

## Financial Services and Products ADVISORY

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### Evaluation of the Debit Interchange and Payment Card Network Restrictions Included in the Dodd-Frank Act

On Wednesday, July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), the culmination of much publicized and heated negotiations among lawmakers regarding reform of the U.S. financial services industry in light of the recent economic crisis. Included within the Dodd-Frank Act is a short but controversial amendment to the Electronic Fund Transfer Act (EFTA)<sup>1</sup> that establishes new restrictions governing debit card transaction interchange fees and certain payment card network practices.<sup>2</sup> These new restrictions, originally introduced and championed by Senate Majority Whip Richard Durbin (D-IL), (i) require that interchange transaction fees received or charged by an issuer<sup>3</sup> in connection with a debit card transaction must be “reasonable and proportional” to the incremental cost to the issuer of processing the transaction (subject to exemptions for small issuers and for qualifying general use reloadable prepaid cards and government-administered benefit cards); (ii) direct the Board of Governors of the Federal Reserve System (FRB) to enact regulations establishing standards for assessing whether a debit card interchange transaction fee is reasonable and proportional to the issuer’s costs of processing the transaction, subject to permissible adjustments the FRB deems necessary to allow the issuer to recover its fraud prevention costs; (iii) authorize the FRB to regulate payment card network<sup>4</sup> fees to the extent necessary to ensure such network fees<sup>5</sup> are not used to compensate issuers for debit card transactions or to circumvent the interchange transaction fee amount restrictions; and (iv) proscribe certain payment card network rules and practices perceived to increase merchant costs and limit merchant control over the acceptance of debit cards (collectively, the “Final Durbin Amendment”).

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<sup>1</sup> 15. U.S. C. 1693 *et seq.* The Dodd-Frank Act adds new Section 920 to the EFTA. Existing Sections 920 and 921 were redesignated as Sections 921 and 922, respectively.

<sup>2</sup> See Section 1075 of the Dodd-Frank Act.

<sup>3</sup> As defined for purposes of Section 1075 of the Dodd-Frank Act, an “issuer” is “any person who issues a debit card, or credit card, or the agent of such person with respect to such card.” Note that the definition of issuer is not limited to traditional financial institutions and that the reference to “agents” leaves the scope of who may and who may not be deemed an “issuer” somewhat unresolved. See EFTA Section 920(c)(9).

<sup>4</sup> A “payment card network” is defined as “an entity that directly, or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions.” See EFTA Section 920(c)(11).

<sup>5</sup> A “network fee” is defined as “any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.”

## I. Background

On May 13, 2010, during negotiation of the Restoring American Financial Stability Act of 2010 (S. 3217), the original Senate bill that would become the foundational text of the Dodd-Frank Act (the “Senate Reform Bill”), the Senate passed an amendment to the bill offered by Senator Durbin to amend the Electronic Fund Transfer Act to, among other things, (i) require that interchange transaction fees paid to issuers or payment card networks in connection with debit and prepaid card transactions be “reasonable and proportional” to the incremental costs incurred by the issuer or payment card network with respect to the applicable transactions, and (ii) establish new limitations on certain payment card network rules that restrict merchant payment card acceptance practices (the “Original Durbin Amendment”).<sup>6</sup> The Original Durbin Amendment also included a specific exemption to the “reasonable and proportional” interchange transaction fee restriction for issuers of debit and prepaid cards that, together with their affiliates, have less than \$10 billion in consolidated assets (“Small Issuers”). The Senate passed the Senate Reform Bill, which included the Original Durbin Amendment, on May 20, 2010. The House of Representative had passed its version of a financial system regulatory reform bill on December 11, 2009 (the “House Reform Bill”). The House Reform Bill did not include provisions analogous to the Original Durbin Amendment. This, together with other differences between the Senate Reform Bill and the House Reform Bill, required that a House-Senate conference committee be formed to reconcile differences between the two measures (the “Conference Committee”). The Conference Committee began its reconciliation efforts on June 10, 2010.

On June 21, 2010, following intense lobbying from a variety of interested parties, including state treasurers, retailers and Small Issuers, House Financial Services Committee and Conference Committee Chairman Barney Frank (D-MA) offered several amendments to the Original Durbin Amendment, which were agreed to by the Conference Committee on June 22, 2010, during committee negotiations. The Original Durbin Amendment, as revised by Chairman Frank and approved by the Conference Committee, was included as the Final Durbin Amendment in the Dodd-Frank Act. The Dodd-Frank Act was finalized by the Conference Committee on June 25, 2010, approved by both chambers of Congress and signed into law on July 21, 2010. Set forth below is an overview and analysis of the Final Durbin Amendment enacted as part of the Dodd-Frank Act.

## II. Overview and Analysis of the Final Durbin Amendment

### A. *Interchange Transaction Fee Restrictions*

#### 1. Overview of the Interchange Transaction Fee Restrictions

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<sup>6</sup> The Senate passed the Original Durbin Amendment (S. Amdt. 3989) by a 64-33 vote.

The Final Durbin Amendment requires that the amount of any “interchange transaction fee”<sup>7</sup> that an issuer receives or charges in connection with an electronic debit transaction<sup>8</sup> (EDT) must be “reasonable and proportional” to the incremental costs to the issuer with respect to the transaction.<sup>9</sup> Debit card transactions fall within the subject class of transactions whether they are authorized based on the cardholder’s signature, entry of a personal identification number (PIN) or by any other means.<sup>10</sup> Note that, unlike the Original Durbin Amendment, the Final Durbin Amendment does not limit the debit card transactions fees (including assessments, dues and other amounts) that may be charged and retained by a payment card network or any other party in the EDT processing chain—only the fees charged or received by the card issuer itself are limited.

