American Bankers Association
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Maribel Bondoc
Manager, ACH Network Rules
NACHA – The Electronic Payments Association
2550 Wasser Terrace, Suite 400
Herndon, VA 20171

Re: Same Day ACH, Proposed Modifications to the Rules

Dear Ms. Bondoc:

The American Bankers Association (ABA)[1] respectfully submits its comments to NACHA, The Electronic Payments Association, on the proposed modifications to the rules that would implement Same Day Automated Clearing House (ACH) transactions. ABA appreciates NACHA's efforts to improve the ACH Network by making faster transactions a viable option for parties originating payments. Establishing rules to facilitate Same Day ACH (SDA) using the established ACH Network will represent a large step forward toward improving the U.S. payment system.

The proposed change would enable most ACH transactions to be processed on the same day. This same day settlement aspect of the proposal is similar to the intent of NACHA Request for Comment regarding Expedited Processing and Settlement first offered in 2011. However, this most recent proposal has addressed many of the concerns that were raised by the banking industry in 2011. Most notably, NACHA has provided more detailed research regarding customer demand for SDA and has established an economic framework that would reduce the financial strain on Receiving Financial Depository Institutions (RDFIs) by compensating them for each SDA received that would be paid by the Originating Financial Depository Financial Institutions (ODFIs). It is essential that financial institutions be compensated for providing these services. This is especially true of the RDFIs that would be required to upgrade their systems and assume ongoing increased operational costs in order to receive SDA transactions.

The United States is falling behind other countries in providing faster payments to its citizens. The United Kingdom, Singapore, Poland, Mexico, and Australia have all implemented bank-centric payment systems that provide same day payments, and in some cases, near real time payment options to their population. Consumer demand for faster payments has been demonstrated in those countries and NACHA's economic research is in agreement estimating that SDA transactions will reach 1.4 billion annually in the United States by 2027, benefitting consumers and businesses. Implementing a faster ACH process will allow the United States to

[1] The American Bankers Association is the voice of the United States' $15 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend more than $8 trillion in loans.

enjoy the benefits from swifter settlement and clearing of funds transfers. Banks will be in a position to provide services to Americans that those elsewhere in the world already have.

Successful payment systems operate with safety as the top priority. The ACH network recognizes this, and consumer protections are integrated into its operating rules. Further, banks participating in the ACH network must meet federal consumer protection requirements including Regulation E and providing deposit insurance for funds held at financial institutions.

ABA strongly supports the NACHA SDA proposal as a fundamental step to promote faster payments across the entire industry.

ABA Summary Position

ABA encourages innovations to the payments system to make it faster, safer, and more responsive to customer demand as long as the changes conform with these principles:

<u>Consumer Protection</u>
Consumers must have a clear understanding of their rights and responsibilities in the payments system. Federal law provides for numerous protections for consumers when they make electronic payments, such as protection against unauthorized charges and defined procedures for disputing a charge. Consumers expect this same level of protection in all transactions, regardless of the provider. Clear uniform protections should apply to all payments systems.

<u>Secure</u>
We must maintain the integrity of the payments system. Payments facilitate all forms of commerce, as such the stability, efficiency, and integrity of the payments system must be maintained. Consumers must have enough faith in the system to continue using it. Because of this, all participants in the payments system must maintain the necessary controls and be subject to sufficient government oversight to ensure that the integrity of the payments system is never in question.

<u>Level Playing Field</u>
The payments system must include all responsible, regulated parties. All participants in the payments system should operate by a similar set of rules and standards. This ensures that all participants have parallel financial incentives to innovate, and eliminates anomalies in the market driven solely by government policies that apply to some players but not others. It is imperative banks of all sizes be able to continue to offer products and services on the same basis as other competitors in the marketplace.

Meets Consumer and Business Needs

Market forces should be allowed to drive the evolution of the payments system, in concert with the above three principles. Enhancements in payments systems should be driven by consumer demand. This allows companies to make modifications that add value without adding unwanted costs to consumers due to government mandates.

Rules governing the payments system should encourage investment by allowing investors to price products according to consumer demand. This will encourage the investment in innovations that is critical to securing our payments system in the future.

