



## **Direct Access Registration** *Request For Comment*

### ***Executive Summary and Rules Description*** **June 4, 2009**

#### **COMMENTS REQUESTED BY XXXX**

NACHA requests comments on a proposal to amend the *NACHA Operating Rules* entitled "Direct Access Registration." Comments are due by July 10, 2009.

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#### **Part I: Proposal Brief**

This rules proposal ("Rule") would require an ODFI to register its Direct Access status with NACHA. For an ODFI that has Direct Access relationships for debit origination, the Rule would require the ODFI to provide NACHA with specific information about each Originator or third-party with Direct Access, and specific data about that party's transaction volume. Finally, the Rule would require an ODFI's board, committee of the board, or its designee to approve a Direct Access debit relationship prior to the ODFI initiating ACH entries for the Originator or third-party.

Currently, each ODFI is expected to register with NACHA its Direct Access status for ACH debit origination pursuant to a policy issued by NACHA's Board of Directors in July 2008. While Direct Access also occurs for credit transactions, credit origination is not a component of the registration process. The views of the NACHA Board of Directors and the Risk Management Advisory Group are that Direct Access credit origination typically involves payroll and disbursement entries, and that this risk is best addressed through educational efforts and risk controls implemented by ODFIs.

As of June 1, 2009, 42 ODFIs have registered that they have Direct Access relationships, and 1,943 ODFIs have registered that they do not have Direct Access relationships. Of the 42 ODFIs that have Direct Access relationships, 4 ODFIs, on average, provide quarterly statistics on these relationships. While useful, the policy has not resulted in all ODFIs registering with NACHA; nor is the policy binding and enforceable as an amendment to the NACHA *Rules*. This Rule, therefore, would codify the NACHA Board's policy in the *Rules*.

## Part II: Rules Description

There are four primary components of this rule proposal:

1. An ODFI's board, board-level committee, or its designee must approve a Direct Access relationship prior to the ODFI initiating ACH entries for the party having that relationship;
2. An ODFI must register its Direct Access status with NACHA:
  - An ODFI with Direct Access relationships for debit origination must provide specified information about the Direct Access participant;
  - An ODFI with no Direct Access relationship must acknowledge such to NACHA;
3. An ODFI with Direct Access relationships must report specified transaction data to NACHA on a quarterly basis;
4. An ODFI must report when there is a change to the information provided for a current Direct Access Debit Participant, including any termination of a relationship.

In addition, to support these primary components, the rules would also be modified to:

- Define "Direct Access" and "Direct Access Debit Participant";
- Provide for enforcement if an ODFI fails to register; and
- Add *Rules* compliance audit provisions related to the Direct Access approval, registration and reporting requirements.

### Definitions

**Direct Access** would be defined as "*a situation in which an Originator, Third-Party Sender, or a Third-Party Service Provider transmits credit or debit entries directly to an ACH Operator using an ODFI's routing number and settlement account.*"

**Direct Access Debit Participant** would be defined as "*an Originator, Third-Party Sender, or Third-Party Service Provider with Direct Access for the origination of debit entries except (i) a Third-Party Service Provider that transmits ACH files solely on behalf of an ODFI where that Third-Party Service Provider does not have a direct agreement with an Originator (and is not itself an Originator), or (ii) an ODFI that transmits files using another Participating DFI's routing number and settlement account.*"

The exclusions described above in (i) and (ii) are exceptions as these relationships involve either a financial institution transmitting entries on behalf of another financial institution, or a third party that is a bank service company that performs service on behalf of a bank and is regulated like a bank by a regulatory agency.

### **Part III: Impact of the Proposal**

#### ***Benefits of the Proposal***

This proposal is one component of NACHA's Risk Management Strategy, which addresses risk throughout the lifecycle of ACH transactions. This proposal will benefit the ACH Network by ensuring that ODFIs better understand the risks of Direct Access through a careful and deliberate consideration of whether or not they have Direct Access Debit Participants and whether to accept/approve new Direct Access Debit Participants. Finally, there will be a Network-wide understanding of the number of Direct Access relationships, the volume of ACH transactions being transmitted through these relationships, and an assurance that ODFIs are verifying that Direct Access activity is within their risk parameters through monitoring volume and quality.

When an ODFI allows Originators and/or third parties Direct Access to the ACH Operators, ACH Network participants, including the ODFI, may be exposed to a variety of risks (including fraud) arising out of shortcomings in the Originator's or Third Party's policies and processes. Accordingly, it is essential that an ODFI that permits Direct Access effectively mitigate such risks by appropriately underwriting, managing and monitoring its relationship with its customer. ACH Operator tools that allow tracking of volume and exceptions are available to assist ODFIs in these efforts. Regardless of the level of due diligence performed by the ODFI's Direct Access customers, the ODFI remains responsible for those customers and for the entities those customers introduce to the Network.

