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May 5, 2011

Scott G. Alvarez, Esq.,  
General Counsel,  
Board of Governors of the Federal Reserve System,  
20th Street, N.W. and Constitution Avenue, N.W.,  
Washington, D.C. 20551.

Dear Scott,

On behalf of American Express Company (“Amex”) and myself, I want to thank you and your staff for taking the time to meet with us on April 20 to discuss our views regarding the scope of the interchange transaction fee and alternative network routing provisions contained in the Durbin Amendment to the Electronic Fund Transfer Act (“EFTA”).

As stated at that meeting and in Amex’s filings with the Board of Governors of the Federal Reserve System (the “Board”), we believe that the interchange transaction fee provisions in Section 920(a) of the EFTA, as amended, do not, by their terms and plain meaning, apply to the prepaid cards that Amex issues and processes over its proprietary payments network.<sup>1</sup> Amex is a closed-loop network that does not establish, charge or receive an “interchange transaction fee . . . for the purpose of compensating an issuer for its involvement in an electronic debit transaction.”<sup>2</sup> Rather,

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<sup>1</sup> Amex does not issue debit cards in the United States; as Amex has previously advised Board staff, Amex does have a third party on its network that issues a card that may fall within the deferred debit card definition in the Official Board Commentary to the proposed debit card interchange fee regulations. Debit Card Interchange Fees and Routing; Proposed Rule, 75 Fed. Reg. 81,722, 81,758 (Dec. 28, 2010) (to be codified at 12 C.F.R. pt. 235). The contract for issuance of those cards terminated in January of this year, and the cards are transitioning off the Amex network.

<sup>2</sup> 15 U.S.C. § 1693o-2(c)(8) (2011).

Amex negotiates a merchant discount fee directly with the merchant that compensates Amex for the service and value it provides to the merchant; it simply does not have a separate interchange transaction fee for the purpose of compensating an issuer for its involvement in the transaction, the prerequisite for applicability of Section 920(a).

In studies, the staffs of the Government Accountability Office and the Board recognized this fact and the important difference between the Amex closed-loop system and the open or four-party systems, which do charge an interchange fee.<sup>3</sup> Senator Durbin also recognized this key distinction in his comment letter to the Board when he stated: “the core problem with the interchange transaction fee in the four-party system – the centralized fixing of fees by a network for the purpose of compensating many separate issuers – is not a concern in the three-party model where the network and the issuer are the same.”<sup>4</sup> Senator Durbin also acknowledged that it would “be administratively infeasible to determine which part of a merchant discount rate in a three-party system is intended to compensate the network for its role as issuer.”<sup>5</sup> He concluded that “there does not appear to be an appropriate application of the EFTA Section 920(a) interchange fee standards to the three-party systems in place today . . . .”<sup>6</sup>

Amex appreciates the Board’s consideration of its views, and would be pleased to provide any additional information you may require. We will also be submitting shortly a memorandum explaining in more detail our view that the prohibition against network exclusivity restrictions in Section 920(b)(1) of the EFTA does not apply

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<sup>3</sup> See U.S. Gov’t Accountability Office, *Credit Cards: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges* 53 n.2 (2009) (“American Express and Discover do not have interchange fees.”); *id.* at 8-9, 17; R. Prager, *et al.*, *Interchange Fees and Payment Card Networks: Economics, Industry Developments and Policy Issues* 6 n.5 (Finance and Economic Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board) (2009) (“Payment card systems in which the network serves one or both of these roles (e.g., American Express and Discover) do not have explicit interchange fees, but they do charge fees to merchants for card transactions.”); *id.* at 55 (“Interchange fee – A fee in a *four-party payment card network* that is (typically) paid by the acquirer to the issuer for each card transaction.”) (emphasis added); *id.* at 12 n.24, 25-26.

<sup>4</sup> Letter from Richard J. Durbin, U.S. Senator, to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, at 15 (Feb. 22, 2011).

<sup>5</sup> *Id.* at 15-16.

<sup>6</sup> *Id.* at 16.

Scott G. Alvarez, Esq.,

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to a closed-loop network, such as that operated by Amex, that does not contain any contractual or contractual-type restrictions prohibited by that section.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rodgin", written in a cursive style.

H. Rodgin Cohen