The NACHA SDA proposal meets the standards established by these principles because the existing NACHA infrastructure and Operating Rules already conform to existing consumer protection and security thresholds and SDAs would be part of this network. The proposal would accelerate the speed of some payments while maintaining existing consumer protections and preserving the integrity of the existing payment system. NACHA's operating rules as well as federal requirements will continue to protect all participants in the process and facilitate faster payments for consumers and commercial customers. All participants in the ACH network must follow these rules and all Financial Institutions are governed by a strong set of federal regulations.

Another critical factor to consider is the economic feasibility of providing payments services. Financial Institutions must generate revenue to offset expenses over the long term to ensure their viability or they will cease to exist. The proposal includes a framework for fees to flow to RDFIs to offset a portion of the costs incurred to meet the mandated requirements to receive SDAs. This compensation will be essential to the success of SDA implementation because it will offset expenses incurred by RDFIs to upgrade and maintain faster systems. Financial institutions considering originating SDAs for customers will need to assess the level of demand for the service at a cost where a reasonable return on investment will be recouped.

ABA strongly supports this proposal and recommends that NACHA move it forward for approval by the NACHA membership with consideration given to the suggestions that follow in this letter.

Summary of the Proposed Modifications to the Rules

NACHA requests input from the payments industry on its proposal to add two additional settlement windows to each business day while retaining the conventional overnight settlement. In the current environment, a bank customer that sends an ACH file to their ODFI at 8 am would not see those payments processed until the next day using the overnight batch system.

The proposal would implement SDA in three phases beginning with allowing credits to be processed using two additional windows at 10 am and 3 pm Eastern Time. These would settle at 5 pm. Phase Two would allow debits and credits to be processed. Phase Three would introduce a third settlement time at noon for those transactions included in the 10 am window. The NACHA RFC outlines an implementation timeline where Phase One would be effective September 16, 2016; Phase two on September 15, 2017; and Phase Three on March 16, 2018.

Same Day ACH Proposal Phased In Timeline

Functionality	**Phase 1**	**Phase 2**	**Phase 3**
Transaction Eligibility	Credits only	Debits and Credits	Debits and Credits
New SDA Processing Windows	10:00 am ET and 3:00 pm ET	10:00 am ET and 3:00 pm ET	10:00 am ET and 3:00 pm ET
New Settlement Times	5:00 pm ET	5:00 pm ET	12:00 noon ET and 5:00 pm ET
ACH Credit Funds Available	End of RDFI's processing day	End of RDFI's processing day	5:00 pm RDFI local time
Effective Date	September 16, 2016	September 15, 2017	March 16, 2018

The proposal would make all ACH entries eligible for same day transactions with the exceptions of International ACH Transactions (IATs) and those valued at more than $25,000.

The proposal would institute an interbank compensation model where ODFIs would compensate the RDFIs for each SDA entry received. Based upon its projections of future volume and the cost of implementation and ongoing expenses, NACHA has determined that the proper compensation fee is 8.2 cents per transaction.

ABA Response to the Proposed Modifications to the Rules

In its analysis of the proposed changes, ABA has considered the potential costs and benefits of implementing the proposal. This new proposal has provided much more detail on projected consumer demand and subsequent volume. It has also outlined an interbank compensation framework that provides clarity to the RDFIs, allowing them to offset costs associated with complying with a mandatory system upgrade.

Analysis

Interbank Compensation

Interbank compensation is essential for SDA to be implemented successfully. Financial Institutions only will exist as long as costs are offset by revenues. One of the challenges of implementing viable SDA is that it must be universally accepted, i.e., every Financial Institution must be able to receive SDA transactions. Financial Institutions that choose to develop and sell SDA products and services will be able to recoup development costs while those that operate only as RDFIs would bear the costs. It would be challenging for RDFIs to charge fees to their own customers receiving SDAs. A customer receiving a payment has no control over whether it was sent via SDA or next day ACH making it awkward to assess a fee to the Receiver for actions taken by the Originator.

The proposed fee attempts to overcome this imbalance by instituting an 8.2 cent levy on each SDA transaction. The fee would flow from the ODFI to the RDFI as compensation for developing and maintaining a system to accept SDA transactions. NACHA's research indicated that, based on forecasted SDA volume, and one-time implementation costs and ongoing operating costs, 8.2 cents per transaction was the proper amount to compensate RDFIs without discouraging ODFIs from offering these new services.

