



December 19, 2005

Ms. Maribel Bondoc
Manager of Network Rules
NACHA
13665 Dulles Technology Drive
Suite 300
Herndon, VA 20171

Re: OFAC and Operator-Related Changes to the ACH Network

Dear Ms. Bondoc:

The Association for Financial Professionals (AFP) welcomes the opportunity to comment on proposed changes to the NACHA rules to strengthen compliance with U.S. sanctions policies and safeguard the financial system from terrorist abuses in international ACH transactions. The U.S. Treasury Department's Office of Financial Assets Control (OFAC) considers that cross-border ACH transactions do not contain sufficient mandatory information to permit adequate scrutiny of transactions for OFAC compliance.

AFP represents approximately 14,000 finance and treasury professionals who, on behalf of over 5,000 corporations and other organizations, are significant participants in the nation's payments system. Organizations represented by its members are drawn generally from the Fortune 1,000 and the largest of the middle market companies. AFP members have responsibility for their organization's origination and receipt of ACH transactions, which may involve parties outside the U.S. They thus have a sizeable stake in the adoption of rules governing international ACH transactions.

Current rules

Current cross-border ACH rules only cover ACH entries processed through a Gateway Operator (e.g., the Federal Reserve Banks). They do not cover ACH entries coming into the U.S. payment system through offshore proprietary or correspondent banking relationships or as SWIFT messages. These ACH transactions are being delivered to Receiving Depository Financial Institutions (RDFIs) as domestic ACH entries (e.g., PPD,

CCD) and do not carry sufficient information to adequately identify the parties, making it hard for banks to comply with OFAC screening requirements.

Proposal

NACHA has identified the following four alternatives for responding to OFAC compliance policies:

1. Define cross-border transactions more broadly as International ACH Transactions and revise the formatting requirements for Cross-Border Payments (CBR Entries)
2. Make no substantive changes to existing cross-border ACH rule provisions
3. Prohibit use of the ACH Network for International ACH Transactions
4. Make the receipt of International ACH Transactions optional

NACHA devotes the major part of its proposal to a discussion of the first alternative—expanding the definition and redefining the format for cross-border entries—as it is considered to be the alternative that would best meet OFAC regulatory requirements.

AFP Recommendation: Alternative #1

AFP agrees that the first alternative satisfies the needs of OFAC-administered U.S. sanctions policies and offers the best option for managing the risks of payments involving parties outside the U.S. that are not subject to U.S. legal jurisdiction.

If NACHA made no changes to its current cross-border rules (Alternative #2), it is likely that OFAC would impose its own requirements on the ACH Network or mandate that all ACH transactions be screened for OFAC compliance. The private sector provider of the ACH payment system is in a better position to understand the complex payment processes and operations and the relationships between them. The potential disruption and costs to the ACH system if all ACH transactions were to be subject to OFAC screening might significantly inhibit the growth of electronic payments in the U.S.

Alternative #3, prohibiting use of the ACH for international transactions, could result in a similar outcome since there might be no way to enforce the ban except by all-ACH OFAC screening.

Alternative #4, making the receipt of International ACH Transactions optional, risks the universality of the ACH network, which is a strength of the U.S. payment system.

The main provisions of Alternative #1 would:

- Define an International ACH Transaction as a debit or credit entry that is part of a Payment Transaction in which one or more parties to the Payment Transaction is not subject to U.S. legal jurisdiction.
- Expand the ACH format to include information now required in wire transfers covered by the Bank Secrecy Act's "Travel Rule." Seven mandatory addenda records would be necessary to accommodate this new data, which would include the name and physical address of the Originator and Receiver and any payment instructions received from the Originator with the payment order.

All International ACH Transactions would be identified by the CBR Standard Entry Class Code.

Alternative #1: Suggested Modifications

AFP is concerned that the substantial changes required by the new ACH format, which NACHA estimates will cost the financial industry millions of dollars, might impact the growth rate of electronic payments. Implementation of the new rules requires careful planning, preparation and execution if it is to be efficient and enforceable. AFP suggests the following modifications.

Implementation Strategy: Schedule a Later Implementation Date

NACHA anticipates that a ballot on the proposed rule would be sent to the NACHA Voting Membership in January 2006, with implementation on March 16, 2007. Because of the extensive changes to software, processing and customer service, as well as the customer education needed, AFP recommends that implementation be scheduled no earlier than September 2007, or later if the ballot process is delayed.

Communication and Education Plan: Corporate Originator Education Required

Many corporate Originators are not aware that the proposed rules will affect their organizations. As NACHA points out, ACH transactions that involve non-U.S. parties are now often identified as domestic ACH payments using the CCD Standard Entry Class Code because they enter the U.S. payment system via proprietary banking systems or as SWIFT messages. As global trade increases, so will the number of payments that U.S. companies exchange with trading partners outside the U.S. that are not subject to U.S. legal jurisdiction.

U.S. corporate Originators need to be informed about the data that will be required with their international ACH transactions, ACH format changes, the OFAC screening process, and the procedure that is followed when a transaction is in violation of U.S. sanctions policy. A corporate education campaign—conducted by NACHA, the Regional Associations and financial institutions as well as by AFP—and time for organizations to make the required modifications to their processes and systems, would call for a later implementation date than the date in the NACHA proposal.

Warranties and Penalties for Non-Compliance: Strong Enforcement Needed

Financial institutions—and their corporate customers—will be undertaking significant expense to comply with the OFAC screening process. OFAC wants to tighten U.S. sanctions compliance and strengthen anti-terrorist controls. These goals will not be met if NACHA rules enforcement is weak.

There is a risk that Originating Depository Financial Institutions (ODFIs) will violate the rules by incorrectly classifying international transactions as domestic transactions. Receiving Depository Financial Institutions (RDFIs) may not be able to detect these errors without screening all incoming ACH transactions.

To prevent abuse, one suggestion is to have the ODFI warrant to the RDFI and other parties in the process that all international ACH transactions are identified with the CBR code. If there was a violation, the ODFI would be responsible for damages under a breach of warranty claim. NACHA should consider applying an even stronger penalty—suspending the right of an ODFI that violates the rule to submit transactions through the ACH Network.

Definitions: Conform to the Uniform Commercial Code (UCC)

NACHA's proposal includes definitions of an International ACH Transaction and the parties to the transaction. AFP agrees with the recommendation of the Electronic Payments Network that the definitions in the proposal be modified to conform to the definitions in UCC Article 4A, which are long established and widely accepted in commercial law.

Thank you for the opportunity to comment on this proposal. If you have any questions, please call Arlene Chapman at AFP, 301-907-2862 or e-mail achapman@afponline.org

Sincerely,



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