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November 15, 2013

Via Email

Lois C. Greisman, Esq.  
Associate Director, Division of Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Lois,

We are writing to provide you an update of recent actions that the Electronic Transactions Association (“ETA”) and its member companies have taken to address concerns about consumer harm caused by certain merchants who process sales transactions through electronic payment systems. ETA has taken a leadership role in dealing with this issue by educating its members about recent law enforcement activity against banks and processors, pursuing a comprehensive initiative to roll-out a nationwide educational campaign on industry guidelines for risk management, and focusing the attention of senior-most executives at ETA’s leading members in order to affect changes that can be implemented through all layers of the payments industry.

More specifically, this letter updates you on our efforts to develop and deploy a new industry Best Practices educational initiative directed at acquirers, processors, and independent sales organizations (ISOs) that are among ETA’s 500-plus member companies. We also provide a report on a special meeting of senior industry executives and legal counsel that ETA convened during its Strategic Leadership Forum held last month in Scottsdale, Arizona. While your participation in that meeting was missed, we found the time spent with this group to be extraordinarily positive and productive in raising awareness and discussing steps that the industry might take relative to its role in the chain of consumer payments. As a follow-up to the Scottsdale meeting, we look forward to your participation in a future meeting with these industry leaders that ETA is arranging for early December in Washington, D.C.

Development of Best Practices Guidelines

Working with Rich Consulting and counsel from Venable LLP, ETA is driving to complete a set of Best Practices that provides guidance to banks, processors, ISOs in three distinct areas: (1) Merchant Underwriting, (2) Merchant Fraud and Transactions Monitoring, and (3) ISO Review Practices. ETA is preparing to launch a nationwide, multi-pronged educational campaign to give the largest possible number of ETA member companies and other payments industry participants the opportunity to benefit from these industry-developed best practices. We are grateful for your willingness to look over a later draft of these guidelines that will form the basis of this educational curriculum, which we hope to have ready for your review by early 2014.

As part of the drafting process, Rich Consulting has hosted a series of discussions, as well as a lengthy in-person meeting during the Scottsdale event, among members of a working group representing thirty-eight ETA member companies. This working group contributed ideas, real-life examples, and key input toward developing topic areas to be covered and in-depth substance for each subject. The acquiring side of the payments industry is undoubtedly a complex business, demanding reasonable flexibility for ETA members to manage underwriting and risk management policies in ways that suit individual characteristics of their merchant portfolios and business operations. As our members become more attuned to roles they can play in protecting consumers, we are extremely pleased with how these guidelines are shaping up.

Once approved by our board of directors, ETA plans to roll-out these Best Practices as part of a comprehensive, nationwide educational campaign that benefits the entire payments industry. We will arrange to hold training sessions and other educational initiatives on the Best Practices guidelines at our annual conference in April 2014 and regional events throughout the year, as well as periodic tutorials online and by telephone. We will advocate among our largest members to help the smaller

processors and ISOs use these Best Practices in the day-to-day activities. In short, we will ensure that all ETA members have the opportunity to use these Best Practices to update and enhance their risk management policies and procedures.

#### Report on October Industry Executives Meeting

We very much regret that you were unable to attend our Strategic Leadership Forum last month in Scottsdale, especially the invitation-only meeting that ETA had arranged for you to meet with high level executives at industry-leading acquirers and processors. We continued on with the meeting to demonstrate the commitment of our leading members to address consumer issues. Attendees of the meeting included executives and legal counsel from Bank of America Merchant Services, Chase Paymentech, Global Payments, Moneris, TransFirst, TSYS Merchant Solutions, Vantiv, and Wells Fargo Merchant Services. ETA invited the nation's top ten largest payment processors, and seven of those entities were able to join the high level meeting.

After opening remarks from Jason Oxman to emphasize the importance of the issues to ETA, attorneys from Venable provided background on recent law enforcement investigations involving the payments industry from across the full array of bank and non-bank regulators, including the Federal Trade Commission. Raymond Carter of First Annapolis Consulting described the economic impact that acquirers, processors, and ISOs would need to anticipate with changes to current underwriting and risk management models. We then opened the discussion on matters relating to the current best practices effort.

Participants confirmed that they have no desire to facilitate the processing of sales transactions for merchants engaged in conduct that violates consumer protection laws, and there should be repercussions for processors that intentionally assist and facilitate bad merchants. The group expressed significant concern about the mark that a few bad actors have scorched on the entire acquiring industry. The group also, however, acknowledged that merchants are not always truthful or forthcoming with acquirers about their business model, and they often change business models after getting a merchant account. While participants in the group viewed their companies as arms' length service providers to business customers, they recognized that consumers can be harmed by bad merchants and that acquirers might be called upon play a role in assisting consumer protection goals, albeit at higher costs.

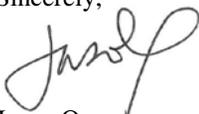
The group supported the ETA Best Practices efforts as a strong first step toward more immediately bolstering industry-wide policies and standards that may help to keep bad merchants outside the gate. In the face of calls for increased government regulation and oversight, the group is intently interested in continuing discussions about where these Best Practices may lead and who may play a role in helping the roll-out of the Best Practices. For example, it was noted that all merchant transactions roll up to a small set of acquiring banks and payment processors, so those acquirers and processors may be viewed by some as best positioned to ensure that downstream ISOs are held to the same standards as the large players. Another idea involved enhancement of card network regulations, since all banks that are members of the card networks and those banks' sponsored entities (e.g., non-bank processors) are obligated to comply with all card network rules. The group also discussed examples of self-regulation in other industries, as well as the Payment Card Industry Security Standards Council model.

The group expressed a desire to solicit feedback from the Federal Trade Commission on these efforts and ideas. Accordingly, ETA is hoping you will be able to join us in Washington, D.C. during the first week of December to continue the discussion that began last month in Scottsdale. ETA will be hosting its industry executives at a "Capitol Hill Day" event on December 3 and would like to plan a meeting with the Commission the morning of that event. As part of that meeting, we would be very appreciative of your views on ETA's best practices effort and how ETA may use that effort to affect changes in the payments industry.

In sum, ETA wants to assure you that its members take consumer protection concerns very seriously. At the same time, our members would very much like your support and input as we explore the initiatives and ideas described above.

We hope that you find the information in this letter helpful, and we look forward to speaking with you about these matters soon.

Sincerely,



Jason Oxman  
CEO