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November 30, 2004

Ms. Maribel Bondoc  
Network Services Associate  
NACHA  
13665 Dulles Technology Drive, Suite 300  
Herndon, VA 20171

Dear Ms. Bondoc:

The Food Marketing Institute (FMI)<sup>1</sup> is pleased to submit this response to the NACHA Request for Comment (RFC) regarding the proposal to institute Network Return Entry Fees (NREF). Please consider this letter to be in lieu of answers to the ACH Participant Survey included in the RFC.

FMI has been an active member of the Electronic Check Council (ECC) for several years along with a number our member companies. FMI and its members are committed to advancing efficient, low cost payment options for the benefit of all our customers. We are equally committed to helping NACHA minimize truly unauthorized returns as well as all types of administrative returns.

FMI strongly opposes the concept of NREF as presented in the RFC. We believe the proposal is misguided at best. At worst, it is an attempt to generate fee revenue under the guise of system improvement. While there are costs associated with unauthorized returns, those costs are far outweighed by the benefits financial institutions receive from the use of ACH products. No attempt has been made in this process to analyze or weigh those benefits versus the costs involved. Nor has there been an effort made to analyze the segments from which the bulk of truly unauthorized returns originate and to attempt to focus efforts on those types of transactions. Instead NACHA proposes to implement an across the board fee to be instituted unilaterally by financial institutions and to require that originators pay another fee, some 600% higher to challenge that decision. We do not believe that any neutral party would consider this proposal to be reasonable.

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<sup>1</sup> FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

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Just as RDFIs are concerned about unauthorized returns, originators are also concerned about administrative returns. Retailers and other originators face real problems and real costs from returns based on incorrect routing information, mutilated MICR lines and the like. They could make an identical economic and policy argument to the one in the RFC that a fee should be paid to originators for these administrative returns. If a similar \$12-17 per entry charge was returned to originators for every administrative return and a similar \$100 charge was imposed on any RDFI that wanted to challenge an item, we would predict that administrative returns would drop dramatically and the system would become much more efficient. We would also predict that RDFIs would strongly oppose an amendment to the current proposal to that effect and would view it as inappropriate. They would be especially distressed if that hypothetical proposal was implemented by a panel of originators and retailers, that moved forward with complete disregard for the concerns of the entities to be assessed the fees.

As you may know, FMI sent a letter to NACHA in April 2002 on behalf of our members opposing a similar proposal for interbank compensation on electronic checks. We raised serious concerns then about the process and potential antitrust liability. This proposal raises those same issues. We note that the RFC indicates that NACHA has retained counsel to analyze legal authority and the related antitrust issues, although no such analysis is included in the RFC. We believe such counsel is appropriate as the issues here go beyond unfairness and unreasonableness and warrant serious antitrust review.

In conclusion, FMI does not believe Network Return Entry Fees are justified or reasonable. We believe that such fees, if they were to be implemented would need to be paid to originators for administrative returns as well. In addition we believe very serious antitrust issues would be raised if such fees were to be imposed over the objections of retailers and other originators by a group of cooperating financial institutions operating under NACHA's umbrella. We believe a much better approach would be to bring all stakeholders together to develop a plan to reduce unauthorized and administrative returns.

Thank you for allowing FMI to respond to the RFC. Please feel free to contact me or Jennifer Hatcher 202-220-0734 if you have any questions or comments regarding our response.

Sincerely,

George Green  
Vice President  
General Counsel