



Credit Union National Association

cuna.org

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-638-5777 | **FAX:** 202-638-7734

Submitted via email: mbondoc@nacha.org

January 10, 2014

Ms. Maribel Bondoc
Manager, Network Rules
NACHA - The Electronic Payments Association
13450 Sunrise Valley Drive, Suite 100
Herndon, VA 20171

Re: NACHA Proposed Rule on ACH Network Risk and
Enforcement Topics

Dear Ms. Bondoc:

This comment letter represents the views of the Credit Union National Association (CUNA) regarding NACHA - The Electronic Payments Association's proposal on Automated Clearing House (ACH) network risk and enforcement topics, as part of a broader strategy to improve risk management. By way of background, CUNA is the largest credit union advocacy organization in this country, representing state and federal credit unions, which serve about 99 million members. We have also filed a separate comment letter today on NACHA's related proposed rule on improving ACH network quality.

CUNA appreciates that NACHA is taking steps to improve ACH network risk management and enforcement by looking into ways to reduce exceptions and their associated processing costs. Credit unions generally originate higher quality transactions and generally support many of the proposed changes to reduce exceptions from "outlier" Originators. However, we are concerned with some potential unintended consequences, because originating financial institutions may not be able to fully control the transactions originated by the Originator and may make risk management changes that would reduce access to the ACH network for some consumers, including the underserved. We ask NACHA to minimize costs on credit unions that may be affected and minimize unintended consequences. In addition, we offer other recommendations to improve the proposal.

Proposed Lower Return Rate Thresholds

The proposal would reduce the existing return rate thresholds for unauthorized debits from 1 percent to 0.5 percent, and also establish a



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threshold for account data quality returns (i.e., administrative returns with return reason codes R03, R04, or R20) at 3 percent, and an overall debit return threshold (for all return codes) at 15 percent. These proposed rates are 16 times the average return rates for unauthorized debits and account data quality, and 10 times the average total returns, for the ACH network.

Receiving Depository Financial Institutions (RDFIs) would generally benefit from lower rates of returns and exceptions because RDFIs have to incur costs for exception processing and customer service. However, Originating Depository Financial Institutions (ODFIs), including credit unions, may be impacted with higher costs that result from these changes intended to reduce exceptions on “outlier” Originators and third-party senders. ODFIs may have to make some changes associated with policies and procedures, risk management, and systems, and may have to respond to NACHA requests. To help minimize these costs, NACHA should provide additional risk management tools and resources to assist ODFIs.

A top concern is that ODFIs may not be able to fully control the transactions originated by the Originator for consumers. Some exceptions are related to errors or spurious disputes by consumers, as noted by NACHA’s study that was done by a payments consulting firm. For example, Originators may be able to show that certain disputed returns were properly authorized by the consumer, even though there is a subsequent return. NACHA should also consider incorporating information about the reasons and outcomes for returns.

Also, NACHA should look into potential alternatives that could be more targeted and less costly to address problem Originators with a pattern of, and the highest level of exceptions. Further, we ask NACHA to continue to coordinate closely with, and consider the actions taken by, the CFPB, prudential financial regulators, and others on further regulating non-depository institution entities.

NACHA should fully assess and minimize the potential unintended consequences from the proposed changes, including with consumer access to payments. In addition, NACHA should account for effects from the concurrent proposed rule on ACH network quality to reduce returns.

Further, NACHA should conduct additional research and provide more data about enforcement actions and existing return rate thresholds before proceeding with the proposed changes.

Other Proposed Changes

The proposal would also extend some of NACHA’s rules to non-depository institution entities, by: 1) providing authority to initiate enforcement

proceedings based on the origination of unauthorized transactions, including for non-depository payment providers, and 2) explicitly applying certain current risk management rules to third-party senders. We believe these changes are consistent with appropriate regulatory and enforcement actions to reduce abusive practices from non-depository providers that have traditionally not been regulated.

In addition, the proposal would clarify the definition of a “reinitiated” entry (i.e., resubmission of a returned entry) by incorporating NACHA Operations Bulletin #3-2013, by specifically prohibiting against reinitiating a transaction that was returned as unauthorized, and by specifying entries that are not considered reinitiations. We generally believe these clarifications are useful, and also support specific examples of the types of transactions that meet, or are excluded from, the definition of “reinitiated.”

Finally, we recommend delayed compliance dates at least three months later than the proposed effective dates of March 20, 2015 for the return and reinitiation changes, and September 19, 2014 for third-party sender and enforcement authority changes. Based on the changes from this proposal, and the potential, additional changes from NACHA’s related network quality proposal, financial institutions will need more time to implement the changes.

Thank you for the opportunity to comment on this proposal. If you have any questions concerning our letter, please feel free to contact CUNA SVP and Deputy General Counsel Mary Dunn or me at (202) 508-6733.

Sincerely,

A handwritten signature in blue ink that reads "Dennis Tsang". The signature is written in a cursive, flowing style.

Dennis Tsang
CUNA Assistant General Counsel for Regulatory Research