

August 19, 2011

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

Re: Pain Points in the Rules-Phase Two

Dear Ms. Bondoc:

The American Bankers Association (ABA)¹ respectfully submits its comments to NACHA, The Electronic Payments Association, on the Pain Points in the Rules-Phase Two request for comment (RFC) and additional information on potential rules changes published on June 27, 2011. ABA appreciates NACHA's efforts to resolve chronic problem areas identified during the Rules Simplification Project. The RFC invites comment from the industry on five proposed changes to the rules and seeks preliminary input on three other areas of the rules that may be subject to change in the future.

It is ABA's position that two of the areas addressed in the RFC need further review before they are incorporated into the ACH Network Rules. Risk mitigation regarding the authorization of corporate debit entries is important, but the proposed rule change places a disproportional obligation and cost on Originating Depository Financial Institutions (ODFIs). Managing these risks is best left between the parties involved and not the ACH Network. Similarly, the proposal to add a new Return Reason Code for Stop Payments adds new costs and burdens on ACH network participants with little benefit. As noted in ABA's comments on this issue last year when NACHA asked for preliminary input on the topic, creating new Return Reason Codes should not be undertaken without there being a clear demonstration that the benefits outweigh the costs. ABA's position remains consistent in opposition to the proposed creation of the new codes, because there are more efficient means available to address the issue.

ABA Response Regarding the Request for Comment and the Request for Information

In assessing the changes proposed by NACHA, ABA has considered the potential benefit of the proposed changes, the cost to implement these changes, and the effective dates of the changes. In cases where there is a low implementation cost there is a correspondingly lower threshold for

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.

evaluating the potential benefit of the change. Conversely, where the cost of implementation is high or difficult to define, the potential benefit of the change must be held to a higher standard.

Request for Comment

1. Authorization Requirements for Corporate Debit Entries and Proof of Authorization

The proposed amendment would establish new standards for documenting the validity of authorizations of debit entries to non-consumer accounts. This is an important issue for banks with commercial customers who may be at risk from unauthorized debits. The proposed rule imposes new requirements on ODFIs to provide information regarding the authorizations to the Receiving Depository Financial Institutions (RDFIs) upon request. First, it would require that the authorization for a debit entry to a non-consumer account be in writing or some other reproducible form. Second, it would permit an RDFI to request a copy of the corporate Receiver's authorization. Third, it would require an ODFI to provide a copy of the authorization to the RDFI within ten banking days of the RDFI's request.

There are numerous hurdles to overcome to comply with this proposed rule, including difficulties associated with the fact that often the ODFI's customer has an agreement with the RDFI's customer to debit its account for services or goods rendered. Often, these agreements are confidential and neither customer would like the terms of these agreements shared with outside parties. These agreements contain the terms of which authorizations may be made, but may not contain authorizations of each individual transaction. The terms regarding the authorization of debiting the account may be one small section of a much larger agreement that contains competitive pricing and marketing information that neither party would like to share with any financial institution.

As proposed, the ODFI would be subject to substantial operational expenses and legal encumbrances related to obtaining, maintaining, and distributing non-consumer customer agreements upon request to the RDFI. The proposal would impose a protection regime that is unnecessary in the overwhelming majority of instances. Clearly these costs exceed the benefits obtained. In its comment to NACHA dated September 30, 2010, ABA noted that it is impractical to expect ODFIs to maintain libraries of authorization agreements that have been negotiated between their customers and those customers' business partners. This continues to be the case and makes the proposed rule impractical to implement.

ABA opposed this solution in its September 30, 2010, comment and continues to oppose it. The proposal improperly shifts the burden of a commercial arrangement onto the ACH system and further shifts the burden from the Receiver who has authorized the payment method to the ODFI. The obligation to secure this payment arrangement should be borne by the Receiver who has the ability to obtain within the context of its commercial agreement with the Originator all necessary information to advise the RDFI about expected authorized debit activity in order to protect its account. This places the Receiver and the RDFI in the best position to evaluate the benefits received from risk management options for the costs incurred in protecting the account. There are technical solutions available that mitigate this risk by allowing RDFIs to block and/or filter ACH debits from being transacted through designated accounts. However, these fee-for-service

products can only be implemented when authorized by the corporate customer. Corporate customers conduct their own risk management analyses to assess whether the filters and blocks are worthwhile.

In the prior Request for Information on this topic, NACHA considered exploring methods to resolve these problems “outside the Network.” This means that these disputes would not be treated as violations of ACH Network rules, but as contractual disputes between trading partners. One of the ways that these disputes could be resolved faster would be for the ODFI to provide the Originator’s contact information to the RDFI upon request when it is researching a disputed transaction. ABA recommends that NACHA reconsider this approach as part of its continuing review of the issue, as it would leave the incentives for account protection in the proper current alignment while facilitating RDFI resolution of disputes with a minimum amount of burden on the ODFI.

