledges that not all network fee structures are undertaken to shift income from acquirers and merchants to issuers, which is why the proposal would prohibit only net negative fee arrangements with issuers. The Board requests comments on whether the prohibition of net compensation to issuers unduly locks in networks' current revenue collection patterns and in particular whether issuer's "signing bonuses" from networks should be considered in the net compensation calculations.

Network Routing: Alternative Paths and Merchant Control

The Durbin Amendment includes two sets of provisions intended to permit merchants to choose between competing network processing paths for each electronic debit transaction. Issuers and payment card networks are prohibited from (i) restricting the number of payment card networks on which an electronic debit transaction may be processed (network exclusivity restrictions) and (ii) "inhibiting" a merchant (or ATM operator) from directing the routing of an electronic debit transaction through any network that can process that transaction (merchant routing restrictions).[47] The **exemptions** from the interchange fee restriction rules for small issuers, government-administered programs and certain general-use prepaid cards **do not apply** to these prohibitions on network exclusivity and prescribed routing.[48] The Board notes that while allowing merchants to choose among competing networks might reduce merchant costs, this mandate might have adverse consequences for consumers who may not be able to control "or even know" whether their transactions qualify for certain benefits and risk control measures offered by a specific network. Therefore, the Board requests comments on two proposed alternatives for implementing the requirement of multiple routing paths.

Alternative A would permit an issuer to meet the requirement if transactions using each covered card can be processed over at least two non-affiliated networks. This requirement would be satisfied, for example, if the card may be used over one signature-based network and one non-affiliated PIN-based network. The Board points out that "the statute does not expressly require issuers to offer multiple unaffiliated signature and multiple unaffiliated PIN debit card network choices on each card."[49] **Alternative B** would require an issuer to permit a merchant (or its acquirer) to choose from at least two non-affiliated networks for each mode of acceptance (PIN or signature) in which the card is enabled.[50] The Board notes that since PIN authorization acceptance is much more limited than signature (i.e., that only two million out of eight million merchant locations accepting cards are capable of accepting PINs), and that PIN authentication and its single message methodology is not practical in industries such as lodging and auto rental, Alternative A, which would allow provision of only one signature network on cards that also offer PIN authorization, would negate the goal of merchant routing choice for most merchants. In any event, each card must be enabled on at least two nationwide networks even if only one mode of acceptance is facilitated. Contactless or RFID acceptance modes do not qualify as separate network routes from the underlying debit processing networks.[51]

The proposal goes on to specify three scenarios that would not satisfy either alternative: 1) if one of the network choices is not national in scope, unless multiple networks are enabled which together provide national scope; 2) if a network option is available at only a limited number of merchants or types of merchants; and 3) if a payment card network restricts the issuer's ability to utilize other networks. Networks would also be prohibited from restricting the number or location of other networks' brands on an issuer's covered cards, although the proposed rule would not itself require an issuer to display on the card all of the networks that may process transactions.[52]

The second arm of the network routing regulation would prohibit issuers and payment card networks from limiting in any way a merchant's ability to route electronic debit transactions over any payment card network that may process such transactions.[53] However, a merchant's network routing choices are limited to the networks enabled on the card by the issuer.[54] The Board specifically requests comments on the impact of providing multiple routing options on small institutions, government-administered programs and for cards that access tax-advantaged health care benefits.

Conclusion

The payment system is the lifeblood of the economy. Its structure represents an end-to-end value chain of many players who must function efficiently together to make it work as reliably as we have come to expect. The Durbin Amendment's focus on the economics affecting merchants will have immense economic and functional impacts on all of the links in the chain, not the least of which will fall on consumers. The Notice of Proposed Rulemaking recognizes the myriad complexities of tailoring the highly specific provisions of the Durbin Amendment to the vast, diverse, highly complex and dynamic business and technical environment of the electronic debit card industry. These impactful proposals will undoubtedly affect the quality of services provided as well as their economics as they transform the payment industry at the furious pace mandated by the statute. Each stakeholder should review the proposal in detail and take the opportunity to provide useful information and potential solutions to the Board's specific requests for comments on proposals that affect them, as well as take the opportunity to identify additional concerns that may not have been addressed.

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[1] Paul Hastings published a series of articles on the many areas of the banking and financial services industries affected by the Dodd-Frank Act, including a previous article on the Durbin Amendment, which are available at http://www.paulhastings.com/GlobalFinancialResources.aspx.

[2] P.L. 111-203 (July 21, 2010) § 1075(a) amends the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. ("EFTA"), adding a new Section 920. References in this article to the Act are to sections of the amended Electronic Funds Transfer Act

[3] 75 Fed. Reg. 81722 (Dec. 28, 2010), available at http://www.federalregister.gov/articles/2010/12/28/2010-32061/debit-card-interchange-fees-and-routing.

[4] Reg II will be codified at 12 CFR Part 235. (Pronounced "eye-eye," not Roman 2.)

[5] EFTA §§ 920(a)(3)(A), (a)(5)(B), (a)(8)(C), (a)(9).

