



April 27, 2018

BY ELECTRONIC DELIVERY

Michael Herd, SVP ACH Network Administration
NACHA – The Electronic Payment Association
2550 Wasser Terrace, Suite 400
Herndon, VA 20171

Re: NACHA Request for Comment on ACH Message Entries

Dear Mr. Herd:

The Clearing House Payments Company L.L.C. (“The Clearing House”)¹ respectfully submits this comment letter in response to NACHA’s proposal to establish rules for non-monetary ACH message entries for certain specified use cases (“Proposal”).²

I. Executive Summary

The Proposal, which is a follow up to NACHA's 2017 Request for Information regarding “DFI to DFI messaging,”³ would establish rules to use the ACH Network “for a new, ubiquitous capability to exchange non-monetary messages between financial institutions.” The Proposal is intended to provide an automated, consistent, ubiquitous process for requesting and responding to requests for certain ACH-related information, and would take effect September 18, 2020.

The Clearing House supports, at a conceptual level, automating processes for requesting and receiving ACH-related information and documentation. However, our member financial institutions hold varying viewpoints on the Proposal itself.⁴ Some strongly support the Proposal, while others believe that additional detail is needed to fully evaluate the impact of mandatory use of the proposed MSG entries and the contemplated document repository. While we believe that the Proposal will benefit some financial institutions by reducing the administrative burdens associated with their existing manual

¹ The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company 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. Its affiliate, The Clearing House Association L.L.C., is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

² NACHA Request for Comment Regarding ACH Message Entries: Automating ACH Exception Processing (March 12, 2018), <https://www.nacha.org/rules/ach-message-entries-automating-ach-exception-processing>.

³ NACHA Request for Information Regarding DFI to DFI Messaging (February 9, 2017), <https://www.nacha.org/system/files/resources/DFI-to-DFI%20Messaging-Executive-Summary-February-2017.pdf>.

⁴ This comment letter does not reflect the views of JP Morgan Chase Bank, National Association or Wells Fargo Bank, National Association, which will be submitting their own comments separately.

processes, the benefits of the Proposal may be limited for other financial institutions. For example, financial institutions that do not receive a large volume of the types of requests covered by the Proposal may not have a rational business case to make the changes that the Proposal would require. We encourage NACHA to provide the industry with additional information about the contemplated document repository in particular to better allow financial institutions to consider the merits, and evaluate the estimated implementation costs, of these proposed changes.

In addition, The Clearing House recommends that in further developing the proposal, NACHA consider a phased implementation approach in which MSG entries that do not require use of the document repository are implemented first, with MSG entries that do require use of the document repository implemented at a later date. To the extent that MSG entries are implemented in the future, we also encourage NACHA to monitor the use of MSG entries and to consider whether further usage guidelines are needed.

II. Discussion

A. Overview of the Proposal

NACHA proposes establishing an ACH network capability for financial institutions to exchange “new non-monetary ACH Message Entries with a new SEC Code of ‘MSG,’ and supporting Addenda Records.” The Proposal identifies six use cases. Specifically, MSG entries would be used to request and respond to requests for the following documentation required to be provided under the NACHA Rules: (i) Records of Authorization⁵ (ii) Source Document (converted check) copies⁶ and (iii) Written Statements of Unauthorized Debit.⁷ In addition, MSG entries would be used for “other ACH-related functions” that consist of (i) ODFI-requested returns, (ii) requests for additional information related to an Originator, and (iii) Trace Requests.⁸

Certain information would be included in the MSG entry and associated addenda records, while requested documents would be uploaded to a separate “trusted document repository” operated by a service provider. The Proposal materials provide only a high level overview of how this document repository would function, stating that (i) “Responders would upload the requested document to the repository[,] (ii) the “Repository would create an encrypted key, inserted into the response addenda record” and (iii) “Upon receipt, the requesting financial institution would utilize the encrypted key to securely access the document.”⁹

⁵ An ODFI must provide an RDFI with a record of a Receiver’s authorization within 10 banking days of receiving a written request. NACHA Rules Sections 2.3.2.5(b) and 2.3.3.3(a).

⁶ An ODFI must provide an RDFI with a copy of a Receiver’s source document for an ARC or BOC entry, or a copy of an item for an RCK (within 10 banking days) or a copy of an item for an XCK (within 30 days).

⁷ An RDFI must provide an ODFI with a copy of a Receiver’s WSUD within 10 banking days. NACHA Rules Section 3.12.7.

