

October 31, 2019

Via Electronic Submission

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket No. OP-1670

Dear Ms. Misback:

Nacha welcomes the opportunity to submit this comment letter to the Board of Governors of the Federal Reserve System (the “Fed”) in response to the notice and request for comment regarding the proposal to develop a new real-time payment and settlement service, called FedNow (the “Request”). As explained further below, we urge the Fed to not let work on the FedNow initiative detract from the pending proposal, and the more immediate need, for the expansion of the National Settlement Service (“NSS”) and Fedwire operating hours.¹ While implementation of the FedNow service may provide public welfare benefits in the future, many similar benefits can be achieved through prompt action on NSS and Fedwire expansion.

Accordingly, Nacha believes that:

1. The Fed’s investigation of FedNow should not in any way impair immediate action on the Fed’s May 16, 2019 proposal to extend NSS operating hours by 1 hour to 6:30 p.m. ET in support of Same Day ACH;
2. Any action on FedNow should be conducted in parallel with other actions to address the liquidity management needs of financial institutions to effectively participate in real time payments (e.g., further extension of NSS and Fedwire to 24x7x365 hours, and implementation of a seven-day accounting regime);
3. Any ancillary tools and services adopted to support FedNow, including 1) the extension of NSS and FedWire operating hours up to 24x7x365; 2) directory services; and 3) fraud prevention services, must be made uniformly available without discrimination to all payment systems and settlement agents otherwise qualified to use Federal Reserve services. Competition among payment systems should be based on the quality, characteristics and benefits of the payment systems themselves, rather than on their differential access to Federal Reserve-provided utilities.

¹ Federal Reserve requests comment on potential modifications to operating hours for the Reserve Banks’ National Settlement Service and Fedwire Funds Service -

<https://www.federalreserve.gov/newsreleases/pressreleases/bcreg20190509b.htm>

I. BACKGROUND: NACHA AND THE ACH NETWORK

Nacha manages the development, administration, and governance of the ACH Network, the backbone for the electronic movement of money and remittance information in the United States. The ACH Network serves as a safe, secure, reliable and ubiquitous network for direct consumer, business, and government payments, and annually facilitates billions of payments moving trillions of dollars. The ACH Network is governed by the Nacha Operating Rules (“Nacha Rules”). Nacha’s rule development process includes input from and participation from all types of organizations, including both business and consumer end-user organizations, as well as the Fed and the Federal Reserve Banks. Nacha represents, and receives input from, over 10,000 participating financial institutions of all sizes and types throughout the United States, both directly and through 11 Payments Associations.

Nacha also actively promotes the on-going enhancement of U.S. domestic payment systems generally, and the ACH Network specifically, by advocating for changes that improve the speed, reliability and security of those systems. In particular, Nacha has been an active participant in the on-going dialogue regarding the roadmap to faster payments infrastructure, including as a member of the Faster Payments Task Force, the Governance Framework Formation Team, the U.S. Faster Payments Council and the Secure Payments Task Force. Nacha views the effort to improve the U.S. payments system as a public-private partnership to which Nacha brings valuable insight as the industry organization charged with oversight of the ACH Network and its ongoing evolution.

II. COMMENTS ON THE REQUEST

A. Overview

Nacha has long been a proponent of payment systems modernization and an advocate for improvements that empower private sector innovation. As explained in Nacha’s June 24, 2019 comment letter,² Nacha has been actively engaged with the Fed since at least 2013 to promote extended operating hours for NSS in a manner that facilitates expanded and faster private-sector services, including later settlement windows for Same Day ACH. Similarly, Nacha expressed its support in the June 24 letter for the Fed’s proposal to implement a corresponding extension of daily operating hours for the Fedwire Funds Service in a manner necessary to support settlement of ACH transactions. These are two critical and overdue improvements in Fed infrastructure that can have a near-term impact on the speed of payments processing and the ability of the private sector to make more effective use of existing ACH infrastructure.

