JAMES C. STURDEVANT*

THE STURDEVANT LAW FIRM
A PROFESSIONAL CORPORATION
4040 Civic Center Drive
Suite 200
SAN RAFAEL, CA 94903

Telephone
(415) 477-2410

Facsimile
(415) 492-2810

email:
jsturdevant@sturdevantlaw.com

July 15, 2019

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

Re: Docket number, OP-1664, Enhanced Same Day ACH processing

Dear Ms. Misback,

My law firm and I support the proposal to authorize consumers to send and receive same-day payments later in the day. Specifically, we support the proposal to enhance same-day ACH processing by adding a third processing window to allow financial institutions to submit same day ACH payments until 4:45 p.m. Eastern Time (ET) (1:45 p.m. Pacific Standard Time (PST)) with settlement at 6:00 p.m. ET (3:00 p.m. PST). Currently, the latest submission deadline is 2:45 p.m. ET (11:45 a.m. PST).

Consumers almost always benefit from faster payment options, and the proposal makes it easier to take advantage of same day ACH payments, especially for consumers on the West Coast. A third same-day ACH window also aligns with the Federal Reserve's ongoing objective to support improvements in the safety and efficiency of payment systems in the United States as well as public interest in greater availability of payment services. The later same-day ACH window would allow more people to use same-day ACH services and to get greater benefit from those services.

Consumers Can Benefit From Faster Payments

The option of same-day ACH payments benefits consumers in a number of situations. Same-day payments could be important to consumers in these and other contexts:

• Payroll. Employees often live paycheck to paycheck, especially hourly employees. Late payrolls can impose serious consequences on families who are counting on today's paycheck to pay the rent and other immediate necessities. The proposal will provide an option for employers who need to get pay quickly to their employees in the case of emergency payrolls, missed deadlines, and last day pay. Same day processing can be especially helpful for certain payroll

payments that have no set payday, such as independent contractors, and for some hourly and temporary workers.

• Expedited bill payment. Consumers who struggle paycheck-to-paycheck do not always have the luxury of paying their bills ahead of time. Families juggling jobs, children and consumers with busy lives also occasionally discover that they overlooked a bill that must be paid today. Same-day ACH payments will help consumers to pay their bills on time and avoid late fees, utility service terminations, and other serious consequences.

• Refunds and claim payments, especially for emergency payments that are urgent. Consumers whose accounts have been erroneously debited or those who are otherwise owed a refund may be desperate to have funds restored. Claim payments may be critical for consumers who are out funds and have no cushion or when payments are needed to deal with emergency shelter, food or medical issues.

• Person-to-person transfers. Same-day ACH payments can also help consumers to send money to friends or family members who need it for urgent bills and other needs.

Consumers Will Benefit From and Take Advantage of A Third Processing Window

Currently, in order to take advantage of same day ACH payments, a payment must be submitted by 2:45 p.m. on the East Coast and as early as 11:45 a.m. on the West Coast. Consumers who wish to make last minute payments to avoid late fees may have difficulty doing so early in the day, especially (but not solely) in the Pacific time zone. Consumers who are paid in cash may not have time to receive the cash and deposit it into their account in time. Others may not have access to online banking while at work and will not be able to arrange a payment until later in the day. Indeed, some consumers may need to visit a bank or another service provider in person to arrange the payment. The additional flexibility is especially important for consumers who are juggling family responsibilities, multiple jobs, or transportation challenges that make it difficult to find time to deal with bills.

Consumers who are expecting funds will also find it helpful to have more flexibility for receiving funds on the same day. A consumer who is having difficulty paying rent may reach out to a friend or family member for last minute help. It may take time for the consumer to get in touch with a family member who is at work and for that person to arrange a payment to the consumer. Giving the person more time to arrange the payment may enable them to get the funds to the consumer to pay to the landlord that evening. Similarly, if a person is in an emergency situation, more options to get funds to them that same day, from whatever source, can only be helpful.

Same Day ACH Payments Will Continue to be Protected by Regulation E and NACHA Rules, Though Clarification is Needed to Protect Consumers from Errors and Scams

Critical to our support for the same-day ACH proposal is the fact that faster payments will still be protected by the consumer protection rules in the Electronic Fund Transfer Act, Regulation E and NACHA rules. Nonetheless, we urge the Federal Reserve Board to work with the Consumer

Financial Protection Bureau to clarify error resolution and fraud protection rules in the context of consumer-initiated payments.

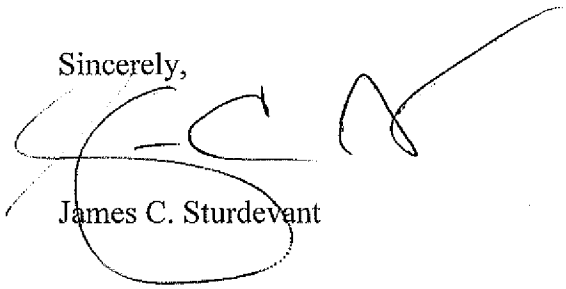
Faster payments can give scammers quicker access to debit money from consumers' accounts. Faster payments should never come at the expense of consumer protections. If a consumer's initiation of a payment was induced through fraud, that payment should be considered unauthorized under Regulation E. The consumer should be able to dispute the payment and be protected from liability vis a vis her institution (the originating institution), with liability ultimately resting on the receiving institution that allowed the scammer to have access to an account to receive funds. Whether through robust know-your-customer controls or vigilance for signs that an account is being used for unlawful purposes, receiving institutions can do much to prevent, detect and block fraud. Putting the responsibility on the receiving institution will increase the incentives to do so. Financial institutions can handle a small amount of fraud, but even a single instance can be devastating to a consumer.

Similarly, all of the bank regulators should ensure that their institutions are properly investigating and helping consumers resolve faster payment errors, including errors committed by consumers. Currently, institutions are so eager to promote their faster payment systems that they have made it too easy to commit these errors and often impossible to correct them, whether it is an error in the amount sent or the person to whom it is sent. For example, allowing funds to be sent with merely a phone number to identify the recipient is bound to result in misdirected funds. But while Regulation E requires institutions to investigate errors, with no limitation on who committed the error, some institutions refuse to help consumers after an error is made. We are even aware of cases where the recipient of misdirected funds was willing to send the funds back, but neither institution would provide any help, not even to reassure the recipient that the refund request was not a scam and that the initial payment would not be reversed after funds were sent back.

If the banking agencies and financial institutions wish consumers to use faster payment systems, they need to make them safe. Fraud protection and full error resolution compliance are key components of consumer confidence in faster payment systems.

Thank you for considering our comments. If you have any questions, please contact me at the email or phone number above.

Sincerely,



James C. Sturdevant