



June 6, 2013

## NACHA: Proposed Clarifications on Third-Parties

### Executive Summary

- NACHA - The Electronic Payments Association recently issued a request for comment regarding the clarification of third-parties in the Automated Clearing House (ACH) Network.
- Specifically, the proposed amendments would clarify the definitions, roles, and responsibilities of third-party service providers and/or third-party senders on ACH transactions, and are intended to strengthen NACHA Operating Rules compliance among ACH participants.
- These proposed changes are intended to be technical amendments. NACHA believes that Originating Depository Financial Institutions (ODFIs) and Receiving Depository Financial Institutions (RDFIs), which include credit unions, should not incur additional costs to comply with these changes if they are currently in compliance with the NACHA Operating Rules.
- CUNA is interested in how this proposal would affect credit union operations and third-party providers (e.g., corporate credit unions), and compliance on the ACH network.
- Comments for the proposed rule are due to NACHA by June 28, 2013; **please submit your comments to CUNA by June 24, 2013.**
- For further details, please visit the NACHA [request for comment executive summary](#); [proposed modifications](#) to the NACHA Rules and Guidelines; and their [ACH participant survey](#).
- Please e-mail your comments to CUNA Assistant General Counsel for Regulatory Research Dennis Tsang at [dtsang@cuna.com](mailto:dtsang@cuna.com).

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### Proposed Changes to the NACHA Operating Rules

1. **Clear Identification of the Originator in Consumer Debit Authorizations** - This proposed amendment would explicitly state that all authorizations for debits to consumer accounts must contain a clear identification of the Originator of the debit entry. The proposal would ensure that consumer debit authorizations plainly state the party to whom the receiver intends to make a payment, especially for “split

transactions” in which the entity debiting the consumer Receiver’s account is not the entity to which funds are ultimately due.

2. **Third-Parties and Receiver Authorizations** - This proposal would acknowledge that the Receiver’s authorization and instructions could be provided to the Originator or its Third-Party.
3. **Definition of Third-Party Sender** - This proposal would also clarify that an ACH participant can act as a Third-Party Sender for a given transaction or an Originator for that transaction, but it cannot assume both roles for the same transaction.
4. **Definition of Third-Party Service Provider** - This proposal would specifically state that Third-Party Service Providers can act on behalf of Third-Party Senders.
5. **Third-Party Sender and Third-Party Service Provider Audit Requirements** - Finally, the proposal would make the titles in Appendix Eight name all parties subject to the audit requirements in that part. Third-Party Senders and Third-Party Service Providers are currently obligated to perform an annual audit of rules compliance to the extent they perform obligations of an ODFI or RDFI. This proposal would also help resolve the issue of which audit requirements apply to Third-Parties.

#### Proposed Effective Date

The proposed effective date for all these changes is January 1, 2014.

#### Proposed Changes to the NACHA Operating Guidelines

The proposed changes to the NACHA Operating Rules would also be supplemented by changes to the NACHA Operating Guidelines that would provide a more robust discussion on the new rules and implementation. The “Proposed Modifications to the Rules” document provides an appendix of sample Guidelines materials.

#### **Questions to Consider Regarding the Proposal**

1. Does your credit union support the proposed clarifications on third-parties (third-party service providers and/or third-party senders) to the NACHA Operating Rules?

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2. Any other comments or concerns regarding third-parties in the ACH network?

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Thank you for your comments.