



NOTICE OF AMENDMENT
TO THE
2014 NACHA OPERATING RULES

February 11, 2014
SUPPLEMENT #1-2014

Clarification of Third-Parties in the ACH Network

Effective Date: March 21, 2014

Supplement #1-2014 to the *NACHA Operating Rules*

On December 6, 2013, NACHA's Voting Membership approved the Clarification of Third-Parties in the ACH Network amendment to the *NACHA Operating Rules (Rules)*. The effective date for this rule change is March 21, 2014.

This supplement provides ACH Network participants with a summary of the key components of the change, along with details regarding the technical changes to *Rules* language. To ensure compliance with the most current rules, this Supplement should be used in conjunction with the 2014 edition of the *Rules*.

Clarification of Third-Parties in the ACH Network

(Approved December 6, 2013 – Effective March 21, 2014)

SUMMARY

This Rule revises the *NACHA Operating Rules (Rules)* to clarify the definitions and certain roles and responsibilities of Third-Parties in the ACH Network. The amendments (“Rule”) clarify and expand on the *Rules* to assist Third-Parties and other ACH participants in better understanding their roles and responsibilities in a particular transaction. This Rule addresses three specific areas of clarification: (1) Definition of Third-Party Sender; (2) Definition of Third-Party Service Provider; and (3) Third-Party Sender and Third-Party Service Provider Audit Requirements.

KEY COMPONENTS OF RULE AMENDMENT

New business opportunities in the ACH Network have led to expanded Third-Party Service Provider and Third-Party Sender roles over the last several years. Third-Parties are now performing roles in ACH processing that were not contemplated at the time Third-Parties were first addressed in the *Rules*, and there is sometimes a blurring of roles between Third-Parties and Originators. An entity can be a Third-Party Sender for one set of transactions and an Originator for another set of transactions. In some cases, new Third-Party roles have resulted in confusion as to whether a particular party is the Third-Party Sender, Third-Party Service Provider, or Originator in a given transaction. The new Rule clarifies the roles and responsibilities of Third-Parties in ACH transactions so that all participants have a better understanding of their respective obligations.

In addition, ACH participants have reported that there is some uncertainty in the industry regarding rules compliance audit requirements for Third-Party Service Providers and Third-Party Senders. Some Third-Parties are apparently unclear about their obligation to conduct an ACH Rules compliance audit. The Rule provides Third-Parties and other ACH Network participants with clarification regarding audit requirements, which will help these participants better understand and fulfill their audit obligation.

Definition of Third-Party Sender

This amendment provides a new definition of a Third-Party Sender that addresses several areas of confusion or uncertainty about the role of a Third-Party Sender. The new definition focuses on two fundamental characteristics of the relationships among Third-Party Senders, Originators, and ODFIs – (1) the Third-Party Sender acts as an intermediary between the Originator and the ODFI, including through Direct Access, and (2) the Third-Party Sender (rather than the Originator) has the Origination Agreement with the ODFI. Further, the new definition clarifies that an ACH participant can act as a Third-Party Sender for a given transaction or an Originator for that transaction, but cannot assume both roles for the same transaction. This Rule helps participants reconcile a Third-Party’s role versus an Originator’s role in a particular transaction.

Definition of Third-Party Service Provider

Outsourcing and downstream Third-Parties have created questions about whether Third-Party Service Providers can perform processing functions on behalf of Third-Party Senders. Current *Rules* language does not explicitly address these relationships, although they are not prohibited. This amendment specifically acknowledges that Third-Party Service Providers can act on behalf of Third-Party Senders.

Third-Party Sender and Third-Party Service Provider Audit Requirements

Third-Party Senders and Third-Party Service Providers are obligated under the *Rules* to perform an annual audit of *Rules* compliance to the extent they perform obligations of an ODFI or RDFI. This requirement

is stated in the text of Article One – General Rules, and of Appendix Eight – Rules Compliance Audit Requirements. To ensure that this responsibility is obvious to all ACH participants, this Rule changes the titles in Appendix Eight to name all parties subject to the audit requirements contained in that part.

This amendment also helps resolve the issue of which audit requirements outlined in Appendix Eight do not apply to Third-Parties. Specifically, the Rule includes a modification to Part 8.2 (Audit Requirements for All Participating DFIs, Third-Party Service Providers, and Third-Party Senders) that states affirmatively that Third-Parties are excluded from one audit requirement (Part 8.2(e)), which is only applicable to financial institutions. This Rule also includes a similar modification to Part 8.4 (Audit Requirements for ODFIs, Third-Party Service Providers, and Third-Party Senders) to state affirmatively that Third-Parties are excluded from two audit requirements (Parts 8.4 (l) and (m)), which are only applicable to ODFIs.

Finally, the Rule includes a minor change in the formatting of Appendix Eight, Part 8.1 (General Audit Requirements) to improve readability.

IMPACT TO PARTICIPANTS

Originators/ODFIs/RDFIs, Third-Party Service Providers, and Third-Party Senders: There should be no costs for organizations currently in compliance with the *Rules*. An organization may incur costs if it finds that it is not currently in compliance due to these clarifications, such as Third Parties that are not performing annual rules compliance audits.

TECHNICAL SUMMARY

Below is a summary of the impact of this rule change on the *NACHA Operating Rules*. Sections of the *Rules* that are affected by this amendment are also included and reflect rule language as it will read upon implementation in highlighted, italicized text.

