



## **Third-Party Sender Registration** *Request for Comment*

### **Proposed Modifications to the Rules** August 17, 2015

#### **ARTICLE TWO – Rights and Responsibilities of ODFIs, Their Originators and Third-Party Senders**

##### **Section 2.15 Obligations of Third-Party Senders, and of ODFIs and Originators That Use Third-Party Senders**

###### ***Subsection 2.15.1 ~~Identification of Originators by Third-Party Senders~~ Third-Party Senders' Provision of Information to ODFIs***

A Third-Party Sender must, upon the ODFI's request, provide the ODFI with any information the ODFI reasonably deems necessary to identify each Originator for which the Third-Party Sender Transmits Entries. The information must be provided to the ODFI by the Third-Party Sender within two Banking days of receipt of the ODFI's request. A Third-Party Sender must also, upon the ODFI's request, provide the ODFI with the information required by Subsection 2.17.3 (Third-Party Sender Registration) for purposes of registration by the ODFI of such Third-Party Sender with the National Association. All of the foregoing information must be provided to the ODFI by the Third-Party Sender within two Banking Days of receipt of the ODFI's request.

##### **Section 2.17 ODFI Reporting Requirements to National Association**

###### ***Subsection 2.17.3 Third-Party Sender Registration (new subsection)***

An ODFI must register with the National Association each Third-Party Sender for which it originates Entries, including 1) a Third-Party Sender that originates Entries through another Third-Party Sender customer of the ODFI; and 2) a Third-Party Sender that originates Entries through Direct Access. The ODFI must provide the following information to the National Association for each Third-Party Sender:

- (a) the ODFI's name;
- (b) the name, title, telephone number, email address, and street address for a contact person at the ODFI;
- (c) the name of the Third-Party Sender and its principal city and state location;
- (d) the routing number(s) used in Entries Transmitted for the Third-Party Sender; and
- (e) the Company Identification(s) used in Entries Transmitted for the Third-Party Sender.

The ODFI must register the Third-Party Sender with the National Association within 30 days of Transmitting the first Entry on behalf of the Third-Party Sender. The ODFI must update the registration information on the Third-Party Sender within 30 days following any change to the information previously provided, including termination of the Third-Party Sender.

The ODFI must pay to NACHA a registration charge that is established by NACHA from time to time for each Third-Party Sender required to be registered.

Upon the receipt of a written request by NACHA, the ODFI must provide within 10 Banking Days any of the following additional registration information about a Third-Party Sender that is requested:

- (f) the Third-Party Sender's doing-business-as name(s) if any, taxpayer identification number(s), street address and website address;
- (g) the name, title, telephone number, and email address for a contact person at the Third-Party Sender;
- (h) the name(s) and title(s) of the principal(s) of the Third-Party Sender;
- (i) the approximate number of Originators for which the Third-Party Sender Transmits Entries; and
- (j) a statement as to whether the Third-Party Sender Transmits debit Entries, credit Entries, or both.

## **APPENDIX EIGHT – RULES COMPLIANCE AUDIT REQUIREMENTS**

### **Part 8.4 Audit Requirements for ODFIs, Third-Party Service Providers and Third-Party Senders**

n. Verify that the ODFI has (1) registered its Third-Party Senders for the purpose of data reporting with the National Association; and (2) notified the National Association of any change to the information previously provided with respect to any Third-Party Sender. (Article Two, Subsection 2.17.3)

n.o. Verify that the ODFI has kept Originators and Third-Party Senders informed of their responsibilities under these Rules. (Article Two, Section 2.1)

## **APPENDIX TEN – Rules Enforcement**

### **Part 10.3 ODFI Registration Requirements**

#### **Subpart 10.3.1 Direct Access Registration (new subsection title)**

If, in its sole discretion, the National Association believes that an ODFI has failed to register its Direct Access Debit Participant status, or to provide data reporting regarding a Direct Access Debit Participant, the National Association may initiate a rules enforcement proceeding. Such proceeding will be according to Part 10.4 (National System of Fines) of this Appendix Ten for a Class 2 Rules Violation, as defined within Subpart 10.4.7.4 (Class 2 Rules Violation).

