

THE FINANCIAL SERVICES ROUNDTABLE



1001 PENNSYLVANIA AVE., NW
SUITE 500 SOUTH
WASHINGTON, DC 20004
TEL 202-289-4322
FAX 202-628-2507

BITS

FINANCIAL SERVICES
R O U N D T A B L E

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Michael Dennis
Attorney-Adviser, Office of Private International Law
U.S. Department of State
DennisMJ@state.gov

Hugh Stevenson,
Deputy Director for International Consumer Protection
U.S. Federal Trade Commission
hstevenson@ftc.gov

Leonard Chanin
Associate Director, Division of Community and Consumer Affairs
Federal Reserve Board of Governors
Leonard.Chanin@frb.gov

The Financial Services Roundtable including BITS (“Roundtable”) appreciates the opportunity to comment on the United States proposal to the Organization of American States (“OAS”) Seventh Inter-American Specialized Conference on Private International Law (“CIDIP-VII”).¹

The Roundtable supports robust online consumer protection to enhance confidence in electronic transactions and supports the overall goal of enhancing consumer protection for electronic commercial transactions. Further, given advancing payments technology, a comprehensive re-thinking of payment system law should occur. However, such an event *must* include detailed feedback from payment system experts, including policy/legal analysts as well technical/operations/risk management analysts. However, the Roundtable does not support the document titled Draft Model Law: Alternate Dispute Resolution For Consumer Payment Card Claims (“Model Law”) in its current form for several reasons.

The Roundtable has concerns with the increased cost and increased operational risk associated with extending Sections 226.12 and 226.13 of Regulation Z of the Federal Reserve Board to debit card transactions. Thus, the Roundtable *urges* the U.S. delegation to the CIDIP-VII conference to only propose to the OAS what is already the substantive U.S. payments law. We believe the scope of the Model Law is overly broad as it would apply to all payment transactions, not just online purchases. We

¹The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$84.7 trillion in managed assets, \$948 billion in revenue, and 2.3 million jobs. BITS is the technology and operations division of The Roundtable. BITS provides intellectual capital and fosters collaboration to address emerging issues where financial services, technology, and commerce intersect.

believe it would be inappropriate to propose such a broad expansion of consumer protection under the guise of an electronic commerce proposal. Even if limited to online transactions in the United States, this proposed Model Law if adopted and enacted could place a high burden on debit card issuers. In particular, there is the potential for problems in determining chargeback fact-finding for international online transactions.

Debit and credit transactions are fundamentally different and to the extent that the payment mechanisms seem identical, current U.S. law provides for two different frameworks for consumer protection. Credit card transactions are enabled by a revolving line of credit that a financial institution extends to a person. Therefore they are governed by the Truth in Lending Act and Federal Reserve Regulation Z, which applies to extensions of credit. In addition to protection against unauthorized charges, Regulation Z provides the so-called chargeback protections that allow a consumer to assert against the credit card issuer any claims or defenses that can be asserted against the merchant (12 C.F.R. § 226.12(c)). Credit products such as credit cards are available to consumers at a charge, the interest rate and applicable fees. The interest rate charged is based on a risk-based estimate of both the consumer's ability to repay as well as the operational risk associated with the legal protection such as the Reg Z chargeback.

In contrast, debit cards enable persons to use a card to initiate a debit transaction linked to a checking account. Not unlike a paper check (or draft), a debit transaction is a "pull"-- it authorizes the merchant to "draw" on the account through the payment card networks. Accordingly, debit card transactions are governed by the Electronic Fund Transfers Act and the Federal Reserve Reg E. Reg E provides strong protection against unauthorized charges. But the Model Law is problematic in that it would shift the risk of an on-line merchant's non-performance to debit card issuers, thereby violating the principle of negotiability that allows financial institutions to be able to rely on the finality of transactions that are linked to cash accounts. Reg E does not provide chargeback protection for any transactions, but Reg E. protection allows consumers to use debit cards for transactions online without fear of economic liability for cybersecurity issues (subject to certain time limits for reporting).

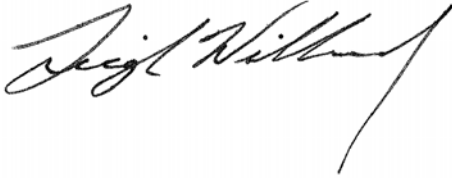
Expanding chargeback protection to debit cards would create logistical operations difficulties and increase payment systems costs. Although the infrastructure for the chargeback mechanism already exists for credit card consumers, there is already a body of law (i.e., Regulation E) that applies to debit card transactions. In addition to the substantive comments above, complying with both the Regulation E and Regulation Z requirements would place a burden on debit card issuers.

In addition, and perhaps more significantly, the Federal Reserve Board made a policy decision years ago to treat debit card transactions differently from credit cards. This decision resulted in the issuance of Regulation E, 12 CFR 205 and its special liability provisions for consumer liability therein. 12 CFR 205.6 Arguably, the latter are more protective than the corresponding provisions of Regulation Z, In any case they should not be suspended without a great deal of study and consultation with the Federal Reserve Board.

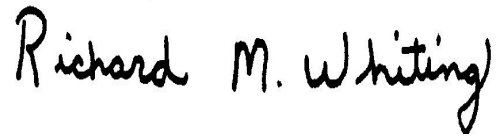
The Model Law, in its current form, could destabilize the payments system by reducing commercial certainty. The Roundtable suggests that the U.S. delegation propose the existing U.S. framework to the OAS. Both Regulations Z and E have worked well in the United States to provide effective consumer protection. If other states in the Americas follow a similar approach it would be beneficial to consumers by providing robust protection and financial institutions by providing workable, sound principles around which to order these lines of business.

Thank you for your consideration. If you have any further questions or comments on this matter, please do not hesitate to contact us or Brian Tate, Vice President of Banking and Securities, at 202.589.2417 or brian@fsround.org.

Sincerely,



Leigh Williams
BITS President



Richard M. Whiting
Executive Director and General Counsel
The Financial Services Roundtable