

By electronic delivery
Mbondoc@nacha.org

September 30, 2010

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

Re: Pain Points in the Rules, Request for Comment, August 17, 2010

Dear Ms. Bondoc:

The American Bankers Association (ABA)¹ respectfully submits its comments to NACHA, The Electronic Payments Association, on the Request for Comment: Pain Points in the Rules (RFC) published on August 17, 2010. The RFC describes and invites comments on several proposed changes to the ACH Network Rules (Rules) that were identified during NACHA's Rules Simplification project. The proposed changes to the Rules are intended to resolve chronic problems not directly included in the scope of the Rules Simplification project. In addition to the comments sought on the proposed changes, NACHA also seeks information on three topics that may be the subjects of future proposed rules changes.

Overview

NACHA is seeking industry comment on seven proposed changes to the Rules. Some of these proposed changes may require financial institutions to make substantial changes to their ACH systems, and other changes would have little to no effect on most ACH participants. NACHA specifically seeks comment on the benefit of the proposed changes, the cost to implement the changes, and the implementation date. Correctly, NACHA recognizes that all three of these factors must be considered in order to determine if it is practical to support a change in the Rules. A proposed change that is clearly beneficial and cost effective would not be practical if the implementation date did not provide enough time for Network participants to prepare for the change. Five of the proposed Rule changes are slated to become effective on January 1, 2011, and two are proposed to become effective

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.

on June 17, 2011. ABA proposes that some of these implementation dates be adjusted in its comments.

NACHA has identified three other areas as sources of “pain” for Network participants, but it is gathering additional information before releasing proposed changes to the Rules. ABA also provides information regarding these issues in this comment letter.

ABA Comments

- **Request for Third-Party Senders to conduct annual Rules compliance audits**

Under the current Rules, Third-Party Senders are exempt from the requirement that originating depository financial institutions (ODFIs) conduct annual audits of their compliance with the Rules. However, even if the audit is not required, the ODFI is liable for any violations of the Rules that Third Party Senders commit while performing an ODFI function. NACHA recognizes that these Third-Party Senders are active participants in critical phases of the ACH origination process and therefore represent possible risk to the system.

The proposed change to the Rules would remove the exemption from the annual audit requirement applying to Third-Party Senders. The ODFI would have no affirmative requirement to determine if the Third-Party Senders conducted the audit under the proposed Rule, but it would continue to be the ultimate responsible party ensuring the Third-Party Sender’s compliance with the Rules.

ABA would support this Rule change if the language explicitly stated that ODFIs are not responsible for affirming that the Third-Party Sender audit was completed and that there are no extensive documentation requirements regarding the audits placed upon the ODFIs. While the audit requirement may provide some risk mitigation benefit, the key factor in protecting the network remains unchanged: the ODFI is responsible for the actions of its Third-Party Sender’s actions. The enlightened self interest of the ODFI is the strongest risk mitigation factor.

- **Removal of language regarding days on which a financial institution or facility is closed**

ABA supports this Rule change.

- **Clarification of rule requiring an receiving depository financial institution (RDFI) to return a credit entry returned to it by its consumer customer**

ABA supports this Rule change.

- **Clarification of reasons for the dishonor of a return by an ODFI and the contesting/correcting of that dishonor by an RDFI**

ABA would support this Rule change if the implementation date were moved to July 1, 2011. This proposed change would require financial institutions to make system upgrades that would be difficult to implement during the short time period between when these Rule changes are finalized and January 1, 2011. The additional time would ensure that the changes would be implemented properly. In addition, it would benefit all Network participants if NACHA were to clarify all of the return reason codes and transactions to which they could apply and create a table or graph for financial institutions to use as a reference.

- **Removal of language regarding warranties and liabilities of associations**

ABA supports this Rule change.

- **Clarification of requirements regarding revocation authorization for single entries**

ABA would support this Rule change to require that an authorization must include revocation language for single-entry WEB and TEL transactions if the implementation date were moved to March 1, 2012. The additional time is needed to implement any system changes and to allow the updating of policies and procedures.