In apparent acknowledgement that payment card networks (which collect interchange from merchant acquirers in connection with debit card transactions) and debit card issuers will require much more guidance than the one-sentence interchange transaction fee restriction embodied in the Dodd-Frank Act, the Final Durbin Amendment includes a mandate to the FRB to promulgate standards, to be issued in final form within nine (9) months following enactment of the Dodd-Frank Act, for assessing whether the amount of any EDT interchange transaction fee is reasonable and proportional to the incremental costs incurred by the issuer with respect to the transaction.<sup>11</sup> Congress did not leave the FRB unfettered discretion in this rulemaking, however. The Final Durbin Amendment includes specific guidance to the FRB regarding the factors that must be included in prescribing the methodology for determining whether an EDT interchange transaction fee is “reasonable and proportional.”<sup>12</sup> Specifically, the Final Durbin Amendment directs the FRB to (i) consider functional similarities between EDTs and paper checks that are required to trade at par; and (ii) distinguish between the incremental costs to the issuer associated with authorizing, clearing and settling a particular EDT (which may be considered in the determinations of reasonableness and proportionality), and the fixed or other costs to the issuer that are not specific to a particular EDT (which may not be considered).<sup>13</sup>

The Dodd-Frank Act’s outright mandate that interchange transaction fees associated with EDTs be “reasonable and proportional” to the issuer’s incremental costs takes effect one year following enactment

<sup>7</sup> An “interchange transaction fee” is defined as “any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.” See EFTA Section 920(c)(8). Note that there is an incongruity between the definition of “interchange transaction fee” in the Final Durbin Amendment, which is limited to fees established, charged or received by a payment card network, and the use of the term “interchange transaction fee” within the Dodd-Frank Act, which references an interchange transaction fee as a fee received that may be “charge[d]” by an issuer.

<sup>8</sup> An “electronic debit transaction” is “a transaction in which a person uses a debit card.” In turn, a “debit card,” for purposes of the Final Durbin Amendment, “(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means; (B) includes a general-use prepaid card as defined in Section 915(a)(2)(A); and (C) does not include paper checks.” See EFTA Section 920(c)(2). Section 915(a)(2)(A) was added to the EFTA on May 22, 2009, as part of the Credit CARD Act, and defines general-use prepaid cards for purposes of the dormancy fee and expiration date restrictions applicable to gift cards included in the Credit CARD Act.

<sup>9</sup> See EFTA Section 920(a)(2).

<sup>10</sup> See *supra* note 8.

<sup>11</sup> See EFTA Section 920(a)(3)(A).

<sup>12</sup> See EFTA Section 920(a)(3).

<sup>13</sup> See EFTA Section 920(a)(4).

of the Dodd-Frank Act, or July 21, 2011.<sup>14</sup> This effective date applies whether or not the FRB complies with the mandate in the Final Durbin Amendment that it promulgate its final rules (as described in the preceding paragraph) within nine months following enactment of the Dodd-Frank Act, or April 21, 2011.<sup>15</sup>

Presumably out of concern that payment card networks may attempt to supplement regulated interchange transaction fees paid to their debit card issuers, surreptitiously or otherwise, the Final Durbin Amendment directs the FRB to prescribe regulations for the purposes of ensuring that (i) a network fee is not used to directly or indirectly compensate an issuer in connection with an EDT, and (ii) a network fee is not used to circumvent or evade the interchange transaction fee limitations of the Final Durbin Amendment.<sup>16</sup> These FRB regulations are also required to be issued, in final form, not later than April 21, 2011.

The Final Durbin Amendment does include certain allowances and exceptions to the EDT interchange transaction fee limitations. The Final Durbin Amendment allows for (i) adjustments to EDT interchange transaction fees for recovery of certain fraud prevention costs (as determined by the FRB), (ii) the exemption of Small Issuers from the interchange transaction fee restrictions and (iii) the exemption of certain government-administered benefit cards and general-use prepaid cards from the interchange transaction fee restrictions. These allowances and exceptions are described in greater detail in Part II.A.4. below.

## 2. Analysis of the Reasonable and Proportional Interchange Transaction Fee Requirement

The bare requirement in the Final Durbin Amendment that EDT interchange transaction fees received by an issuer must be reasonable and proportional to the issuer's incremental costs associated with the EDT leaves much to interpretation. Even in the few weeks since the Original Durbin Amendment was introduced, conjecture about the proper application of this requirement has been rampant. All eyes are now focused on the FRB and its charge to enact rules to put the interchange transaction fee limitation principles in the Final Durbin Amendment into practice over the next nine months.

*a. Incremental Cost Determinations.* The text of the Final Durbin Amendment makes clear that determination of the EDT interchange transaction fee amount an issuer may receive is tied to the issuer's EDT processing costs—specifically the incremental costs to the issuer for its role in the authorization, clearance or settlement of the EDT.<sup>17</sup> Other costs incurred by the issuer that are not specific to the particular EDT may not be included in determining allowable EDT interchange transaction fees recoverable by the issuer. To determine the appropriate cost baseline for the reasonable and proportional determination, an issuer must know which of its EDT processing costs are includable incremental costs and which of its costs are required to be excluded. The criteria offered by Congress in the Final Durbin Amendment to aid in this determination appear to expressly include variable processing costs associated with authorization, clearing and settlement of the EDT (such as per-transaction third-party processor costs and network per-transaction

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<sup>14</sup> See EFTA Section 920(a)(9).

<sup>15</sup> See EFTA Section 920(a)(3)(A).

<sup>16</sup> See EFTA Section 920(a)(8)(B).

<sup>17</sup> See EFTA Section 920(a)(4)(b)(i).

fees and switch fees<sup>18</sup>) and to expressly exclude other types of costs (such as fixed costs of hardware, software, employee salaries and overhead). However, the proper classification of many costs associated with EDT processing is less clear. For example, an issuer's fraud losses are variable costs associated with EDT processing, but are such losses "cost incurred by an issuer for the role of the issuer in authorization, clearance, or settlement"?<sup>19</sup> On the one hand, issuers sustain fraud losses, in part, because they are obligated by payment card network rules to settle all EDTs for which the issuer approved an authorization request, suggesting that fraud losses may be an incremental cost of the settlement function and should therefore be recoverable. On the other hand, only a small fraction of EDTs are fraudulent, suggesting that fraud losses may not be an incremental cost of each EDT of the type allowed to be recovered. Other issuer costs associated with EDTs that have at least some variable character include costs of regulatory compliance (e.g., complying with disclosure and error resolution requirements of the EFTA and FRB Regulation E), costs of responding to data breaches (e.g., card re-issuance and credit monitoring) and costs of maintaining transaction records. The extent to which these EDT costs are properly characterized as incremental costs associated with authorization, clearance and settlement of EDTs will likely remain unknown until the FRB promulgates its regulations to implement the interchange transaction fee restrictions of the Final Durbin Amendment.

