

June 19, 2020

*BY ELECTRONIC DELIVERY*

Jane Larimer, CEO  
Nacha  
2550 Wasser Terrace, Suite 400  
Herndon, VA 20171

Re: Nacha Request for Comment on Reversals and Enforcement

Ms. Larimer:

The Clearing House Payments Company L.L.C. (“The Clearing House”)<sup>1</sup> respectfully submits this comment letter in response to Nacha’s request for comment on Reversing Entries and Enforcement (“Proposal”).<sup>2</sup>

## **I. Executive Summary**

The Proposal is intended to address the improper use of Reversing Entries (“reversals”), including a 2019 incident in which a Third Party Sender’s reversals to “claw back” direct deposit payments harmed consumers, RDFIs, and the reputation of the ACH network. As discussed in further detail below, The Clearing House generally agrees with the Proposal and supports Nacha’s efforts to deter misuse of reversal entries. However, we believe that certain modifications and clarifications are appropriate, including that Nacha:

- Modify the proposed effective date of the changes to the reversal rules to be one year from the date the ballot is approved through the Nacha rulemaking process;

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<sup>1</sup> Since its founding in 1853, The Clearing House has delivered safe and reliable payments systems, facilitated bank-led payments innovation, and provided thought leadership on strategic payments issues.

Today, The Clearing House is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. It continues to leverage its unique capabilities to support bank-led innovation, including launching RTP®, a real-time payment system that modernizes core payments capabilities for all U.S. financial institutions. As the country’s oldest banking trade association, The Clearing House also provides informed advocacy and thought leadership on critical payments-related issues facing financial institutions today. The Clearing House is owned by 23 financial institutions and supports hundreds of banks and credit unions through its core systems and related services.

<sup>2</sup> Nacha Request for Comment regarding Reversals and Enforcement, <https://www.nacha.org/rules/reversals-and-enforcement>.

- Provide clarification regarding the expected timing of returns of improper reversals to consumer accounts;
- Consider an alternate return reason code for returns of improper reversals to commercial accounts; and
- Include additional information with the rulemaking ballot regarding the rationale for the numeric thresholds in the definition of an “egregious violation” of the Nacha Rules.

## II. Discussion

### A. Reversals

The Proposal would add an explicit statement to the Nacha Rules that use of a reversal for any reason other than permissible reasons under the Rules is prohibited,<sup>3</sup> and adopt a non-exclusive list of examples of improper reversals.

The Proposal would also explicitly permit an RDFI to return an improper reversal using the R11 return reason code for an improper reversal to a consumer account and the R29 code for an improper reversal to a commercial account. In addition, the Proposal would establish formatting requirements for Reversing Entries by requiring (i) the word “REVERSAL” in the Company Entry Description field of the Company/Batch Header Record, and (ii) the Company Name, Company ID, SEC Code, and Amount fields of the reversal to be identical to the original entry.

Separately, Nacha has proposed to expand the list of permissible reasons for a reversal to permit the reversal of an entry that orders payment on a date different than the date intended by the Originator.

The Clearing House appreciates Nacha taking action to prevent improper reversals and the harm they may cause. We support the proposal to add an explicit statement to the Nacha Rules that using a reversal for any reason other than permissible reasons under the Nacha Rules is prohibited, and to establish the non-exclusive list of examples of improper reversals. We encourage Nacha to consider whether additional steps may be taken to further deter Originators from originating improper reversals, such as by extending the indemnity in Subsection 2.9.2 to Originators, which would allow RDFIs to

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<sup>3</sup> Currently, a reversing entry is permitted to correct an “Erroneous Entry,” which is defined for this purpose as an entry that “(a) is a duplicate of an Entry previously initiated by the Originator or ODFI; (b) orders payment to or from a Receiver different than the Receiver intended to be credited or debited by the Originator; (c) orders payment in a dollar amount different than was intended by the Originator; or (d) is a credit PPD Entry satisfying each of the following criteria: (i) the credit PPD Entry is for funds related to a Receiver’s employment; (ii) the value of the credit PPD Entry is fully included in the amount of a Check delivered to the same Receiver at or prior to the Receiver’s separation from employment; and (iii) the credit PPD Entry was Transmitted by the Originator prior to the delivery of the Check to the Receiver.” Nacha Op. Rules, Subsection 2.9.1.

recover attorneys' fees directly from Originators whose improper reversals cause the RDFI to suffer a loss.