***Subpart 10.3.2 Third-Party Sender Registration (new subsection)***

If, in its sole discretion, the National Association believes that an ODFI has failed to register or provide other required information for a Third-Party Sender, the National Association may initiate a rules enforcement proceeding. Such proceeding will be according to Part 10.4 (National System of Fines) of this Appendix Ten for a Class 2 Rules Violation, as defined within Subpart 10.4.7.4 (Class 2 Rules Violation).

**Part 10.4 National System of Fines**

***SUBPART 10.4.7 Fines and Penalties***

***SUBPART 10.4.7.4 Class 2 Rules Violation***

A Class 2 Rules Violation is one in which:

(1) the Participating DFI has not responded to either the Notice of Possible ACH Rules Violation or the Notice of Possible Fine;

(2) the Participating DFI responds to either notice that it does not intend to correct the rules violation;

(3) the Participating DFI

(i) fails to respond completely and accurately, within the proper time frame, to the National Association's request for information in accordance with the requirements of Article Two, Subsection 2.17.2 (ODFI Return Rate Reporting);

(ii) fails to reduce the Originator's or Third-Party Sender's Unauthorized Entry Return Rate below the Unauthorized Entry Return Rate Threshold within 30 days of receipt of the National Association's written request;

(iii) successfully reduces the Unauthorized Entry Return Rate below the Unauthorized Entry Return Rate Threshold within the 30 day time period, but fails to maintain the Unauthorized Entry Return Rate below the Unauthorized Entry Return Rate Threshold for 180 additional days. The Panel may consider the Originator's or Third-Party Sender's volume of debit Entries as an extenuating circumstance in determining whether a violation under this provision constitutes a Class 2 Rules Violation;

(iv) fails to reduce the Administrative Return Rate or Overall Return Rate of an Originator or Third Party Sender below the applicable Return Rate Level within 30 days after receipt of the written directive; or

(v) successfully reduces the Administrative Return Rate or Overall Return Rate of an Originator or Third Party Sender below the applicable Return Rate Level within 30 days after receipt of a written directive, but fails to maintain the rate below the applicable Return Rate Level for 180 additional days;

(4) the Participating DFI fails to register its Direct Access Debit Participant status or provide data reporting on a Direct Access Debit Participant, as required by Article Two, Subsection 2.17.1 (Direct Access Registration);

***(5) the Participating DFI fails to register a Third-Party Sender(s) with the National Association, or provide other required information, as required by Article Two, Subsection 2.17.3 (Third-Party Sender Registration);***

~~(5)~~ **(6)** the Participating DFI fails to provide the National Association with proof of completion of its own, its Third-Party Service Provider's, or its Third-Party Sender's rules compliance audit, as required by Appendix Eight (Rule Compliance Audit Requirements);

~~(6)~~ **(7)** the ACH Rules Enforcement Panel determines the time frame and resolution date asserted by a Participating DFI as necessary to resolve the problem causing the rules violation are excessive;

~~(7)~~ **(8)** the National Association believes that the violation causes excessive harm to one or more Participating DFIs or the ACH Network; or

~~(8)~~ **(9)** it is the fourth or subsequent recurrence of the same rules violation.

In situations involving a Class 2 Rules Violation, the ACH Rules Enforcement Panel may levy a fine against the respondent Participating DFI in an amount up to \$100,000 per month until the problem is resolved. Where the violation relates to a specific Originator or Third-Party Service Provider at the DFI, a separate monthly fine may be assessed to the DFI with respect to each such Originator or Third-Party Service Provider.



