



1700 G Street, N.W., Washington, DC 20552

February 9, 2015

Maribel Bondoc
Manager, Network Rules
NACHA
2550 Wasser Terrace, Suite 400
Herndon, VA 20171

Dear Ms. Bondoc:

The Consumer Financial Protection Bureau (CFPB) is pleased to comment on NACHA's Proposed Rules for Same Day ACH to Move Payments Faster. As you know, the CFPB is the nation's first federal agency focused solely on consumer financial protection, and our mission is to make the consumer financial markets work for American consumers, responsible businesses, and the economy as a whole, and to empower consumers to take more control over their economic lives.

In his speech to members of The Clearing House last November, CFPB Director Richard Cordray noted the value faster payments could bring to consumers, and he urged the audience to maintain foremost in their minds the interests of consumers in efforts to develop faster payments.

In this vein, the CFPB would welcome implementation of same day ACH services. Same day ACH can provide consumers with faster availability of funds. In addition, same day ACH may help alleviate some of the challenges consumers face today in trying to forecast when various types of credit and debit payments will post to their accounts and the complications—such as overdrawn balances, nonsufficient balances for subsequent payments, and fees—that can arise from such uncertainty. Furthermore, as Director Cordray remarked in his address, we see great value in the steps industry is taking toward faster payment systems in general.

As we stated in our January 13, 2014 letter to you, consumers currently enjoy important regulatory protections when making and receiving ACH payments. These protections are established by the Electronic Fund Transfer Act (EFTA), whose “primary objective ... is the provision of individual consumer rights,”¹ and by the Dodd Frank Act, which

¹ Electronic Funds Transfer Act (EFTA), 15 USC 1693(b).

protects consumers of financial products or services from acts or practices that are unfair, deceptive, or abusive. In addition, consumers derive protection from a number of NACHA's operating rules as well as from careful attention by both originating and receiving depository financial institutions (ODFIs and RDFIs) to consumer interests. The consumer rights and protections provided by the Bureau's rules and authorities will not be diminished by industry adoption of same day ACH. We urge NACHA to ensure the protections its rules provide consumers are similarly sustained in this and in subsequent efforts to enhance and modernize the ACH system.

We wish to highlight the importance of the provisions of NACHA's proposal that ensure recipient funds availability is accelerated with the implementation of same day ACH payments, and we strongly encourage NACHA and its members to ensure these promises are realized. We further urge NACHA and its members to continue to consider opportunities to hasten funds availability to consumers, whether by making additional modifications to settlement windows or tightening rules for availability after settlement. In addition, we strongly encourage RDFIs and ODFIs to communicate to consumers clearly and in a timely manner when funds will be debited from or made available to their accounts for any ACH transaction. And importantly, we expect that implementation of same day ACH will in no way place undue burdens on consumers, increase consumer exposure to unauthorized debit transactions, or restrict consumer access to this important payment network.

Finally, while we look forward to a marketplace with a faster ACH system, we will not be satisfied if the evolution of our country's payment systems stops there. The U.S. lags other countries that have instituted near real-time payment systems, and we see potential benefits such systems may bring consumers here if accompanied by the current strong consumer protections of existing law. Thus, we urge industry stakeholders to move expediently to develop near real-time payment capabilities while keeping consumer's needs and interests among its top priorities.

Sincerely,

A handwritten signature in black ink, appearing to read "David Silberman". The signature is fluid and cursive, with a large initial "D" and "S".

David Silberman
Associate Director
Division of Research, Markets and Regulations