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Via electronic submission

April 22, 2020

Ms. Jane Larimer
President and CEO
Nacha – The Electronic Payment Association
2550 Wasser Terrace, Suite 400
Herndon, VA 20171

Re: Request for Comment and Information Meaningful Modernization Topics

Dear Ms. Larimer:

ICBA commends Nacha for continuing to take a leadership role in the ACH network and for employing strategic approaches to modernize the ACH network in the face of evolving technology. These decisive actions ensure that the ACH network continues to grow, remains vibrant and keeps pace with stakeholder needs. The Independent Community Bankers of America (“ICBA”)¹ is pleased to submit comments to Nacha regarding a set of Rules proposals and other concepts collectively referred to as “Meaningful Modernization.”

Background

The overarching purpose of these proposals is to improve and simplify the ACH user-experience by facilitating the adoption of new technologies and channels for the initiation of consumer ACH payments; reducing barriers to use of the ACH; providing flexibility and increasing consistency related to the authorization of consumer ACH payments; and reducing certain administrative burdens on Originating Deposit Financial Institutions (“ODFIs”) and their Originators, and on Receiving Deposit Financial Institutions (“RDFIs”) and their consumer customers.

¹The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, nearly \$4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America.

ICBA 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.

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The request for industry feedback has two components. Five specific proposals are being put forth as a Request for Comment to amend the Nacha Operating Rules effective on July 1, 2021 to modernize authorization and dispute processes. Additionally, a sixth topic is being issued as a Request for Information to gather industry perspectives, but at this time is not a specific proposal to amend the Nacha Rules. Each is identified below.

1. Explicitly define and better enable the use of standing authorizations for consumer ACH debits, thereby better accommodating the use of new technologies and business methods that make use of frequent or occasional interactions between parties to transact;
2. Define and allow for the use of oral authorization of consumer ACH debits beyond telephone calls, thereby better accommodating the use of new technologies and business methods that make use of verbal interactions and voice technologies;
3. Clarify and provide greater consistency of authorization standards for consumer ACH debits across payment authorization and initiation channels;
4. Reduce the administrative burden of providing proof of authorization of a consumer ACH debit; and,
5. Reduce the administrative burden associated with the Written Statement of Unauthorized Debit by better facilitating the use of electronically and orally provided statements.

In addition to the five specific Rules proposals described above, Nacha also requests the industry to provide information and perspectives on whether the ACH Network should explore the potential to allow authorization dispute resolution for Originators of consumer ACH debits.

ICBA Summary of Comments

Below is a summary of our positions:

- ICBA supports, with some clarification and explanation, adding the proposed Standing Authorization and Subsequent Entries framework to better utilize ACH, particularly in the context of ongoing payment relationships and commerce.
- ICBA supports, with additional clarification, the proposed Oral Authorization as it may better enable businesses to adopt ACH in settings that use non-telephone verbal interactions and voice-related technology.
- ICBA supports the proposed rule changes designed to promote consistency of ACH Authorization standards, as the changes will provide ACH stakeholders with greater clarity and consistency regarding Nacha's authorization requirements.
- ICBA supports the proposed change Nacha has proposed to allow an ODFI to agree to accept the return of an ACH entry as an alternative to providing the proof of authorization to reduce administrative burden.

- ICBA supports the proposed rule change to clarify and make explicit that an RDFI may obtain a consumer’s Written Statement of Unauthorized Debit (“WSUD”) electronically or orally, and that a consumer is permitted to sign a WSUD using an electronic signature.
- ICBA supports the proposed effective date on July 1, 2021.
- ICBA does not support the proposal outlined in the Request for Information to allow ACH Originators to refute the basis of a return as unauthorized as it would place a disproportional burden on RDFIs.

Standing Authorizations for Consumer ACH Debits

Nacha proposes to establish a new authorization framework that is intended to address a gap between single and recurring ACH entries. In particular, the Proposal will allow consumer Receivers to initiate future payments in different amounts (“Subsequent Entries”) pursuant to a “Standing Authorization” by taking an affirmative action defined in the Standing Authorization obtained by the Originator.

The Proposal would allow ODFIs to use different SEC codes for Subsequent Entries regardless of the way the Standing Authorization was obtained. Nacha envisions this change as helping support use cases such as bill payments and payments initiated through digital assistants and mobile applications. Standing Authorizations and Subsequent Entries may be useful to allow new technologies. ICBA supports adding the proposed Standing Authorization and Subsequent Entries framework to better utilize ACH, particularly in the context of ongoing payment relationships and commerce. ICBA agrees that the use of Standing Authorizations and Subsequent Entries should be optional for Originators and ODFIs to adopt.

However, ICBA requests that Nacha provide additional clarification and explanation regarding certain aspects of Standing Authorizations. Nacha should clarify that an Originator initiates a Subsequent Entry to a Receiver’s account upon the occurrence of a Receiver’s affirmative action, rather than to state that it is the Receiver who initiates the entry. Nacha should also provide further guidance regarding the implementation of this new concept to the Nacha Rules, regarding:

- expectations for Originator/ODFI documentation or evidence of the affirmative actions upon which a Subsequent Entry may be based and related information regarding the entry;
- whether ODFIs will be required to provide such documentation or evidence to RDFIs upon request (e.g., in the event a Receiver reports a Subsequent Entry as unauthorized); and,
- how the Nacha Rules for stop payment orders would apply to Subsequent Entries.

