



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

GEN-221618

MAR - 9 2004

Mr. Elliott McEntee  
President and CEO  
National Automated Clearing House Association (NACHA)  
13665 Dulles Technology Drive, Suite 300  
Herndon, VA 20171

Dear Mr. McEntee:

Thank you for NACHA's correspondence of October 1, 2003 and January 15, 2004. As we understand the plan in its current form, cross-border ACH, as proposed, could result in sanctions targets being able to use the U.S. payment system without detection and provide the opportunity for individuals and entities to transfer funds in violation of U.S. law.

As you know, we have been following closely the evolution of ACH transactions for many years. In 1997, we provided guidance to NACHA on domestic ACH transactions, stating that Originating Depository Financial Institutions (ODFIs) could rely on Receiving Depository Financial Institutions (RDFIs) for their compliance with OFAC regulations. We worked with NACHA to assure that ODFIs included language in their contracts with Originators stating that the ACH system could not be used to process transactions in violation of U.S. law.

The advent of two-way, cross-border ACH transactions significantly increases the risks of sanctions violations occurring without the ability to detect their occurrence. These risks would be reduced if Receiving Gateway Operators (RGOs) were to abide by NACHA rules concerning Inbound Cross-Border Payments. Subsection 10.6.1 of the NACHA Rules entitled, "OGO/RGO Agreement" states:

Each RGO warrants to each RDFI, ACH Operator, and Association that it has entered into an agreement with the OGO in the country in which the Inbound entry was originated and that the OGO has agreed that each Inbound entry it transmits will be in compliance with applicable U.S. law, the Cross-Border Payment Operating Rules, and these rules.

We also note that inbound and outbound cross-border transactions do not have mandatory addenda records containing adequate descriptor information. Lack of descriptor information associated with Consumer (PBR) and Corporate (CBR) transactions could easily result in ODFIs or RDFIs processing unlawful transactions. Currently, PBR and CBR records contain only one mandatory addenda record providing descriptor information on the RDFI. To address this issue, the ACH community could

adopt mandatory, additional addenda records to provide transaction information similar to that found on SWIFT MT100s. This would include the names and addresses of the originator (and its client(s), if the transfer is not for the originator's account), intermediary bank, beneficiary bank, beneficiary, and the purpose of the transaction. Having such a level of descriptor information on PBR and CBR transactions would provide U.S. ODFIs and RDFIs with tools critical to effective interdiction of potentially unlawful transactions.

Given the current state of interdiction technology, it would make sense for OGOs and RGOs as well as ODFIs and RDFIs, or their contractors, to screen cross-border ACH transactions for possible OFAC violations prior to their entering or exiting U.S. jurisdiction. OGOs and RGOs are the frontiers of the cross-border system. They have an obvious responsibility to ensure that sanctions-targeted transactions neither enter nor leave the United States. The failure to identify a possible violation by a party to a transaction could subject a U.S. processor to regulatory and enforcement consequences and result in the imposition of civil or criminal penalties.

Please do not hesitate to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Newcomb". The signature is written in a cursive, flowing style with a large initial "R".

R. Richard Newcomb

Director

Office of Foreign Assets Control