According to NACHA's research, the interbank compensation amount of 8.2 cents per SDA is justifiable for all financial institutions in the aggregate and is based on a long term approach to implementation and cost recovery. In fact, the 8.2 cents would allow RDFIs to recover a portion of implementation costs, maintenance costs, and a commercially reasonable rate of return only after an estimated 11.5 years. Further, the proposal would <u>not</u> allow the rate to increase at any time. However, if forecasted volume exceeded expectations, the rate could be lowered after the fifth and eighth years of operation. After ten years, a new economic analysis would be conducted to determine the future rate to be used after the initial 11.5 year period ended. The future rate would exclude compensation for implementation costs.

While the 8.2 cents may be the proper compensation amount based on the aggregate of Financial Institutions, we recognize that a large number of banks that receive relatively low volumes of SDA transactions will receive correspondingly low interbank compensation, but they will have fixed implementation costs and ongoing maintenance costs regardless of the low volume of transactions. That will negatively affect net revenues for some Financial Institutions. Essentially the interbank compensation proposed will allow some institutions to reduce their losses.

The interbank compensation fee will not offset all costs for banks and NACHA has gone even further by instituting safeguards to ensure that it never increases. If actual SDA volume exceeds the projections by more than 25% in the fifth year of operation, then the fee would be decreased to a level that would ensure the 11.5 year payback period is met. A similar review will take place reviewing the volumes in the eighth year. When the 11.5 year cost recovery period has ended, the fee will be adjusted to exclude any portions related to implementation costs.

It is important to note that SDA transactions are not to be mandated. It is the choice of the Originator whether to opt for a faster ACH payment compared to a conventional overnight transaction. Regularly occurring transactions such as mortgage payments or salary received through Direct Deposit work well using the cheap, safe and established overnight batch process. In fact, conventional transactions work well for the vast majority of ACH transactions. NACHA's own research indicated that only 12% of network volume would benefit from expedited processing.

Originators selecting the SDA method of making a payment will be doing so out of choice, not necessity. They will be aware of the benefits of a speedier transaction and balance those against the increased cost of the transaction. When the Originator believes the faster processing is worth 8.2 cents then it will select SDA and its associated fee. The FIs are offering an enhanced product to Originators and the Originators decide when it makes economic sense to use it. Consumers face similar choices every day when shopping on line. If there is no urgent need to receive purchased goods they can opt for the low cost shipping and receive the package in 3-5 days. When they need the goods sooner, they can opt for overnight shipping which is more expense.

ABA strongly supports the interbank compensation fee model as a method to help RDFIs absorb at least a portion of the costs of implementing and maintaining SDA functionality.

Phased In Approach

The SDA proposal would institute a phased in approach that would begin first with processing credits only during the two new same-day ACH processing windows. In Phase 1, all FIs would be required to accept SDA credit transactions in September 2016. Interbank settlement would occur at 5 pm and funds would be credited to customer accounts at the end of the RDFI's processing day.

In Phase 2, SDA debits would be made eligible to be processed during the two same-day ACH processing windows. This would be effective in September 2017.

In Phase 3, an additional interbank settlement time of 12:00 noon ET would be added to settle transactions entered in the 10 am same-day ACH processing window. Those transactions in the 3 pm same-day ACH processing window would be settled at 5 pm ET. RDFIs would be required to make funds available to Receivers by 5 pm local time.

The phased in approach enables Financial Institutions to plan their system upgrades over a period of almost three years. The Phase 1 updates would be required of all ACH participants. It is important to note that the requirement is to be able to receive SDA transactions and not originate them. This first deadline is set approximately 15 months after NACHA anticipates releasing a final rule. Financial Institutions wishing to originate SDAs would elect to absorb the added obligation of upgrading their systems to provide products and services to their customers by September 2016 or they could introduce the new products at a later date. The phased in approach allows Financial Institutions the flexibility to build in their upgrades all at once or to do so incrementally over an approximately 33 month period.

ABA supports the phased in approach as described in the proposal.