*b. The FRB's Rate-Setting Authority.* Much of the speculation about FRB rulemaking pursuant to the Final Durbin Amendment has centered on whether the FRB will (i) establish determinate EDT interchange transaction fee amounts for signature debit transactions and for PIN debit transactions, (ii) establish formulas to be used by issuers and payment card networks for determining allowable EDT interchange transaction fee amounts for signature debit and PIN debit transactions (but without fixing interchange transaction fees), or (iii) establish formulas as in (ii) above, but with determinate safe harbor amounts for signature debit and PIN debit EDT interchange transaction fees at or below which an interchange transaction fee is conclusively presumed to be reasonable and proportional. For the reasons set out below, the FRB may elect to follow the third alternative.

The FRB is not directed (or authorized) under the Final Durbin Amendment to set fixed interchange transaction fee amounts; rather, the FRB is required to enact regulations "to establish standards for assessing whether the amount of any interchange transaction fee . . . is reasonable and proportional."<sup>20</sup> Establishing standards to assist in making a determination of the reasonableness and proportionality of an interchange transaction fee amount is far short of a mandate to establish the amount itself. Further, establishing a single rate across all subject issuers would seem to conflict with the intent of the Final Durbin Amendment, which allows interchange transaction fee amounts to be determined on an issuer-by-issuer basis depending on the incremental EDT costs incurred by the particular issuer—the Final Durbin Amendment provides that the

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<sup>18</sup> Note that some may argue that all or a portion of the per transaction fees paid by a debit card issuer to its third party processor or to a payment card network are not or should not be recoverable incremental costs. While there may be valid policy argument to support these contentions (e.g., allowance of full recovery for these costs may encourage issuers to outsource all EDT transaction processing functions to third parties, even where doing so is less efficient than performing the same functions in-house, because interchange transaction fee recovery for these costs will effectively shift them to transaction acquirers and/or merchants), such per transaction fee costs appear to fit squarely within the category of incremental costs the Final Durbin Amendment allows to be recovered through interchange transaction fees.

<sup>19</sup> See EFTA Section 920(a)(4).

<sup>20</sup> EFTA Section 920(a)(3)(A).

interchange transaction fee must be “reasonable and proportional to the cost incurred by the issuer with respect to the transaction.”<sup>21</sup> Putting aside the practical challenges to operating a payment card network on which interchange rates vary on an issuer-by-issuer basis, allowing as much seems to be intended by the Final Durbin Amendment, and rulemaking by the FRB that does not honor that allowance would likely be subject to legal challenge.

In contrast, the Final Durbin Amendment appears to contemplate FRB rulemaking that establishes a formula (or formulas) setting forth the means by which allowable EDT interchange transaction fee amounts should be determined. As noted in the preceding paragraph, the FRB is charged with “establish[ing] standards for assessing” the reasonableness and proportionality of an EDT interchange transaction fee.<sup>22</sup> That being the case, the remaining unknown is whether the FRB, in addition to establishing a standards-based formula for determining allowable EDT interchange transaction fee amounts, will establish one or more safe harbor amounts at or below which a particular EDT interchange transaction fee is deemed to satisfy the reasonable and proportional requirement without further analysis or proof. The Final Durbin Amendment does not expressly vest the FRB with authority to establish safe harbor interchange transaction fee amounts, but such authority may be implied by the broad grant of authority to the FRB to “prescribe regulations . . . regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction . . . .”<sup>23</sup> Given the significant challenges faced by issuers in determining recoverable incremental EDT processing costs and distinguishing those costs from other, non-recoverable EDT costs, and given the significant challenges to payment card networks of operating in an environment of uncertainty as to the EDT interchange transaction fee amount that each issuer is permitted to receive under the Final Durbin Amendment, it seems reasonable that the FRB would seek to exercise available authority to reduce market uncertainty by establishing safe harbor interchange transaction fee amounts. The Final Durbin Amendment authorizes the FRB to collect EDT processing cost information from issuers and payment card networks, information the FRB may use to establish informed interchange transaction fee safe harbors.<sup>24</sup> If the FRB does establish safe harbors, issuers would likely remain free to receive EDT interchange transaction fees in excess of an applicable safe harbor amount, but doing so will require the issuer to justify the amount using the FRB-prescribed standards and formulas.

*c. Determining “Proportionality.”* Notably, the FRB has experience in promulgating rules under a congressionally-mandated “reasonable and proportional” standard. The Credit Card Accountability, Responsibility and Disclosure Act of 2009 (the “Credit CARD Act”)<sup>25</sup> requires that the amount of any penalty fee or charge imposed by a credit card issuer for a cardholder’s violation of the cardholder agreement must be “reasonable and proportional” to such violation.<sup>26</sup> The FRB was charged with enacting rules under Regulation Z to implement this reasonable and proportional penalty fees requirement of the Credit

<sup>21</sup> *Id.* Emphasis added.

<sup>22</sup> See EFTA Section 920(a)(3)(A).

<sup>23</sup> See EFTA Section 920(a)(1).

<sup>24</sup> See EFTA Section 920(a)(3)(B).

<sup>25</sup> See Public Law No: 111-24 ([http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_public\\_laws&docid=f:publ024.111.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ024.111.pdf)).

<sup>26</sup> *Id.* at Section 149(a).