- *Article Eight, Section 8.98 (Third-Party Sender)* – defines a Third-Party Sender as an intermediary between the Originator and the ODFI, including through Direct Access, that has an Origination Agreement with the ODFI.
- *Article Eight, Section 8.99 (Third-Party Service Provider)* – updates the definition to acknowledge that Third-Party Service Providers can execute certain functions on behalf of Third-Party Senders.
- *Appendix Eight, Part 8.2 (Audit Requirements for All Participating DFIs)* – modifies the title to include “Third-Party Service Provider” and “Third-Party Sender,” and the text to exclude Third-Parties from Item (e).
- *Appendix Eight, Part 8.3 (Audit Requirements for RDFIs)* – modifies the title to include “Third-Party Service Provider” and “Third-Party Sender.”
- *Appendix Eight, Part 8.4 (Audit Requirements for ODFIs)* – modifies the title to include “Third-Party Service Provider” and “Third-Party Sender,” and the text to exclude Third-Parties from Items (l) and (m).
- *Appendix Eight, Part 8.1 (General Audit Requirements)* – updates the format for better readability, without text changes.

Implementation Date: *March 21, 2014*

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As approved December 6, 2013, effective March 21, 2014, the Rules are modified as follows for the rule changes specific to Clarifications of Third-Parties in the ACH Network. [Note: The individual audit provisions defined in Appendix Eight, Parts 8.2, 8.3, and 8.4 are not affected by this amendment, and are not included within this Supplement.]

ARTICLE EIGHT

Definitions of Terms Used in These Rules

SECTION 8.98 “Third-Party Sender”

an Organization that is not an Originator that has authorized an ODFI or a Third Party Service Provider to Transmit, for its account or the account of another Third-Party Sender, a credit Entry, debit Entry, or Non-Monetary Entry to the Receiver’s account at the RDFI. An Organization acting as a Third-Party Sender also is a Third-Party Service Provider.

- ▶ *a type of Third-Party Service Provider that acts as an intermediary in Transmitting Entries between an Originator and an ODFI, including through Direct Access, and acts on behalf of an Originator or another Third-Party Sender. A Third-Party Sender must have an Origination Agreement with the ODFI of the Entry. A Third-Party Sender is never the Originator for Entries it Transmits on behalf of another Organization. However, a Third-Party Sender of Entries may also be an Originator of other Entries in its own right.*

SECTION 8.99 “Third-Party Service Provider”

- ▶ an Organization that performs any functions on behalf of the Originator, *the Third-Party Sender*, the ODFI, or the RDFI (not including the Originator, ODFI or RDFI acting in such capacity for such Entries) related to the processing of Entries, including the creation of the Files or acting as a Sending Point or Receiving Point on behalf of a Participating DFI. An Organization acting as Third-Party Sender also is a Third-Party Service Provider.

APPENDIX EIGHT

Rule Compliance Audit Requirements

PART 8.1 General Audit Requirements¹

- ▶ *Each Participating DFI, Third-Party Service Provider, and Third-Party Sender must, in accordance with standard auditing procedures, conduct an internal or external audit of compliance with provisions of the ACH rules in accordance with the requirements of this Appendix Eight. These audit provisions do not prescribe a specific methodology to be used for the completion of an audit but identify key rule provisions that should be examined during the audit process.*

An annual audit must be conducted under these Rule Compliance Audit Requirements no later than December 31 of each year.

This audit must be performed under the direction of the audit committee, audit manager, senior level officer, or independent (external) examiner or auditor of the Participating DFI, Third-Party Service Provider, or Third-Party Sender.

¹ The text of Part 8.1 (General Audit Requirements) is highlighted to draw attention to structural changes to improve readability and understanding of content. The rules language has not changed.

The Participating DFI, Third-Party Service Provider or Third-Party Sender must retain proof that it has completed an audit of compliance in accordance with these Rules. Documentation supporting the completion of an audit must be (1) retained for a period of six years from the date of the audit, and (2) provided to the National Association upon request.

Failure of a Participating DFI to provide proof of completion of an audit according to procedures determined by the National Association may be considered a Class 2 rule violation pursuant to Appendix Ten, subpart 10.4.7.4 (Class 2 Rules Violation).

► **PART 8.2 Audit Requirements for All Participating DFIs, Third-Party Service Providers, and Third-Party Senders**

Each Participating DFI, Third-Party Service Provider, and Third-Party Sender must conduct the following audit of ACH operations. These audit specifications apply generally to all Participating DFIs, regardless of a Participating DFI's status as an ODFI or RDFI. *The specifications also apply to Third-Party Service Providers and Third-Party Senders, with the exception of Part 8.2, item (e).*

► **PART 8.3 Audit Requirements for RDFIs and Third-Party Service Providers**

In addition to the audit procedures outlined in Parts 8.1 (General Audit Requirements) and 8.2 (Audit Requirements for All Participating DFIs, *Third Party Service Providers, and Third-Party Senders*) of this Appendix Eight, all RDFIs and their Third-Party Service Providers must conduct an audit of the following relating to the receipt of ACH entries:

► **PART 8.4 Audit Requirements for ODFIs, Third-Party Service Providers and Third-Party Senders**

In addition to the audit procedures outlined in Parts 8.1 (General Audit Requirements) and 8.2 (Audit Requirements for All Participating DFIs) of this Appendix Eight, ODFIs, Third-Party Service Providers, and Third-Party Senders must conduct an audit of the following relating to the origination of ACH entries:

► *In addition to the audit procedures outlined in Parts 8.1 (General Audit Requirements) and 8.2 (Audit Requirements for All Participating DFIs, Third-Party Service Providers, and Third-Party Senders) of this Appendix Eight, ODFIs, and Third-Party Service Providers, and Third-Party Senders when performing an obligation of the ODFI, must conduct an audit of the following relating to the origination of ACH entries. Part 8.4, items (l) and (m) do not apply to Third-Party Senders.*