American Bankers Association
Building Success. Together.

Stephen Kenneally
Vice President
Center for Regulatory Compliance
Phone: 202-663-5147
skenneal@aba.com

By electronic delivery
Mbondoc@nacha.org

June 24, 2011

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

Re: Risk Management Enhancements, Request for Comment/Information, 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/Information: Risk Management Enhancements (RFC) published on April 29, 2011. The RFC describes and invites comment on six proposed provisions the NACHA Operating Rules intended to protect the ACH network participants by improving risk management efforts. ABA applauds NACHA's efforts to reduce the risk associated with unauthorized ACH transactions for all ACH network stakeholders.

Overview and Comment

The proposed changes would be applied to a wide range of topics found within the Operating Rules.

1. Excused Delay

This proposal is meant to prevent a participating Depositary Financial Institution (DFI) or ACH Operator from using the current language in Article One, Section 1.5 to delay making ACH payments it has committed to if it has not received ACH payments that it was expecting. The existing wording of the Operating Rules could allow a DFI to make an argument that it could exercise an "excused delay" in making all of its obligated outgoing payments if it failed to receive expected payments due to "the suspension of payments from another Participating DFI or ACH Operator."

[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.

The unintended consequence of the wording of this section is that it could increase the systemic risk associated with ACH payments, not reduce it. For example, if Bank X fails and does not make payments to Bank Y, then Bank Y would be able to delay settlement of its own payments to Banks C, D, E, and F even if the expected payment from Bank X was less than what was owed to the other banks. Those banks would then be able to delay settlement for ACH payments they are obligated to make, increasing the systemic risk associated with the ACH network.

The proposed revision would remove language allowing Participating DFIs to claim that a delay in processing is excused by the interruption or the suspension of payment by, or unavailability of funds from, another Participating DFI.

ABA supports this proposed rule change in the effort to decrease systemic risk in the ACH Network.

2. Data Passing

An increase in the number of unethical Internet merchants sharing customers' credit card information with other parties who have then initiated unauthorized transactions using that information has triggered this proposed rule change. This rule change would reduce the risk of sensitive ACH data from being passed on to third parties who would initiate unauthorized transactions. The Federal Trade Commission (FTC) has asked NACHA to review its rules to ensure that customers are protected from the unauthorized sharing and use of their ACH information, similar to the prohibitions found in the Restore Online Shoppers' Confidence Act enacted into law in December 2010. The proposed NACHA rule goes beyond the requirements of the Act to parallel the scope of coverage being adopted by some card network rules. ABA does not object to this particular extension of the proposal, because it recognizes the value in keeping the banking payments system responsive to the information security needs of customers across transaction channels.

We do have concerns, however, where the proposal does exceed applicable legal bases and prudent business standards by placing unwarranted and infeasible burdens on ODFIs regarding the actions of their originators and third parties. Rightfully, *the Act* places the requirement to protect account information *on the parties that are directly violating the law* and does not rely on a business partner to act as the police authority. NACHA should not impose a different obligation.

The proposal would:

- Prohibit ODFIs from disclosing a Receiver's account number or routing number to any third party for use in creating a debit entry that is not included in part of the original authorization;
- Require the ODFI "*to ensure*" that the Originator and any Third-Party Service Provider do not disclose such information to initiate a transaction that was not part of the original authorization; and,
- Require Originators of debit entries to obtain the account number to be debited directly from the Receiver.

ABA supports the proposed rule change prohibiting ODFIs from disclosing Receiver account information to other parties, but ABA is opposed to the provisions that would require the ODFI to "ensure" that Originators and Third-Party Service Providers obtain account information and authorizations through the proper channels. ABA recommends that this requirement be placed directly on the Originators and Third-Party Service Providers and not on the ODFIs.

ODFIs will be able to comply with the first part of this rule change by refusing to disclose Receiver account information to any third parties. ODFIs have direct control over their own actions. Although ODFIs will be able to put these new requirements into account agreements with Originators and Third-Party Service Providers, *ensuring* compliance is beyond the ODFI's capabilities. It is impractical to place the requirement on ODFIs to "ensure" that Originators and Third-Party Service Providers not use this information to initiate transactions. ODFIs may minimize this risk by conducting due diligence at account opening and monitoring ongoing transactions, but it is not realistic to place the burden of preventing these transactions on the ODFI.

