



February 6, 2015

BY COURIER AND ELECTRONIC DELIVERY

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

Re: Same Day ACH Proposal

Dear Ms. Estep:

The Clearing House Payments Company L.L.C., including its regional payments association, (“The Clearing House”) and the Consumer Bankers Association (“CBA”) (together “the Associations”)¹ respectfully submit this comment letter in response to an invitation to comment on NACHA’s Same Day ACH Proposal issued on December 8, 2014 (the “Proposal”).² This letter also includes, as Attachment 1, a survey response that represents the specific views of The Clearing House as an ACH Operator.

As further detailed below, we support the Proposal as it addresses the most critical concerns raised by financial institutions in response to NACHA’s 2011 Expedited Processing and Settlement Proposal (the “2011 Proposal”). We recognize and appreciate NACHA’s thoughtful efforts since the 2011 Proposal to understand the needs of all financial institutions and to craft the current Proposal in a manner that balances these needs so that ubiquitous same day ACH can become a reality. In particular, we emphasize our agreement with NACHA’s observation that in order to “create a new, viable capability for moving payments faster, both Originating and Receiving Financial Institutions must see a rational business justification for making the required investments.”³

¹ Please see Appendix 1 for a description of the associations.

² NACHA Request for Comment, Same Day ACH, <https://www.nacha.org/rules/request-comment-same-day-ach-move-payments-faster>,

³ *Id.* at 28.

I. Executive Summary

The Proposal seeks to enhance the ACH system by establishing ubiquitous same day clearing and settlement capability for eligible credit and debit transactions. Specifically, the Proposal, which would be implemented in three “phases” beginning in September 2016, would add two new same-day processing windows to “provide greater functionality and flexibility” than the single new window included in the 2011 Proposal. Additionally, the Proposal would institute a per-entry interbank fee that will enable RDFIs “to recover their costs and provide a fair return on their required investments.”

As discussed in further detail below, we support the Proposal overall, including its application to both credit and debit entries, the “phased” approach to implementation, and the per-entry interbank fee. However, we believe that the Proposal can be improved in certain ways and suggest that NACHA refine its approach by:

- adopting a different indicator in the Batch Header Record (such as a new Service Class Code) to identify transactions for same day processing and settlement, rather than relying on the Effective Entry Date;
- expanding the existing exemption in the NACHA Rules that permits an RDFI to withhold funds availability if it “reasonably suspects” that a credit entry is unauthorized so that an RDFI may also delay funds availability if it has a reasonable suspicion that a credit entry involves fraud or that the funds were derived from illegal activity; and
- making certain clarifying revisions to the proposed definition of “Same Day Entry,” as well as definitions relating to the calculation and review of the Same Day ACH Entry Fee.

Furthermore, in light of the recently announced expanded operating hours of the National Net Settlement service, which enables inter-bank settlement, we encourage NACHA to consider leveraging additional evening settlement windows as a future enhancement to the same day ACH capabilities.

II. Comments

A. Functionality

The Proposal would enable ODFIs to send domestic credit and debit entries up to \$25,000 for same day clearing and settlement. ODFIs could also send non-value entries, such as pre-notifications and notifications of change for same day clearing. All RDFIs would be mandated to receive same day entries and provide funds availability by 5:00 p.m. local time to receivers of same day credits. The Proposal implements this functionality in three phases, as summarized below.

Functionality	Phase 1 September 2016	Phase 2 September 2017	Phase 3 March 2018
Transaction Eligibility	Credits only	Credits and debits	Credits and debits
New ODFI ACH File Transmission Deadlines	10:00 am ET and 3:00 pm ET	10:00 am ET and 3:00 pm ET	10:00 am ET and 3:00 pm ET
New Same Day Settlement Time(s)	5:00 pm ET	5:00 pm ET	12:00 noon ET and 5:00 pm ET
ACH Credit Funds Availability	End of RDFI's processing day	End of RDFI's processing day	5:00 pm RDFI local time

