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NAFCU
National Association of Federally-Insured Credit Unions

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Maribel Bondoc
Manager, Network Rules
Nacha
550 Wasser Terrace, Suite 400
Herndon, VA 20171

RE: RFI on ACH Risk Management Topics

Dear Ms. Bondoc:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Request for Information (RFI) issued by Nacha seeking information and perspectives on automated clearinghouse (ACH) risk management topics and the Nacha operating rules. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 135 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the opportunity to provide input on this RFI and generally support the proposals put forward by Nacha to address credit-push fraud through the Nacha Rules. However, NAFCU urges Nacha to avoid mandating a risk-based approach to early funds availability, and instead, allow credit unions the flexibility to adopt their own, tailored policies to early funds availability. NAFCU urges Nacha to engage in a collaborative approach as it considers finalizing these proposals and to engage in cost-benefit analysis to ensure that the problem being solved is not outweighed by the costs associated with implementation.

ACH Network Credit Return Threshold

The proposed establishment of a return rate threshold for ACH credits can contribute to the Risk Management Framework objectives by enhancing risk mitigation measures within the ACH Network. This initiative aligns with the objective of minimizing financial losses and fraud while maintaining the integrity and efficiency of the payment system. By monitoring and addressing excessive administrative returns of ACH credits, the industry can proactively identify potential fraud scenarios and take necessary preventive measures. Considering the evolving landscape of fraud, particularly the increasing use of credit payments in fraudulent activities, NAFCU believes it would be prudent for Nacha to develop specific Rules proposals to address this issue. While the current return rate threshold rules cover ACH debit returns, it is logical to extend similar provisions to ACH credits to ensure a comprehensive risk management approach. This would allow financial institutions to detect and mitigate fraud scenarios specific to ACH credit transactions more effectively.

As Nacha considers the appropriate return rate threshold for administrative returns of ACH credits, NAFCU urges Nacha to initiate collaborative discussions among various stakeholders, including credit unions, banks, payment processors, and other industry experts, to gather insights and expertise in defining a suitable return rate threshold for ACH credits. This collaborative approach would ensure that the proposed threshold aligns with industry needs and effectively addresses the challenges faced by RDFIs. Additionally, to complement the proposed rule, Nacha should consider investing in educational initiatives aimed at educating financial institutions about the risks associated with credit-push frauds, such as the indiscriminate use of Micro-Entries to "phish" for open accounts. By promoting awareness and providing guidance on detecting and preventing such fraud scenarios, the industry can collectively improve its defenses against fraudulent activities.

Once a rule is implemented, Nacha should establish an ongoing monitoring and evaluation process to assess its effectiveness in addressing administrative returns of ACH credits. This could involve periodic reviews, data analysis, and feedback mechanisms from participating financial institutions. Such an approach would ensure that the rule remains relevant and responsive to emerging fraud trends.

Define and Apply Rules to “Third-Party Receivers”

The proposal to acknowledge and define Third-Party Receivers (TPRs), and subsequently apply Rules to their relationships, aligns well with the Risk Management Framework objectives. As ACH processing scenarios have become increasingly complex, it is essential to address the risks associated with intermediaries involved in ACH payments. By recognizing and regulating Third-Party Receivers, the industry can mitigate potential vulnerabilities, enhance risk assessments, ensure data security, and promote overall system integrity. As the types of fraud within the ACH network have evolved, it is evident that all participants to the network, including Third-Party Receivers, should be defined and subject to Nacha Rules. The absence of clear guidelines for these intermediaries may lead to inconsistencies, potential gaps in risk management, and increased vulnerability to fraud and security breaches. Establishing specific Rules would provide clarity, establish consistent practices, and ensure the effective governance of Third-Party Receiver relationships.

Nacha should acknowledge and define TPRs within the Nacha Operating Rules by clearly outlining the role and responsibilities of Third-Party Receivers and establishing a foundation for subsequent rules and obligations. NAFCU generally agrees with Nacha’s proposal to place the obligations of RDFIs onto TPRs in the same manner as ODFI obligations are applied to Third-Party Senders (TPS). As noted in the RFI, under this framework, ACH agreements between participating parties, including RDFIs and TPRs, would outline their respective responsibilities, compliance audits, risk assessments, data security requirements, funds availability requirements, obligations to accept consumer WSUDs, and commercially reasonable fraud detection and monitoring of inbound credits. Despite NAFCU’s general support for this change, financial institutions could benefit from clarity regarding the applicability of registration requirements imposed on RDFIs for TPRs. If an RDFI would need to register a TPR in the same manner as an ODFI registers a TPS there could potentially many more TPRs to register than TPSs. NAFCU is concerned that if this portion of the TPS rule is replicated, the sheer volume of TPR registrations might be burdensome for RDFIs.

