The Durbin Interchange Amendment Compromise
Summary of Modifications

The Durbin interchange amendment has been modified for consideration by the Wall Street Reform conference committee. Below is a summary of changes included in the modified amendment.

- **Definition of "interchange transaction fee"**

The Senate-passed amendment defined "interchange transaction fee" to include debit card fees that are established by a payment card network (e.g., Visa and MasterCard) and that accrue to either the card-issuing bank or to the network itself. The compromise provides that the Fed cannot regulate network fees (i.e., the fees that Visa and MasterCard charge and that accrue to themselves) except to ensure that the fees are not used to circumvent interchange fee regulation.

- **Government administered cards**

The Senate-passed amendment would regulate the interchange fees associated with debit or prepaid cards issued by large banks on behalf of government-administered payment programs (e.g., unemployment insurance, TANF, child support). The compromise exempts federal, state and local government program debit and prepaid cards from interchange regulation, provided that after a two-year grace period the program must ensure that prepaid cardholding beneficiaries are not charged any overdraft fees or fees for the first monthly in-network ATM withdrawal.

- **Reloadable prepaid cards**

The Senate-passed amendment would regulate the interchange fees associated with reloadable prepaid debit cards, which are in common use by consumers who lack bank accounts. The compromise exempts these cards from interchange regulation, provided that after a two-year grace period the issuing bank must not charge cardholders any overdraft fees or fees for the first monthly in-network ATM withdrawal.

- **Fraud prevention costs**

The Senate-passed amendment did not permit consideration of fraud prevention costs in the calculation of reasonable and proportional interchange rates. The compromise provides that the Fed can adjust the interchange fee rate received by a particular card-issuing bank if the bank demonstrates that the adjustment is reasonably necessary to cover fraud prevention costs incurred by the bank. In order to qualify for this adjustment, the bank would have to comply with standards established by the Fed that would demonstrate that the bank is taking effective steps to reduce fraud, and the bank would also have to show that the adjustment it seeks is limited to those reasonably necessary fraud prevention costs.

- **Discounting between card networks**

The Senate-passed amendment provided that card networks could no longer prevent merchants from offering customers a discount to use one card network vs. another (e.g., a discount to use Visa vs. MasterCard), and that this discount would apply in both the credit card and debit card contexts. This provision has been removed from the amendment. In its place, the compromise includes a provision directing the Fed to issue rules preventing card networks from requiring that their debit cards can only be used on one debit card network (thereby ensuring that merchants will have the choice of at least two networks upon which to run debit transactions).

- **Discounting between forms of payment**

The Senate-passed amendment provided that card networks cannot prevent merchants from offering a discount for one form of payment vs. another (cash vs. check vs. credit vs. debit). The compromise clarifies that these discounts cannot be offered if the discounts differentiate between card issuers or card networks. The compromise further clarifies that the discount must be offered to all prospective buyers and disclosed clearly and conspicuously to the extent required by federal and applicable state law, though a network would not be permitted to penalize a merchant for a discount that is provided in compliance with federal and state law.

- **Setting of maximum/minimum transaction thresholds for use of a credit card**

The Senate-passed amendment provided that card networks could not prevent merchants from setting a minimum or maximum dollar amount for payment by credit card. The compromise provides that such a minimum may not exceed $10, with authority given to the Fed to increase that dollar amount. The compromise also limits the ability to set maximums for payment by credit card to the Federal government and colleges and universities.

- **Non-discrimination between cards issued by different banks**

The compromise amendment contains a rule of construction stating that nothing shall be construed to authorize any person to discriminate between debit cards or between credit cards on the basis of the issuer who issued the card. The Senate-passed amendment did not contain this provision.

- **Authority of the Federal Reserve Board vs. the Consumer Financial Protection Agency/Bureau**

The Senate-passed amendment provided for regulatory authority under the amendment to migrate to the Consumer Financial Protection Agency/Bureau after the CFPA/B is established. The compromise provides that regulatory authority under the amendment shall remain with the Fed.

- **Non-applicability to USDA nutrition assistance program EBT cards**

The Senate-passed amendment was silent on the applicability of the amendment to USDA's nutrition assistance programs in which interchange fees are not charged for electronic benefit transfer (EBT) transactions. The compromise makes clear that nothing in the amendment shall apply to these nutrition assistance programs.

The compromise also makes various conforming and technical changes.