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B. Dan Berger
President & Chief Executive Officer

National Association of Federal Credit Unions | www.nafcu.org

August 9, 2013

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Mike Crapo
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Re: NAFCU concerns regarding the *NACS, et al., v. Board of Governors* decision

Dear Chairman Johnson and Ranking Member Crapo:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the interests of our nation's federally chartered credit unions, I write today to share with you our concerns about the impact of the U.S. District Court for the District of Columbia ruling in the *NACS, et al., v. Board of Governors* case. As you are aware, this decision called for the Federal Reserve's rule on debit interchange to be vacated, after a temporary stay and additional court review.

This ruling is of major significance to credit unions of all asset sizes because of the loss of debit card fee income that will result from this ruling, in addition to the monumental costs of implementing massive changes to the existing debit card system for small issuers such as credit unions. It is important to note that Congress provided no exemption for credit unions of any size from the network exclusivity rules. This means that all small issuers, including credit unions, will be adversely impacted by this ruling and will now face additional and increased costs that will come from the reworking of this rule. Furthermore, not only do most credit unions lack the economies of scale to lower costs based on sheer size, credit unions can have costs far above any rate likely to be imposed on non-exempt issuers under the District Court's opinion. We do not believe that it was the intent of Congress that small issuers such as credit unions would be so adversely impacted.

NAFCU has also weighed in with our concerns on this matter to both the National Credit Union Administration (NCUA) and the Federal Reserve. I have attached a copy of our letter to Federal Reserve Board Chairman Ben Bernanke that outlines our concerns. As you continue to follow the legal developments in this case, we urge you to stand ready to act in a timely manner should our nation's credit unions and community institutions ultimately need congressional action on this matter.

The Honorable Tim Johnson
The Honorable Mike Crapo
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Thank you for the opportunity to put forward our views on this important issue. If my colleagues or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact myself, or NAFCU's Vice President of Legislative Affairs, Brad Thaler at (703) 842-2204.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger", with a large, sweeping flourish extending to the right.

B. Dan Berger
President and Chief Executive Officer

Enclosure

cc: Members of the Senate Committee on Banking, Housing, and Urban Affairs



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August 9, 2013

The Honorable Ben S. Bernanke
Chairman of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551

RE: *NACS, et al., v. Board of Governors*

Dear Chairman Bernanke:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the recent decision by Federal Judge Richard Leon of the U.S. District Court for the District of Columbia in *NACS, et al., v. Board of Governors* to overturn the Federal Reserve Board of Governors' (Board or Federal Reserve) rule limiting the fees that financial institutions can charge merchants for processing debit card transactions. This case is of extreme and immediate importance to credit unions and may have a significant effect on the safety and soundness of our members. We are particularly concerned with the financial and compliance impacts on small and mid-sized credit unions.

NAFCU surveys our members on a regular basis on interchange fee income. In our last *Economic & CU Monitor* survey of our members on this issue, approximately 21.8 percent of a credit union's non-interest income came from debit card interchange fees. Should interchange fees be reduced dramatically for large issuers, and subsequently for small issuers due to market forces, the impact could be extreme. We also note that our survey shows that the median interchange fee, as well as the median fee as a percent of the total amount of a transaction, has decreased since Regulation II came into effect, even though almost all of our members are below \$10 billion in assets.

The loss of fee income aside, this ruling represents a substantial increase in compliance burden. There is no exemption for credit unions of any size from the network exclusivity rules. As interpreted by Judge Leon, the Court's requirement of at least two unaffiliated networks for each authentication method will drive up the resulting costs. In order for this change to even be technologically possible, it will initially require massive changes to the existing debit card system for issuers, networks and merchants alike. Credit unions could also be required to issue all new debit cards for their members at a considerable cost. Once credit unions factor the cost of

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complying with this requirement, while at the same time seeing reduced debit fee income, we are looking at a serious safety and soundness issue for our industry.

Further, massive changes to the existing debit card system for issuers, networks and merchants take a great deal of time to implement. The Board itself said in the 2010 proposed rule "enabling multiple signature debit networks on a debit card could require the replacement or reprogramming of millions of merchant terminals as well as substantial changes to software and hardware for networks, issuers, acquirers, and processors in order to build the necessary systems capability to support multiple signature debit networks for a particular debit card transaction... the Board recognizes that small debit card issuers could be disproportionately affected by a requirement to have multiple networks for each method of debit card authorization." Assuming that small and mid-sized credit unions could even find the resources to make these changes, they would take at least a year to put in place.

In a time when financial institutions are being required to increase their capital ratios, this ruling could not come at a worse time. Credit unions cannot raise capital simply by going to the open market. The only capital they can raise comes from retained earnings. Couple the loss of a substantial portion of interchange fees due to market forces, with the costs that will be added to adhere to the new network requirements, and this could prove to be the death knell of many small and mid-sized credit unions.

Judge Leon has set an August 14, 2013, briefing with the parties to the case. NAFCU wanted to ensure that the Federal Reserve is aware of credit union concerns prior to the hearing.

Should you wish to discuss this matter further, please feel free to contact me at dberger@nafcu.org or (703) 842-2215.

Sincerely,



B. Dan Berger
President and Chief Executive Officer

cc: Scott Alvarez, General Counsel of the Federal Reserve