In light of those pending proposals, Nacha believes that it is critical that the Fed’s investigation of the proposed FedNow system not in any way impair immediate action on the May 16, 2019 proposal to extend NSS and Fedwire operating hours in support of Same Day ACH (“Same Day Proposal”). Indeed, the enhancement of those market utilities, and the industry actions to adjust to those enhancements, will help position the industry to make the further changes that would be necessary to support FedNow. Therefore, regardless of how the Fed determines to move

² See https://www.federalreserve.gov/SECRS/2019/July/20190705/OP-1664/OP-1664_062419_134232_364463938438_1.pdf

forward with FedNow, it should promptly implement the Same Day Proposal, so that work on FedNow does not derail the widespread benefits available from the Same Day Proposal. Similarly, any further enhancements of NSS and Fedwire or tools adopted to support FedNow, including any additional services, such as directory or fraud prevention, should be made uniformly available to retail payment systems so that other systems, including the ACH, can also build enhanced services on the basis of the new/improved market utilities.

B. NSS/Fedwire Extensions For Same Day ACH Should Continue To Be Treated As A Stand-Alone Effort That Is Not Impacted Or Delayed By Consideration Of The Request.

The Same Day Proposal received 85 comments from, and on behalf of, the financial services industry and both business and consumer end-user organizations. The significant majority of the comments were vastly supportive of extending NSS and Fedwire operating hours in order to enable the additional Same Day ACH settlement window. The Request does not expressly address the interaction between the Same Day Proposal and the FedNow effort, but Nacha assumes, and we encourage the Fed to clarify, that the Same Day Proposal will proceed to finalization and implementation without regard to the status of the Request.

As articulated in Nacha’s response to the Same Day Proposal, the proposal for expanded NSS operating hours has been requested by the industry since at least 2013, and has been on the Fed’s own roadmap since at least 2015. In particular, the Fed’s January 26, 2015 paper, Strategies for Improving the U.S. Payment System (the “2015 SIPS Report”) included an action item to “Expand the operating hours and other capabilities of the National Settlement Service.” In the 2015 SIPS Report, the Fed committed to “enhance the National Settlement Service to make it more attractive as a settlement vehicle for private sector arrangements. An improved service has the potential to empower private-sector innovation around solutions for making payments faster, safer and more efficient”³ based on industry feedback received in response to the Fed’s 2013 “Payment System Improvement-Public Consultation Paper.” Nacha strongly supported this statement.

Since that time, however, the Fed has extended NSS operating hours later into the day by only a modest 30 minutes. While Nacha appreciates that movement, the overwhelming support for the Same Day Proposal from all segments of the industry, including both financial institutions and corporate end users, makes clear that further action is needed. The Same Day Proposal will provide immediate public benefits in terms of faster payments well in advance of the benefit that can be achieved via a more significant effort to create FedNow, including, for example, for same day payroll, which has been an area that has received consistent attention in Fed discussions of the benefits of faster payments, including in the Request.

Moreover, industry adjustment to the incremental improvements contained in the Same Day Proposal will provide the opportunity to identify any unexpected challenges in that effort before the more significant shift to 24x7x365 operations and a 7-day accounting regime takes place in the implementation of FedNow. This will make both the Fed and the entire industry better prepared for that next step in the evolution of NSS and Fedwire services. Accordingly, in order to achieve the

³ 2015 SIPS Report at 21.

Fed's own goals for the improvement of public welfare through faster payments, it is essential that the Fed finalize and implement the Same Day Proposal as soon as possible.

C. Work On Implementation Of Further Extension Of NSS And Fedwire Should Proceed In Tandem With FedNow.

As the Fed's original 2018 request for comment on the possibility of a Fed-managed RTGS system ("RTGS Proposal") indicated, sound risk management policies, procedures and systems are a condition precedent to implementing RTGS.⁴ Moreover, the shift to 24x7x365 settlement and the accompanying 7-day accounting regime will be a material change for financial institutions well beyond the incremental efforts necessary to support the Same Day Proposal. Therefore, tools to help manage the risks associated with real-time FedNow payments should be made available at the same time that FedNow becomes available.

Accordingly, although the Request indicates that a follow-up proposal will be made to further expand the operating hours for NSS and Fedwire, we respectfully suggest that such action is essential to provide the industry with the liquidity management tools to reduce systemic risks that may exist in connection with the roll-out of FedNow. As the Fed determines how to proceed with FedNow, it should do so in tandem with actions to further expand NSS and Fedwire operating hours to be fully available on the same schedule that FedNow itself is available.

