
Section 1: 8-K (8-K)

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):
October 12, 2010



TCF FINANCIAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-10253
(Commission File Number)

41-1591444
(IRS Employer Identification No.)

200 Lake Street East, Mail Code EX0-03-A, Wayzata, Minnesota
(Address of principal executive offices)

55391-1693
(Zip Code)

(952) 745-2760
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 Other Events.

The Durbin Amendment (the “Amendment”) to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Act”), which was signed into law on July 21, 2010, directs the Federal Reserve Board to issue regulations which will reduce debit-card interchange transaction fees paid by retailers to debit card issuers with total assets of \$10 billion or more. The Amendment requires the Federal Reserve Board to establish standards to assess whether the amount of an interchange transaction fee is reasonable and proportional to the cost incurred by an issuer with respect to a debit card transaction, but prohibits the Federal Reserve Board from considering any costs incurred by an issuer other than incremental costs for its role in the authorization, clearance, or settlement of a particular electronic debit transaction, plus possibly some costs relating to fraud prevention. The Federal Reserve Board is required to issue final regulations by April 21, 2011 relating to these new limitations and these new regulations are required to take effect by July 21, 2011. While TCF National Bank (“TCF Bank”), a wholly-owned subsidiary of TCF Financial Corporation (together with its subsidiaries, “TCF” or the “Company”) will be subject to these limitations, 99% of the banks in the United States will not. If a regulation is adopted which precludes the recovery of costs other than those permitted by the Amendment, the reduction in TCF’s average interchange rate after July 21, 2011 could approach 80%. Since 99% of all banks are not subject to the new interchange limitations, the new regulations will have an adverse impact on TCF’s competitive position because these other banks will be free to continue to charge retailers current debit card interchange rates and recover all of their costs plus a profit.

On October 12, 2010, TCF Bank filed a lawsuit in the United States District Court for South Dakota asking that the Amendment be declared unconstitutional under the Takings, Due Process and Equal Protection clauses of the Fifth Amendment to the United States Constitution. The lawsuit challenges the Amendment on the grounds that it has no rational basis and amounts to an arbitrary and confiscatory fee limitation on TCF and other similarly-situated debit card issuers. The lawsuit seeks a preliminary injunction preventing forthcoming Federal Reserve Board debit card interchange fee regulations from going into effect without a full review and hearing by the Court, and also permanent injunctive relief. See “Summary of TCF’s Legal Challenge of the Durbin Amendment” attached hereto as Exhibit 99.2.

Forward-Looking Information

This current report on Form 8-K and other reports issued by the Company, including reports filed with the SEC, contain “forward-looking” statements that deal with future results, plans or performance. In addition, TCF’s management may make such statements orally to the media, or to securities analysts, investors or others. Forward-looking statements deal with matters that do not relate strictly to historical facts. TCF’s future results may differ materially from historical performance and forward-looking statements about TCF’s expected financial results or other plans and are subject to a number of risks and uncertainties. These include, but are not limited to the following:

Adverse Economic or Business Conditions, Credit Risks. *Continued or deepening deterioration in general economic and banking industry conditions, or continued increases in unemployment in TCF’s primary banking markets; adverse economic, business and competitive developments such as shrinking interest margins, deposit outflows, deposit account attrition, or an inability to increase the number of deposit accounts; adverse changes in credit and other risks posed by TCF’s loan, lease, investment, and securities available for sale portfolios, including continuing declines in commercial or residential real estate values or changes in the allowance for loan and lease losses dictated by new market conditions or regulatory requirements; interest rate risks resulting from fluctuations in prevailing interest rates or other factors that result in a mismatch between yields earned on TCF’s interest-earning assets and the rates paid on its deposits and borrowings.*

