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10 July 2009

Maribel Bondoc
Manager, Network Rules
NACHA, the Electronic Payments Association
13450 Sunrise Valley Drive
Herndon, VA 20171

Re: Request for Comment: Direct Access Registration

Dear Ms. Bondoc:

The American Bankers Association (ABA)¹ respectfully submits its comments to NACHA, The Electronic Payments Association, on the Request for Comment: Direct Access Registration (RFC). The RFC describes and invites comments on proposed changes to require additional disclosure of Direct Access status of Originating Depository Financial Institutions (ODFIs) with a focus on those parties introducing debit entries into the ACH network.

Overview

This proposal is intended to support NACHA's Risk Management Strategy by identifying ODFIs that have Direct Access relationships allowing Debit Participants to initiate debit entries. The proposal would increase the amount of information available regarding the volume of ACH debit transactions being initiated by third parties with Direct Access relationships with ODFIs. The return rates would also be tracked.

The proposed rule defines "Direct Access" as "a situation in which an Originator, Third Party Sender, or a Third-Party Service Provider transmits credit or debit entries directly to an ACH Operator using an ODFI's routing number and settlement account." ODFIs that are engaged in these relationships may become exposed to additional risk in the event of fraud or errors in the Originator's or Third Party's policies and processes. ODFIs understand they are responsible for entries initiated by their Direct Access customers and should perform due diligence on these customers,

¹ ABA brings together banks of all sizes and charters into one Association. ABA works to enhance the competitiveness of the United States banking industry and to strengthen America's economy and communities. Its members represent over 95 percent of the industry's \$13.6 trillion in assets and employ over 2 million men and women.

manage these relationships and monitor the account activity as is prudent given the risk presented.

The NACHA proposal is intended to provide greater information to the network operator by requiring registration of the Direct Access Debit Participant (DADP) and a quarterly submission of their transactions.

The proposal has four primary requirements:

1. ODFIs with Direct Access Debit Participant relationships must have those relationships approved by their board, board level committee, or its designee;
2. An ODFI must register its Direct Access status with NACHA, and those ODFIs that allow debit originations must provide additional information;
3. An ODFI with Direct Access Debit Participant relationships must submit quarterly transaction reports to NACHA; and,
4. An ODFI must report any changes in Direct Access relationships to NACHA.

Proposed Requirement 1: ODFIs with Direct Access Debit Participant relationships must have those relationships approved by their board, board-level committee, or its designee

ABA opposes the stated requirement as written. Sound operating risk management of the ACH activity does not require the involvement of, or delegation by, the depository institution's board of directors. It is sufficient that senior management responsible for NACHA compliance exercise any necessary judgment about accepting DADP relationships. Although the requirement enables a lower level official to be designated, this generally results in a superfluous routine of creating a ministerial board minute, rather than entail any informed risk-management judgment. It exalts form over substance. What is important is that management has someone who is responsible for accepting DADP relationships—not who (board or executive management) designated that person to be responsible.

The risk management structure of the individual ODFI should not be dictated by NACHA. It is sufficient for NACHA's purposes that DADPs are identified and an official at the ODFI responsible for accepting such a relationship on behalf of the ODFI is identified. Accordingly, ABA recommends that Proposed Requirement 1 be restated as follows: ODFIs with Direct Access Debit Participant relationships must identify a management official responsible for accepting those relationships on behalf of the ODFI.

Proposed Requirement 2: An ODFI must register its Direct Access status with NACHA, and those ODFIs that allow debit originations must provide additional information

ABA supports the differing registration requirements for ODFIs that do and do not participate in Direct Access Debit Participant programs and recommends that the process should be web-based to minimize costs for financial institutions and NACHA.

ABA recommends that the registration process for financial institutions that do not offer access to Direct Access Debit Participants be very simple and streamlined requiring the minimum of resources to be expended. The four basic data fields outlined in the proposal are reasonable:

1. ODFI name
2. ODFI routing number
3. Identify contact person at ODFI
4. A statement acknowledging the ODFI has no Direct Access Debit Participants

ABA agrees that the first seven of the eight categories of data requested regarding the registration of Direct Access Debit Participants under the proposal are reasonable for the financial institutions that do allow such customer participation. ABA opposes the statement called for by proposed item 8. Instead, ABA recommends simply that the contact identified in item 3 be the person authorized to approve DADP relationships on behalf of the ODFI. Accordingly, we concur in the following data fields:

1. ODFI name
2. ODFI routing number used for Debit Participant
3. Identify contact person at ODFI with authority to accept DADPs
4. Categorization of the Debit Participant as originator, third-party service provider, or third-party sender
5. Name, title, address, telephone number, and TIN for Debit Participant
6. Number of originators transmitting debit entries through the third-party service provider or third-party sender
7. Identification of ACH Operator being used for these transactions

If additional information were added to this list of required information another Request for Comment should be issued to allow financial institutions to review the recommendations before the requirement becomes effective.

Proposed Requirement 3: An ODFI with Direct Access Debit Participant relationships must submit quarterly transaction reports to NACHA

The proposal enumerates the following quarterly data reporting requirements:

1. Average daily debit entry origination volume
2. Average daily debit entry origination dollar value
3. Average daily debit entry return transaction volume
4. Average daily debit entry return dollar value
5. Average daily rates of return

ABA agrees that this data request is reasonable. It is recommended that the fifth data point be clarified. Should the average daily rate of return be based on dollar value of the transactions or the number of transactions?

Proposed Requirement 4: An ODFI must report any changes in Direct Access relationships to NACHA

ABA agrees that changes in Direct Access relationships should be reported under the proposal. ABA recommends that these updates be reported to NACHA on a quarterly basis.

Costs to Comply

ABA is not able to provide data on the exact costs for compliance, however, it should be emphasized that financial institutions that do not participate in Direct Access Debit Participant programs should not bear anything more than minimal costs under this proposed rule change.

Implementation Date

The Direct Access Registration proposal includes an implementation date of March 19, 2010. ABA finds it difficult to endorse this date, because it is the same implementation date that NACHA set in its XML proposal released in the autumn of 2008. It would be helpful to have the final requirements of the XML proposal known, so as to be able to determine if it is desirable to bring both rule changes into effect on the same day or if it is more practical to set different implementation dates. In our comments on the XML proposal, ABA requested the March 19, 2010, deadline for the XML proposal be extended due to the resource limitations many banks are currently experiencing that are being further stretched by efforts to comply with NACHA's International ACH Transaction rule change effective on September 19, 2009.

ABA recommends that NACHA consider developing a set of guidelines to coordinate future ACH system development changes to allow financial institutions participating in the ACH network to have adequate time to construct the systems development life cycle of projects cost effectively, including planning, coding, and testing of systems. In some cases this may suggest that certain independent proposals be combined to become effective on the same date, and in other cases it may suggest that the projects be implemented separately with an adequate period of time in between each effective date. Financial institutions also have to incorporate policy changes and staff training to meet regulator expectations when most changes are required. Financial institutions and the ACH network would benefit from "smoothing" the calendar around proposals requiring systems development.

ABA appreciates the opportunity to comment on the Direct Access Registration RFC. If you have any questions about these comments, please contact Stephen Kenneally at 202-663-5147 or via email at skenneally@aba.com.

Respectfully submitted,



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