CARD Act.<sup>27</sup> However, determinations of reasonableness and proportionality in the credit card penalty fee context may not so easily translate to the EDT interchange transaction fee context. For example, one can imagine that reasonable and proportional penalty fees, which at their core are intended to deter and punish behaviors in violation of the agreement between the issuer and its cardholder, may not include allowance for profit to the credit card issuer, while allowance for reasonable profit seems more appropriate (and perhaps necessary) in the EDT interchange transaction fee context. This raises the fundamental question of what it means for an EDT interchange transaction fee to be “reasonable and proportional” to the issuer’s incremental processing costs. To be sure, as described in Part II.A.1 above, Congress provided guidance to the FRB as to the cost components that may be considered in establishing the baseline of recoverable costs (that is, only the incremental costs to the issuer of authorization, clearance and settlement of the particular EDT), but the Final Durbin Amendment does not, on its face, require that the actual allowable interchange transaction fee amount must be in a one-to-one proportion to those recoverable costs—that is, there is no express requirement that allowable EDT interchange transaction fees be limited to recovery of the issuer’s incremental costs. Instead, the Final Durbin Amendment requires that the actual EDT interchange transaction fee received by the issuer be *proportional* to the issuer’s incremental processing costs associated with the EDT. The proportionality standard leaves room for the FRB to allow for a fee-to-cost ratio greater than one-to-one, which would allow for some profit to issuers above mere recovery of their incremental processing costs. Whether the FRB elects to allow for a fee-to-cost ratio in excess of one-to-one, or rather determines that Congress intended to restrict EDT interchange transaction fees to no more than is necessary for issuers to recover their incremental processing costs, remains to be seen.

*d. Considering the Similarities Between Debit Card and Paper Check Transactions.* The requirement that the FRB consider similarities between EDTs and paper check transactions was likely inspired by the somewhat controversial notion that EDTs are substantively no different than paper check transactions (i.e., both are instruments used to effect payment from an asset account, and both allow the account-holding institution to refuse to honor the transaction if the asset account contains insufficient collected funds to satisfy it (by declining an authorization on a debit card or returning a paper check unpaid)). For this reason, supporters of this argument contend, EDTs should trade at par with nominal associated (fixed) processing fees just like their paper check counterparts. This notion has been controversial because card issuers contend that debit card transactions carry additional costs and risks to issuers not associated with paper checks (e.g., fraud losses and costs of compliance with consumer protection statutes that, among other things, require issuers to make debit cardholders whole for certain types of errors or loss events) and because merchants garner certain benefits when a customer pays by debit card rather than by paper check (e.g., guaranteed settlement for transactions authorized by the issuer and lower handling costs than are associated with paper checks). In contrast, merchants contend that these cost differences are nominal and that issuers benefit from certain cost savings associated with EDTs relative to paper checks as well (e.g., reduced costs of handling and processing paper checks). The degree to which the FRB’s mandated consideration of the similarities between EDTs and paper check transactions will impact its rulemaking is in the discretion of the FRB. Congress did not mandate a result from the required analysis.

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<sup>27</sup> See <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100615a1.pdf>.

### 3. Preventing the Use of Payment Card Network Fees to Compensate Issuers

The Final Durbin Amendment eliminated provisions in the Original Durbin Amendment that would have classified fees charged and retained by payment card networks in connection with EDTs as interchange transaction fees that are subject to the “reasonable and proportional” limitations. However, the Final Durbin Amendment does authorize and require the FRB to prescribe regulations restricting payment card network fees for the limited purpose of ensuring that such network fees are not used to (i) directly or indirectly compensate an issuer with respect to an EDT; or (ii) otherwise circumvent the requirements of the Final Durbin Amendment, and any related federal regulations (the “PCN Fee Restrictions”).<sup>28</sup> While the intent underlying these required PCN Fee Restrictions seems clear—to prevent payment card networks from supplementing regulated EDT interchange transaction fees for issuers—the text of the provision leaves much to interpretation.

In the current debit card issuance marketplace, payment card networks enter into all manner of financial arrangements with debit card issuers. For example, it is not uncommon for a payment card network to compensate an issuer for achieving certain transaction goals, to pay incentives in exchange for the issuance of cards on its network, to provide fee rebates to certain issuers or to offer marketing allowances to facilitate an issuer’s promotion of its debit cards. The extent to which any or all of these mechanisms frequently used by payment card networks to compensate and incentivize issuers are prohibited by the PCN Fee Restrictions remains unclear. Payments, rebates or concessions provided by a payment card network to issuers on a per-transaction basis are more likely to be viewed as prohibited supplemental payments out of network fees than are one-time or periodic payments not tied to individual transactions or to transaction volumes. If the FRB interprets the PCN Fee Restrictions narrowly, it may only prohibit true per transaction supplements to EDT interchange through its rulemaking. In contrast, if the FRB reads its mandate to issue PCN Fee Restrictions more broadly, it may enact rules that prohibit all types of payment card network payments, rebates and concessions to issuers, whether such amounts are paid based on or independently of EDT volumes. If the FRB adopts this broad reading of the PCN Fee Restrictions requirement and prohibits all payment card network payments, rebates and concessions to issuers, pricing will likely become a much less significant differentiator among payment card networks in the eyes of debit card issuers.<sup>29</sup>

### 4. Exceptions to the Interchange Transaction Fee Amount Limitations

#### *a. Fraud Prevention Cost Adjustments to the Allowable Interchange Transaction Fee Amount.*

The Final Durbin Amendment expressly authorizes the FRB to allow for an adjustment to the EDT interchange transaction fee amount received by an issuer if (i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to EDTs involving the issuer, and (ii) the issuer complies with specific fraud-related standards established by the FRB (the “Fraud Prevention

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<sup>28</sup> See EFTA Section 920(a)(8).

<sup>29</sup> Payment card networks that offer multiple product lines, such as debit cards and credit cards, may attempt to reward issuers, through cross-subsidization, for their debit card issuance activities by offering extra incentives for other product lines (e.g., offering credit card program issuance incentives based on total network brand volume (debit and credit combined volume)). It is unclear how any reference to debit card issuance or total network volume in a credit card issuance incentive arrangement would be viewed in light of the PCN Fee Restrictions mandate and the prohibition on Network Exclusivity Arrangements described below.