[6] 75 Fed. Reg. 81753

[7] 12 C.F.R. 235.2(j)

[8] 12 C.F.R. 235.2(h). The Board acknowledges that the statutory language does not include its proposed limitation to payment transactions and expressly asks for comments on whether Reg II should apply to ATM transactions, noting, however, that the Board believes that ATM transactions are not within the legislative intent to allow the acquirer to choose the lowest cost alternative, since interchange flows in the reverse direction for ATM transactions. In that context, the acquirer would choose the highest cost alternative in order to increase revenues. 75 C.F.R. 81727.

[9] These accounts are typically issued in connection with retail brokerage accounts. While not discussed in the Notice of Proposed Rulemaking, network rules sometimes permit these deferred debit cards to receive higher credit card rather than debit card interchange fees, so the reduction of interchange fees to 7-12 cents per transaction would be more drastic yet for those issuers. The rationale for the credit card rate was that the issuer was denied the use of the funds representing the settled transactions for a period of time approximating the "free period" on typical credit card transactions.

[10] 12 C.F.R. § 235.2(f)(2), Official Comment 2(f)-3. However, direct ACH transfers are exempt even if initiated by the customer's use of an account number or code.

[11] 12 C.F.R. § 235.2(f)(3)(i).

[12] *Id*. at (3)(ii).

[13] *Id*. at (3)(iii).

[14] 12 C.F.R. § 235.2(i).

[15] Codified in EFTA § 915(a)(2)(A).

[16] 75 C.F.R. § 81730 and n.39.

[17] The Board points out that a payment network only has to be satisfied that a transaction meets the qualifications for one of the exemptions in order to apply an unregulated interchange fee. Official Comment 5-1.

[18] 12 C.F.R. § 235.5(a)(1)

[19] Section 6 of the Dodd-Frank Act, 12 U.S.C. 5303, states that nothing in the Act should be construed to "modify, impair or supersede" the antitrust laws unless otherwise specified.

[20] 12 C.F.R. § 235.5(b)(1) and Official Comment 5b-1.

[21] EFTA § 920(a)(7)(A)(ii).

[22] 12 C.F.R. § 235.5(c)(1).

[23] Official Comment 5c-1.

[24] 75 Fed. Reg. 81745, Official Comment 5c-2.

[25] Official Comment 5c-4.

[26] 12 C.F.R. § 235.5(d). The fee described in § 235.5(d)(1) does not include a fee or charge charged for transferring funds from another asset account to cover a shortfall in the account accessed by the card.

[27] 12 C.F.R. § 235.2(g). The Board goes on to clarify further the meaning of "reasonable and convenient access." *See* 75 Fed. Reg. 81730-31.

[28] EFTA §§ 920(a)(2), (a)(3)(A).

[29] 75 Fed. Reg. 81725, nn.19, 25.

[30] 75 Fed. Reg. 81737.

[31] 12 C.F.R. § 235.3(b). The Board recognizes that in three-party network systems, in which the network also serves as both the issuer and the acquirer, there is no express amount charged to merchants that fits the Board's definition of interchange fees and the Board seeks comments on the practicalities of applying the reasonableness standards in the three-party context. 75 Fed. Reg. 81727

[32] 12 C.F.R. § 235.3(c); proposed Official Comment 3c-2. The time period over which the reasonableness of fess is determined will be October 1 through the following September 30.

[33] Official Comment 3c-3.ii.

[34] "The Board believes that the average variable cost, as discussed above, provides a reasonable approximation of an issuer's per-transaction cost for its role in authorization, clearance, and settlement. The Board believes that a maximum interchange fee determined on an issuer-specific basis as provided in Alternative 1 is both reasonable, in that it reflects only those allowable costs identified by the Board (up to a cap, discussed further below), and is directly proportional to the issuer's actual costs." The Board chose 12 cents as the "reasonable" maximum level of interchange based on its surveys of costs incurred by major issuers, and concluded "The Board proposes a cap of 12 cents per transaction because, while it significantly reduces interchange fees from current levels (approximately 44 cents per transaction, on average, based on the survey of payment card networks), it allows for the recovery of per-transaction variable costs for a large majority of covered issuers (approximately 80 percent)." *Ibid*. See 75 Fed. Reg. 81724-26

[35] 75 Fed. Reg. 81738.

[36] 75 Fed. Reg. 81738-9.

[37] 75 Fed. Reg. 81741.

[38] EFTA § 920(a)(5)(B).

[39] 75 Fed. Reg. 81740

[40] *Id*. at 81742 The Board also noted that the innovative technologies recommended by various industry participants have not significantly reduced fraud in countries where they have been adopted.

[41] *Ibid*.

[42] EFTA § 920(a)(1), (a)(8).

[43] 75 Fed. Reg. 81747.

[44] Official Comment 6-1.

[45] 12 C.F.R. § 235.6.

[46] Official Comment 6-1.ii.

[47] EFTA § 920(b)(1); 12 C.F.R. 235.7.

[48] *See* 75 Fed. Reg. 81748.

[49] 75 Fed. Reg. 81749.

[50] 75 Fed. Reg. 81750.

[51] Official Comment 7a-3.

[52] 12 C.F.R. § 235.7(a) (2); Official Comment 7a-6.

[53] 12 C.F.R. § 235.7(b).

[54] Official Comment 7b-1.