

Testimony of

Mr. Art Potash  
Chief Executive Officer for Potash Markets

On Behalf of the  
Food Marketing Institute

Before the

House Small Business Committee

Hearing on

*The EMV Deadline and What it Means for Small Businesses: Part II*

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**Introduction:**

Good Morning Chairman Chabot, Ranking Member Velázquez and members of the Committee. My name is Art Potash and I am the CEO of Potash Markets in Chicago, Illinois. My family has owned and operated grocery stores in the Chicago area for 65 years. We currently employ 140 people. The Potash family tradition continues today of helping our customers fulfill their culinary passions and lead healthier and more fulfilling lives. We enjoy strong customer loyalty to our local grocery stores and strive to meet our customers' preferences and demands, from the food we sell to their peace of mind when using their credit cards to pay in our stores. I appreciate the opportunity to speak to you today about steps my company has taken to migrate to EMV and the challenges we have faced along the way. It is incredibly important that this committee, Congress and the American Consumer fully understands how EMV is being implemented here in the United States, what its potential benefits are, how it is different than it has been done

globally, and the unique challenges small merchants are facing in meeting these standards.

**About the Food Marketing Institute:**

Food Marketing Institute proudly advocates on behalf of the food retail industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit [www.fmi.org](http://www.fmi.org) and for information regarding the FMI foundation, visit [www.fmifoundation.org](http://www.fmifoundation.org).

**Decision and Experience Migrating to EMV:**

As Visa's witness explained in the prior hearing, their company did not place an explicit mandate on merchants to migrate to EMV. Instead, Visa, MasterCard and the other card brands announced that any merchants who did not migrate to EMV would have additional fraud costs placed upon them. This would be in addition to fraud costs we already pay in interchange fees and chargebacks. As the other witnesses have and will testify today, each merchant then had to make the business decision of if the added cost of fraudulent cards would outweigh the cost of upgrading their point of sale systems to EMV.

After studying the costs and benefits, including providing the most robust security for our customers' payment card data, we decided, like the majority of the grocery industry, to work to migrate our stores to EMV. As you can imagine, upgrading to EMV in my business is not as easy as buying a \$49.99 Square reader. Our cash registers and credit card readers are more complex, providing for credit, debit, SNAP transactions, coupons and returns, among other features such as our customer loyalty card program, and ties

into a network that requires substantial upgrades on both the front end and back end to be EMV-compliant as well as PCI-compliant.

Additionally, like many others, I am in the business of selling groceries and I rely on third party vendors to actually perform these upgrades and interface with the other links in the chain. A small business such as mine does not have the resources to perform the programming to convert our system to EMV or the financial wherewithal to own our own switch. Instead, we rely on and pay our merchant acquirer, in our case Worldpay, to make this happen for us so we can focus on selling groceries.

During the first hearing, the panel frequently referred to the \$49.99 Square EMV solution, or a \$100 off the shelf EMV point of sale reader. That characterization innately did not reflect the true needs and perspective of the merchant community. The true cost estimates in the United States for merchants to convert to EMV runs into the billions of dollars. Even the conservative estimate of \$8 billion for merchants did not appear to consider back end costs as well as man hours and potential downtime while upgrading the system. This is a huge investment and cost on all merchants large and small.

In May, we installed all new EMV point of sale devices in two of our three stores at a cost of \$1,000 per lane. For the two stores, this means an upgrade cost of \$8,000 just to conduct EMV-compliant payment transactions. This is a large investment to our small business, but we are willing to make it to protect our customers and hopefully get a reduction in fraud and our fraud expenses.

While we now have EMV readers in our stores, we are not yet EMV-compliant and are now facing a holiday season exposed to greater fraud liability as we wait for our merchant acquirer to complete our transition. Currently, our acquirer has estimated they will be ready to upgrade our back end software by the end of November at best.

### ***The Cost of EMV and Card Acceptance for Merchants Moving Forward:***

This is an investment we made without much incentive from the card brands. Unlike the issuing banks who were enticed to issue chip cards with the promise of seeing their fraud costs reduce, merchants were pushed to do so under the threat of seeing their costs

increase. This is particularly difficult for us to accept when we already pay the highest interchange fees in the modern world in the name of fraud costs. Visa, MasterCard and the other card brands have defended charging American merchants \$71 billion a year in interchange fees as a way of offsetting the cost of fraud. If a portion of this fee is assessed because of fraud, those fees should be reduced if fraud is reduced.

Unfortunately, as we heard in the first hearing, Visa has no plans to pass any savings along to merchants. We hope that will change and we hope that the Federal Reserve will see to it that this changes.

The card networks have pushed merchants and encouraged issuers to migrate to EMV here in the United States under the guise of reducing fraud, but without promising to share any of those savings. As a small business I compete every day with other food retailers from the large box chains to other specialty markets, these fees restrict my ability to grow and compete and are a cost that I have absolutely no control over. The rule with Visa and MasterCard has basically always been “take it or leave it” with regards to their operating rules and fee structure, placing merchants of all sizes, particularly small ones, at their mercy.

In addition, consider the following historical trend. Retail food companies operate at razor thin margins due to the competitive nature of retail food industry. Our profit margin has never hit or exceeded 2% in the 60 years we have been collecting data. When food retailers have realized savings through efficiencies due to technological advancements and other cost saving measures the net profit for businesses in the retail food industry has remained at below 2% and savings have been passed along to the customer. This is further assurance that if retailers realize savings from reduced fraud those savings will also be passed along to the customer.

