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June 4, 2008

VIA ELECTRONIC MAIL

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: FRB Docket Number OP-1310

Dear Ms. Johnson:

NACHA – The Electronic Payments Association appreciates this opportunity to respond to the Request for Comment regarding daylight overdraft posting rules issued by the Federal Reserve Board (“Board”).¹ NACHA is not commenting separately on the Board’s proposal addressing broader changes to its Payment System Risk (PSR) Policy,² but we do address in these comments areas of interrelationship between the two proposals relevant to the ACH Network.

NACHA supports aligning the posting times for ACH debit entries and for Treasury Tax and Loan (TT&L) investments associated with the Electronic Federal Tax Payment System (EFTPS) with the posting time (8:30 a.m. ET) in place for ACH credit entries. We agree with the Board’s assessment that the proposal will increase liquidity for originating financial institutions, address competitive differences between the ACH Operators, and more closely reflect the time at which the payor institution is obligated to pay for the transaction.

We do however have some reservations around the disparities between the implementation period for this proposal versus the later implementation of the Board’s broader PSR Policy proposal that will provide receiving financial institutions greater latitude to absorb any negative funding impact to their ACH operations. Finally, we find it unfortunate that certain financial institutions that play a critical role in ACH processing, but are ineligible for intraday credit (e.g., bankers banks and corporate credit unions), will be disadvantaged even after implementation of OP-1309.

Nonetheless, the proposal on balance represents a step towards greater uniformity in policies and posting practices within the ACH Network and would address the ongoing concerns expressed by the Board in its proposal regarding intraday liquidity.

¹ NACHA is a not-for-profit association representing more than 15,000 financial institutions and a network of regional payments associations through direct membership, and 650 organizations through its industry councils. NACHA develops operating rules and business practices for the Automated Clearing House (ACH) Network and for electronic payments in the areas of Internet commerce, electronic bill and invoice presentment and payment (EBPP, EIPP), e-checks, financial electronic data interchange (EDI), international payments, and electronic benefits services (EBS).

² Docket OP-1309.

A. Discussion of Proposed Changes

1. Increased Liquidity

Financial institutions originating a large value of ACH debit transfers will clearly benefit from the proposed posting rule since the liquidity needed to fund the settlement of ACH credit transfer origination at 8:30 a.m. would be offset by the receipt of funds from concurrent settlement of ACH debit transfers. In addition, these originating institutions may be able to offer their customers earlier funds availability from ACH debit transfers, thereby reducing any competitive disadvantages that depository institutions settling through the Reserve Banks' FedACH service may face. Finally, NACHA agrees that the proposed posting change could also benefit those institutions originating ACH debit transfers over the Electronic Payments Network (EPN) but delivered to receiving depository institutions by FedACH via inter-Operator exchange.

If adopted as proposed in Docket OP-1309, the ability to collateralize daylight overdrafts and therefore avoid a fee assessment would be of direct assistance to many originating financial institutions seeking to mitigate liquidity concerns. Nonetheless, we are concerned that this proposal would not likely be implemented until a year and a half after the proposed ACH posting changes and this disparity in proposed implementation timeframes could represent a burden for a significant period of time to receiving financial institutions that do not have comparable volumes of offsetting ACH credit transactions. Further, as the Board points out, not all financial institutions will be eligible to take advantage of the options proposed in OP-1309 and many other institutions' business models are not conducive to pledging the additional collateral. For these institutions, we are concerned about the need to add additional staff in the morning and/or to keep significant additional reserve account balances overnight to avoid daylight overdrafts and their pricing impact. Therefore, we urge the Board to carefully consider these impacts and any means to mitigate their effect.

2. Reducing Competitive Disparities

NACHA agrees with the Board's assessment that originating institutions would be in a better position to avail customers of earlier funds availability from ACH debit transfers, and thereby reduce any competitive disadvantage to depository institutions settling through the Reserve Banks' FedACH service. Further, NACHA agrees that this benefit would extend to institutions originating ACH debit transfers through EPN that are delivered to receiving depository institutions through FedACH via inter-Operator exchange.

In the proposal, the Board states that the Federal Reserve Banks' Retail Payments Office has received feedback that the later posting of debit transfers is influencing some customer decisions in choosing an Operator for origination. We are not sure how much changing the posting time will influence originating financial institutions in their decisions since settlement time is just one of many factors financial institutions consider when choosing an Operator. However, NACHA supports any effort to reduce identifiable competitive disparities between ACH Operators since this is in the best interest of the ACH Network.

B. Implementation Deadline

The benefits from this proposal to originating financial institutions are clearly evident. On the other hand, the impact on receiving financial institutions will be the accelerated daily debiting – by 2.5 hours – of their reserve accounts to settle ACH debit entries received. For institutions without offsetting ACH origination activity, this impact will likely result in the need to retain greater reserve account funding overnight or to staff the reserve account management function earlier than is currently the case. NACHA has been advised that this expectation is likely to fall most heavily on small financial institutions not actively involved in ACH origination and those institutions in western time zones.

Once enacted, the Board’s related proposal regarding intraday credit and broader daylight overdraft policy changes will offer a great deal of relief from any negative consequences associated with the earlier posting of ACH debit transactions. However, the Board is proposing a 6-month implementation period for this proposal and a 2-year implementation period for OP-1309. This disparity in implementation timeframes will result in the hardships we cite above for a fairly significant period (1.5 years) for receiving institutions with minimal opportunity for mitigation in the interim. This is to say nothing of the ongoing disadvantage that will be caused to those ineligible financial institutions. Therefore, we strongly believe that changes to the posting rules should take effect concurrent with any changes to the PSR policy to mitigate the effects. As the Board recognizes in its proposal, implementing any posting rule change in tandem with the broader PSR policy will provide institutions an opportunity to pledge (additional) collateral to manage a possible increase in fees.

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Thank you for allowing us this opportunity to respond. If I can be of further assistance, please do not hesitate to contact me at (703) 561-3975.

Sincerely,

Carrie M. Lee
Staff Attorney