With respect to the proposal to explicitly permit returns of improper reversals, we request that Nacha clarify the timeframe for such returns, including whether the timeframe for extended return entries is intended to apply to returns of improper reversals to consumer accounts.<sup>4</sup> We also understand that some financial institutions currently use the R29 return reason code to return debits to a commercial account that has an automated debit blocking feature in place, or have programming that prevents the return of reversals using the R29 code, and would need to make changes to their systems and implement new practices for the R29 code to be used for the new proposed purpose.<sup>5</sup> Thus, we encourage Nacha to consider an alternate code for return of an improper reversal to a commercial account.

Some of The Clearing House's member financial institutions have concerns regarding the proposal to expand the list of permissible reasons to allow reversals of entries that order payment on a date different than intended by the Originator. In particular, certain of our members felt it was not appropriate to expand the use of reversals because it will reduce the ability of an RDFI and Receiver to rely on an ACH transaction as final; and believe that further "opening up" the reversal framework might diminish incentives for Originators to confirm the accuracy of the effective entry date prior to origination. That said, some of our members support allowing the reversal of a transaction that has an effective entry date that differs from a payment date agreed upon between the Originator and Receiver, where a new transaction is then originated with the corrected date. We also understand that some ODFIs and Originators currently use reversals for this situation. If Nacha progresses this proposed change to a rulemaking ballot, we encourage Nacha to consider limiting the expansion of permissible reasons for reversals to this specific use case.

The Clearing House believes the proposed effective date of January 1, 2021 for these Rule revisions would not provide the industry with enough time to learn about and understand these important changes, or make system or process changes related to return reason codes, particularly at a time when resources are more strained than normal due to the global COVID-19 pandemic. We encourage Nacha to modify the proposed effective date to be one year from the date the ballot is approved through the Nacha rulemaking process.

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<sup>4</sup> For example, the revisions to the table of return reason codes indicate that a return of an improper reversal using the R11 code may be sent within 60 calendar days. However, the rules for extended return entries that provide the exception to the standard timing rule for returns (two banking days from settlement) under Nacha Rules Section 3.8 require an RDFI to warrant that it has obtained a Written Statement of Unauthorized Debit from the Receiver prior to initiating the extended return entry, even though an Originator is not required to obtain an authorization for a reversal. Nacha Rules Section 3.13.

<sup>5</sup> We also understand that some financial institutions may have systems in place to automatically dishonor a reversal that is returned using the R29 return reason code.

B. Enforcement

The Proposal would also modify the Nacha Rules enforcement provisions to cover “egregious violations” of the rules. “Egregious violation” would be defined as a willful or reckless action that (i) impacts at least 100 Participating DFIs, or (ii) affects entries in the aggregate amount of at least \$1 million. These proposed changes would allow the Nacha Rules Enforcement Panel to classify egregious violations as a Class 2 or 3 rules violation of the Nacha Rules.

The Proposal would also expressly authorize Nacha to report Class 3 rules violations to the ACH Operators and “federal and state banking, consumer protection, and other appropriate regulators and agencies.”

The Clearing House supports these proposed changes. However, we request that Nacha provide further information regarding the rationale for the specific numeric thresholds included in the proposed definition of an “egregious violation.” Such information may assist the industry with evaluating the appropriateness of this change. We also support the proposed effective date of these changes.

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Thank you for the opportunity to comment on the Proposal. If you have any questions or wish to discuss The Clearing House’s comments, please do not hesitate to contact me using the contact information provided below.

Sincerely,

/s/

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