Adjustment”).<sup>30</sup> The fraud-related standards established by the FRB must (i) be designed to ensure that any fraud-related adjustment is limited to the amount reasonably necessary to make allowances for costs incurred by the issuer in preventing fraud in relation to applicable EDTs, taking into account any fraud-related reimbursements received from consumers, merchants or payment card networks in relation to EDTs involving the issuer; and (ii) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to EDTs, including through development and implementation of cost-effective fraud prevention technology.<sup>31</sup> In prescribing regulations and establishing fraud-related standards, the Final Durbin Amendment requires the FRB to consider, among other things, (i) the nature, type and occurrence of fraud in EDTs, (ii) the extent to which the occurrence of fraud in EDTs depends on the means of authorization (e.g., signature, PIN or other means), (iii) the available and economical means by which fraud in EDTs may be reduced, (iv) the fraud prevention and data security costs expended by each party involved in EDTs (including financial institutions, payment card networks, consumers and merchants), (v) the costs of fraudulent transactions absorbed by each party involved in EDTs (including financial institutions, payment card networks, consumers and merchants) and (vi) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in EDTs to reduce fraud.<sup>32</sup>

Notably, the allowable Fraud Prevention Adjustment applies only to recovery of costs for fraud prevention; it does not allow the FRB to adjust interchange transaction fees to account for actual fraud losses (although such losses may be recoverable as part of the incremental EDT transactions costs, as described in Part II.A.2.a. above, depending on the FRB’s determination of what is and what is not a recoverable incremental cost). In addition, the adjustment criteria the FRB may consider and the factors required to influence FRB rulemaking on the subject suggest that the results of the FRB’s application of this allowable adjustment to the strict “reasonable and proportional” test for determining interchange transaction fees will turn, at least in part, on the FRB’s conclusion as to whether issuers or merchants bear more of the costs of fraud prevention and fraud losses, and whether merchants bearing certain fraud costs and losses have historically encouraged issuers to elect riskier, less efficient transaction types in favor of higher interchange revenue because merchants bear a disproportionate share of the losses as a result of these decisions. Further, the FRB may determine, in keeping with the requirements of the Fraud Prevention Adjustment process described above, that certain EDT authorization technologies common in other markets (such as EMV/chip and PIN) would merit greater cost recovery by adopting issuers under the Fraud Prevention Adjustment, which could create financial incentives (or reduce disincentives) for issuers to adopt such technologies.

*b. Small Issuer Exemption.* The Final Durbin Amendment retained the Original Durbin Amendment’s exemption for Small Issuers from the “reasonable and proportional” EDT interchange transaction fee requirement. This exemption sets up the legal framework for payment card networks to establish a two-tiered EDT interchange transaction fee structure whereby issuers having \$10 billion or more in assets would receive (presumably lower) regulated EDT interchange transaction fees, and Small Issuers would receive (presumably higher) unregulated EDT interchange transaction fees. However, whether this two-tiered structure is practical or likely has been the subject of much debate. Notwithstanding their exempt status, Small Issuers ardently opposed inclusion of the Original Durbin Amendment in the Senate

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<sup>30</sup> See EFTA Section 920(a)(5)(A).

<sup>31</sup> See *id.*

<sup>32</sup> See EFTA Section 920(a)(5)(b)(ii).

Reform Bill and likewise opposed inclusion of the Final Durbin Amendment in the Dodd-Frank Act. Small Issuer opposition was fueled by concerns that (i) merchants would discriminate against their debit cards in the event that Small Issuer EDT interchange transaction fees are higher than the regulated interchange transaction fees payable to larger issuers, and (ii) payment card networks would be loathe to implement a two-tiered EDT interchange transaction fee structure that is more beneficial to Small Issuers on the network than it is to larger issuers.

c. Exemption for Government-Administered Payment Programs and General Use Reloadable Prepaid Cards. Interchange transaction fees are not subject to the “reasonable and proportional” requirement where the underlying EDT was initiated using (i) a debit card or general-use prepaid card provided to a person pursuant to a federal, state or local government-administered payment program in which the person may only use the card to transfer or debit funds, monetary value or other assets provided under such program (a “Government Benefit Card”); or (ii) a plastic card, payment code or device that is (a) linked to funds, monetary value or assets purchased or loaded on a prepaid basis; (b) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount used for tracking use of prepaid funds); (c) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines (ATMs) (i.e., an open-loop card); (d) used to transfer or debit funds, monetary value or other assets; and (e) reloadable and not marketed or labeled as a gift card or gift certificate (a “GPR Card”).<sup>33</sup> This exemption may be fleeting for some otherwise exempt cards, however, because the Final Durbin Amendment expressly provides for loss of the exemption, beginning two years after enactment of Dodd-Frank Act, as to any Government Benefit Card (where the Government Benefit Card is a general-use prepaid card) or GPR Card regarding which the issuer may charge either (A) an overdraft fee for a transaction that exceeds the available account balance, or (B) a fee for the first withdrawal each month from an ATM within the issuer’s designated ATM network.<sup>34</sup>

Much of the lobbying effort in favor of the exemption for Government Benefit Cards focused on the proposition that, without the exemption, issuers would no longer be willing to issue such cards to government agencies at minimal cost, since the amount of revenue received by an issuer from interchange transaction fees will likely be negatively impacted by application of the “reasonable and proportional” requirement of the Final Durbin Amendment. It appears that these efforts rang true in Congress. Likewise, industry participants argued for an exception from the interchange transaction fee restrictions for GPR Cards on grounds that these products are often used by the unbanked and underprivileged, and that issuers of GPR Cards would be less willing to issue these socially beneficial products if interchange transaction fee revenues were substantially curtailed. Congress appears to have been similarly persuaded by these arguments. Notably, Congress has ordered the FRB to report to it regularly on the use of prepaid cards in Government Benefit Card programs and on the interchange transaction fees and cardholder fees charged in GPR Card programs—an indication that Congress intends to keep a watchful eye on these excluded programs for perceived abuses.<sup>35</sup>

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<sup>33</sup> See EFTA Section 920(a)(7)(A).

<sup>34</sup> See EFTA Section 920(a)(7)(B). An issuer’s “designated automated teller machine network” is either (i) all ATMs identified in the name of the issuer, or (ii) a network of ATMs identified by the issuer that provides reasonable and convenient access to the issuer’s customers. See EFTA 920(a)(7)(C).

<sup>35</sup> See EFTA Section 920(a)(7)(D).

