



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

GEN-235613

NOV - 9 2004

Mr. Elliott McEntee
President and CEO
NACHA -- The Electronic Payments Association
13665 Dulles Technology Drive, Suite 300
Herndon, Virginia 20171

Dear Mr. McEntee:

This letter is a follow-up and clarification to our letter of March 9, 2004, and a follow-up to NACHA's productive teleconference with OFAC staff on August 10, 2004 concerning changes to cross-border Standard Entry Class (SEC) codes that are needed to safeguard our financial system from terrorist and other potential sanctions abuses in international Automated Clearing House (ACH) transactions.

The services provided by the ACH community are invaluable. The sheer volume of transactions that move through the system on a daily basis indicates how vital ACH is in assisting businesses, financial institutions, and consumers to conduct business in a timely and efficient manner. From our perspective, however, that speed and efficiency also makes ACH vulnerable to abuse with respect to the international cross-border movement of funds.

As you know, Treasury believes that cross-border ACH transactions currently do not contain sufficient mandatory field information to permit an adequate degree of scrutiny of transactions for OFAC compliance. Based on discussions with your office, we understand that NACHA's rulemaking process intends to address this issue promptly, and is actively considering the adoption of a U.S. cross-border standard and formatting requirements that will include the name, address, and account number of each originator (and its client if the transfer is not from the originator's account); the name, address, and account number of each beneficiary; information sufficient to identify originating, intermediary, and beneficiary banks; and originator to beneficiary information (OBI) field specs identifying the purpose of each transaction. Such a standard would go a long way toward enhancing the ability

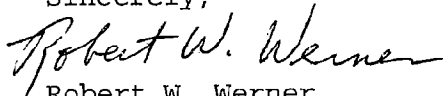
to effectively screen ACH transactions for potential OFAC violations.

Treasury is pleased to be able to report to the ACH community that the Federal Reserve Banks, through their FedACH service, and in their role as United States Gateway Operator, have agreed to use interdiction software to flag incoming international ACH transactions for potential violations of OFAC sanctions. The screening will include scanning all parties to every transaction, as well as data contained in originator-to-beneficiary information and details of payment fields. FedACH will inform, by virtue of an indicator in cross-border messages or another similar mechanism, both OFAC and relevant Receiving Depository Financial Institutions (RDFIs) of any instances in which potential OFAC violations are detected. United States RDFIs and their beneficiaries will continue to have an obligation to ensure that all aspects of inbound, cross-border transactions are in compliance with OFAC regulations and to take appropriate steps to investigate, suspend, reject, block, and report on transactions, as necessary.

With regard to outbound cross-border ACH transactions, United States Originating Depository Financial Institutions (ODFIs) and their originators will continue to be responsible for ensuring that all parties to transactions, as well as the underlying purpose of transactions, are not in violation of OFAC regulations, and they will need to take appropriate steps to investigate, suspend, reject, block, and report on transactions, as necessary. FedACH will not be screening outbound transactions.

We look forward to working closely with NACHA and with the Federal Reserve System to implement improved standards and procedures appropriate to the year 2005 and beyond. Please do not hesitate to contact me, at 202-622-2510, or my Compliance staff at 202-622-2490 if you have any questions.

Sincerely,



Robert W. Werner
Director
Office of Foreign Assets Control



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20020

MAR 20 1997

FAC Ref: Gen-155913

Dear Mr. McEntee:

Thank you for your letter of March 6, 1997 and for taking the time to meet with us on February 3. You have sought our guidance about the Office of Foreign Assets Control's ("OFAC's") expectations with regard to the purely domestic account-to-account Automated Clearing House ("ACH") system that involves Originating Depository Financial Institutions ("ODFIs") and Receiving Depository Financial Institutions ("RDFIs"), but does not involve any intermediary financial institutions.

We would, of course, consider ODFIs with accounts which ought be blocked or which cannot be serviced (such as Iranian accounts for which the posting of debits or credits is restricted) to be liable if they initiate ACH credits by allowing unlicensed debits to those blocked or restricted accounts. We would also expect, in those instances in which an ODFI itself aggregates or batches items for its own or its customers' accounts, that it would assure that it does not process transactions in violation of OFAC's regulations to the extent that sufficient detail is available to it regarding such transactions.

We also presume, based on our discussions with your organization on September 8, 1995, that NACHA is working toward revising its own rules to require originators of ACH payments in their contracts with ODFIs to acknowledge that the ACH system may not be used for transactions in violation of U.S. law, including the sanctions laws administered by OFAC, and that a positive statement to that effect will be included in sample "Authorization Agreements for Direct Deposits (ACH Credits)" and "Authorization Agreements for Direct Payments (ACH Debits)" disseminated by NACHA.

After addressing the above issues, the ACH system may rely on RDFIs for compliance with OFAC sanctions programs: blocking accounts and transactions on their books, allowing the posting of credit but not debit entries, and prohibiting the servicing of accounts, such as those specified in the Iranian Transactions Regulations, which (except as licensed) may have neither debit entries nor credit entries posted. We would look to RDFIs to take such actions. In domestic ACH transactions, OFAC does not intend for ODFIs to unbatch transactions which they receive batched from their customers (who have been placed on notice about their own responsibilities with regard to OFAC's regulations). However, to the extent that unbatching

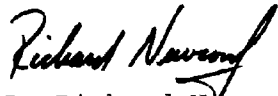
occurs, OFAC will treat ODFIs as responsible for screening as though they had done the initial batching.

International ("cross-border") ACH payments involving "Gateway" institutions and accounts not subject to U.S./OFAC jurisdiction are not covered by the understanding expressed in this letter. The nature of these transactions does not provide the compliance safeguards present in wholly domestic ACH transactions. We presume that NACHA is in the process of developing criteria to effectively identify and segregate cross-border ACH transactions from domestic transactions and that NACHA members will separately and effectively address the issue of OFAC compliance with regard to such payments. We will continue to work with you in that regard.

We ought to mention that there may be times when OFAC finds itself compelled to contact an ODFI regarding the interdiction of a particular transaction it has reason to believe is related to terrorism or narcotics trafficking under the International Emergency Economic Powers Act or the Antiterrorism and Effective Death Penalty Act. In those instances, we would expect an ODFI to stop such a transaction based on our notice and could hold the ODFI liable for not stopping the transaction following our notice.

Again, thank you for sharing your concerns. We are looking forward to working with you and your staff in addressing OFAC enforcement and compliance issues involving the Internet and cross-border payments.

Sincerely,



R. Richard Newcomb
Director
Office of Foreign Assets Control

Mr. Elliott C. McEntee
President & CEO
The National Automated Clearing House Association
607 Herndon Parkway - Suite 200
Herndon, Virginia 20170