



ACH Data Review Ballot #11-09

Executive Summary and Rules Description **August 26, 2009**

Part I: Proposal Brief

The ACH Data Review Rule (“Rule”) would provide a framework within the *NACHA Operating Rules* (“*Rules*”) for NACHA to receive additional data regarding ACH entries from the ACH Operators. The data would be used in support of NACHA’s current role in *Rules* enforcement and ACH Network risk management.

The scope of the Rule is substantially narrowed in two primary ways from that which was proposed in the Request for Comment (“RFC”) dated June 4, 2009:

1. The data NACHA could receive from the ACH Operators, upon their agreement, would be limited to:
 - Return and adjustment entry data;
 - Aggregate data on forward entries that does not permit identification of the Receiver(s), and that excludes CIE entries; and,
 - Data to respond to specific Network risk or enforcement events.
2. The concept of a Technology Provider that could provide tools for analysis of ACH data has been removed from the Rule.

Currently, the *Rules* provide that the ACH Operators will provide monthly reports to NACHA on return entries. The current language is insufficient as it does not:

- Accurately reflect the data the NACHA already receives from the ACH Operators;
- Allow for review of any data on forward entries for NACHA to calculate return rates as is necessary under the Network Enforcement Rule, or to respond to specific ACH Network risk events; and
- Provide any additional requirements regarding data privacy and security.

More frequent reporting of both aggregate forward entry data and return entry data will enable NACHA to calculate specific return rates for ODFIs and Originators, using ACH Network data rather than relying on self-reported data (if any) from those ODFIs and Originators.

Part II: Rules Framework

The key provisions of the Rule are:

- The ACH Operators would provide “Designated Data” to NACHA in accordance with timelines and procedures that are mutually agreed;
- “Designated Data” would itself become a defined term, and would exclude CIE entries and other ACH record data elements that could individually identify Receivers;
- NACHA’s permitted and prohibited uses of the data would be specified;
- NACHA would be obligated to comply with data security, privacy and breach policies and laws; and,
- ODFIs and RDFIs would authorize and instruct the ACH Operators to provide the data to NACHA.

Changes to Original Proposal

On June 4, 2009, NACHA requested comment on proposed rules regarding an ACH Data Review Framework (“Original Proposal”). The Original Proposal has been revised in response to the comments that were received. The revisions are summarized below.

1. *Definition of Designated Data*

The Original Proposal included a broad definition of Designated Data that would have allowed ACH Operators to share most forward and return ACH entry data elements if agreed with NACHA. Many respondents to the RFC stated a preference for a narrower definition. Their concerns generally regarded: 1) the costs to handle and analyze a large data set, perhaps by using a third-party technology provider and/or in a large-scale database; and 2) privacy and security issues relating to the sharing and storing of transaction-level data for most forward entries.

In response to these comments, NACHA is revising the Original Proposal to significantly narrow the scope of the Designated Data. In the revised Rule, Designated Data would cover: 1) return entry data; 2) aggregate forward entry data that does not identify the Receiver; and 3) data to enable NACHA to investigate and respond to a specific incident involving *Rules* enforcement or risk management. NACHA will be able to address its most immediate risk and enforcement needs with this Designated Data.

2. *Definition and References to a Technology Provider*

The Original Proposal provided for the option of a Technology Provider to be engaged by NACHA to provide data processing services to support use of the Designated Data. Many respondents commented that the use of a Technology Provider would increase costs to support the ACH Network and could result in related data security issues.

In response to these comments, NACHA has revised the Original Proposal to remove all references to a Technology Provider. The additional data review enabled by the Rule does not require the assistance of a Technology Provider.

3. *Financial Institutions Providing Data Directly to NACHA*

The Original Proposal included language requiring a financial institution to report Designated Data directly to NACHA for entries not processed by an ACH Operator. Some respondents had similar concerns about the potential cost to a financial institution about such reporting, and about the privacy and security of the data. This language has been removed from the revised Rule.

Part III: Benefits of the Proposal

The Rule would enable NACHA to receive ACH data to address its most immediate needs - *Rules* enforcement and responding to specific Network risk incidents. For example, provisions of the Network Enforcement Rule are triggered by an unauthorized debit return rate that exceeds one percent; aggregate forward origination data from the ACH Operators would enable such a rate to be calculated more precisely by allowing NACHA to calculate return rates based on a point-in-time. This increased accuracy in rules enforcement based on more robust data will also enable NACHA to effectively defend itself in litigation, when necessary.

Additionally, the Rule would allow the ACH Operators to provide data to NACHA when there is a specific incident with *Rules* enforcement or risk management impacts. Historically, there are two to three significant incidents per year in which NACHA's members and other Network participants rely on NACHA to be knowledgeable about the event and provide appropriate *Rules* and risk advice. In some of these incidents, having actual data regarding the incident would improve the accuracy and quality of NACHA's knowledge and its advice.

Part IV: Costs and Implementation of the Rule

There are no anticipated costs, operational issues or implementation requirements for financial institutions to comply with this Rule; any such costs or implementation issues for transmitting data elements in a different manner than today would be limited to NACHA and the ACH Operators.

The Rule would become effective on December 18, 2009.

Part V: Technical Summary

The following sections of the *Rules* would be modified:

- Article Two, Section 2.17 (Release of Information), and Article Four, Section 4.7 (Release of Information), for ODFIs and RDFIs, respectively, would be replaced in their entirety by new sections that authorize and instruct the ACH Operators to transmit Designated Data to NACHA, and hold the ACH Operator harmless against a claim by the ODFI or RDFI.
- Article Nine, Section 9.11 (Requirement to Provide Designated Data to National Association) would be replaced in its entirety by a new section that would:
 - Provide that each ACH Operator would transmit the Designated Data to NACHA in accordance with timelines and procedures that are mutually agreed between the ACH Operator and NACHA; and

- Enable an ACH Operator to suspend transmitting data, if NACHA were in material breach of the use and disclosure provisions for the Designated Data, with one day's notice until such time as the breach is addressed and systems put in place to avoid a recurrence of a breach.
- Article Twelve, Section 12.6 (Use and Disclosure of Designated Data by the National Association) – This section would:
 - Authorize NACHA to use the Designated Data to monitor ACH Network quality and compliance with the *Rules*, and to support an enforcement proceeding;
 - Stipulate that NACHA cannot sell the Designated Data or use it for purposes other than those outlined in the *Rules*;
 - Provide that NACHA would only disclose Designated Data to appropriate parties, including the ACH Operator and DFI to whom the data relates, to NACHA employees and groups who need access to the data to perform their functions, as required by law, or in an aggregate manner; and
 - Address the privacy and security of the Designated Data by providing that NACHA would adopt and implement a data security policy related to the data, comply with the Interim Policy on Data Breach Notification Requirements, and comply with privacy laws, and
 - State that NACHA indemnifies the ACH Operators against any claims resulting from NACHA's breach of its obligations related to the Designated Data.
- Article Fourteen, Subsection 14.1.21 (Designated Data) – This subsection would:
 - Define Designated Data as data regarding Entries, excluding CIE Entries, processed by an ACH Operator, to the extent such ACH Operator agrees to provide such data to the National Association from time to time: (i) data derived from return or adjustment Entries, (ii) aggregate information from forward Entries that does not permit identification of the Receiver; and (iii) data requested by NACHA to investigate and respond to a specific incident involving potential violation of these rules or risk to Participating DFIs, Originators, or Receivers. Designated Data does not include the DFI Account Number, Individual Name, and Individual Identification Number fields of entry detail records.