

NACHA Issues Amendments to Operating Rules on Same-Day ACH Payments

April 6, 2016

The NACHA, The Electronic Payments Association (“NACHA”) has adopted several amendments to its Operating Rules and Guidelines (“NACHA Rules”) that could significantly impact the operations of financial institutions. The amendments include (i) requirements for same-day ACH payments; (ii) unauthorized entry fees for specific unauthorized returns; and (iii) disclosure requirements for certain Point of Sale (“POS”) entries utilizing ACH Cards. This advisory summarizes these NACHA amendments.

Same-Day ACH

Currently, most ACH payments are settled on a next business day basis. NACHA will begin to allow same-day processing of almost all ACH credit entries (i.e., ‘payment sent’ transactions) that are made to an account at any receiving depository financial institution (“RDFI”). Same-day ACH processing will be implemented in 3 phases:

- Phase 1. September 23, 2016 (credits only). Funds will be available (i.e., posted, no requirement for cash withdrawal) at the close of the RDFI processing day. The settlement at 1:00 p.m. ET and 5:00 p.m. ET.*
- Phase 2. September 15, 2017 (debits and credits). Funds will be available (i.e., posted, no requirement for cash withdrawal) at the close of the RDFI processing day. The settlement at 1:00 p.m. ET and 5:00 p.m. ET.*
- Phase 3. March 16, 2018 (debits and credits). Funds will be available (including availability for cash withdrawals) at 5:00 p.m. local RDFI time. The settlement at 1:00 p.m. ET and 5:00 p.m. ET.*

All financial institutions that participate in the ACH network as an RDFI must be able to receive and process same-day ACH credits beginning with Phase 1 and ACH debits beginning with Phase 2. This ensures that any originating depository financial institution (“ODFI”) can offer same-day transfers to a customer who is initiating an ACH entry (“Originator”) the certainty of sending same-day transactions to an account at any RDFI. While there is no mandate for ODFIs to offer same-day ACH to their customers, the services are expected to be offered widely.

When fully implemented in 2018, these new rules will give an Originator the option to send same-day ACH transactions—both credit and debit—to accounts at any domestic RDFI. The two initial phases of the implementation are less comprehensive and are intended to enable the various participants in the ACH payment process to adjust to the new standards for accelerated processing. For example, while Phase 1 is limited to same-day ACH credits, same-day processing of most return entries, including non-monetary transactions (e.g., Notifications of Change), will be allowed. Please note that International ACH Transactions (“IAT”) and any individual transaction over \$25,000 are not and will not become eligible for same-day processing.

The Originator will indicate its intention to initiate a same-day ACH transaction by means of the Effective Entry Date for the ACH entry. For example, in the case of a Phase 1 credit entry, the Originator will enter the current date in the Effective Entry Date field and its ODFI will pass the entry to its ACH Operator. If it is determined that the entry can be processed in one of the new same-day clearing windows, the ACH Operator will insert the current date as the Settlement Date for the entry and process the transaction as same-day. The NACHA Rules provide that, as of September 23, 2016, an RDFI will be entitled to rely upon the Settlement Date of a credit entry regardless of the Effective Entry Date. It is important to note that if an Effective Entry Date field for an entry contains a 'stale' date (i.e., a Banking Day in the past) or otherwise invalid value, the ACH Operator will process and settle such an entry at the next available opportunity, including as a same-day entry if the timing of its submission so permits.

There is also an optional identification method available for use by an ODFI to help sort and manage same-day ACH entries. It is expected that many ODFIs will require Originators to demonstrate their intent for same-day settlement of an ACH entry by establishing a standardized same-day indicator for insertion in the Company Descriptive Date field. While this optional same-day indicator may be helpful to clarify the instructions from an Originator to its ODFI, neither an ACH Operator nor the RDFI is under an obligation to take any action based on the presence or absence of information appearing in Company Descriptive Date field.

In light of these changes, two (2) new clearing windows will be offered by ACH Operators:

- Submission deadline of 10:30 a.m. ET with the settlement at 1:00 p.m. ET.*
- Submission deadline of 2:45 p.m. ET with the settlement at 5:00 p.m. ET.*

Any entry that is coded as a same-day transfer by an ODFI, but is not submitted in a timely manner as part of one of the above same-day clearing windows, will be given a Settlement Date of the next banking day by the ACH Operator and processed as a next-day entry. It is important to recognize, while the new clearing windows are being established to support same-day ACH, they are not designed to handle same-day entries exclusively. The batches of entries submitted to ACH Operators will include same-day and future-dated entries, which the RDFI will need to sort and manage based on the Settlement Date field.