2. Stop Payments

The proposed amendment would make changes in three areas of the existing rules. First, it would create a new Return Reason Code to be used for the return of entries relating to a stop payment order from the Receiver to stop “all future entries.” Second, it would limit the use of the current Return Reason Code Payment Stopped (R08) to stopping a single payment. Third, it would clarify the effective period for stop payment orders by non-consumers.

The first two changes are intended to reduce the confusion surrounding stop payment orders issued by a Receiver when there is an ongoing stream of payments. Consider the example where a consumer has authorized his account to be debited by a health club on a monthly basis. The current Return Reason Code (R08) can be used to stop a payment, but it can also be used to stop some or all future debits to the account by the health club. This is a source of confusion. This proposed rule change would designate R08 to be used only when stopping a single payment. The new R90 would be used to stop all future entries by the health club.

ABA recognizes the issue being addressed by the proposed stop payment orders but opposes the proposed rule change that would create a new Return Reason Code stopping all future payments. ABA believes that creating a new Return Reason Code for this purpose is not necessary and would create unreasonable costs and burdens on financial institutions with little benefit. There is an existing mechanism in place already that would stop all future payments; the customer can revoke authorization using R10, Customer Advises Not Authorized. ABA recommends that the proposed new definition of R08 be accepted and used to stop single payments and that R10 be used to stop all future payments. It may be necessary to review the R10 definition, but no new Return Reason Code is needed.

When an RDFI customer expresses the desire to stop all payments from a certain Originator, the RDFI should encourage the customer to contact the Originator directly to revoke the authorization for any future debit. This should stop the unauthorized entries from being originated in the first place, eliminating the need for a stop payment order.

The third aspect of this rule would clarify the time limits on stop payments by non-consumers. The current rule states that stop payments issued by non-consumers expire at six months unless renewed in writing. This does not take into consideration the circumstance where the return is made prior to the six month term being completed or if the Receiver withdraws the stop payment order. The proposed rule would mandate that written stop payment orders remain in effect until the earlier of the withdrawal of the stop payment order by the Receiver, the return of the debit entry, or six months, unless renewed in writing. ABA concurs with this change if it would apply only to the redefined R08 without the creation of any new Return Reason Codes.

ABA recommends that this proposed rule change be modified prior to adoption. ABA opposes the creation of a new Return Reason Code R90. No return reason code is needed to stop ongoing future payments, because Return Reason Code R10 can be used to revoke authorization for those transactions. ABA agrees with the proposal that Return Reason Code R08 be limited to single payments. ABA agrees with the change of effective dates for stop payment orders as proposed with the clarification that they will apply to the newly defined R08 to stop single payments.

3. WEB Exposure Limits

This proposed rule change would eliminate the requirement that ODFIs establish separate exposure limits for Originators and Third-Party Senders for transactions assigned the WEB SEC Code. These transactions would include transactions initiated over the Internet and over mobile devices. The change is being proposed because the underlying rule has been superseded by a newer rule, the Risk Management and Assessment Rule, effective in June 2010. The newer rule requires ODFIs to establish exposure limits for all Originators and Third-Party Senders, not just those associated with WEB transactions.

ABA recognizes the benefit of eliminating this duplicative rule with negligible cost associated with making this change by the proposed effective date of 30 days following approval of the change. ABA supports this rule change.

4. Dishonor of Untimely Returns

This proposed rule change would remove the requirement that an ODFI or its Originator must suffer a loss in order to dishonor a return that is untimely. Under ACH Network Rules, RDFIs are allowed to return entries to ODFIs for specific reasons and within certain time limits. When ODFIs receive these return entries they may accept the return or dishonor it under certain circumstances. The current rules require that an ODFI can only dishonor a return as untimely if two conditions are met. First, the return must be returned outside of the allowable time limits. Second, the delay must have caused a loss to the ODFI or the Originator. In the current environment, it is difficult to implement an automated process for managing untimely returns, because ODFIs must not only determine if the return is late, but then they must research the issue to determine if there is an associated loss.

ABA recognizes the benefits of eliminating the requirement to determine if an untimely return has caused a loss. The change will allow ODFIs to automate the process by dishonoring returns without having to research whether it is associated with a loss. It will also enhance the ODFIs'

ability to manage risk associated with having to return funds after the return deadline has passed. The costs of implementing this change will be low and will allow for more efficient processing or returns. The proposed effective date of 30 days following the rule approval of the change is reasonable. ABA supports this rule change.

5. Modification of Accounts Receivable (ARC) Entries to Accommodate Checks Tendered In Person for the Payment of a Bill at a Manned Location

This proposed rule change would simplify processing checks as Accounts Receivable (ARC) entries at lockbox locations when the checks are not received via U.S. Mail. Under the current rules, Originators of ARC transactions are restricted to processing checks that are received through the U.S. Mail or deposited in a drop box. Difficulties arise when customers at corporate service centers physically hand over a check for payment. In order to process these transactions through ARC rules and processes, the corporate clerk could not accept the check and would have to request that the customer mail it or place it in a drop box at that location. If the clerk accepted the check, then it would need to be processed under more burdensome rules associated with the Back Office Conversion (BOC) SEC Code. This rule change would allow checks received through any channel, including mail, courier, lockbox, and in-person be processed through a single ARC workflow.

