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**MEMORANDUM**

July 31, 2013

To Our Clients and Friends

Re: Federal Court Invalidates Federal Reserve's Debit Card Interchange Rules

The U.S. District Court for District of Columbia has invalidated the Federal Reserve Board's regulation regarding permissible interchange fees for debit card transactions and payment routing networks that have been in effect since October 1, 2011. The Court held that the Board's rule contravenes the language and Congressional intent of the Durbin Amendment.

In addressing the Board's calculation of the permissible debit card interchange fee, the Court stated that the statute directed the Board to consider only incremental or variable costs, incurred by an issuer, for its role in the authorization, clearance, or settlement ("ACS") of a debit card transaction. The Court found that the Board incorrectly considered other fees, such as fixed ACS costs, transaction monitoring costs, allowances for fraud losses, and network processing fees. The Court stated that the Board's inclusion of these costs was contrary to Congress direction of which issuer costs may and may not be factored into the interchange fee limit.

The Court also invalidated the Board's rule that permits issuers to make available two unaffiliated processing networks, one PIN and one signature, for each debit card. The Court concluded that Congress intended that a choice of at least two networks be available for each *transaction* and not for each *debit card*. That is, each debit card must offer two signature networks and two PIN networks, for a total of four network options on each debit card.

The Court did not enjoin the rule, which means that the current rule remains in effect pending further proceedings.

The Court's decision can be found at our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Ben Gray at (202) 776-0700.