Abbreviated Processing Times
Phase 3 of the implementation process would institute a new requirement that RDFIs provide funds availability to customers at 5 PM local time. This is a significant change from Phases 1 and 2 when credits must be made available at the end of the RDFI's processing day, usually later than 5 pm.

According to the proposal, RDFIs would receive files from the ACH Operators for the afternoon SDA window at 4 pm ET. RDFIs and/or their core processors would need to download the data, validate it, process the file, balance the processing and update their system to reflect the SDA transactions. There are many steps involved and only 60 minutes allowed the RDFI to complete the task for banks in the Eastern Time Zone, 120 minutes for those in the Central Time Zone, etc.

The abbreviated afternoon SDA processing window is particularly unfair for Financial Institutions operating in the Eastern Time Zone. These Financial Institutions would have only 60 minutes to complete the process while banks in other time zones would have substantially more time. Allowing additional time would reduce the possibility of errors occurring and also allow more time to fix whatever errors do occur. An additional hour to complete these tasks efficiently would be invaluable. Financial Institutions that can post the credits sooner than 6 pm would be allowed to continue to do so for the benefit of their customers.

ABA recommends that the deadline for granting ACH credit to customers be changed from 5 PM Local Time to 6 PM Local Time.

Identification of Same-Day ACH Items
The NACHA proposal would use the Effective Entry Date field in the ACH batch to identify SDA items. Items that are meant to be processed on the same day would have that day's date populated in the Effective Entry Date field located in the Batch Header Record. Items with the current date populating that field that meet ACH Operator deadlines for being processed in the

10 am morning window would settle at noon. If the item meets the ACH Operator deadline for the 3 pm afternoon window, it would settle at 5 pm. If the item contains the current date in the Effective Entry Date field, but is received by the ACH Operator past the SDA deadlines it would be processed the next day with the regular overnight ACH batch.

ABA appreciates the effort to utilize an existing field to identify SDA transactions, but it could prove troublesome. Two separate entries could have the same Effective Entry Date field with two different settlement intentions and two different fees.

- Consider an Entry submitted to the ACH Operator on the evening of 2/13/14 in the overnight batch to be processed conventionally the next day with an effective date of 2/14/15.
- Consider a second entry originated on the morning of 2/14/15 with an effective date of 2/14/15 and it is intended to be an SDA.
- Consider a third entry originated at noon on 2/14/15 and intended to settle the next day, but inadvertently has 2/14/15 as the effective date.

One of these transactions would be a conventional ACH transaction, one an intended SDA, and the third an unintentional SDA, but all three would have the same information in the Effective Entry Date field. Identifying historical records to determine whether an Entry should have been designated SDA or not will be challenging for ODFIs and RDFIs. This could also hamper the fee assessment process if it is not clear which transactions would be subject to interbank compensation offsets.

Using the Effective Entry Date also raises the possibility of customers entering the current date by default or by mistake when it should have been effective on the next day. This could result in credits or debits being made a day early. This could cause a customer to be charged a transaction fee wrongly for an unintended SDA. It would also cause problems if the transaction debited an account earlier than anticipated by the Receiver of the transaction, increasing the risk of an entry being returned for insufficient funds.

A better choice would be to clearly identify SDA transactions through the use of a new Service Class Code located in the Batch Header Record. This would help clarify the intent of the Originator submitting the file that it wants to originate an SDA transaction. Batches submitted with the SDA Service Class Code would be processed same day and all others would be processed conventionally. Programming for a new Service Class Code would add an additional expense for ODFIs and for customers creating ACH files, but it would preempt any disputes (and related expenses) associated with whether a transaction should have been processed the same day or through the conventional process.

ABA recommends that a new Service Class Code be implemented specifically to identify SDA transactions.

Conclusion
ABA supports faster, safer payments and, consequently, supports the NACHA Same Day ACH proposal to add two additional ACH settlement windows on each business day. The established operational structure of the ACH network along with its established operating rules facilitates taking this first step towards faster payments in the United States.

ABA appreciates the opportunity to comment on the Same Day ACH proposal. If you have any questions or comments please contact the undersigned at skenneally@aba.com or by telephone at 202.663.5147.

Sincerely,

Stephen K. Kenneally
Vice President
Center for Payments and Cybersecurity Policy