Earnings/Capital Constraints, Liquidity Risks. *Limitations on TCF’s ability to pay dividends or to increase dividends in the future because of financial performance deterioration, regulatory restrictions or limitations; increased deposit insurance premiums, special assessments or other costs related to deteriorating conditions in the banking industry, the economic impact on banks of the Act and Emergency Economic Stabilization Act of 2008, as amended (“EESA”), and other regulatory reform legislation; the impact of financial regulatory reform, including the phase out of trust preferred securities in Tier 1 capital called for by the Act, or additional capital, leverage, liquidity and risk management requirements or changes in the composition of qualifying regulatory capital; adverse changes in securities markets directly or indirectly affecting TCF’s ability to sell assets or to fund its operations; diminished unsecured borrowing capacity resulting from TCF credit rating downgrades and unfavorable conditions in the credit markets that restrict or limit various funding sources; costs associated with new regulatory requirements or interpretive guidance relating to liquidity.*

Legislative and Regulatory Requirements. *New consumer protection and supervisory requirements, including the Act’s creation of a new consumer protection bureau and limits on Federal preemption for state laws that could be applied to national banks; the imposition of requirements with an adverse impact relating to TCF’s lending, loan collection and other business activities as a result of the EESA and the Act, or other legislative or regulatory developments such as mortgage foreclosure moratorium laws or imposition of underwriting or other limitations that impact the ability to use certain variable-rate products; reduction of interchange revenue from debit card transactions resulting from the so-called Durbin Amendment to the Act, which limits debit card interchange fees to fees that allow issuers to recover only incremental costs of authorization, clearance and settlement of debit card transactions, plus possibly some costs relating to fraud prevention; impact of legislative, regulatory or other changes affecting customer account charges and fee income; changes to bankruptcy laws which would result in the loss of all or part of TCF’s security interest due to collateral value declines (so-called “cramdown” provisions); increased health care costs resulting from recently enacted Federal health care reform legislation; adverse regulatory examinations and resulting enforcement actions, including those provided for under the Bank Secrecy Act; heightened regulatory practices, requirements or expectations, including, but not limited to, requirements related to the Bank Secrecy Act and anti-money laundering compliance activity.*

Risks Relating to New Product Introduction. *TCF has introduced a new anchor retail deposit account product that replaces TCF Totally Free Checking, and that calls for a monthly maintenance fee on accounts not meeting certain specific requirements. TCF has also implemented new regulatory requirements that prohibit financial institutions from charging NSF fees on point-of-sale and ATM transactions unless customers opt-in. Customer acceptance of the new product changes and regulatory requirements cannot be predicted with certainty, and these changes may*

have an adverse impact on TCF's ability to generate and retain accounts and on its fee revenue.

Litigation Risks. Results of litigation, including class action litigation concerning TCF's lending or deposit activities or fees or charges, or employment practices, and possible increases in indemnification obligations for certain litigation against Visa U.S.A. ("covered litigation") and potential reductions in card revenues resulting from covered litigation or other litigation against Visa.

Competitive Conditions; Supermarket Branching Risk. Reduced demand for financial services and loan and lease products; adverse developments affecting TCF's supermarket banking relationships or any of the supermarket chains in which TCF maintains supermarket branches.

Accounting, Audit, Tax and Insurance Matters. Changes in accounting standards or interpretations of existing standards; monetary, fiscal or tax policies of the federal or state governments, including adoption of state legislation that would increase state taxes; adverse state or Federal tax assessments or findings in tax audits; lack of or inadequate insurance coverage for claims against TCF.

Technological and Operational Matters. Technological, computer-related or operational difficulties or loss or theft of information and the possibility that deposit account losses (fraudulent checks, etc.) may increase.

Investors should consult TCF's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K for additional important information about the Company.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
99.1	Press Release dated October 12, 2010
99.2	Summary of TCF's Legal Challenge of Durbin Amendment

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TCF FINANCIAL CORPORATION

/s/ William A. Cooper

William A. Cooper,
Chairman and Chief Executive Officer
(Principal Executive Officer)

/s/ Thomas F. Jasper

Thomas F. Jasper, Executive Vice President and
Chief Financial Officer
(Principal Financial Officer)

/s/ David M. Stautz

David M. Stautz, Senior Vice President,
Controller and Assistant Treasurer
(Principal Accounting Officer)

Dated: October 12, 2010

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Section 2: EX-99.1 (EX-99.1)

NEWS RELEASE

FOR IMMEDIATE RELEASE



200 Lake Street East, Wayzata, MN 55391-1693
www.tcfbank.com

TCF Bank Files Lawsuit Challenging The Durbin Amendment of the Dodd-Frank Act

— *Complaint Calls Amendment Unconstitutional* —

WAYZATA, MN, October 12, 2010 – TCF National Bank (“TCF”), a subsidiary of TCF Financial Corporation (NYSE:TCB), announced that today it is filing a lawsuit challenging the constitutionality of the Durbin Amendment (“the Amendment”). Congress included this Amendment, without hearings, in the Wall Street Reform and Consumer Financial Protection Act of 2010, also known as the Dodd-Frank Act.