We agree with NACHA that in order for the complete benefits of same day clearing and settlement to be achieved, same day clearing and settlement must be ubiquitous. Hence, we support mandatory receipt by RDFIs. We also believe that for parties to a same day credit transaction, same day availability of funds to the receiver will be an important improvement over current ACH capabilities, and thus also support a requirement that RDFIs make funds available “no later than 5:00 p.m. in the RDFI’s local time,”⁴ subject to the institution’s right to return the entry and its right to delay availability when there is a reasonable suspicion that an entry is unauthorized or, as discussed in section C below, that a transaction involves fraud or that the funds were derived from illegal activity.

Further, we support the Proposal’s three phases of implementation over a 30 month period as it will give ACH participants, and smaller financial institutions in particular, the time necessary to make required system and operational changes and become accustomed to new processing, settlement, and posting times. Limiting the first phase to credit entries is beneficial as it will accustom RDFIs and receivers to the new same day settlement functionality without risk of causing negative settlement balances or account overdrafts. At the same time, we support the inclusion of debit entries beginning in phase two as we believe same day debits will be useful to many originators and we recognize that the economic analysis used to model cost recovery for RDFIs and to develop the proposed interbank fee is based on cost and volume figures regarding *both* credit and debit entries.

⁴ NACHA Operating Rules, Proposed Subsection 3.3.1.1 (phase 3).

With respect to the types of entries that the Proposal permits to be same day entries, we agree that only domestic entries should be allowed due to the additional legal, regulatory, compliance and operational complexities of international transactions. While ACH capabilities may develop over time and it may be appropriate to consider international ACH transactions for same day clearing and settlement in the future, we believe it is premature to do so at this time. With respect to the proposed transmission deadline and settlement times, as NACHA notes, these times will be determined by the operators under their operating rules. For The Clearing House as an operator 1:00 pm Eastern Time, rather than 12:00 pm Eastern Time, will likely be a more suitable time for settlement time due to operational considerations.

With regard to the second same day settlement time, we understand that 5:00 pm Eastern Time is the latest time that can currently be supported due to the operating hours of the Federal Reserve Banks' national net settlement service ("NSS"), which currently closes at 5:30 pm Eastern Time and does not re-open until 7:30 am ET the following day. While we support the 5:00 pm settlement time as the best available end of day settlement time, we note that 5:00 pm Eastern Time is still early in the business day for west coast participants. Given that the Federal Reserve Banks have indicated that NSS will change its opening time to 9:00 pm Eastern Time by the end of the year, we encourage NACHA to consider leveraging additional evening settlement windows as a future enhancement to the same day ACH capabilities.⁵

B. Balancing the Needs of ODFIs and RDFIs

As The Clearing House noted in its comment letter responding to the 2011 Proposal, same day ACH requires a business case to justify the necessary capital and on-going investments to implement and maintain faster processing and settlement. In particular, The Clearing House stated that the 2011 Proposal created an imbalance between ODFIs and RDFIs as originators, which would derive the most value from faster ACH clearing and settlement, would be most likely to pay for such enhancements, while receivers, which do not control the timing or speed of ACH entries, would not be likely to pay for same day entries. Yet the cost of implementation would fall primarily on RDFIs. NACHA's economic research, which included an analysis of both ODFI and RDFI benefits and costs for large and small institutions, confirmed this imbalance.⁶

To address the imbalance of same day costs and benefits the Proposal includes a per-entry interbank fee paid by an ODFI to the respective RDFI of a same day entry. We strongly support an interbank fee as the most practical means of providing a viable business case for RDFIs and balancing the benefits of same day ACH across the network. In contrast, we strongly disagree with the idea that the industry should adopt a same day ACH capability without an interbank fee for strategic or other, alternative business reasons. In fact, because we believe implementation of same day ACH would not be economically viable for RDFIs in the absence of interbank compensation, the Associations would not support the Proposal if it did not include this fee.

⁵ Federal Reserve System, *Strategies for Improving the U.S. Payment System, Appendix 8* (January 26, 2015).