Alongside the introduction of specific Rules, Nacha should invest in educational initiatives and guidance to support financial institutions and Third-Party Receivers in understanding and implementing the new requirements. Nacha could do so by developing training materials, webinars, and industry best practices for effectively managing Third-Party Receiver relationships. Nacha should also establish mechanisms for monitoring and enforcing compliance with the new Rules regarding Third-Party Receivers through the use of periodic compliance audits, data analysis, and reporting requirements to ensure adherence to the established obligations. Non-compliance should be met with appropriate penalties and corrective measures to maintain the integrity of the ACH system.

Risk-Based Approach to Early Funds Availability

While the proposed risk-based approach to early funds availability aims to address fraud prevention, it is important to recognize that risk management objectives may differ for each financial institution. The Risk Management Framework objectives primarily focus on maintaining the integrity and efficiency of the payment system while minimizing financial losses and fraud. However, determining the level of risk associated with early funds availability should be left to the discretion of individual financial institutions, as they are best positioned to assess their unique risk profiles and make business risk decisions accordingly.

Given the varying risk profiles and business models of financial institutions, we believe that Nacha should refrain from developing specific Rules proposals to mandate a risk-based approach to early funds availability. By allowing financial institutions to retain autonomy over this business decision, they can tailor their risk management practices to their specific circumstances and implement controls that align with their own risk appetite. The absence of specific Rules proposals in this regard allows for flexibility and encourages responsible risk management practices without creating unnecessary regulatory burdens.

Instead of incorporating a risk-based approach to early funds availability into the Nacha Operating Rules, financial institutions should retain the authority to determine their own policies regarding early funds availability. This can, and does, include conducting internal risk assessments to identify eligibility and ineligibility criteria based on unique risk factors, including those listed in the RFI such as account type, account longevity, transaction purpose, dollar limits, SEC codes, volume and velocity checks, reversal risk, and settlement risk. Financial institutions are better equipped to evaluate these factors based on their customer relationships, historical data, and risk management expertise.

Nacha can play a vital role in facilitating industry collaboration and sharing best practices related to early funds availability. This could involve the establishment of working groups, forums, or educational resources where financial institutions can exchange insights, discuss risk management strategies, and learn from each other's experiences. Nacha's role should focus on promoting awareness, providing guidance, and disseminating information related to sound risk management practices without mandating specific rules.

Credit unions that offer early funds availability already possess internal policies, procedures, and systems to assess risk, enforce eligibility/ineligibility criteria, and report anomalies and violations. Regular monitoring and reporting of early funds availability practices allows them to identify emerging risks, evaluate the effectiveness of risk mitigation measures, and enable continuous improvement in risk management processes. NAFCU believes that the risk-based approach to early funds availability should remain a business risk decision for individual financial institutions, as risk profiles and risk management strategies may vary significantly.

NOC for SEC Code/Account Type Mismatch

The proposed inclusion of a new NOC for SEC Code/Account Type mismatches has the potential to reduce risks and monetary losses by enabling expedited notice of mismatches to Originators and ODFIs. This aligns with the Risk Management Framework objectives. By providing timely information about mismatches, financial institutions can take appropriate actions to rectify errors and mitigate potentially fraudulent activities.

While the concept of introducing a new NOC for SEC Code/Account Type mismatches has its merits, it is crucial to consider the potential costs associated with implementing such a rule change. It is important to note that the majority of fraud cases encountered by credit unions involve consumer-to-consumer transactions, rather than mismatches related to SEC Codes and account types. Consequently, the potential benefit derived from this proposal may be outweighed by the additional programming and monitoring costs incurred by financial institutions.

In light of this, Nacha should conduct a comprehensive cost-benefit analysis to evaluate the potential financial and operational impact on financial institutions, including credit unions. This analysis should take into account the programming and monitoring costs associated with implementing the new NOC, as well as the potential reduction in risk and monetary losses resulting from expedited notice of mismatches. Nacha should also engage in further collaboration with industry stakeholders, including credit unions, to gather insights and assess the prevalence of SEC Code/Account Type mismatches within the ACH network. This collaborative effort will provide valuable input into the decision-making process and ensure that any rules proposals are reflective of the actual need within the system.

If the cost-benefit analysis and industry collaboration indicate that specific Rules proposals are warranted, Nacha should develop tailored rules that consider the unique characteristics and risk profiles of credit unions. This approach will ensure that any rules implemented are practical, effective, and aligned with the risk management strategies employed by credit unions.

Conclusion

NAFCU appreciates the opportunity to comment on the RFI regarding ACH Risk Management. If you have any questions, please do not hesitate to contact me at 703-842-2268 or jakin@nafcu.org.

Sincerely,

James C. Akin
Senior Regulatory Affairs Counsel