***There is a Need for Competition:***

As you can see from above the grocery industry is incredibly competitive, with even the largest company holding less than a 15% market share. We in the grocery industry all compete for customers every day with competitive prices, value and incentives to keep our customers and earn new ones. The credit card market is inherently different with the top two brands, Visa and MasterCard holding over 85% of the market. These brands do

not compete for merchant acceptance. They compete for banks to issue their cards, and they compete by promising revenues from sources such as interchange fees they charge to merchants who accept their cards. There is no competition with the brands to garner merchant acceptance. So while the grocery customer has more opportunities to save money as my store competes with others for their business, retailers have virtually no options as customers of the credit card companies to reduce their costs.

***A Missed Opportunity to Truly Improve Card Security:***

I would be remiss if I failed to address the issue of PIN authentication. Every point of sale in our stores is PIN-enabled. PIN is a proven safety measure that has been adopted globally, everywhere but here in the United States. Historically, the card companies have rolled out EMV as “chip and PIN” technology. So, not only are they verifying that the card is legitimate, they are also confirming that the person presenting the card is authorized to use it. Unfortunately, here in the United States, the card companies have rolled out an untested model of “chip and choice” as they call it. They left it up to the issuing banks to decide whether to issue PINs.

I have been a bit mystified by the card brands’ and banks’ defense of not requiring PIN. One of the most interesting is the argument that the PIN is a static number and once compromised is useless. They instead argue for biometric authentication or continue to defend the useless signature method. This argument has a real problem. If your PIN is somehow compromised, or you forget it, you can go to your bank and reset it. Many current and former government employees will tell you, once your fingerprint or other biometric is compromised, there is no “reset.” You cannot go and change your thumbprint; it truly is static. So I think the “PIN is static” argument has a few holes in it.

We all agree, technology and industry are evolving and improvements are made every day, but here is what we know today: PIN works today. It reduces fraud, period.

I think it is important to respond to a question that was raised during the first hearing regarding PIN. A member asked if the card companies allowed merchants to require a PIN. The answer is no. We can prompt for PIN, but the current Visa and MasterCard operating rules that every merchant must adhere to or face fines or loss of the privilege of

accepting their cards will not allow a merchant to require a PIN for a transaction that does not include cashback on a card, even if it is PIN-enabled. This is a very important note to make. Banks require a PIN when the customer uses its ATM to withdraw money, but will not allow me the same privilege when a customer is making a purchase in my store.

### **A Federal Data Security and Breach Notification Law:**

Another issue that was raised during the first hearing that deserves a merchant response is the bank and credit union witnesses support for H.R. 2205 the Data Security Act of 2015. To be clear, Potash Markets is committed to protecting our customers' payment card data. Gross mischaracterizations that merchants are not committed to protecting our customers' payment card data and that we are not held to any standards is simply not true. In addition to the various state laws merchants must comply with, the Federal Trade Commission has taken an active interest in holding merchants liable for not adequately protecting customer data with over fifty cases already pursued. Where we agree with the banks and credit unions, grocers and other merchant groups would like to replace the patchwork of state laws with one federal standard. Where we differ, is how that federal law should work. Unfortunately, H.R. 2205 in its current form takes a standard that was written specifically for the banks and puts it on any and all that accept credit and debit cards. Our desire is to work with the bill drafters to create a final product that will allow for the flexibility necessary that will allow for a small business such as me to take necessary steps to protect data, but tailor it specifically to my business needs, not unnecessarily opening me up to liability and heavy handed enforcement without merit. We all have the common goal of protecting customer data, but that should be addressed with fair and narrowly written legislation not punitive overly restrictive requirements.

### **What Merchants Are Expecting Next in Electronic Payments:**

Another piece that was raised during the first hearing has taken on even more greater importance in the last week. The Visa witness shared a perspective on merchants having an option to "turn on" the near field communication (NFC) technology on the new EMV readers. She offered it as a feature and option but not required or mandated. Unfortunately, this past week we got a glimpse of what we should expect next. Last week, merchants in the United Kingdom were informed by their merchant acquirers that

Visa and MasterCard will now mandate that they turn on and accept NFC transactions. This is something many American merchants have feared was coming next. By requiring that all merchants turn on and accept NFC transaction, Visa and MasterCard have moved to lock in their mobile payments solution, and effectively block other entrants into the market. They will ensure that every merchant accept their solution before any others can make it to market. By eliminating further competition in that space, Visa and MasterCard are moving to guarantee their dominance in the market continues. It is also important to note, it is not as easy as flipping a switch for a merchant to “turn on” their NFC function. This will require further certification, cost and investment.

**Conclusion:**

As you can see, there is a great deal more to EMV on the merchant side than buying a \$100 piece of hardware off the shelf, or opting for Square’s \$49.99 solution. There is significantly more investment, dependence on vendors and long-term repercussions to be considered. As mentioned earlier in my testimony, we are doing all of this on an untested model of chip and choice, versus the proven fraud reducing solution of chip and PIN technology. All of this affects merchants of all sizes, but as this committee knows very well, these challenges can be greatly magnified when it comes to small businesses.

In conclusion, Potash Markets has made significant investments and is committed to migrate to EMV. Unfortunately, we find ourselves in the unenviable place of waiting for our providers to get us across the finish line, while we face a busy holiday season with the threat of higher fraud liability over our heads. I greatly appreciate the committee’s interest in this very important issue, and look forward to answering your questions.