

By electronic delivery
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June 10, 2011

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

Re: Corporate Account Takeover, Request for Comment, April 29, 2011

Dear Ms. Bondoc:

The American Bankers Association (ABA)¹ respectfully submits its comments to NACHA, The Electronic Payments Association, on the Request for Comment: Corporate Account Takeover (RFC) published on April 29, 2011. The RFC describes and invites comment on two proposed provisions of the NACHA Operating Rules intended to protect the integrity and security of the ACH Network and its participants. ABA applauds NACHA's efforts to mitigate the risk associated with unauthorized ACH transactions out of commercial customer bank accounts.

Overview

The first of two proposed amendments to the rules, referred to as the "Sound Practices Rule," is intended to increase the communication of industry practices to non-consumer Originators and Third-Party Senders to reduce the risk associated with unauthorized transactions. The second amendment, referred to as the "Availability Exception Rule," is intended to provide additional time to a Receiving Depository Financial Institution (RDFI) to investigate suspicious credit Entries before making them available to the account holder.

The Sound Practices Rule would require—

1. Originating Depository Financial Institutions (ODFI) to provide Originators and Third-Party Senders with current industry sound practices to prevent unauthorized credit entries from being initiated in non-Consumer Accounts on an annual basis.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

2. Third-party senders to provide their originators, on an annual basis, with current industry sound practices to prevent unauthorized credit entries from being initiated from non-consumer accounts.

The Availability Exception Rule would—

1. Provide an RDFI that reasonably suspects that a credit entry is unauthorized with an exception to the Rules provisions requiring the RDFI to make certain credit entries available to customers more quickly than required under Regulation CC.
2. Require the RDFI to notify promptly the ODFI if the RDFI makes use of this exception to the funds availability requirements.

ABA Comments

The Sound Practices Rule

ABA recognizes the threat posed by Corporate Account Takeover toward commercial customer accounts and the value of increasing awareness of the issue among Originators. The incidents have been widespread and have affected a large number of banks and account holders. NACHA plays a valuable role in educating all participants, including Originators and Third Party Senders, in the ACH Network of the risks and how to reduce the chance of being compromised. Financial institutions share the same concerns and expend significant effort and resources on improving customer risk management procedures. These efforts are motivated by improving the customer relationship, providing a customer service and protecting the financial institution interests at the same time. Educating customers about risk and helping them to thwart risk is, at its core, a customer relationship issue.

The intent of the proposed Sound Practices Rule would be better served if it were posed as guidance and not a formal rule. Many banks are already conducting similar efforts to educate their customers, and making this a formal requirement would add to the cost of executing the campaigns. Banks that need additional incentive to promote enhanced risk management procedures would be able to take advantage of the NACHA materials to increase their customers' security awareness.

Adopting these practices as a rule will tend to make them too rigid and inflexible to meet the dynamics of the vulnerabilities that are posed by Corporate Account Takeover schemes. Making current practices into rules will also have a tendency to confuse them with "commercially reasonable" standards, with unintended consequences for the liability of contractual parties in the payments system. Consequently, ABA members strongly oppose codifying these practices into formal rules.

ABA strongly recommends that NACHA continue its education efforts to mitigate the risk associated with Corporate Account Takeover, but to do so as guidance and not in a formal rulemaking. ODFIs would be able to utilize NACHA's library of sound business practice documents as it creates customer risk mitigation programs. NACHA would also be able to continue its education campaign through its existing communication channels

to spread the word on how ACH participants can protect themselves. NACHA can use a wide range of vehicles to educate its stakeholders, including its conferences, the Risk Management Tools and Resources section of the NACHA web site, through its Regional Payments Associations, newsletters, and ACH Operations Bulletins. ODFIs will be able to use this information to incorporate improved risk management applications into their own internal practices, mitigating the risk of Corporate Account Takeover without the disadvantages associated with it being a part of the formal Rules.

Adopting this proposal as guidance should not be construed as adding any additional requirements on ODFIs to impose detailed compliance procedures on Originators or Third Party Senders to ensure that they are meeting the guidelines.

The Availability Exception Rule

The intent of this proposed change to the Rules is to provide an exception to the funds availability requirements if the RDFI has a reasonable suspicion that a credit entry was not properly authorized. This rule change would also allow RDFIs to delay funds availability if they are notified that the ODFI has a reasonable suspicion of the entry's authorization.

An additional benefit provided by this proposal is that it would also help in situations where transactions were authorized under false pretenses. Consider a fraudster that was aggregating funds in an account through a scheme where the fraudster purportedly overpaid for items with forged checks and asked recipients to refund the overpayment with an ACH credit. A vigilant ODFI may recognize this pattern and delay funds availability to follow up with the ODFI. In this case, the ACH transaction may have an apparently valid authorization, but the underlying reason for that authorization may be false.

ABA supports this proposal to provide an exception to funds availability at the discretion of the RDFI if an unauthorized entry is suspected. It will allow aberrant entries to be validated before the funds are released. Further, ABA supports the requirement that the RDFI inform the ODFI of any delay in availability as long as the notification method is fast and efficient, such as a telephone call or email, and does not create an administrative burden.

ABA appreciates the opportunity to comment on the Corporate Account Takeover RFC. If you have any questions about these comments, please contact the undersigned at 202.662.5147 or via email at skenneally@aba.com.

Respectfully submitted,



Stephen K. Kenneally