The Standing Authorization should not be limited to debits. Under the contemplated Standing Authorization framework for debit entries, consumer Originators may also seek to initiate credit

entries to a Receiver at irregular intervals. Banks may offer their own digital assistants and wish to permit their accountholders to instruct their institution to make payments to a business or another consumer. ICBA envisions that the Standing Authorization framework could be applicable to other emerging use cases, such as the Internet of Things. The permissive nature of the authorization rules for single credit entries likely permits such activity without any modifications to the Nacha Rules.

Oral Authorization of Consumer ACH Debits beyond Telephone Calls

The Proposal would define “Oral Authorization” and allow it as an authorization method for consumer debits initiated orally through a non-telephone channel. Nacha explains that this proposed change is intended to address ambiguous rules for oral authorizations not provided during a telephone call, such as through voice interactions with digital assistants or over the internet through FaceTime, Skype, or similar applications.

ICBA supports, with additional clarification, the proposed Oral Authorization as it may better enable businesses to adopt ACH in settings that use non-telephone verbal interactions and voice-related technology. ICBA believes that this proposed change adds needed flexibility that will enable the ACH to adapt to future technological advances. ICBA agrees that the use of Standing Authorizations and Subsequent Entries should be optional for Originators and ODFIs to adopt. ICBA requests that Nacha provide further guidance on whether information contained in the authorization may be provided or confirmed by the Receiver through a key entered response (IVR) system. ICBA requests further clarification regarding obtaining proof of authorization and maintaining an audit trail of authorizations provided through these new technological channels.

Consistency of ACH Authorization Standards across Payment Initiation Channels

Nacha has proposed certain changes to reorganize and clarify the Nacha authorization requirements, which would apply the “readily identifiable” standard and requirement for “clear and readily understandable terms” to all authorizations and incorporate the new “Standing Authorization” and “Oral Authorization” concepts into the Nacha Rules. The proposed changes would also define the minimum data elements required for all consumer ACH debit authorizations.

ICBA supports the proposed rule changes designed to promote consistency of ACH Authorization standards, as the changes will provide ACH stakeholders with greater clarity and consistency regarding Nacha’s authorization requirements. ICBA maintains that these changes may improve the quality of ACH authorizations, and ACH network quality more broadly and could be useful in emerging use-cases.

Administrative Burden of Providing Proof of Authorization

Nacha Rules currently require an ODFI to provide proof of authorization within ten Banking Days of receiving a written request from an RDFI. Nacha has proposed to allow an ODFI to agree to accept the return of an ACH entry as an alternative to providing the proof of authorization. A decision to accept a return in lieu of providing proof of authorization would be optional for Originators and their ODFIs.

The ODFI would be required to confirm to the RDFI in writing the ODFI's agreement to accept the return, and to then accept the return within ten Banking Days of providing the confirmation. However, if the RDFI later requires proof of authorization, the ODFI would still be required to provide it. Nacha explains that the purpose of this proposal is to "alleviate the burden of providing proof of authorization in every instance in which it is requested."

ICBA supports the proposed change Nacha has proposed to allow an ODFI to agree to accept the return of an ACH entry as an alternative to providing the proof of authorization. ICBA also supports the proposal to require an ODFI to later provide proof of authorization if an RDFI requires it in the future.

Use of Electronic and Oral Written Statements of Unauthorized Debit

Nacha has proposed to clarify and make explicit that an RDFI may obtain a consumer's Written Statement of Unauthorized Debit ("WSUD") electronically or orally, and that a consumer is permitted to sign a WSUD using an electronic signature. The use and acceptance of electronically or orally provided WSUDs would be optional for RDFIs. While not prohibited today, Nacha believes that explicit rules for electronically and orally provided WSUDs will clarify industry confusion.

ICBA supports the proposed rule change to clarify and make explicit that an RDFI may obtain a consumer's Written Statement of Unauthorized Debit ("WSUD") electronically or orally, and that a consumer is permitted to sign a WSUD using an electronic signature. Some financial institutions already accept WSUDs electronically and orally, and that these changes would formalize in the Nacha Rules an existing industry practice. This proposed rule change should clear up any existing industry confusion regarding the acceptance of electronically or orally provided WSUDs and address an administrative burden by reducing exception costs and resolution time.

ICBA recommends that Nacha explicitly state that an RDFI may obtain the minimum information required for a WSUD from the Receiver by telephone and reflect that information,

as well as a record of the Receiver's authentication of that information, in a written document that may be provided to the ODFI on request.

Request for Information

With the Proposal, Nacha released a Request for Information that seeks industry feedback on the potential to allow ACH Originators to refute the basis of a return as unauthorized. Such an "authorization resolution dispute" mechanism could include providing evidence of a valid authorization to a third-party arbiter. Nacha states that the lack of recourse appeal for ACH Originators that receive the return of a consumer debit as unauthorized is viewed by some Originators as a "pain point" for using the ACH network. Nacha acknowledges that there "would be costs, perhaps substantial costs, to setting up and operating a system for authorization dispute resolution."

ICBA opposes the proposal contained in the Request for Information regarding the potential to allow ACH Originators to refute the basis of a return as unauthorized, as it would place a disproportional burden on RDFIs. ICBA strongly believes that such disputes between consumers and merchants are best resolved directly between the parties involved in the dispute. ICBA believes that resolution of the dispute should occur outside of the ACH network system, rather than through their financial institutions.

ICBA acknowledges that some Originators have valid customer authorizations and may suffer losses resulting from Returns of debits that Receivers assert as unauthorized. However, ICBA does not believe that Nacha-sponsored arbitration or a similar authorization resolution mechanism is the appropriate way to address these issues. An authorization dispute resolution mechanism may complicate RDFI Regulation E error resolution processes and leave RDFIs unable to collect from ODFIs for certain valid customer claims, making the RDFI financially liable.

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