

Meeting on Interchange Statutory Provisions

February 4, 2011

Participants:

Rodgin Cohen, Sullivan & Cromwell

Virgil Mattingly, Sullivan & Cromwell

Paul Saltzman, Executive Vice President & General Counsel, The Clearinghouse Association

Rob Hunter, Deputy General Counsel, The Clearinghouse Association

Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve System

Stephanie Martin, Assoc. General Counsel, Board of Governors of the Federal Reserve System

Summary: Attorneys from The Clearinghouse Association and their outside counsel met with attorneys from the Board's Legal Division to discuss interpretive issues related to the interchange fee provisions in section 1075 of the Dodd-Frank Act. The discussion focused on various aspects of the statute, including:

- Whether provisions requiring the Board to set "standards for assessing" interchange fees preclude the Board from setting caps
- The application of the "reasonable and proportional to cost" standard and the Board's flexibility to allow for a "cost-plus" fee
- The ability of the Board to consider a broader range of costs than was proposed
- The aspects of check transactions that the Board should take into account when considering the "functional similarity" between checks and debit cards
- The extent to which the Board should consider the costs incurred by small issuers when setting the interchange fee standards
- The extent to which the Board should take into account public policy considerations, including the overall effect on consumers and the payments system
- The need for the Board to avoid Constitutional issues in developing its rules
- The potential for a phased approach within the statutory deadlines