



February 26, 2015

*BY COURIER AND ELECTRONIC DELIVERY*

Ms. Jan Estep, Chief Executive Officer  
NACHA – The Electronic Payments Association  
2550 Wasser Terrace, Suite 400  
Herndon, VA 20171

Re: NACHA Same Day ACH Proposal

Dear Ms. Estep:

The Clearing House Payments Company L.L.C., the American Bankers Association, the Consumer Bankers Association, the Credit Union National Association, the Independent Bankers Association of America, the Financial Services Roundtable, and the National Association of Federal Credit Unions (“Associations”)<sup>1</sup> respectfully submit this letter to NACHA – The Electronic Payments Association (“NACHA”) in response to public comments<sup>2</sup> submitted by the Board of Governors of the Federal Reserve (“Board”) regarding NACHA’s Same-Day

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<sup>1</sup> Please see Appendix 1 for a description of each association.

<sup>2</sup> Board Letter to NACHA, February 6, 2015, <http://www.federalreserve.gov/paymentsystems/board-staff-comment-letter-to-NACHA-20150206.pdf>.

ACH Proposal issued on December 8, 2014 (the "Proposal").<sup>3</sup> In particular, this letter sets forth the Associations' response to the concerns that the Board raised regarding the proposed interbank fee, which Originating Depository Financial Institutions ("ODFIs") would pay to Receiving Depository Financial Institutions ("RDFIs") for each same-day ACH transaction. Further, this letter emphasizes our shared belief that without the interbank fee, implementation of same-day ACH would not be economically viable for RDFIs and, to the extent that was the case, it would not be possible to achieve ubiquitous, same day ACH service.

With respect to the interbank fee, the Board has identified three issues:

- "The perspectives of same-day ACH originators should weigh heavily in the determination of the interbank fee as the proposal is refined prior to being brought to a vote";
- The Board is "concerned with the definition and determination of allowable costs for the proposed interbank fee"; and
- "The proposed interbank fee will likely inhibit the usage of the same-day ACH service, and therefore payments system efficiency".

Before responding to each of these concerns, the Associations acknowledge the importance of NACHA's economic analysis of the Proposal, including a study of ODFI and RDFI costs to implement the specific features of the Proposal. This economic analysis serves as the basis for the interbank fee. The economic analysis included a review of likely use cases and same-day volumes, as well as a comprehensive cost analysis to determine implementation and on-going costs for financial institutions of all sizes. The research concluded that an interbank fee was the optimal method to ensure ubiquity of the service, and absent a fee, RDFIs would have no likelihood to recover the costs to implement and operate the proposed same-day ACH service.

Equally important is the fact that same day ACH, if adopted by NACHA's membership, would be an optional capability for originators and ODFIs. Specifically, these network participants will be able to choose whether to use same day clearing and settlement. If they choose to take advantage of faster processing and settlement, the interbank fee will apply to their same day items. However, originators and ODFIs will still be able to clear and settle ACH items using current next day capabilities and no interbank fee will apply to such items.

***The Interbank Fee is Essential to Achieve Ubiquity and ODFIs Will Remain Free to Determine Pricing for their Originator Customers***

The Board believes that the interbank fee will ultimately be borne by originators by setting a floor on the amount they will be charged to access the service and noted that because end users of ACH services do not have a direct voice in the NACHA voting process, it is critical that NACHA seek out their views. Thus, the Board states that the perspectives of same-day ACH originators should "weigh heavily in the determination of the interbank fee as the Proposal is refined prior to being brought to a vote."

The Associations agree that the perspectives of same-day ACH originators are important. We think it is important to note that there are many different kinds of originators in the ACH network. For example, there are

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<sup>3</sup> NACHA Request for Comment, Same Day ACH, <https://www.nacha.org/rules/request-comment-same-day-ach-move-payments-faster>,

corporations that use the ACH for commercial payments<sup>4</sup>, employers and payroll providers that use the network to send direct deposits of payroll, service providers that use the network for automated bill pay, savings plans that use the network for automated savings programs, and merchants that use the network for check truncation or point of sale transactions. NACHA provides an open comment process through which originators of all types, as well as other network participants, can provide their views. We understand that NACHA has received comments regarding the Proposal from a variety of originators or groups representing originators. We believe that NACHA will give these comments due consideration.