## **Third-Party Sender Registration Request for Comment**

### ***Executive Summary and Rules Description*** **August 17, 2015**

#### **REQUEST FOR COMMENT – RESPONSES DUE BY OCTOBER 9, 2015**

NACHA requests comments on proposed changes to the *NACHA Operating Rules* that would require Originating Depository Financial Institutions (ODFIs) to register their Third-Party Senders with NACHA. The resulting Third-Party Sender registry would be a risk mitigation tool that would (1) standardize across all ODFIs the basic data collected for all Third-Party Senders; and (2) provide high-level information on Third-Party Senders that would enable better monitoring by NACHA of trends and any risks associated with Third-Party Senders in the ACH Network. Comments this proposal are due by October 9, 2015.

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#### **PART I: PROPOSAL BRIEF**

This request for comment (“RFC”) describes proposed revisions to the *NACHA Operating Rules (Rules)* that would create an obligation for ODFIs to report information on their Third-Party Senders to NACHA. The proposed rule (“Rule”) enumerates data elements that ODFIs with Third-Party Sender customers would be required to provide about themselves and their Third-Party Senders. The resulting demographic information would enable better monitoring by NACHA of trends and any risks associated with Third-Party Senders in the ACH Network today.

#### **PART II: BACKGROUND AND JUSTIFICATION FOR THE PROPOSAL**

The NACHA ACH Risk Management Strategy (“Strategy”) recognizes the growth of the role of third-parties in the ACH Network – both the value they can provide and the potential for greater risk. The Strategy identifies third-party risk management as a theme for initiatives aimed at understanding the expanding and sometimes ambiguous roles of third-parties in the ACH Network, and the need to mitigate any attendant risks. To achieve these objectives, the Strategy

recommends a multi-pronged approach, including risk mitigation services and tools, sound business practices, and risk-related rules.

Several rule changes clarifying the roles and responsibilities of Third-Party Senders, and a related operations bulletin, have recently been adopted and promulgated. A rule change became effective in March 2014 that revised the definition of a Third-Party Sender in order to help industry participants better understand the fundamental characteristics of the relationships between Third-Party Senders, Originators and ODFIs.<sup>1</sup> In December 2014, NACHA released an Operations Bulletin (ACH Operations Bulletin #2-2014: ACH Transactions Involving Third-Party Senders and Other Payments Intermediaries<sup>2</sup>) that provided examples to help ACH participants and observers properly categorize the parties in payment scenarios involving payment intermediaries, many of which are Third-Party Sender relationships. In January 2015, a rule change became effective that explicitly applied certain ODFI risk management obligations to Third-Party Senders.<sup>3</sup>

As a next step, NACHA proposes this Rule to require ODFIs to report basic information about their Third-Party Sender customers to NACHA. Third-Party Sender Registration will improve ACH Network quality by enabling better overall Network administration by NACHA. NACHA would use the resulting information to assemble a look at demographic information of Third-Party Senders as a category of ACH Network participant. For the first time, NACHA would have a census of Third-Party Senders to identify and monitor trends in the Network. Currently, very little data is available about the scope of Third-Party Sender participation in the ACH Network. Fundamentally, the registry would provide NACHA with definitive information on the number of Third-Party Senders active in the ACH Network.

This improved transparency can better inform NACHA in its Network Risk Management responsibilities, and to quickly identify and respond to specific risk events. For example, NACHA would have the registry as a resource for contact information during the course of a risk investigation. The registry also will enable NACHA to observe some Third-Party Senders as they move through the Network and establish new ODFI relationships. For example, the registry would enable NACHA to identify instances in which a Third-Party Sender is terminated by one ODFI and is registered by another ODFI, and instances in which a Third-Party Sender is registered with multiple ODFIs.

The registration process also can enable better risk management of Third-Party Sender relationships by ODFIs.<sup>4</sup> Requiring ODFIs to complete a standardized registration process could help some ODFIs comply with appropriate know-your-customer (KYC) requirements. Better KYC practices, in turn, may help some ODFIs better recognize when they have a Third-Party Sender relationship in their customer base, particularly in the case of “nested” Third-Party Senders in which one Third-Party Sender processes ACH transactions for other Third-Party

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<sup>1</sup> See Subsection 8.104 “Third-Party Sender,” 2015 NACHA Operating Rules, Page OR69.