⁶ *Id.* at 34.

Moreover, while same day ACH is strategic for both the network and for individual financial institutions, “strategic” does not mean that financial institutions can ignore the fundamental need of for-profit entities to recover the costs of building and operating new services, including the cost of capital.

With regard to the methodology used to derive the interbank fee, we are supportive of the cost plus commercially reasonable rate of return approach that NACHA used. We note that a cost approach, as compared to other methodologies that could have been used to calculate a fee, is a conservative methodology as it provides only a minimum threshold for determining a viable economic model for same day ACH. We believe a conservative approach is appropriate for the inter-bank fee.

C. Use Cases and Risks

Given that same day settlement will enable funds to move more quickly, there will be less time for financial institutions to identify fraudulent or erroneous transactions. Hence, we support the \$25,000 limit on same day entries as the limit will reduce the risk of fraud and error. We also think the limit reduces settlement risk.

We note that the ACH Rules currently provide an exemption to the requirement that an RDFI make funds available in a receiver’s account by a particular time, which applies if an RDFI “reasonably suspects” that a credit Entry is unauthorized, subject to applicable legal requirements.⁷ In addition to the risk of unauthorized transfers, credit entries may be used to launder stolen funds or funds that are otherwise derived from illegal activity (e.g., through “money mule” schemes) and we believe that this risk is heightened with respect to credit Same Day Entries. Thus, with respect to credit Same Day Entries, we recommend that NACHA expand this exemption so that an RDFI is also permitted to withhold funds availability if the RDFI has a reasonable suspicion that a transaction involves fraud or that the funds were derived from illegal activity. Further, while outside the scope of this Proposal, we encourage NACHA to consider adopting such an expanded exemption with respect to *all* credit entries, which we believe would assist financial institutions in preventing the misuse of ACH transactions to launder illicit funds.

D. Technical/ Operational Issues

a. Identifying Same Day Entries

Under the Proposal, originators and ODFIs would identify transactions for same day treatment by using the current Banking Day’s date in the Effective Entry Date field in the Batch Header Record. While we recognize that there are merits to using the Effective Entry Date as the indicator for same day entries and that the factors that determine the optimal indicator are complex and subject to debate, on balance we believe that the Effective Entry Date is not the

⁷ NACHA Rule 3.3.1.1.

appropriate indicator. We suggest that NACHA adopt a different indicator (in the Batch Header Record) to identify transactions for same day processing and settlement.⁸ In particular, the Effective Entry Date is not a field that originators have historically understood to be critical to settlement or the fees their banks charge them. Hence, originators often use the incorrect Effective Entry Date. We believe that relying on this field is likely to result in inadvertent same day transactions (and resulting fees) for some originator customers. In our view, using a different indicator (such as a new Service Class Code) would provide ODFIs with greater certainty regarding the intent of their originator customers and help to ensure proper processing.⁹ In addition, because the information in the Effective Entry Date field does not flow to downstream systems (e.g., reporting and posting systems) and financial institutions would be required to adopt their own internal methods to identify same day transactions for these systems, we believe that utilizing a single “universal” indicator that provides such functionality would be helpful to financial institutions and ensure a uniform industry approach.

b. Definition of Same Day Entry and Description of Settlement Date

The proposed definition of a same day entry provides that in addition to containing the current Banking Day as the Effective Entry Date, the entry must be “received by the RDFI by its cut-off time for Same Day Entry processing.”¹⁰ We note that this element of the definition suggests that each RDFI can establish its own cut-off time for receiving same day items. We disagree with this approach as it is contrary to established ACH market practice, which determines settlement time based on when an operator has received an ACH file from an ODFI, not the time that an RDFI receives a file. Not only would it be impossible for operators to manage their settlement systems to accommodate RDFI-specific receipt times, it would undermine the ubiquity of same day ACH settlement as RDFIs might set cut-off times that were difficult or impossible for originators and ODFIs to meet on a same day basis.