The Durbin Amendment orders the Federal Reserve Board to enact regulations that strictly limit the amount of interchange fees the bank can charge retailers on debit card transactions. The Amendment directs the Federal Reserve Board to measure the processing costs of authorizing, clearing and settling debit card transactions and then to adopt regulations setting debit card interchange rates based on those costs alone. In total, these processing costs amount to only a fraction of the total costs required to manage the debit card system and deliver the product. The Amendment also explicitly mandates that the Federal Reserve Board ignore other costs incurred by banks associated with the creation, administration and improvement of their extensive, highly efficient, debit card systems. Finally, the Amendment

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applies only to banks like TCF with \$10 billion or more in assets, which constitutes just one percent of banks in the country, and exempts all others. The thousands of banks exempted from the Amendment will be free to continue to charge retailers the current debit card interchange rate and recover all their cost plus a profit. This will result in an irrational competitive disadvantage for banks like TCF that are subject to the new regulations.

“It is unprecedented for Congress, or any regulatory agency, to mandate a fee charged in the free market that not only denies a reasonable rate of return on investment, but actually requires the rate to be lower than the incremental cost of providing the service,” said William A. Cooper, Chairman and Chief Executive Officer of TCF Financial Corporation. “Furthermore, the Amendment affects only one percent of the nation’s banks, giving thousands of unaffected banks an unfair competitive advantage.”

“We believe these provisions violate our Constitutional rights on three separate grounds: the regulations take our property without just compensation and without Due Process of Law; and they also deny us Equal Protection under the law” Cooper said. “The statute makes no more sense than regulating the price of a Burger King® hamburger solely to the costs of the meat and the bun. To stay in business, Burger King has to sell burgers at prices that cover more than those costs; it also has to cover costs such as paying an employee to make the hamburger and another employee to serve it, the cost of the building and maintenance, as well as the costs incurred to advertise and promote the product. Under the Durbin Amendment, TCF only gets to recover the cost of the bun!”

“The Durbin Amendment blatantly confiscates TCF’s assets by denying the bank an opportunity to earn a fair rate of return on its assets. The Amendment also engages in invidious discrimination against the bank by making it impossible for it to compete on even ground with the thousands of banks that are exempted from the Amendment,” said Richard A.

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Epstein, a constitutional law scholar who, along with Timothy D. Kelly of Kelly & Berens P.A., has served as counsel to TCF on this case. “Well-established Supreme Court case law prohibits Congressional rate regulation that does not allow the bank to attract and retain the capital necessary to run its debit card business,” Epstein added.

Congress has never enacted any regulatory statute like the Durbin Amendment before: one that requires an administrative agency to order sellers of a product or service to cut their rates to a rate far below their actual cost of delivering the product or service, and then exempts ninety-nine percent of the sellers from the new confiscatory rate. Moreover, the Durbin Amendment was a last minute addition to the Dodd-Frank Act’s comprehensive overhaul of the financial services industry. Neither the Senate nor the House held any hearings on the provision, which would have allowed for public analysis of its most questionable provisions. Few people in Congress, therefore, grasped its revolutionary implications and its punitive impact on the few banks subject to its restrictions.

TCF will host a teleconference to elaborate further on the reasons it chose to file this suit, at which time it will further explain the legal basis for the complaint. Media are welcome to attend in a listen-only mode. The teleconference will occur today, Tuesday, October 12, 2010 at 11:00 a.m. Eastern Time. If you would like to listen to TCF's live teleconference, please dial (877) 245-6230. To listen to the replay of TCF's teleconference, please dial (800) 642-1687 and enter conference ID #17047486. Replay begins two hours after the call is completed and will be available through Wednesday, October 20th.