ABA recognizes the benefits of simplifying the payments process and the difficulties of processing checks associated with one payment stream under two different sets of rules. This rule change is sensible, because it conforms to meet real world needs associated with check payments efficiently. The costs of implementing this change will be low and will allow for more efficient processing of check deposits. The proposed effective date of 30 days following the rule approval of the change is reasonable. ABA supports this rule change.

Request for Information

1. Prenotification Entries-Effectiveness and Function

The proposal asks for industry input on several areas related to Prenotification Entries (prenotes). Prenotes are non-dollar entries sent through the Network by the Originator to an RDFI with all of the information that will be included on future entries, with the exception of a transaction code and dollar amount. Sending prenotes is optional, and they are used to validate that the account numbers are accurate prior to initiating a live transaction. Upon receiving a prenote, the RDFI must either return the entry or send a Notification of Change to the ODFI within two banking days of the settlement date if the account number information is inaccurate. If the account number is valid, the RDFI is not required to respond. Originators are not allowed to initiate live entries until six banking days following the settlement date of the prenote to allow enough time for the RDFI to respond.

ABA believes that the voluntary system in place now works well for all parties. There may be value in shortening the timeframes involved in the prenote process relating to the RDFIs sending notifications of change and the related six-day waiting period after a prenote where the ODFI is

prohibited from initiating an entry. These systems are fully automated and may be leveraged to accelerate the process. ABA recommends that NACHA explore this opportunity.

Industry participants are also asked to provide comments on the cost or burden to the RDFI of verifying not only the validity of the account number in a prenote, but also validating the ownership of the account. Comment is also sought regarding the potential value of this proposal to ODFIs.

The cost to RDFIs to implement an account number/account ownership validation process would be substantial, and establishing an equitable system of compensation would be challenging and require a capital investment at a time when capital is unusually scarce.

Consider that under the current rules, prenotes are not required. Some ODFIs opt to send prenotes to confirm the validity of account numbers prior to initiating a live transaction. Other ODFIs do not consider this to be an efficient use of time and resources. This request for information suggests considering that RDFIs incur significant costs to provide additional information to *some* ODFIs at the option of the ODFI when Network Rules do not even consider matching the account number to be necessary. It does not make sense to consider a mandate to provide an enhanced level of information on an optional request.

Some RDFIs may elect to provide this account validation as a service to their customers or to ODFIs. They will continue to be allowed to do so even without such a mandate.

ABA opposes any mandates related to expanding the prenote validation process.

2. New Dishonor and Contested Dishonor Codes to Correct Unjust Enrichment Through the Reversal Process

The proposal asks for industry input about the concept of creating a new Return Reason Code to be used by ODFIs when the reversal process results in an unintended payment to and enrichment of the receiver. This situation may occur when an Originator transmits a debit to a Receiver in error. Two days later the Originator realizes the mistake and transmits a reversal, crediting the Receiver's account. In the interim, the RDFI identified the error as well and returned the debit entry. The result is the Receiver's account was not debited and then re-credited, but ended up being credited in error by the ODFI enriching the customer.

Correcting these situations becomes complex as ODFIs can try to reverse the original reversal. The creation of a new Return Reason Code would simplify the research process for the RDFI to resolve the discrepancy.

ABA notes that although these situations do arise they are relatively rare, and the creation of a new Return Reason Code is unwarranted. The cost of creating a new Return Reason Code and implementing system changes across the industry would need additional economic justification. It would also be helpful to gather information on how often this situation occurs within the Network.

3. Notifications of Change (NOC) for Single-Entries

The proposal asks for industry input on whether to change the current NOC process as it relates to Single Entry Transactions. NOCs are non-dollar entries transmitted by an RDFI to the ODFI when it receives a transaction with incorrect information. NOCs identify the entry that was received, pinpoint the specific information on that entry that is incorrect, and provide the correct information in a precise format. Currently all Originators are required to act on NOC information received within six banking days of receipt of such data or prior to originating a subsequent transaction to the Receiver's account. This applies to recurring payments and to one time Single Entry Transactions.

NOCs are valuable when the RDFI provides information to the ODFI to enable it to make needed corrections to a recurring stream of payments. NOCs are not valuable for a Single Entry Transaction that is completed before the ODFI even receives the updated information. Maintaining a database of information that may or may not be used in the future is difficult to justify.

ABA is in favor of a further discussion regarding changing the rules related to NOCs and Single Entry Transactions. Of the three options outlined in the proposal, ABA recommends that NACHA explore Option #1. This option would modify the NOC rules to eliminate the Originator's requirement to act on a change for Single Entry Transactions. Originators could choose, but not be obligated, to act on any NOC response.

ABA appreciates the opportunity to comment on NACHA's Pain Points in the Rules- Phase Two proposal. If you have any questions about these comments, please contact the undersigned at (202)663-5147 or via email at skenneally@aba.com.

Sincerely,



Stephen K. Kenneally
Vice President
Center for Regulatory Compliance