We suggest that the definition of same day entry be revised so that an entry must be received by an operator’s transmission deadline for same day settlement. We also note that the reference to “deposit deadline” in the description of Settlement Date¹¹ is incorrect as operators do not accept ACH entries for deposit but only for processing. Hence, we suggest that deposit deadline be changed to transmission deadline.

⁸ We note that the need for a different same day indicator is supported by a majority of The Clearing House’s members, though a few members strongly take the view that the Effective Date is the optimal indicator.

⁹ We encourage NACHA to adopt a *single* indicator (rather than an indicator that is *additional* to the Effective Entry Date field) to serve as the *sole method* of identifying same day ACH transactions. As NACHA acknowledges in the Proposal, the use of a *secondary* indicator, in addition to relying on the Effective Entry Date field, could lead to “‘disagreement’ between the alternative same-day identification method and the Effective Entry Date.”

¹⁰ NACHA Operating Rules, Proposed Section 8.84

¹¹ NACHA Operating Rules, Appendix Three, Subpart 3.2.2, Proposed “Settlement Date”

c. Description of Revision of Same Day ACH Entry Fee

The Proposal would add a new Appendix 11 to the NACHA Rules that sets forth how NACHA will determine the same day entry fee and how the fee will be reviewed. We find the drafting of this appendix confusing and unclear in parts.

The first part of Appendix 11 that is unclear is the reference to the “projected volume used to calculate the Same Day Entry Fee” in the description of the eight year review (Proposed Part 11.2(B)). Given that there will also be a volume review in year five that may result in an adjustment to the fee, it is not clear if the “projected volume” referenced in the eight year review is the original projected volume or a projected volume based on the five year review.

We further find the definition of “Same Day ACH Renewal Period” to be unclear. Appendix 11 defines both a “Same Day ACH Initial Period” (Part 11.3) and a “Same Day ACH Renewal Period” (Part 11.5). The Same Day ACH Initial Period begins when the Same Day Entry fee takes effect pursuant to Section 1.12 and lasts until “the effective date of the revision of the Same Day Entry fee pursuant to Appendix Eleven, Part 11.2(C)” (which is a “Ten Year Review” performed by an economist). It seems reasonable to define the “Same Day ACH Renewal Period” to mean each (roughly) ten year period that (i) begins after a “Ten Year Review” by the expert economist and (ii) lasts until the next review by the expert economist. Assuming that is the intention, the existing definition is problematic because as explained below, it seems to overlap with the “Same Day ACH Initial Period.”

A “Same Day Renewal Period” is defined to begin on “the effective date of the Same Day Entry fee at Section 1.12, or as revised by Part 11.2(C).” This means that a renewal period may begin when the Same Day Entry fee takes effect, *which is the same point in time* that the “Same Day ACH Initial Period” begins. The Same Day Renewal Period is then defined to run until “the effective date of any change or announcement of no change to the Same Day Entry fee pursuant to Part 11.2(C).”

Assuming that NACHA intended a Same Day ACH Renewal Period to begin following each Ten Year Review performed by the expert economist and conclude at the time of the next Ten Year Review, we suggest that NACHA revise Part 11.5 to state:

Part 11.5 Same Day ACH Renewal Period (new part)

The period between the first effective date of the Same Day Entry fee at Section 1.12, or as revised by a revision or announcement of no change to the Same Day Entry fee pursuant to Part 11.2(C), and the effective date of any the subsequent change or announcement of no change to the Same Day Entry fee pursuant to Part 11.2(C).

In addition, we suggest that NACHA revise Part 11.3 to state:

Part 11.3 Same Day ACH Initial Period (new part)

The period between the effective date of Section 1.12 and the effective date of the **first** revision of **or announcement of no change** to the Same Day Entry fee pursuant to ~~Appendix Eleven~~, Part 11.2(C).

(Suggested new text is highlighted in yellow.)

Additionally while we assume that NACHA intends to refer to the same time period, 11.1(B) and 11.3 refer to "*Same Day* ACH Initial Period," while 11.1(C) and (D) refer to "*Initial Same Day* ACH Period."