By requiring approval of Direct Access relationships by an ODFI's board, board-level committee, or its designee, this proposal would contribute to better due diligence and adherence to risk management policies by ODFIs.

#### ***Costs to Comply with the Proposal***

ODFIs without Direct Access Debit Participants will incur minimal costs to register with NACHA and acknowledge their Direct Access Debit Participant status. ODFIs with Direct Access Debit Participants may incur some costs associated with developing and implementing processes to approve, monitor, register, report, and audit Direct Access relationships, to the extent that they do not have such processes in place today.

NACHA would incur some costs to support an expanded registration process and work collaboratively with the ACH Operators to validate that ODFIs have registered all Direct Access Debit Participants.

There are no anticipated costs for RDFIs to comply with this proposal.

### **Part IV: Additional Background – Existing Board Policy Statement on Direct Access**

NACHA's Board of Directors approved a Policy Statement on Direct Access in July 2008. This policy statement directed ODFIs to either register their current Direct Access relationships or provide a statement acknowledging that the institution does not maintain Direct Access relationships for ACH debit transactions. ODFIs with these relationships were asked to provide

quarterly statistics, return to the registration site following a significant change (such as termination of a Direct Access participant), and follow recommended best practices for these relationships. A copy of the Board Policy Statement on Direct Access can be found on NACHA's web site at <http://www.nacha.org/OtherResources/riskmgmt/DirectAccess/default.htm>.

## **Part V: Implementation**

The rule amendment is proposed to become effective on March 19, 2010. This implementation timeframe provides time for ODFIs with Direct Access relationships to incorporate processes for board-level approval of future Direct Access relationships and periodic reporting, and to incorporate the required audit provisions. ODFIs that have registered under the registration process in place since September 21, 2008 under the direction of the NACHA Board of Director's Policy Statement on Direct Access would not need to re-register under this Rule. The board-level or designated approval of Direct Access Debit Participants only applies to ODFIs that establish new relationships after the implementation date of the rule.

## **Part V: Appendices**

### **A. NACHA's Risk Management Strategy**

Direct Access Registration is a component of NACHA's Risk Management Strategy, the goal of which is to ensure high-quality ACH transactions and mitigate risk for financial institutions, businesses, and consumers. The strategy addresses risk throughout the life-cycle of ACH transactions and includes:

- Network entry requirements;
- Ongoing requirements;
- Enforcement;
- ACH Operator tools, and
- Cross-channel risk management.

While this rules proposal addresses Network entry requirements and the enforcement element of the strategy specifically, it will also aid the other aspects of the strategy with respect to risk mitigation and quality improvement.

### **B. Technical Summary**

The Rules would provide for ODFI registration of Direct Access relationships with NACHA by addressing the following:

- Article Two, Section 2.19 (ODFI Registration Requirements) – This section would:
  - Require an ODFI's board of directors, committee of the board, or its designee to approve Direct Access Debit Participants prior to originating for these entities;
  - Require an ODFI to register its Direct Access Debit Participant status with NACHA
    - An ODFI with no Direct Access Debit Participants would provide basic information and acknowledge this fact.

- An ODFI with Direct Access Debit Participants would provide more detailed information related to the Direct Access relationship.
- ODFIs must then register new Direct Access Debit Participants as they are established, and update their current registration information when there are changes.
- ODFIs with Direct Access Debit Participants would provide quarterly statistical data on these relationships for origination and returns.
- Article Fourteen, Subsection 14.1.21 (Direct Access) and Subsection 14.1.22 (Direct Access Debit Participant) – This section would:
  - Define Direct Access as a situation in which an Originator, Third Party Sender, or a Third Party Service Provider transmits credit or debit entries directly to an ACH Operator using the ODFI’s routing number and settlement account; and
  - Define Direct Access Debit Participant as an Originator, Third Party Sender, or Third Party Service Provider with Direct Access for origination of debit entries.
- Appendix Eight, Section 8.4 (Audit Requirements for ODFIs) – An ODFI audit requirement would be added that the ODFI verify that it has registered its Direct Access status with NACHA, obtained the approval of its board, board-level committee, or its designee for each Direct Access Participant, provided required statistical reporting for each Direct Access Debit Participant, and notified NACHA of any change with respect to any Direct Access Debit Participant.
- Appendix Eleven (Rules Enforcement)
  - Section 11.3 (ODFI Registration Requirements) – This section would state that NACHA can initiate a rules enforcement proceeding as a Class 2 violation if an ODFI does not register its Direct Access Debit Participant status.
  - Subsection 11.4.4.2 (Notice of Possible Fine) – When an ODFI fails to register or provide data reporting, the ODFI would be required to include its registration information when it responds to the Notice of Possible Fine.
  - Subsection 11.4.7.4 (Class 2 Rules Violation) – It would be a Class 2 rules violation for the ODFI not to register its Direct Access Debit Participant status with NACHA.