TCF's teleconference will also be webcast live on the Investor Relations section of TCF's website, ir.tcfbank.com. In addition, the teleconference will be archived for replay on the website.

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TCF National Bank is a subsidiary of TCF Financial Corporation, a Wayzata, Minnesota-based bank holding company with \$18 billion in total assets. The company has 441 banking offices in Minnesota, Illinois, Michigan, Colorado, Wisconsin, Indiana, Arizona and South Dakota, providing retail and commercial banking services. TCF also conducts commercial leasing and equipment finance business in all 50 states and commercial inventory finance business in the U.S. and Canada. For more information about TCF, please visit www.tcfbank.com.

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Section 3: EX-99.2 (EX-99.2)

Exhibit 99.2

SUMMARY OF TCF'S LEGAL CHALLENGE OF THE DURBIN AMENDMENT

TCF National Bank vs. **Board of Governors of the Federal Reserve System**

Filed: **United States District Court
District of South Dakota**

Date: **October 12, 2010**

Attorneys for Plaintiff: **Richard A. Epstein** **Mark Meierhenry**
Chicago, Illinois *Meierhenry Sargent LLP*
Sioux Falls, South Dakota

Timothy D. Kelly
Kelly & Berens, P.A.
Minneapolis, MN

TCF National Bank ("TCF") has filed suit challenging the constitutionality of the Durbin Amendment ("DA"), included in the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, which became law on July 21, 2010. The DA requires the Board of Governors of the Federal Reserve System (the "Board") to adopt regulations reducing debit card—not credit card—interchange transaction fees charged to retailers. The DA requires the Board, no later than April 21, 2011, to issue new rates that are "reasonable and proportional" to the cost incurred by the issuer with respect to each debit interchange transaction, but then limits the allowable costs to the "incremental cost" of electronically processing a "particular" transaction ("authorization, clearance and settlement"), prohibits consideration of "other costs incurred by an issuer which are not specific to a particular electronic debit transaction"—which are the bulk of the actual costs of the debit card service—and does not allow for a profit.

The DA exempts from these requirements any issuer that has assets of less than \$10,000,000,000.

TCF's suit alleges that the DA is unconstitutional because:

- (1) It violates the institution's Due Process rights under the Fifth Amendment to earn a fair rate of return on invested capital and requires the institution to offer its product below cost;
- (2) By exempting institutions with assets less than \$10 billion, it denies the institution Equal Protection under the law mandated by the Fifth Amendment; and
- (3) It violates the institution's rights under the Takings Clause of the Fifth Amendment by causing the institution to bear a substantial competitive and financial burden without just compensation.

As stated in the complaint filed by TCF, the Constitution precludes Congress from enacting a law limiting the price a business may charge for its product to an amount that does not

allow the institution to earn a reasonable return on its capital and that requires it to offer its product below cost. This is a "confiscatory" rate, and Congress has no legal right under the Constitution to set such a rate.

The complaint further alleges that Congress may not deprive TCF of equal protection by drawing an irrational distinction between institutions with less than \$10 billion and those with \$10 billion or more in assets, and thus allowing those under the limit an unfair competitive advantage.

By joining together a drastic reduction in debit card interchange fees and then exempting 99% of issuing banks from this reduction, Congress has enacted an utterly unprecedented form of regulation. The impact of the DA will be to effectively provide the exempted banks an unlevel playing field in customer account acquisition and retention as they will maintain a revenue stream that is lost and not recoverable by regulated banks. In this environment, TCF could retain customers only by absorbing a large reduction in debit card interchange revenue. This results in a violation of the Takings Clause of the Fifth Amendment. This legal consequence will not be the result of an exercise of discretion by the Board, but instead is commanded by the strict requirements of the DA.

In an effort to stop the Board from proceeding with implementation of the required regulation under the DA, TCF seeks two forms of relief: first, a preliminary injunction to stop the Board from implementing its regulations without a prior hearing on their constitutionality and following that, a permanent injunction; and second, a declaratory judgment that the DA is unconstitutional.

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