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Thank you for the opportunity to comment on the Proposal. If you have any questions or wish to discuss these comments, please do not hesitate to contact the undersigned.

Very truly yours,

Dave Fortney

David Pommerehn

/s/

/s/

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cc:

Board of Governors of the Federal Reserve System
Louise Roseman, Director, Reserve Bank Operations

Consumer Financial Protection Bureau
Richard Cordray, Director

Appendix 1
Description of Trade Associations

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.

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.

Attachment 1
TCH ACH Operator Survey Response

RESPONDENT INFORMATION

All Respondents

Name:	Alex Romeo		
Title:	Vice-President EPN Product Manager		
Organization:	The Clearing House Payments Company		
Phone:	212-613-0101	E-mail:	Alex.romeo@theclearinghouse.org

Please indicate your organization's role(s) in the ACH Network:

<input type="checkbox"/>	ODFI	<input type="checkbox"/>	Regional Payments Association
<input type="checkbox"/>	RDFI	<input type="checkbox"/>	NACHA Direct FI Member
<input checked="" type="checkbox"/>	ACH Operator	<input type="checkbox"/>	Third-Party Service Provider
<input type="checkbox"/>	Originator	<input type="checkbox"/>	Software Vendor
<input type="checkbox"/>	Receiver	<input type="checkbox"/>	Industry Association
<input type="checkbox"/>	Government	<input type="checkbox"/>	
<input type="checkbox"/>	Other:	<input type="checkbox"/>	

Financial Institution Respondents

Asset Size	<input type="checkbox"/>	less than \$250 million
	<input type="checkbox"/>	\$250 million - \$999 million
	<input type="checkbox"/>	\$1 billion - \$100 billion
	<input type="checkbox"/>	greater than \$100 billion

What areas of your organization provided input for the responses to this survey?

<input checked="" type="checkbox"/>	Operations	<input type="checkbox"/>	Wholesale/Corporate Banking/Treasury Management
<input checked="" type="checkbox"/>	Product Management	<input type="checkbox"/>	Customer Service
<input checked="" type="checkbox"/>	Legal	<input type="checkbox"/>	Compliance
<input checked="" type="checkbox"/>	Information Technology/Software	<input type="checkbox"/>	Retail/Online Banking

	Other:
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Question 1. Does your organization support the proposed new Same Day ACH clearing windows and settlement times *substantially as proposed*? (Check only one box that best describes your response.)

<input checked="" type="checkbox"/>	Yes, we support the new Same Day ACH Network clearing windows and settlement times substantially as proposed.
<input type="checkbox"/>	Yes, we would support the new Same Day ACH Network clearing windows and settlement times with change(s).
<input type="checkbox"/>	No, we do not we support the new Same Day ACH Network clearing windows and settlement times.

If you checked the box “with change(s),” please specify the changes.

Question 2. Do you agree that ubiquity is required in order for Same-Day ACH to provide value to ACH Network end-users? (I.e., that all RDFIs should be required to receive Same Day ACH transactions)?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

If you checked “No,” please explain what functionality would provide value without the ability to reach all RDFIs.

Question 3. Do you agree that virtually all ACH payments, including both debits and credits, should be eligible for same-day processing? (Check only one box that best describes your response.)

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	Yes, but with a change(s)
<input type="checkbox"/>	No

If you checked the box “with a change(s),” which transactions should be eligible or ineligible?

Question 4. Do you agree that all RDFIs should be mandated to provide faster funds availability for same-day ACH credits? (Check only one box that best describes your response.)

<input checked="" type="checkbox"/>	Yes, at the proposed time of 5:00 p.m. RDFI local time.
<input type="checkbox"/>	Yes, but at a different time(s).
<input type="checkbox"/>	No

If you checked the box “at a different time(s),” please specify the time(s).

Question 5. Do you agree with the three implementation phases and their effective dates *substantially as proposed*? (Check only one box that best describes your response.)