⁸ NACHA explains that the requests and responses that MSG entries would be used for are currently handled outside of the ACH network through manual processes.

⁹ Under the Proposal, financial institutions could respond to these messages using Message Entries that also use the new MSG SEC code and Addenda Records with information that tie the response to the original request. Certain information would be included in the entry and associated addenda records, while requested documents would be uploaded to a separate “trusted document repository” operated by a service provider. The addenda record would include an “encrypted key” that a bank could use to access documents in the secure repository.

NACHA notes that the Proposal would provide for a consistent, automated and ubiquitous process as use of MSG entries for these requests and responses would be mandatory. NACHA identifies various intended benefits associated with the automation of these processes through MSG entries, including that they would provide “a known and defined timeframe of receipt and traceability” for such requests, reduce manual labor needed to move paper requests, decrease overall response times, and provide additional certainty by “requiring a response to a request, whether negative or positive.”

B. TCH Comments

The Clearing House appreciates NACHA’s efforts to improve ACH network functionality and supports, at a conceptual level, automating processes for requesting and receiving ACH-related information and documentation. However, we have concerns about certain aspects of the Proposal, including whether the benefits of implementing MSG entries and a document repository would, for many financial institutions, be justified by the expense and effort required. We also believe that for financial institutions to properly evaluate the Proposal, NACHA will need to provide the industry with significant additional information and clarification about the contemplated document repository; and that NACHA should consider a phased implementation approach in which MSG entries that do not require use of the document repository are implemented first, with MSG entries that do require use of the document repository implemented at a later date.

1. The Benefits of the Proposal May be Limited for Certain Financial Institutions

The Clearing House agrees that there are potential benefits to automating ACH exception processing, and notes that certain of our members strongly support the Proposal.

At the same time, however, it is important to recognize that the Proposal would require financial institutions to expend significant effort to connect their ACH applications with other existing systems and processes used to retain documents and information.¹⁰ The volume of information and documentation requests covered by the Proposal may be low for many financial institutions. As a result, there may not be a rational business case for these institutions to make the changes that the Proposal would require. Also, as discussed below, further information regarding the contemplated document repository is needed for the industry to adequately evaluate the merits of MSG entries as proposed, as well as for financial institutions to determine whether there is a sufficient business case to support a future rulemaking.¹¹

¹⁰ Further, these documents and information may be maintained in various different departments within a particular institution, including for example, its retail, commercial, or mortgage departments. Even once an institution establishes a link between those systems and its ACH processing functions (i.e., to gather a requested document upon receipt of a MSG entry), financial institutions may still need to rely on manual processes to upload a requested document to the repository that NACHA contemplates.

¹¹ In addition to providing additional information regarding the repository to allow financial institutions to better evaluate whether there is a business case to support these changes, some of The Clearing House’s members believe that NACHA should provide the industry with estimated implementation costs to allow financial institutions to more fully consider and plan for these proposed changes. Other members believe that individual financial institutions should determine their own estimated implantation costs given that these costs may vary depending on the institution’s size, business model, existing technology and operational processes, and other factors.

We also encourage NACHA to consider whether there may be more efficient and cost effective ways to automate the processing of document and information requests and responses for the specific use cases that NACHA has identified, such as through the use of APIs or other secure communication channels.

2. NACHA Should Provide Additional Details Regarding the Document Repository Concept

A secure document repository is an integral component of the Proposal and the new ACH network functionality that it contemplates. However, aside from a high level overview, the Proposal provides little detail about the entity that will operate the repository, how the repository and encrypted key process would function, and the data security and privacy controls that would apply to the documents that are stored in and accessed via this repository.¹²

Accordingly, to the extent that NACHA moves forward with the Proposal in its current form, we encourage NACHA to provide the industry with significant additional details about the repository, including:

- the considerations NACHA will use when identifying the repository provider(s), and to ensure that the arrangement is consistent with regulatory expectations for financial institutions' oversight and management of third party service providers¹³;
- proposed retention periods for stored documents;
- how the document repository would be funded and information regarding the expected fees; and
- further detail regarding the user access and other security controls that would be employed to protect documents stored in the document repository, maintain appropriate data privacy, and ensure the security of the encrypted key process.

The Clearing House believes that this information is necessary for the industry to fully evaluate the merits of this Proposal in advance of a NACHA rulemaking ballot.

