



To: EFTA Members

From: Dennis Ambach, Legislative & Regulatory Council Chairman

Date: October 12, 2010

Re: Legislative & Regulatory Alert – Durbin Amendment Challenged

TCF Bank today filed a lawsuit in the US District Court in South Dakota challenging the constitutionality of the Durbin amendment regulating debit card interchange rates. As you know, the Durbin amendment was included in the final Wall Street Reform and Consumer Financial Protection Act (known as “Dodd-Frank”).

According to TCF’s news release announcing the [lawsuit](#), the Durbin amendment is an unprecedented move by Congress to deny any reasonable rate of return on investment. The Durbin amendment gives the Federal Reserve Board (FRB) regulatory authority over interchange fees on debit cards. Specifically, Congress instructs the FRB that any interchange transaction fee an issuer may receive “...shall be reasonable and proportional to the cost incurred.” TCF charges additionally that Durbin’s exemption for small issuers (less than \$10 billion in assets) affects only one percent of the nation’s banks and will cause an unfair competitive advantage in the marketplace with unaffected banks.

This morning Senator Durbin released a [statement](#) on TCF’s court challenge. As expected, Durbin strongly objected to the lawsuit and noted the 64-33 bipartisan vote in the Senate. He also noted the recent settlement by Visa and MasterCard with the Department of Justice over interchange fees as more justification for his amendment. A U.S. District Court in New York needs to approve the Visa/MasterCard settlement in the coming weeks and months.

As you may recall, the FRB must have the final rules issued on debit card interchange nine months after Dodd-Frank was signed into law (roughly, March 2011). It is uncertain how and when the court will address the TCF suit given this tight regulatory timetable. We certainly will pass along more details as they become available.