There will be a same-day entry fee on each same-day transaction paid by the ODFI to the RDFI. The fee is 5.2 cents per same-day transaction. It will be assessed and collected by ACH Operators through established monthly billing mechanisms. There is no same-day entry fee for RDFIs and no requirement for RDFIs to process same-day returns.

Each RDFI will need to consider how it will comply with the requirement—applicable during Phases 1 and 2—to make funds available as of the close of the RDFI's processing day. This requirement does not require the RDFI to make any funds received available for cash withdrawal, but the funds must be available to cover any debits applicable to the Receiver's account and thereby avoid returns due to not sufficient funds ("NSF") and overdrafts. Special operational processing will be required for institutions where the processing day ends before the new 2:45 p.m. ET clearing window with a 5:00 p.m. ET settlement time*. By way of example, should an RDFI's daily processing day end at 4:00 p.m. ET, causing an overdraft based on existing transaction activity on Day 1, and if a

credit is then received at the 5:00 p.m. ET settlement on Day 1*, the RDFI must recognize the receipt of such credit when business opens on Day 2. The RDFI must make an adjustment that will give the Receiver's account benefit of the credit as if it was received as of the close of business on Day 1, including reversing any NSF returns and overdrafts, including any related fees, that might have been triggered before receipt of such credit. Where an RDFI ends its daily processing day at 5:00 p.m. ET (or later) after receiving any same-day credits there should be no need to back-date credits to comply with this requirement.

RDFIs will have flexibility in determining the 'local RDFI time' in Phase 3. The local RDFI time may be based on (i) a specific time zone, if an RDFI's geographic footprint is limited to a single time zone; (ii) branches in which specific accounts were opened, or are hosted on platforms corresponding to those branches; (iii) a customer's address (i.e., the Receiver of the same-day ACH entry); and/or (iv) other ways for assigning 'local time' as long as they provide access to funds on a basis that reasonably associates accounts with location information.

All RDFIs and any ODFI planning to offer same-day transfers should review their current processes and procedures for ACH file pickup and processing and discuss the pending changes relevant to vendors, the ACH Operator(s) and other processors. Institutions should begin considering whether revisions are required to customer agreements, disclosures and fee schedules, as well as to existing printed and online instructions for processing ACH transfers. The institution will, of course, need to update procedures and arrange for discussions and training sessions with relevant staff members.

* Important: The times described above are approximate and are not controlled by the NACHA Rules. Institutions are advised to confirm the actual timing of submissions and settlements with its own ACH Operator(s).

Unauthorized Entry Fees

In order to improve the quality of transactions in the ACH Network by reducing unauthorized returns, NACHA has implemented an unauthorized entry fee to be paid by the ODFI to the RDFI for each unauthorized return (R05/R07/R10/R29/R51). The current fee is \$4.50 per each ACH debit that is returned as unauthorized and both NACHA and the ACH Operators will determine the system to collect and disburse the fees. This fee may not be disputed and the amount will stay the same for the first three years.

The above rule will become effective beginning with applicable return entries that have a Settlement Date of October 3, 2016. Fees applied to return entries as of October 3, 2016, would relate to forward entries initiated as early as August 1, 2016.

Disclosure Requirements for POS Entries

The new NACHA disclosure requirements for POS Entries deal with the issuance of ACH Cards. An ACH Card is a card or other means of access to a consumer account at a financial institution that is issued by an entity other than the consumer's financial institution and can be used to initiate POS entries through ACH. An example of an ACH Card that is subject to this rule is a merchant-issued shopping card, such as a Target Red Debit Card, for which payments are made via ACH debits against a checking account at a financial institution designated by the

cardholder.

Originators or Third Party Senders issuing ACH Cards must disclose to consumers prior to activation that:

- The ACH Card is not issued by the consumer's financial institution;
- POS Entries made with the ACH Card may overdraw the consumer's account and are not subject to overdraft opt-in with respect to debit card overdrafts; and
- Benefits and protections for the ACH Card may differ from the financial institution's issued debit card.

The above disclosures must be made: (i) within twelve (12) months from March 18, 2016, for existing ACH Card holders and (ii) prior to activating the ACH Card for cards issued on or after March 18, 2016. The goal of the above disclosures is to reduce consumer confusion between ACH Cards issued by financial institutions and those issued by non-financial institutions and the possibility of incurring unexpected overdraft issues.

Please note that Cullen and Dykman has extensive experience in advising and drafting ACH-related agreements for financial institutions. If you have any questions regarding the new NACHA rule changes, please feel free to contact Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, or Diana Acosta at 516-357-3739 or via email at dacosta@cullenanddykman.com.

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