INDEPENDENT COMMUNITY BANKERS of AMERICA®

Submitted via email

July 20, 2018

Mr. Michael Herd
Senior Vice President, ACH Network Administration
NACHA – The Electronic Payment Association
2550 Wasser Terrace, Suite 400
Herndon, VA 20171

Re: NACHA Requests for Comment on ACH Quality and Risk Management Topics and ACH Rules Compliance Audit Requirements

Dear Mr. Herd:

The Independent Community Bankers of America ("ICBA")[1] is pleased to submit comments to NACHA – The Electronic Payment Association ("NACHA") regarding two requests for comment on (1) ACH Quality and Risk Management Topics ("Quality and Risk Management Proposal") and (2) ACH Rules Compliance Audit Requirements ("ACH Rules Audit Proposal").

The Quality and Risk Management Proposal amends the *NACHA Operating Rules and Guidelines* ("NACHA Rules") to improve ACH network quality and risk management. Specifically, this proposal:

1. establishes a time limit for breach of authorization warranty claims;
2. changes existing return reason codes to provide more granular and precise reasons when an ACH debit is returned as unauthorized, and to allow a return for "questionable" activity;

[1] The Independent Community Bankers of America®, the nation's voice for nearly 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 52,000 locations nationwide, community banks employ 760,000 Americans and hold $4.9 trillion in assets, $3.9 trillion in deposits, and $3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

3. adds new detail regarding the fraud detection obligations that apply to Originators of WEB debits; and
4. establishes new information security requirements for certain large Originators, Third-Party Service Providers ("TPSPs") and Third-Party Senders ("TPS").

The ACH Rules Audit Proposal consolidates and streamlines the compliance audit provisions in one section of the NACHA Rules and eliminates redundancy.

ICBA Comments

ICBA supports NACHA's ongoing efforts to improve ACH network quality and risk management practices, and supports the changes in the ACH Rules Audit Proposal noted below:

- Establish time limits for breach of authorization warranty claims but urges NACHA to further analyze the legal and risk implications regarding regulatory compliance.
- Re-purpose a different return code R11 for a transaction where an authorization exists between Originator and Receiver and the Originator has made an error regarding the payment. ICBA recommends an effective date of March 1, 2020, for this change to provide community banks and their TPSPs
- Make explicit that "account validation" is an inherent part of a "commercially reasonable fraudulent transaction detection system."
- Allow Receiving Depository Financial Institutions ("RDFIs") to use return reason code R17 to indicate that an entry does not have a valid account number.
- Require large Originators, TPSPs and TPSs to render account information unreadable when it is stored electronically.

Additionally, ICBA strongly supports, in its entirety, the ACH Rules Audit Proposal, as it makes compliance audit requirement more consistent, and easier for ACH participants to understand and implement.

Quality and Risk Management Proposal

A. Time Limits for Breach of Authorization Warranty Claims

Currently, NACHA Rules do not define the time period within which an RDFI is permitted to bring a breach of authorization warranty claim against an Originating Depository Financial Institution ("ODFI"). NACHA proposes to revise the NACHA Rules to limit the permissible time period for authorization warranty claims to one

year from the settlement date for entries to non-consumer accounts, and to 18 months from the settlement date for entries to consumer accounts.

ICBA supports the operational clarity that establishing time limits would bring. However, ICBA urges NACHA to further analyze the legal and risk implications regarding regulatory compliance before balloting this proposal.

B. *Differentiating Unauthorized Return Reasons*

Currently, return reason code R10 covers all types of reasons for unauthorized returns. NACHA proposes to re-purpose a different return code R11 for a transaction where an authorization exists between Originator and Receiver, and the Originator has made an error regarding the payment.

ICBA strongly believes that there is value for the industry in having greater insight into the level of fraud in the ACH Network. Thus, we support NACHA's effort to distinguish between fraudulent transactions for which there is no authorization and transactions for which there is an authorization, but the entry is not in accordance with those terms.

ICBA believes that repurposing the R11 existing return reason code is preferable to the creation of an entirely new code for this purpose since this code is already recognized by ACH systems, processors and applications and the impact would be much less significant from cost and development perspectives. However, ICBA recommends an effective date of March 1, 2020, for this change to provide community banks and their TPSPs sufficient time to implement the change.

C. *Commercially Reasonable Fraud Detection for WEB Debits*

Currently, ACH Originators of WEB debit entries must use a "commercially reasonable fraudulent transaction detection system" to screen these transactions for fraud. NACHA proposes to make it explicit that "account validation" is an inherent part of a "commercially reasonable fraudulent transaction detection system."

ICBA supports this aspect of the proposal and agrees that specifying "account validation" as part of the fraud screening requirement for Originators of WEB debits will help prevent the introduction of fraudulent payments into the ACH Network. ICBA agrees with the cited examples of account validation methods identified to educate ACH participants, without endorsing a specific technology.

D. Allow a Return for Questionable Activity

NACHA proposes to allow, but not require, RDFIs to use return reason code R17 to indicate that an entry does not have a valid account number, and the RDFI believes it is questionable, suspicious, or anomalous in some way. NACHA explains that the proposed change is consistent with existing NACHA guidance that "advises RDFIs that they can use return reason code R17 to return questionable transactions that would otherwise be returned via existing invalid/no account return codes (R03/R04)."

ICBA supports allowing RDFIs to use return reason code R17 to indicate that an entry does not have a valid account number. This would provide an optional, automated way for RDFIs to alert ODFIs regarding questionable ACH activity, and allow ODFIs to distinguish questionable transactions from routine account number errors and to potentially prevent origination of additional "questionable" transactions.

E. Account Information Security

NACHA proposes to expand the existing ACH Security Framework rules to explicitly require large, non-financial institution Originators, TPSPs and TPSs to protect deposit account information "by rendering it unreadable when it is stored electronically." ICBA supports this requirement as it would reduce potential harm from data breach events involving the referenced parties.

ACH Rules Audit Proposal

NACHA's ACH Rules Audit Proposal consolidates all requirements for the annual ACH rules compliance audit within one section of the NACHA Rules. Currently, the general obligation for ODFIs and RDFIs (and certain TPSPs and TPSs) to conduct an annual audit of their compliance with the NACHA Rules is located in Article One, Section 1.2.2 (Audits of Rules Compliance). However, additional detail regarding the audit requirement is separately located within Appendix Eight (Rule Compliance Audit Requirements). The proposal eliminates the specific inventory of points in Parts 8.2, 8.3, and 8.4 of the appendix. NACHA explains that the inventory attempts to recap, in abridged form, the actual rules defined elsewhere in the rules and appendices, and is redundant, incomplete, and in certain instances, inconsistent with the text of the relevant rule.

ICBA strongly supports this proposal and agrees that it will streamline the NACHA Rules, eliminate redundancy, and make the rules "more consistent and easier for industry participants to understand and use."

ICBA appreciates the opportunity to comment on these proposals. Please do not hesitate to contact me at cary.whaley@icba.org or 202.659.8111 with any questions regarding our comments.

Sincerely,

/s/

Cary Whaley
First Vice President, Payments and Technology Policy