<sup>2</sup> See <https://www.nacha.org/news/ach-operations-bulletin-2-2014-ach-transactions-involving-third-party-senders-and-other-payment>.

<sup>3</sup> See Section 2.15 “Obligations of Third-Party Senders,” 2015 NACHA Operating Rules, Pages OR33-34.

<sup>4</sup> Additional NACHA guidance on ODFI management of Third-Party Senders is available on NACHA’s web site at <https://www.nacha.org/system/files/resources/FINAL%20Third%20Party%20Sender%20Risk.pdf>; and Chapter 50, “Third-Party Service Providers,” 2015 NACHA Operating Guidelines, Pages OG247-258.

Senders. Finally, as the industry collectively recognizes the increased visibility by NACHA into the relationships between ODFIs and Third-Party Senders and their underlying business activities, ODFIs may conduct more thorough due diligence at the onset of a new relationship, and ongoing oversight throughout the relationship. Similar registration programs exist in the card networks for Independent Service Organizations, Payment Facilitators, and other third party agents and service providers. These programs serve to raise issuer and acquirer awareness and increase due diligence. NACHA expects analogous results with this program.

The information required by the Rule is consistent with the expectations of various regulators under existing guidance.<sup>5</sup> Although the Rule creates a new obligation, ODFIs with Third-Party Sender customers should already have processes in place to collect and maintain the requested basic data. For those ODFIs that don't, the proposed information requirements would provide an incentive to encourage better due diligence through minimum data specifications for their Third-Party Sender customers. The proposed registration is not intended to replace any aspects of ODFIs' on-boarding or on-going due diligence of their clients and prospects. However, the proposed registry's requirements would help set part of the baseline for ODFIs' Third-Party Sender risk management programs by requiring ODFIs to gather certain fundamental information. In establishing formal data requirements, the Rule would ensure that basic information is consistently collected by all ODFIs with Third-Party Sender customers in the Network.

By allowing NACHA to better understand the population and activity of Third-Party Senders, the proposed registry would create opportunities to improve risk monitoring and trend analysis at a Network level. NACHA would gain insight into Third-Party Senders' ACH Network activity that doesn't exist today. In addition, the registration of a broad scope of Third-Party Senders would support NACHA's effort to obtain proof of completion of Rules compliance audits from a random sampling of the industry. The performance of annual Rules compliance audits across all participants in the ACH Network is a critical component of effective private-sector self-regulation and will help promote quality in the Network.

### **PART III: REQUEST FOR COMMENT – ELEMENTS OF THE PROPOSED RULE**

The Rule described in this RFC outlines the specific ODFI and Third-Party Sender information that an ODFI would need to provide to NACHA. The new obligation would apply to Third-Party Senders that are the ODFI's direct customers, as well as those other Third-Party Senders that are direct customers of the first Third-Party Sender, otherwise known as "nested" Third-Party Senders.<sup>6</sup> The proposed ODFI obligation would include reporting basic information for each Third-Party Sender for which an ODFI originates. The required registration information is:

- the ODFI's name and contact information;
- the name and principal business location of the Third-Party Sender;

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<sup>5</sup> A compilation of regulatory guidance, including guidance on third-party relationships, is accessible on NACHA's web site at <https://www.nacha.org/content/regulatory-updates>.

<sup>6</sup> The obligation would also apply regardless of whether the ODFI allows the Third-Party Sender Direct Access to an ACH Operator. In the case of Direct Access, the ODFI would need to register the Third-Party Sender with NACHA in addition to registering its Direct Access status under 2.17.1 (Direct Access Registration).

- the routing number and Company Identification used in ACH transactions originated for the Third-Party Sender.