## B. *Prohibited Payment Card Network Practices*

### 1. Overview of the Limitations on Payment Card Network Practices

The Final Durbin Amendment prohibits the following four payment card network practices: (i) arrangements by a payment card network or an issuer that restrict the number of payment card networks on which an EDT may be processed to (a) one network or (b) two or more networks that are owned, controlled or otherwise operated by affiliated persons or networks affiliated with the issuer (the “Network Exclusivity Arrangements”); (ii) arrangements by a payment card network or an issuer that inhibit the ability of a merchant to direct the routing of EDTs for processing over any payment card network that may process such transactions (the “Merchant-Directed Routing Restrictions”); (iii) arrangements by a payment card network that inhibit the ability of any person to offer a discount or in-kind incentive to induce a customer to pay by use of cash, checks, debit cards or credit cards, so long as the discount or incentive does not differentiate on the basis of the issuer or payment card network (the “Tender Type Incentive Restrictions”); and (iv) arrangements by a payment card network that inhibit the ability of (a) any merchant to set a minimum dollar value for credit card transactions, so long as the value does not exceed \$10.00, or (b) a federal agency or institution of higher education to set a maximum dollar value for credit card transactions, so long as the value does not differentiate between issuers or payment card networks (the “Transaction Minimum/Maximum Restrictions”).<sup>36</sup>

The prohibitions on Network Exclusivity Arrangements and Merchant-Directed Routing Restrictions are not self-executing requirements of the Dodd-Frank Act; rather, these limitations take effect only upon enactment of implementing regulations promulgated by the FRB. The FRB is directed to prescribe these regulations by the first anniversary of the Dodd-Frank Act.<sup>37</sup> Interestingly, in contrast to the mandate that the FRB issue regulations to implement the interchange transaction fee requirements and the PCN Fee Restrictions, in final form, within nine months after enactment of the Dodd-Frank Act (see Part II.A.1 above), the FRB’s mandate to enact rules regarding Network Exclusivity Arrangements and Merchant-Directed Routing Restrictions does not require that those rules be issued in final form or that the rules specify a compliance deadline—only that rules be issued by July 21, 2011. Consequently, the FRB may satisfy the mandate by issuing proposed (as opposed to final) rules on the first anniversary of the Dodd-Frank Act and by providing for a delayed compliance deadline. In contrast, the prohibitions on Tender Type Incentive Restrictions and on Transaction Minimum/Maximum Restrictions are self-executing, without need or requirement for FRB rulemaking, and became effective upon enactment of the Dodd-Frank Act on July 21, 2010.

Notably, the Small Issuer, Government Benefit Card and GPR Card exemptions to the interchange transaction fee limitations in the Final Durbin Amendment do not extend to the limitations on payment card network practices. Consequently, these issuers and card products are subject to the limitations on payment card network practices described in this Part II.B.

### 2. Analysis of the Limitations on Payment Card Network Practices

Although the interchange transaction fee requirements within the Final Durbin Amendment have, justifiably, garnered the most attention to date, the Final Durbin Amendment’s restrictions on certain payment card network practices, in particular the prohibition against Network Exclusivity Arrangements (which was not

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<sup>36</sup> See EFTA Section 920(b).

<sup>37</sup> See EFTA Section 920(b)(1).

a part of the Original Durbin Amendment) will certainly have widespread impact on issuers, payment card networks and merchants.

a. *Prohibition of Network Exclusivity Arrangements*. The marketplace for debit card issuers is highly competitive. In the battle for issuer market share, payment card networks have frequently turned to both carrots and sticks to promote debit card issuer brand loyalty and to drive EDT volume to their networks. In the category of carrots, payment card networks may offer financial incentives in exchange for an issuer's express or implied commitment that the payment card network will be the only such debit network (e.g., the only signature debit network and/or the only PIN debit network) associated with the issuer's debit cards. In the category of sticks, payment card networks may seek to restrict, through agreement, rules or membership requirements, the other payment card networks that may be associated with debit cards issued for acceptance on its network. In light of these and other types of carrot and stick arrangements that encourage (or require) such behavior, exclusive arrangements between issuers and payment card networks are not uncommon. FRB rulemaking, as directed by the Final Durbin Amendment, will determine the degree to which these types of arrangements will become unlawful.

The plain meaning of the prohibition on Network Exclusivity Arrangements in the Final Durbin Amendment indicates that an exclusivity arrangement between a debit card issuer and a payment card network (or affiliated group of payment card networks), whereby the debit card issuer agrees that all of its debit cards will participate only in that network or those affiliated networks, cannot be sustained following effectiveness of related FRB rulemaking. Payment card networks will not, in the future, be permitted to bind debit card issuers to true network exclusivity arrangements whereby the only signature debit and PIN debit functionality of the issuer's debit cards are on networks owned or controlled by a single payment card network operator. However, numerous other varieties of exclusive or near-exclusive arrangements that are not so clearly addressed under the Final Durbin Amendment are common, including (i) signature debit exclusivity arrangements where the issuer is free to select an unaffiliated payment card network for PIN debit functionality; (ii) PIN debit exclusivity arrangements where the issuer is free to select an unaffiliated payment card network for signature debit functionality; (iii) arrangements where the issuer has agreed to signature debit exclusivity with a particular payment card network and has also agreed to enroll all of its debit cards in that same payment card network's affiliated PIN debit network, but where the issuer remains free to include the capabilities of a second PIN debit network on the same cards; and (iv) passive exclusivity where an issuer, out of convenience and not pursuant to any explicit or tacit arrangement or agreement with the payment card network, voluntarily elects to participate in a single payment card network (e.g., because the issuer views the costs of participating in multiple payment card networks as exceeding its benefits). The fate of each of the above types of arrangements remains to be determined.

