

September 24, 2012

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

**Re: Compliance and Operational Topics Request for Comment**

Dear Ms. Bondoc:

The American Bankers Association (ABA)<sup>1</sup> respectfully submits its comments to NACHA, The Electronic Payments Association, on the Request for Comment (RFC) on Compliance and Operational Topics published on August 15, 2012. ABA appreciates NACHA's efforts to improve the Automated Clearing House (ACH) network by clarifying rules and promoting efficiencies. The RFC invites comment from the industry on four proposals to change or eliminate rule requirements to create a better network.

**Background**

The NACHA proposal would make changes in four topic areas at the request of the industry to resolve outstanding challenges to ACH participants. NACHA's Compliance and Operations Standing Rules Group has reviewed the proposed rule changes. These proposals have been considered for review in prior NACHA RFCs and Requests for Information in 2010 and 2011. The industry has provided input during these period, and the result is this proposal to make changes in four sections of the NACHA Operating Rules:

1. Facilitating requests for proof of authorization for non-consumer debit entries;
2. Creating a new Return Reason Code assigned to stop "all future entries" and use an existing code to stop "individual transactions" only;
3. Creating two new Return Reason Codes to correct and resolve erroneous transactions;  
and
4. Revise Notification of Change entries for single-entries.

---

<sup>1</sup> The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 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](http://www.aba.com).

## **Summary and Recommendations Regarding the Proposed Rule**

### **1. Proof of Authorization for Non-Consumer Debit Entries**

This amendment would permit a Receiving Depository Financial Institution (RDFI) to request proof of a non-consumer Receiver's authorization for Cash Concentration or Disbursement (CCD) or Corporate Trade Exchange CTX entries, or an Inbound International ACH Transaction (IAT) entry; and require that, upon receipt of an RDFI's written request, the Originating Depository Financial Institution (ODFI) must provide an accurate record of the Receiver's authorization to the RDFI within 10 banking days without charge. The increase in Corporate Account Takeover fraud in recent years has spurred this proposed change. This would allow a corporate customer's bank to request proof that their client authorized another party to debit their account.

In a related 2010 Request for Information, 68.8% of respondents were in favor of the concept that and RDFI should be able to request proof of authorization. The following Request for Comment (RFC) in 2011 found that a majority of respondents continued to be in favor of allowing the RDFI to request proof of authorization. However, the 2011 RFC contained a prescriptive format requirement for the authorization. This current RFC does not contain that requirement and would allow the ODFI to provide the authorization in whatever form is available.

In its prior comments, ABA opposed the proposed changes for several reasons. First, they shift the burden of a commercial arrangement onto the ACH system. Second, they place the burden from the Receiver who authorized the transaction onto the ODFI. Third, they would require that ODFIs maintain libraries of corporate contracts containing confidential information, including the authorization to allow the accounts to be debited. However, it is not likely that these agreements would contain authorizations for the specific transactions being questioned. Finally, RDFIs have tools available to block these unauthorized transactions, such as debit blocks, without needing to add new rule requirements.

This 2012 proposal has been scaled back. The RDFI would be able to request the proof of authorization from the ODFI. The ODFI would be obligated to return the proof authorization within 10 days, but there are no specific terms or format for the authorization. The ODFI could provide information in whatever form it has, easing the burden on the ODFI.

ABA members have noted the increase in fraud losses related to corporate account takeover attacks on their non-consumer clients and acknowledge that this proposal could help provide some benefits when these events occur. However, the question of whether this problem is best addressed through this requirement to the ACH Network Operating Rules instead of considering it as a contract dispute among trading partners remains unresolved within ABA's membership.

**ABA abstains from making a recommendation on this Proof of Authorization proposal.**

## **2. Stop Payments**

This proposed amendment would add a new Return Reason Code R90 to be used for the return of entries relating to a stop payment order from the Receiver requesting to stop “all future entries;” and limit the use of current Return Reason Code R08 (Payment Stopped) to stop payment orders on an individual transaction.

This proposal follows a 2010 RFI and 2011 RFC on the handling of stop payments. In comments on those proposals, ABA recommended against the creation of a new Return Reason Code as unnecessary. Rather, ABA recommended using Return Reason Code R10, Customer Advises Not Authorized as an alternative by changing its definition to include stopping all future entries.

ABA’s concerns related to creating new Return Reason Codes in 2012 remain the same as in past two years. 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.

This increased expense of creating a new code is especially troubling when existing Return Reason Code R10, Customer Advises Not Authorized, can be used to halt all future entries. Existing Return Reason Code R08 can be defined as stopping an individual payment. There is no reason to create a new Return Reason Code R90 as proposed when clarifying the definition of R10 is sufficient.

**ABA recommends that this Stop Payment proposal not be adopted.**

## **3. New Dishonor Code to Account Re-credited Twice Due to Reversal, and New Contested Dishonor**

The proposed rule would permit an ODFI to dishonor a return entry relating to an erroneous transaction provided that it can substantiate that it had also originated a reversing entry to correct the erroneous transaction. To support this ability, the rule would define a new dishonored return reason code for use by the Originator/ODFI when the reversal process has resulted in an unintended payment to and enrichment of the Receiver. The rule would also define a new contested dishonored return reason code for use by the RDFI, when appropriate, in response to such dishonored returns when the RDFI has returned both the erroneous entry and the reversal. The new code is intended to reduce confusion when erroneous transactions are identified and both the Receiver and Originator try to correct the problem, resulting in an unfair exchange of funds.

In response to a 2011 RFC, ABA noted that it was not clear that these situations happened often enough to justify creating a new Return Reason Code.

In 2012, ABA members acknowledged an evolving appreciation for the disruption that these dishonored transactions can have on financial institutions. Based on additional review and

experience with these disputed transactions, the ABA membership determined that the proposal allowing entries made in error be recognized and resolved quickly and without any unjust enrichment on either the ODFI or the RDFI made sense in the current environment. The benefits realized from the creation of these two new Return Reason Codes outweigh the costs associated with system changes.

**ABA recommends that this proposal to create new Return Reason Codes for Dishonored Transactions be adopted with an effective date of March 2015.**

#### **4. Notifications of Change for Single-Entries**

This proposed rule change would revise the *Rules* to make optional the Originator response to Notification of Change (NOCs) for Single Entry payments. The proposed rule change would not disallow an RDFI's initiation of an NOC for a Single Entry, nor would it mandate the Originator make the changes provided in such NOCs. The following SEC codes would be affected by this proposal: ARC, BOC, POP, POS, RCK, and XCK entries, as well as, TEL and WEB entries bearing a single entry indicator ("S" or "blank" for TEL and "S" for WEB).

In response to a 2011 RFI, ABA favored this position as it related to NOCs affecting Single-Entries. ABA favored allowing the RDFI to initiate the NOC but not requiring the Originator to respond. ABA recognizes the change in the proposal and notes that it aligns with the association's position. The proposal would allow any RDFI to initiate a NOC for Single Entry transactions, but it would not obligate the ODFI to act upon on it.

**ABA recommends that this proposal be adopted as drafted effective September 20, 2013.**

ABA appreciates the opportunity to comment on NACHA's Compliance and Operational Issues proposal. If you have any questions about these comments, please contact the undersigned at (202)663-5147 or via email at [skenneally@aba.com](mailto:skenneally@aba.com).

Sincerely,



Stephen K. Kenneally  
Vice President  
Center for Regulatory Compliance