In addition, in NACHA's 2017 DFI to DFI Messaging Request for Information, NACHA stated that "System operators currently provide similar databases to provide information in other payment channels" and that NACHA's Product Innovation Rules Work Group "consider[ed] the ACH Operators as entities that should consider the feasibility of maintaining one or more repositories for these functions." To the extent that the ACH Operators would serve as the operators of the contemplated document repositories, or facilitate the exchange of encrypted keys via addenda records, The Clearing House would need significant additional details regarding the overall security framework contemplated for the

¹² The Proposal materials explain that "[t]he repository is envisioned to work similar to that used for Federal Reserve Bank Check Adjustments." "Depository institutions participating in FedLine Web Check Adjustments Service, and the Federal Reserve Banks, are able to access messages and images of the associated documents on a central archive." Federal Reserve Bank Check Adjustment Services Guide, <https://www.frbservices.org/assets/financial-services/check/check-adjustments-product.pdf>

¹³ See, e.g., Federal Reserve Supervisory Letter 13-19; OCC Bulletin 2013-29.

stored documents, including for example the process for inserting encrypted keys into addenda records (with respect to both inter-operator and intra-operator ACH transactions).

3. NACHA Should Consider a Phased Implementation Approach

Even assuming there is an appropriate business case for most financial institutions, we believe that the proposed effective date of September 18, 2020 may present challenges for some financial institutions given the efforts that will be needed to implement new processes and make technical changes required to upload documents to, and access documents from, the secure document repository. The challenges associated with this timeframe are heightened given the minimal information that is currently available about where the document repository would be housed and how it would function. The Clearing House encourages NACHA in developing additional details relating to the proposal to consider a phased implementation approach in which MSG entries that do not require use of the document repository are implemented by the currently proposed effective date, with MSG entries that do require use of the document repository implemented at a later time (subject to a potential extension to account for the expansion of Same Day ACH as discussed below).

A phased approach of this nature would allow financial institutions time to implement MSG entries and begin to update their back office processes associated with use of, and responses to, MSG entries for certain use cases. The added functionality associated with the document repository could then be implemented at a later date. We believe that the additional details regarding the repository concept that are referenced above are necessary for the industry to provide informed feedback on when new rules requiring use of the repository should take effect.

In addition, because financial institutions have finite resources for projects that require technology and operational changes like the Proposal, they are required to make decisions about how to prioritize such work. To the extent that NACHA moves forward with both the Same Day ACH expansion and this Proposal, NACHA should allow financial institutions appropriate time to plan for and implement these changes. If the industry approves a third Same Day ACH window, financial institutions will be required make staffing, technology, operational and other changes. We encourage NACHA to allow financial institutions to complete any required modifications relating to a potential Same Day ACH expansion prior to requiring them to allocate resources to implement a new framework for automated ACH exception processing, which may require an extension of the proposed effective date.

4. NACHA Should Monitor Use of MSG Entries and Consider whether Usage Guidelines are Needed

The Clearing House generally agrees with the benefits of automating requests and responses for ACH related documentation and information. We note, however, that the overuse of MSG entries could negate some of these benefits where a response is required (e.g., if a financial institution automated the creation of MSG entries to request a copy of an authorization record for every entry it receives). Thus, if the Proposal is approved in future rulemaking ballot, we encourage NACHA to monitor volumes and developments in the use of the MSG entries, and to consider whether additional guidelines or limits on the use of MSG entries is needed.

5. ODFI Requested Returns

Under the Proposal, a MSG entry could be used by an ODFI under NACHA Rule 2.12.2 to request that an RDFI return an erroneous entry, or a credit entry originated without an Originator's authorization. The MSG entry would serve as the ODFI's request for a return, and take the place of the letter of indemnification that many ODFIs use for these purposes today. The Proposal materials explain that "[t]he RDFI either would return the original monetary entry; or [t]he RDFI would send a Message Entry that indicates it is not returning the original monetary entry." Letters of indemnification are also used to request the return of funds from an ACH transaction in scenarios that are not covered by the indemnification contained in NACHA Rule 2.12.3 (e.g., fraudulently induced payments, or the partial return of funds where the full amount is no longer available in the Receiver's account). We understand that NACHA is working to develop a broader indemnification template to address the request for the return of funds in such scenarios. Regardless of whether NACHA moves the MSG entry Proposal to a rulemaking ballot, we support NACHA's efforts to develop a broader indemnity to apply to such scenarios, and would support incorporation of that indemnity into the NACHA Rules to reduce reliance on letters of indemnification.

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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 comment letter, please do not hesitate to contact me using the contact information provided below.

Yours very truly,

/s/

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