A fair (and perhaps the most likely) application of the prohibition on Network Exclusivity Arrangements would continue to allow unaffiliated dual exclusivity arrangements—that is, exclusivity between an issuer and a PIN debit payment card network, on the one hand, and between the same issuer and a signature debit payment card network, on the other hand, so long as the exclusive PIN debit and signature debit payment card networks are not under common ownership or control (“Unaffiliated Dual Exclusivity”). Such an arrangement would appear not to limit the number of payment card networks on which an EDT initiated using the subject debit card may be processed to one network or to an affiliated group of networks. However, this interpretation assumes that the proper point of evaluating exclusivity is at the initiation point of the EDT using a particular debit card (i.e., at the time the cardholder initially presents the debit card for payment). Any debit card that

has signature debit functionality and PIN debit functionality offered through two unaffiliated payment card networks appears to have, at the time the card is initially presented for payment and before the cardholder has made a signature versus PIN transaction type election, multiple transaction processing options consistent with the prohibition on Network Exclusivity Arrangements. However, the Final Durbin Amendment does not make clear that the initial time of debit card presentment for payment is the proper point for testing for prohibited Network Exclusivity Arrangements. It is conceivable, if the FRB concludes that the intent of the prohibition on Network Exclusivity Arrangements is to ensure that merchants have at least two EDT routing options available *after* the cardholder has made the signature versus PIN transaction type election, that the prohibition on Network Exclusivity Arrangements could be applied to prohibit Unaffiliated Dual Exclusivity because, under Unaffiliated Dual Exclusivity arrangements, once the cardholder has elected signature debit or PIN debit as the preferred transaction type for a particular EDT, the merchant's routing options will be limited to a single payment card network (either the exclusive PIN debit network associated with the debit card or the exclusive signature debit network associated with the debit card). In other words, if the test for prohibited Network Exclusivity Arrangements is to be applied after the cardholder's signature versus PIN election in connection with a particular EDT, then issuers and payment card networks may be prohibited from entering into any type of debit exclusivity arrangements, even those limited to PIN debit or signature debit exclusivity.<sup>38</sup> Again, the plainest meaning of the prohibition on Network Exclusivity Arrangements would only preclude true exclusivity between a debit card issuer and a single payment card network or affiliated group of payment card networks, but a stricter application of this requirement is conceivable

Finally, consideration must be given to whether the prohibition on Network Exclusivity Arrangements applies to passive exclusivity arrangements. Passive exclusivity arrangements occur where the debit card issuer (whether by design or through happenstance) participates in a single payment card network or affiliated group of payment card networks, but where such exclusivity is not pursuant to any mandate, rule, contract, agreement, requirement or other arrangement or understanding between the issuer and the payment card network(s). These types of passive exclusivity arrangements often occur because the issuer perceives little benefit to participation in multiple payment card networks, and so the issuer does not pursue participation in more than one payment card network. Whether these passive exclusivity arrangements violate the prohibition on Network Exclusivity Arrangements is difficult to determine. The apparent intent of the prohibition on Network Exclusivity Arrangements is to ensure that merchants have the option of at least two unaffiliated transaction processing channels for each EDT, which may support a conclusion that passive exclusivity should be prohibited to the same extent as active exclusivity arrangements. However, prohibiting passive exclusivity arrangements means that the FRB, through rulemaking, will use the force of law to require one commercial entity (an issuer) to enter into a contract with another commercial entity (a payment card network)—putting the FRB in an unusual and uncomfortable position. Government-mandated contracting between commercial parties outside of the public safety context is uncommon, may be subject to constitutional challenge and presents a number of social and economic concerns. For example, what

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<sup>38</sup> Of course this interpretation would prohibit signature debit exclusivity on a debit card even where PIN debit functionality is offered by an unaffiliated PIN debit network, suggesting that each debit card would be permitted (and may even be required based on the analysis in the next paragraph) to participate in multiple signature debit networks—a result that seems absurd in the current marketplace where debit card participation in multiple PIN debit networks is common but participation in multiple signature debit networks is nonexistent.

happens if an issuer cannot procure a second payment card network for its debit cards (or cannot do so on economically viable terms)?

*b. Prohibition on Merchant-Directed Routing Restrictions.* Issuer-directed transaction routing is common practice among PIN-debit payment card networks, which often require by rule that merchants route PIN debit transactions in accordance with issuer-designated preferences. The prohibition on Merchant-Directed Routing Restrictions within the Final Durbin Amendment appears fairly straightforward in its preclusion of such payment card network rules. Merchants oppose issuer-directed routing requirements because such rules purport to prevent them from applying their own transaction routing preferences, including least-cost routing (i.e., routing transactions along the processing path that will result in the lowest costs to the merchant).<sup>39</sup> One particularly important point of clarification required from the FRB in this regard, however, is whether the prohibition on Merchant-Directed Routing Restrictions extends to payment card network rules that prevent merchants from blocking certain transaction options at the point-of-sale (e.g., where a merchant may instruct a cardholder that a debit card with both PIN debit and signature debit functionality may not be used to initiate a signature debit transaction unless PIN debit functionality is unavailable for the transaction). If the FRB determines that such payment card network rules are precluded by the prohibition on Merchant-Directed Routing Restrictions, then Merchants may be able, to the extent sustainable from a customer relations perspective, to take even more control over the determination of signature debit versus PIN debit at the point-of-sale—a decision currently in the hands of the cardholder.

Another point for clarification by the FRB in enacting rules to prohibit Merchant-Direct Routing Restrictions is the scope of the intended allowance to merchants. As written, this provision of the Final Durbin Amendment provides that a payment card network may not inhibit the ability of a merchant to direct the routing of EDTs for processing over “any payment card network that may process such transactions.”<sup>40</sup> Applied literally, a merchant may direct that an EDT be routed over any payment card network that has a direct or indirect means of delivering the EDT to the card issuer, even if the underlying debit card was not issued on the chosen payment card network and even if the issuer is not a member of the chosen payment card network. For example, an entity that is both the merchant processor and the issuer processor for a given EDT, but that is not the owner or operator of a payment card network on which the underlying debit card participates, could bypass the payment card network and process the EDT directly to the issuer. This type of payment card network disintermediation and circumvention was likely not an intended result of the prohibition on Merchant-Directed Routing Restrictions, but it remains a possible interpretation of the broad language included by Congress in the Final Durbin Amendment.

*c. Prohibition on Tender Type Incentive Restrictions.* Payment card networks have not historically restricted the ability of merchants to offer discounts to customers to induce payment by cash rather than by debit or credit card. However, networks have long maintained anti-discrimination rules that prohibit merchants from inducing customers to pay via an alternative card type, to pay using a card issued on another payment card network or to pay using a card issued by another issuer (whether on the same or another payment card network). The prohibition on Tender Type Incentive Restrictions proscribes such payment type anti-discrimination rules to the extent the rules would otherwise prohibit a merchant from

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<sup>39</sup> Note that in practice merchants have often historically applied their own routing preferences notwithstanding PIN debit network rule requirements to the contrary.