3. Social Security Number (SSN) Suppression

This proposed rule change would prohibit ODFIs from transmitting entries with SSN and Individual Taxpayer Identification Numbers (ITINs) included in the data fields, unless those numbers were truncated. Removing sensitive data from an ACH entry eliminates the risk of that information being breached. That is the most effective form of risk management.

ABA supports this proposed rule change.

4. ODFI Return Rate Reporting

This proposed rule change has three distinct parts. First, it would reduce the threshold for the allowable rates of returns for debit entries from 1% to 0.50% in two stages. There would be an interim period where the threshold will be 0.75%. NACHA data indicate that the overall return rate for the ACH network is just 0.03%.

ABA supports this rule change to lower the threshold for allowable rates of return.

Second, the proposed rule would create a new threshold for returns for invalid account information. NACHA contends that high levels of returns for invalid account information is indicative of fraudulent activity associated with transactions that would have been returned as unauthorized if the account numbers were valid. NACHA proposes to set this new threshold at 1% based upon data indicating that the 2010 Network return rate for debit entries with invalid account transactions was 0.23%.

ABA supports this rule change to establish a 1% threshold for invalid account information returns.

Third, the proposed rule would eliminate the current 60-day period during which an ODFI is allowed to attempt to reduce the excessive return rate for unauthorized entries without risk of fines. This was intended to allow the ODFI time to work with the Originator to improve its processes to reduce the return rate. However, it appears that some ODFIs have used this period to continue to process entries with high rates of returns without worry about the NACHA System of Fines being applicable. An ODFI could terminate the customer relationship on the 60th day, eliminating the risk of being fined. This proposed rule change would make the ODFI subject to the System of Fines immediately when it has been informed that its return rate is too high. The first report of high return rates does not necessarily mean that fines will be assessed immediately, but it will be an option if the ODFI does not address the excessively high return rates or implement a reasonable plan to reduce the high rate of return.

ABA supports this rule change to eliminate the automatic 60-day grace period for ODFIs to reduce excessive rates of return.

5. Incomplete Transaction Returns

This proposal addresses concerns surrounding incomplete transactions that can occur when a Third-Party Sender initiates a debit from a Receiver's account to pay an obligation of the Receiver. The transaction would be considered incomplete if the debit is made from the Receiver's account but payment is not made by the Third-Party Sender. For example, consider a company that has its payroll processed by a vendor. The vendor would debit the company's account on Wednesday in order to make payroll payments on Friday. If the vendor debits the company account, but fails to make the payroll payments, that would be an incomplete transaction. Similar situations may occur when consumers utilize bill payment or person to person payments. The original debits are not considered unauthorized, but they are not used for their intended purpose.

For consumer transactions, the proposed rule would require that the RDFI re-credit the customer for such a transaction if the consumer provides a written statement that the transaction was unauthorized. The use of the term "unauthorized" is not appropriate since the transaction was authorized at the time, but not completed. The RDFI then would be allowed to return the debit entry to the ODFI using a process similar to those associated with unauthorized transactions.

Non-consumer Receivers would be allowed to request re-credit for the debit entry that is part of an incomplete transaction using the same 2-day time period for the return of non-consumer debit entries.

ABA supports this proposed rule change associated with incomplete transaction returns with the recommendation that the customer seeking credit for an incomplete transaction submit a written statement that the transaction is "incomplete" rather than "unauthorized." The descriptions and usages of the Return Reason Codes to be used can be expanded to include "incomplete."

6. Audit Date

This proposed rule change would extend the date for completion of the annual Rules compliance audit from December 1st to December 31st (Audit Date). The current language of the Rule inadvertently precludes audits from being conducted during the month of December. This change is being proposed to allow for the required audit to be conducted during any month of the year.

ABA supports this proposed rule change.

ABA appreciates the opportunity to comment on the Risk Management Enhancements 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