This registration data is basic information that is intended to be simple for ODFIs to provide during the initial registration and periodic update. An ODFI would be required to provide this information for each currently existing Third-Party Sender relationship by the effective date of the Rule, and, after the Rule becomes effective, within 30 days of originating entries for any new Third-Party Sender relationship. After registering a Third-Party Sender for the first time, an ODFI would be required to update the registration information within 30 days of any change, including the termination of the ODFI's ACH processing relationship with the Third-Party Sender. These 30-day grace periods would allow ODFIs to register and update information on a regular, monthly basis. An ODFI with no Third-Party Sender customers would not be required to submit any information to NACHA.

Beyond the basic registration information defined above, it may become necessary from time-to-time for NACHA to receive additional information about a Third-Party Sender. The Rule provides that, upon receiving a written request from NACHA, an ODFI will be required to provide within 10 Banking Days any or all of the following information that is requested:

- any doing-business-as names, taxpayer identification number(s), and street and website address(es) of the Third-Party Sender;
- the name and contact information for the Third-Party Sender's contact person;
- names and titles of the Third-Party Sender's principals;
- the approximate number of Originators for which the Third-Party Sender transmits entries; and
- a statement as to whether the Third-Party Sender transmits debit entries, credit entries or both.

Respondents are requested to provide comment on both the basic registration information, and the additional information in response to a request from NACHA.

Finally, in order to cover costs associated with the registry, the Rule would require ODFIs to pay a registration charge to NACHA for each Third-Party Sender entered into the registry. As the gateway to the ACH Network, ODFIs are responsible for their Third-Party Senders' activity, as well as mitigating the risk related to these ACH Network participants. Therefore, it is appropriate for ODFIs that originate on behalf of Third-Party Senders to defray the costs of related risk management tools. Such a registration charge is common in other electronic payment networks, such as for Independent Sales Organization registration. NACHA does not have sufficient information at this time to estimate the amount of the registration charge. ODFIs with Third-Party Sender customers are requested to provide the number of such customers, so that an estimate can be made of a reasonable registration charge.<sup>7</sup>

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<sup>7</sup> The amount of a registration charge could be estimated by dividing the estimated cost of operating the registry by the estimated number of entities registered.

An alternative to a registration charge for each Third-Party Sender would be for NACHA to absorb the cost of the registry within its Network Administration function, which includes other ACH Network risk management services. NACHA's Network Administration function is funded through Network Administration per-entry fees, which are paid by all ODFIs and RDFIs in the ACH Network. If the cost of the registry is funded by the Network Administration per-entry fees, then all RDFIs and those ODFIs without Third-Party Sender customers would be providing funding the registry. NACHA requests comment on this alternative for covering the cost of the registry.

NACHA does not intend to provide for public disclosure of registry information. An ODFI would be able to view its own information in the registry, but would not have access to another ODFI's Third-Party Sender registrations. The registry information would be solely for NACHA's use in its role as ACH Network Administrator. In this capacity NACHA would review and monitor registration data to better inform its risk management strategy. NACHA may also reference the registry during risk investigation activities.

Rules Framework: This Rule would create a new subsection under Article Two, Section 2.17 (ODFI Reporting Requirements) to address the registration requirements and the required data. Subsection 2.15.1 (Third-Party Senders' Provision of Information to ODFIs) would be re-titled and modified to require a Third-Party Sender to provide the registration information to its ODFI upon request. A new audit item would be created under Appendix Eight, Part 8.4 to verify that the ODFI registered its Third-Party Senders. Finally, Appendix Ten, Parts 10.3 (ODFI Reporting Requirements) and 10.4 (National System of Fines) would be modified to include references to Third-Party Sender Registration.

#### **PART IV: IMPACT OF THE PROPOSED RULE**

##### ***Benefits of Third-Party Sender Registration***

Generally, the ACH Network and its participants benefit from rules and other initiatives that address risk management and improve the quality of ACH transactions. Better risk management leads to higher quality and fewer exceptions and returns, which is a benefit to RDFIs. Standardizing the information for the registration of Third-Party Senders will promote appropriate know-your-customer due diligence across all ODFIs.