<sup>40</sup> EFTA Section 920(b)(1)(B).

inducing a holder of one card type (e.g., credit versus debit) to pay via the other card type or via a non-card method. Note, however, that the prohibition on Tender Type Incentive Restrictions does not prohibit payment card networks from continuing to restrict such discounts or in-kind incentives to the extent that the discount or in-kind incentive discriminates on the basis of the card issuer or the payment card network on which a particular type of payment card was issued. For example, a payment card network's rules that prohibit a merchant from offering discounts or in-kind incentives to favor payment by one payment card network's credit cards over a competing payment card network's credit cards are not proscribed by the prohibition on Tender Type Incentive Restrictions.

*d. Prohibition on Transaction Minimum/Maximum Restrictions.* Payment card networks have historically prohibited merchants from establishing minimum or maximum transaction amounts for payment by credit or debit card. The prohibition on Transaction Minimum/Maximum Restrictions in the Final Durbin Amendment proscribes payment card network rules to the extent that such rules prohibit merchants from setting minimum *credit* card transaction dollar values of up to \$10.00. Consequently, merchants are now free to decline acceptance of credit cards for transaction amounts of less than \$10.00 (but merchants may not similarly decline debit cards or prepaid cards if payment card network rules continue to prohibit merchants from setting minimum transaction amounts for these card products). With respect to maximum transaction amounts, the prohibition on payment card network Transaction Minimum/Maximum Restrictions in the Final Durbin Amendment applies only with respect to credit cards (like the minimum transaction value restrictions above) and only where the person setting the maximum dollar value is a federal agency or an institution of higher education—payment card network restrictions on transaction maximums are not prohibited as applied to any other types of merchants. Additionally, the prohibition on Transaction Minimum/Maximum Restrictions in the Final Durbin Amendment includes a proviso that payment card network restrictions on minimum or maximum transaction value setting are not prohibited if a merchant's otherwise protected minimum or maximum differentiates between issuers or payment card networks.

### C. Other Considerations

The Final Durbin Amendment ushered in changes to the debit card landscape beyond its interchange transaction fee limitations and prohibited payment card network practices, including a broadened scope of the types of "debit cards" that are subject to the EFTA and questions (and consternation) about its impacts on existing commercial arrangements.

#### 1. The New and Extended Definition of "Debit Cards"

The principal purpose of the EFTA is to establish individual consumer rights in connection with electronic fund transfers.<sup>41</sup> Consequently, the EFTA (as written and as interpreted through the FRB's implementing rules embodied in Regulation E) has historically applied to "consumer" asset accounts and the electronic funds transfers effected to and from those accounts (including such transfers when effected by debit card).<sup>42</sup> Notwithstanding the EFTA's stated purpose of consumer protection, the definition of "debit card" for purposes of the EFTA amendments brought about by the Final Durbin Amendment pursuant to the Dodd-Frank Act

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<sup>41</sup> See EFTA Section 902.

<sup>42</sup> Accounts historically subject to the EFTA are "consumer asset accounts" established primarily for personal, family or household purposes. See Regulation E (12 C.F.R. 205 *et. seq.*) Section 205.2(b)(1). Likewise, debit cards historically subject to the EFTA and Regulation E have been those that access a consumer asset account. See Regulation E Section 205.2(a)(1).

expressly includes cards used to debit all manner of asset accounts “regardless of the purpose for which the account is established.”<sup>43</sup> Congress’s inclusion of this catch-all clause within the definition of “debit card” appears directly intended to lift the consumer account limitations otherwise embodied in the EFTA for purposes of the Final Durbin Amendment. Assuming the FRB interprets the catch-all clause plainly, the whole of the Final Durbin Amendment (including the limitations on interchange transaction fee amounts and the prohibited payment card network practices) applies equally to consumer debit cards, commercial/business debit cards and possibly to certain types of benefit cards associated with programs that are not government-administered (e.g., FSA, HSA and HRA cards) to the extent that such cards do not qualify for the Government Benefit Card or GPR Card exceptions described above.<sup>44</sup>

## 2. Effects of Final Durbin Amendment on Existing Contractual Relationships

One of the most significant near-term challenges presented by the Final Durbin Amendment is the extent to which existing commercial and contractual arrangements will be vitiated by its requirements. Perhaps with the limited exception of the prohibitions on Network Exclusivity Arrangements and Merchant-Directed Routing Restrictions, which (as noted above in Part II.B.1) may allow for delayed effectiveness timetables if the FRB so chooses through its rulemaking, none of the provisions of the Final Durbin Amendment appear to provide for, or to authorize the FRB to allow for, delayed implementation timing or grandfathering of existing agreements or arrangements. The Final Durbin Amendment fundamentally changes the economic model on which the debit card marketplace operates, changes that will alter the foundational principles on which many active debit card agreements were formed. While the FRB is likely to avoid disrupting the marketplace and existing contractual relationships more than is necessary to implement the mandates of the Final Durbin Amendment, these mandates do not allow for accommodation of conflicting commercial arrangements, in particular those between payment card networks and their issuers. The time to review and begin planning for reformation of these existing relationships is now.

## III. Conclusion

While occupying only seven pages of the Dodd-Frank Act, the Final Durbin Amendment ushers in monumental changes to the debit card industry in the United States. The full breadth of these changes will not be fully known until the FRB completes its rulemaking over the coming year; the full impact of these changes on the debit card marketplace may not be fully realized for many years to come.

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<sup>43</sup> See *supra* note 8.

<sup>44</sup> It is worth noting that each of Senator Christopher Dodd (D-CT) and Representative Barney Frank (D-MA) made statements for the record in their respective chambers of Congress to clarify that the exemptions to the Final Durbin Amendment for GPR Cards (which exempt GPR Cards from the interchange transaction fee provisions but not the prohibited payment card network practices) were intended to apply to FSA, HSA and HRA cards, as well as qualified transportation accounts. See Congressional Record, Page S. 5927, July 15, 2010 (Dodd statement); and Larson-Frank Colloquy, <http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598395052> (Frank statement). To the extent that FSA, HSA and HRA cards meet the statutory definition of GPR Cards within the Final Durbin Amendment, these cards should have been exempted from the interchange transaction fee restrictions without need for these clarifying statements.

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