Additionally, NACHA asks for input regarding whether ARC, BOC and POP coded transactions (Accounts Receivable Conversion, Back Office Conversion, and Point of Purchase) should be clearly exempted from this revocation language requirement. ABA supports this change since these transactions generally involve a very narrow time window between when they are authorized and when they are executed. In practical terms, there is little chance that the payments could be halted once original authorization is received.

NACHA asks for input regarding whether to allow the use of R07 “Authorization Revoked” for POP, single-entry WEB, and single-entry TEL transactions. Currently, the Rules prohibit using R07 as a return reason code for these transactions. ABA supports prohibiting the R07 code from being used for POP transactions because by the time that the code can be used, the transaction has already taken place. At that time, it is more accurate to use the code for “unauthorized transactions” for POP. ABA would support allowing the R07 return reason code for WEB and single-entry TEL transactions as long as there was adequate time for financial institutions to make the necessary changes. This would require at least a six month time period after the Rule change is made final before it becomes effective.

- **Require ODFIs to provide information regarding return entries to Originators**

ABA strongly opposes this proposed Rule change to create a specific requirement that an ODFI must provide its Originator with information related to return entries within two banking days of receipt or as determined by agreement. The Originator is a customer of the bank that is not a direct participant in the ACH Network. This proposal would unnecessarily interject the ACH Network rules between a bank and its customer. This is a customer service issue that is best addressed directly by the ODFI and its own customer and not through a formal rule governing ACH Network participants. ACH Network Rules should be directed at issues that affect the Network and not the relationships between financial institutions and their clients.

Request for Information

ABA submits these comments to NACHA along with the offer to provide additional assistance from the financial institution perspective as any proposed changes to the Rules in these areas are contemplated.

- **Authorization Requirements for corporate entities; proof of authorization for corporate entities**

This is an important issue for banks with commercial customers. However, there is no immediate solution to the problem of resolving circumstances where the Receiver claims that a debit to its account by a business partner was unauthorized. It is often the case that the authorization to debit funds from an account is included in the contract between the commercial parties. It is not practical to expect the ODFI to maintain a library of contracts entered into by its customers. Nor is it likely that the commercial customers would like to have the details of those contracts in the possession of the bank.

Exempting the ODFI from providing proof of authorization if the entry is returned is not appropriate. Doing so would suggest that banks would base their decision to return funds on the costs of providing the required proof and not on a determination of whether the transaction was truly authorized. This would result in a larger percentage of low value entries being returned based on the value of the transaction, not on the veracity of the claim.

Requiring the ODFI to provide the Originator's contact information to the RDFI for resolution outside the Network has the potential to be a solution but further research and details are needed on how this would work in practice before this method can be endorsed.

- **Notification of Change (NOC) for Single-Entries**

ABA strongly opposes the requirement that NOCs be transmitted to ODFIs to correct information related to single-entry transactions. NOCs have value when the RDFI provides information to the ODFI to enable it to make needed corrections to a recurring stream of payments. By definition, single-entry transactions are finalized before an ODFI would even receive a NOC. There is no benefit to making corrections to an entry that has been completed.

The request for information notes that many single-entry transactions are initiated on a regular basis, similar to a recurring transaction, and that there may be value to generating a NOC to make corrections. However, this would require NOCs for all single-entry transactions, not just for those single-entry transactions that are submitted regularly. This would be a waste of time for the majority of transactions. An alternative course of action would be to improve the ODFI practice of identifying recurring transactions instead of labeling them as single-entry transactions.

- **Stop Payment Return Reason Codes**

ABA supports the effort to resolve the problems associated with the uncertainty applying stop payments orders to single transactions or to all of the recurring payments in the stream. In general, ABA opposes introducing a new return code for this purpose while recognizing that putting additional information regarding stop payment details into addenda records can be difficult. If possible, it would be preferable to modify one of the existing return codes in an effort to clarify whether a stop payment order applies to a specific payment or to all payments in that stream. Any proposed changes to the Rules should eliminate the existing ambiguity.

ABA understands that this approach must be well researched to ensure a smooth implementation for ODFIs, RDFIs, and the Originators. One of the keys to a successful implementation will be the ability of the ODFI to explain the difference in the stop payment orders to the Originator so that the entry will correctly represent the Originator's wishes.

ABA appreciates the opportunity to comment on the Pain Points in the Rules RFC and to provide information to help shape future Rules proposals. 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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