D. The 24x7x365 Extension Of NSS And Fedwire Operating Hours Must Be Available To All Payment Systems.

The Request itself confirms that support exists for the extension of NSS and Fedwire operating hours as a liquidity management tool broadly available across the industry, and that opening extended hours to the both private-sector RTGS and other payment systems, such as the ACH, would have significant public benefits: "Expanded hours for the Fedwire Funds Service and NSS could also benefit other retail payment services. For retail services that conduct interbank settlement on a deferred basis, including certain faster payment services and traditional payment card services, expanded hours could enable these services to settle net interbank obligations at times not currently possible, including weekends and holidays. Expanded Fedwire Funds Service and NSS hours could also benefit ACH payments by enabling additional settlement windows."⁵

As articulated in our December 13, 2018 comment on the RTGS Proposal, Nacha fully supports this position and believes that it is essential to maintaining a robust and competitive payments landscape that these types of Fed utilities continue to be made available to private sector payment systems without discrimination.

⁴ "Potential Federal Reserve Actions To Support Interbank Settlement of Faster Payments, Request for Comments," 83 Fed. Reg. 57351 (Nov. 15, 2018).

⁵ 84 Fed. Reg. 39,297, at 39,315-6 (Aug. 9, 2019).

E. The ACH System Provides A Model For Operator Interoperability.

The Request acknowledges the potential role of interoperability with the private sector RTGS in achieving ubiquitous real-time payment services. The operational complexities of developing a technical interface between FedNow and the private sector RTGS are beyond the scope of this comment. We note, however, that the ACH system, governed by the Nacha Operating Rules as administered by Nacha, provides a model for understanding how a real-time system with interoperable operators could benefit the entire industry and preserve the ability of the private sector to compete. Should the Fed determine to proceed with an interoperable real-time system, we respectfully suggest that it look to the ACH system, the Nacha rules and Nacha administration mechanisms as the baseline for any such effort.

F. Any Additional Services, Such As A Directory Or Fraud Prevention, Should Also Be Open To Private Sector Payment Systems On A Non-Discriminatory Basis.

In order for the U.S. economy to continue to have access to a robust set of payment alternatives, the Fed must ensure that any enhancement services it determines to provide are offered on a system-neutral basis. For example, Nacha’s December 2018 comment advocated payment-system agnostic directories. If the Fed determines to offer a directory service, then it should develop a service that supports a wide range of payment options, including ACH. That will enable financial institutions to make a more balanced choice among systems for specific types of payments based on characteristics such as quality and cost of the payment service itself, rather than on the availability of Fed services that could just as easily be available without differentiation among systems. It will also further enhance the efficiency of the U.S. payment system in its entirety. Accordingly, just as the Request highlights the Fed’s intent to provide FedNow as “a neutral platform for private-sector entities to offer competitive and innovative faster payment services to end users,”⁶ so to should the ancillary services under consideration be offered in a manner that does not inappropriately skew the playing field against ACH or other services that would otherwise compete with FedNow.

G. The Implementation Of FedNow And Other 24x7x365 Services Is An Opportunity To Re-Align The Banking Day

Although not contemplated by the Request, we encourage the Fed to use this process of designing and implementing FedNow and other 24x7x365 services as an opportunity to re-align the start and end of the banking day with the U.S. calendar day. Currently, the Fed opens Fedwire at 9:00 p.m. ET (6:00 p.m. PT) in support of activities in Asian markets. While justifiable in today’s operating environment, this timing has caused difficulties in the development of faster and more efficient payments in the U.S., and especially in providing services to financial institutions and their customers in the Pacific Time Zone. The totality of the changes contemplated by the Request, then, are an opportunity to re-align a newly-defined “Fedwire day” (as well as a “FedNow day”), potentially beginning at 12:00 midnight (presumably on Eastern Time).

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⁶ *Id.* at 39,312.

Nacha appreciates the opportunity to provide comments in response to the Request. If you have any questions regarding our comments, please do not hesitate to call me at (703) 561-3927, or our counsel at Sidley Austin LLP in this matter, David E. Teitelbaum, at (202) 736-8683.

Sincerely,

Jane Larimer
Chief Executive Officer

cc: David E. Teitelbaum, Esq.