<input checked="" type="checkbox"/>	Yes, we agree with the three implementation phases and their effective dates substantially as proposed.
<input type="checkbox"/>	Yes, we agree with the three implementation phases and their effective dates, but with a change(s).
<input type="checkbox"/>	No

If you checked the box “with change(s),” please specify the adjustments you would make to any of the implementation phases or their effective dates.

Question 6. Please provide any other comments on Part 1 - New, Ubiquitous ACH Functionality - of the Request for Comment. **N/A**

Question 7. Would your organization use or offer Same Day ACH for any of the 10 major uses cases identified in the proposal? **N/A**

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

If you checked “Yes,” please identify which one(s).

Question 8. Please identify any other use cases for Same Day ACH that your organization would use or offer. **N/A**

Question 9. What changes would your organization need to make in order to:

- A. Send same-day ACH credit payments? **N/A**
- B. Send same-day ACH debit payments? **N/A**
- C. Receive same-day ACH credit payments? **N/A**
- D. Receive same-day ACH debit payments? **N/A**

Question 10. Please identify whether you see any risks that would be introduced or exacerbated by Same Day ACH, and explain why. If there are, how would those risks be managed or mitigated?

Comment: Same-Day ACH will cause funds to move faster; therefore the window of recoverability that exists today will go away. It is imperative that financial institutions have appropriate mechanisms and processes in place to mitigate risk associated with potentially fraudulent transactions.

Question 11. Please identify whether you see any risks that would be mitigated by Same Day ACH, and explain why.

Comment: Please see response to question 10.

Question 12. Please provide any other comments on Part 2 – Use Cases for Same Day ACH - of the Request for Comment. **N/A**

Question 13. Please provide any comments on the components and the results of the economic analysis. **N/A**

Question 14. Please provide any comments on the Principles for Evaluating an Interbank Fee (as described on slide 35 of the Request for Comment presentation). **N/A**

Question 15. An alternative rationale is that the industry should adopt a same day ACH capability without an interbank fee for strategic reasons (see slide 40 of the Request for Comment presentation). Please provide your organization's perspective on this or other alternative business justifications for adopting a same day ACH capability. Would your organization support adopting same-day ACH with no interbank fee? In commenting, please specify the reason(s) that support your position.

Comment: The interbank fee is imperative to the Same-Day ACH business case, TCH as ACH Operator would not support Same-Day ACH without the interbank fee.

Question 16. Are there alternative ways that RDFIs' costs of mandatory Same Day ACH implementation could be addressed that also could achieve a ubiquitous, Same Day ACH capability? **N/A**

Question 17. Please provide any other comments on Part 3 – A Balanced Approach Among ODFIs and RDFIs - of the Request for Comment. **None**

Question 18. Do you agree with the proposal to use the Effective Entry Date field to identify same-day ACH transactions?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No

If you do not agree, how should same-day ACH transactions be identified? Please give the reason(s) that support your answer.

Comment: Please see comments in our comment letter.

Question 19. Do you agree with the proposal that non-monetary transactions would be eligible for same-day processing, beginning with the Phase 1?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	Yes, but with an exception(s)
<input type="checkbox"/>	No

If you checked the box “with an exception(s), please specify the exception(s).

If you checked “No,” should non-monetary transactions become eligible for same-day processing in a later implementation phase? If so, which phase?

Question 20. Do you agree with the proposal that returns should be eligible for processing through the new Same Day ACH clearing and settlement windows?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

If you checked “No,” please explain why.

Are there any circumstances in which an RDFI would attempt to time the settlement of a return (rather than receiving the next available settlement)? **N/A**

Question 21. What level of effort would be required for business Receivers to credit Originators for same-day ACH credits (e.g., CIE, CCD, and CTX) as of the Settlement Date? **N/A**

Question 22. Please provide any other comments on these or other technical and operational topics. **None**

Question 23. Respondents are asked to provide any other comments on the Request for Comment on Same Day ACH that are not covered elsewhere. **None**