At the same time, the Associations believe that the proposed interbank fee is essential to facilitate the adoption needed to achieve ubiquity and emphasize that the fee is cost-based and subject to significant economic controls. These controls are explicit in the rule, allowing for downward pressure on the fee. In particular, the fee would be subject to re-evaluation at defined intervals under criteria that tie the amount of the fee to a cost recovery standard.

As noted above, same-day ACH would be optional for ODFIs and originators, but mandatory for RDFIs in order to achieve ubiquity of receiving points. Such ubiquity is a “major key to the success of any payments product as it stimulates both customer reach and economics.”<sup>5</sup> Further, as the Board acknowledged in its comments to NACHA, the FedACH opt-in same-day service has had “negligible take-up.”

The cost of implementation for same day ACH will fall primarily on RDFIs. Originators, which would derive the most value from faster ACH clearing and settlement, are the most likely to pay for enhancements, while receivers, which do not control the timing or speed of ACH entries, are not likely to pay for same-day entries. The proposed fee is designed to address this imbalance between ODFIs and RDFIs and, as acknowledged above, is the result of a comprehensive economic study evaluating investment and business requirements.

Moreover, adoption by end users is necessary for new ACH same-day services to be successful, and banks have an incentive to take their customers’ interests into account. With this in mind, the Associations believe that financial institutions are in a strong position to understand their customers’ needs and the business case necessary to achieve adoption. Each ODFI will be free to charge or not charge its originators as it sees fit and will determine the amount of the charge (if any) independently, as they do today with their next-day ACH services for originators, for which pricing varies widely.

***Opportunity Costs and Risk-Adjusted Rate of Return are Standard Considerations for a Capital Project and it is Appropriate to Account for them in the Interbank Fee***

The Board takes the view that NACHA’s inclusion of “opportunity costs” and a “risk adjusted rate of return” in the interbank fee calculation is inappropriate. The Board believes that the inclusion of opportunity costs in the calculation of the interbank fee effectively transfers high mark-ups to same-day ACH transactions at the expense of end users. The Board also has “similar concerns” about the inclusion of a risk adjusted fair rate of return.

As stated above, the Associations believe that same day ACH can only be implemented successfully if both ODFIs and RDFIs see a rational business justification for making the required investments. We believe that opportunity

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<sup>4</sup> With respect to corporate originators we note that the Association of Financial Professionals submitted a comment letter that supports the Proposal, noting that same day ACH would be a cash management tool for corporate treasurers that is significantly less expensive than wires.

<sup>5</sup> Rich Oliver, same day ACH editorial on Pymnts.com (February 3, 2015). Available at: <http://www.pymnts.com/news/2015/same-day-ach-why-the-time-is-now/#.VO38RvnF861>.

costs and a risk-adjusted rate of return are both essential elements of a business case that financial institutions need to address in determining whether to invest in new product offerings. In particular, opportunity costs and risk-adjusted rate of return are standard considerations for capital projects, especially the introduction of new products. The Associations believe it is unrealistic to suggest that RDFIs would not consider these factors as they evaluate the Proposal, including the mandate for RDFI participation. Indeed, we believe that a financial institution that did not include these considerations in its capital approval process would face safety and soundness questions from its prudential regulator.

Opportunity costs refer to the earnings that RDFIs lose from existing transactions displaced by same-day ACH transactions over which the RDFI has no control. For example, if ODFIs begin sending same-day ACH transactions instead of wire transfers in certain circumstances, the opportunity cost to the RDFI would be the earnings normally made by the RDFI from receiving a wire transfer. The impact on revenue received from processing wire transactions must be considered in quantifying the business case for an investment in a new product offering. Similarly, a risk-adjusted rate of return is also an essential element of any business case. No commercial enterprise can be expected to make an investment without factoring in the cost of capital. It is not economically rational, is against the interests of shareholders and for insured financial institutions would be an unsafe and unsound practice. We also note that under the Monetary Control Act and its pricing principles, the Federal Reserve Banks are required to set pricing for their payment products based on their actual costs plus a "Private Sector Adjustment Factor" that requires the Banks to take into consideration, among other things, a private sector competitor's taxes and cost of capital.