The registration process itself would provide NACHA with tools to improve risk monitoring of Third-Party Senders at the overall ACH Network level. For the first time, NACHA would have demographic information about Third-Party Senders that should be helpful in identifying and analyzing trends in the Network. NACHA would be better positioned to provide ACH Network risk management services, and to quickly identify and respond to specific risk events. Should the need arise, such as during risk investigations, NACHA would have access to a Third-Party Sender's contact information.

### ***Costs to Comply with the Proposed Framework***

**ODFIs:** ODFIs with Third-Party Sender customers will incur some costs to assemble and report the required information to NACHA. ODFIs already should have thorough records of their existing Third-Party Sender customers, and likely will have obtained the relevant information during the on-boarding of new customers; therefore, NACHA does not expect these costs to be significant. Nevertheless, ODFIs are requested to provide comment on anticipated costs of complying with the Rules. There may be some ODFIs that will have to obtain the required information, and they may experience higher costs to comply with the Rule. ODFIs with Third-Party Sender customers will have direct costs for the registration charge. ODFIs with no Third-Party Sender customer will have no such costs.

**Third-Party Senders:** Third-Party Senders may incur some costs to assemble and provide required information to their ODFIs. Because the information is basic in nature, NACHA does not expect these costs to be so significant as to outweigh the benefits of the Rule. Respondents are requested to provide comment on anticipated costs of complying with the Rules.

**Originators, ACH Operators, and RDFIs:** These Network participants are not expected to incur any costs associated with Third-Party Sender Registration.

**NACHA:** NACHA will incur costs to establish and maintain the registry. The Rule proposes to recover these costs through a registration charge to ODFIs for each Third-Party Sender that is registered.

### **PART V: EFFECTIVE DATE**

NACHA proposes an effective date of June 16, 2017 for the Third-Party Sender Registration rule. This would be the deadline by which ODFIs must register their existing Third-Party Senders.<sup>8</sup> NACHA anticipates that the implementation effort on the part of ODFIs would be primarily administrative in nature, and not impact their ACH systems. Nevertheless, ODFIs are requested to provide comment on this proposed effective date, taking into consideration the implementation of other recently approved rules.

To allow for implementation to be spread out across a reasonable time period, NACHA would make the registry live prior to the effective date. ODFIs would have a window of at least several months to register their Third-Party Senders prior to the June 16, 2017 deadline.

### **PART VI: TECHNICAL SUMMARY**

The following changes to the technical language represent proposed modifications to the *NACHA Operating Rules*:

- *Article Two, Subsection 2.15.1 (Third-Party Senders' Provision of Information to ODFIs)*  
– *Creates an obligation of Third-Party Senders to provide ODFIs with information necessary for registration.*

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<sup>8</sup> An ODFI that on-boards a Third-Party Sender within 30 days of this effective date would be permitted the full 30-day period to register that Third-Party Sender. For example, if origination for a Third-Party Sender begins on May 31, 2017, then the ODFI would need to register the Third-Party Sender by June 30, 2017.

- *Article Two, Subsection 2.17.3 (Third-Party Sender Registration)* – Creates a new subsection for the Third-Party Registration data requirements
- *Appendix Eight, Part 8.4 (Audit Requirements for ODFIs, Third-Party Service Providers and Third-Party Senders)* - Adds an audit item verifying that the ODFI has registered and updated information on its Third-Party Senders
- *Appendix Ten, Subpart 10.3.1 (Direct Access Registration)* – Modifies the subpart title only
- *Appendix Ten, Subpart 10.3.2 (Third-Party Sender Registration)* – Adds a new subpart to address rules enforcement for Third-Party Sender Registration non-compliance
- *Appendix Ten, Subpart 10.4.7.4 (Class 2 Rules Violation)* – Adds failure of the ODFI to register its Third-Party Senders to the list of Class 2 Rules Violations