***The "Efficient" Price is an Equilibrium that Provides ODFIs and RDFIs with Appropriate Incentives to Implement Same-Day ACH Service***

The Board states that "[t]hrough its effect on fees to originators, the interbank fee will likely reduce usage of the same-day ACH service from what it would be absent a fee, and ultimately limit the benefits that end users derive from it."

However, in the absence of an interbank fee, a new system for same-day ACH is unlikely to be built or, if it was built, is unlikely to be ubiquitous. In particular, we believe the Proposal will not be adopted if it does not make business sense for RDFIs, as they would be mandated to accept same-day ACH entries and thereby assume cost of enabling same day settlement without any realistic means to recover those costs. We note that even with the proposed fee some financial institutions are concerned that they will not be sufficiently compensated to recover their costs. Thus, the Associations believe that a fee of "zero" is actually what would inhibit same-day ACH usage.

We disagree with the Board's assumption that a mandated price of "zero" is not a price, and that setting the interbank fee to zero results in the most efficient use. The "efficient" price is an equilibrium that provides adequate incentives for ODFI and RDFI participation. If the same-day ACH interbank fee is set too high, it will discourage ODFIs from offering same day ACH services. However, if the inter-bank fee is not provided at all or is set to too low, RDFIs will be discouraged from supporting the Proposal.

Even if the rule could mandate RDFI acceptance at a zero fee, this simply would result in a greater number of transactions, not the most "efficient" number of transactions, because it would not take into account the impact on RDFIs.<sup>6</sup> In fact, if an originator does not see the full cost of same-day ACH reflected in the price, the decision

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<sup>6</sup> We note that an obligation of the RDFI to pay the ODFI a fee also would increase transaction volume by subsidizing origination. However, that too would not be an "efficient" model.

to use the service would be based on incomplete information that would lead to inefficiency. If this were the case, the pricing mechanism would actually embed externality (i.e., the uncompensated cost to the RDFI) instead of mitigating externality, which is a goal of the interbank fee.

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Thank you for your consideration of our comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact the undersigned.

Yours very truly,

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*Board of Governors of the Federal Reserve System*  
Ms. Louise L. Roseman, Director

## **Appendix 1**

### **Trade Association Descriptions**

#### **The Clearing House**

Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively hold more than half of all U.S. deposits and which employ over one million people in the United States and more than two million people worldwide. The Clearing House Association L.L.C. is a nonpartisan advocacy organization that represents the interests of its owner banks by promoting and developing policies to support a safe, sound and competitive banking system that serves customers and communities. Its affiliate, The Clearing House Payments Company L.L.C., which is regulated as a systemically important financial market utility, owns and operates payments technology infrastructure that provides safe and efficient payment, clearing and settlement services to financial institutions, and leads innovation and thought leadership activities for the next generation of payments. It clears almost \$2 trillion each day, representing nearly half of all automated clearing-house, funds transfer and check-image payments made in the United States. See The Clearing House's web page at [www.theclearinghouse.org](http://www.theclearinghouse.org).

#### **American Bankers Association**

The American Bankers Association is the voice of the United States' \$15 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans.

#### **Consumer Bankers Association**

Founded in 1919, the Consumer Bankers Association (CBA) is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding well over half of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

#### **Credit Union National Association**

CUNA is the national trade association for America's state and federally chartered credit unions. CUNA represents approximately 90% of America's 6,500 credit unions and their 102 million memberships

#### **Financial Services Roundtable**

The Financial Services Roundtable represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

### **Independent Community Bankers of America**

The Independent Community Bankers of America® (ICBA), the nation's voice for more than 6,500 community banks of all sizes and charter types, 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. ICBA members operate 24,000 locations nationwide, employ 300,000 American, hold \$1.3 trillion in assets, \$1 trillion in deposits and \$800 billion in loans to consumers, small businesses and the agricultural community. For more information, visit [www.icba.org](http://www.icba.org).

### **National Association of Federal Credit Unions**

The National Association of Federal Credit Unions exclusively represents the interests of federal credit unions before the federal government. NAFCU represents nearly 800 federal credit unions, accounting for 68.5 percent of total FCU assets and 64 percent of all FCU member-owners. NAFCU represents many smaller credit unions with limited operations as well as many of the largest and most sophisticated credit unions in the nation, including 82 out of the 100 largest FCUs. Learn more at [www.nafcu.org](http://www.nafcu.org).