



Direct Access Registration

Ballot #10-09

Executive Summary and Rules Description

August 26, 2009

Part I: Proposal Brief

This Direct Access Registration Rule (“Rule”) would require an ODFI to register its Direct Access status with NACHA. For an ODFI that has Direct Access relationships for debit origination (“Direct Access Debit Participants”), the Rule would require the ODFI to provide NACHA with specific information about each Originator or third-party with Direct Access, and data about that party’s transaction volume. The Rule would also require an ODFI’s board, committee of the board, or its designee to approve a Direct Access Debit Participant prior to the ODFI originating ACH debit 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. As of July 30, 2009, 39 ODFIs have registered that they have Direct Access Debit Participants, and 1,972 ODFIs have registered that they do not have these relationships. Of the 39 ODFIs that have Direct Access Debit Participants, 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 a NACHA rule. This Rule, therefore, would codify the NACHA Board’s policy in the *Rules*.

While Direct Access also occurs for credit transactions, credit origination is not a component of the current registration process. The views of the NACHA Board of Directors and the Risk Management Advisory Group (“RMAG”) are that Direct Access credit origination typically involves payroll and disbursement entries, and that risks associated with these activities are best addressed at this time through educational efforts and risk controls implemented by ODFIs. Risks associated with Direct Access credit origination will be assessed on an ongoing basis for consideration of changes in registration or the *Rules*.

Part II: Rules Framework

There are four primary components of this Rule:

1. An ODFI’s board, board-level committee, or its designee would be required to approve a Direct Access Debit Participant prior to the ODFI initiating ACH debit entries for that Participant. The board’s designee can be a management group or staff level position as appropriate at the institution;

2. An ODFI would be required to register its Direct Access Debit Participant status with NACHA;
 - An ODFI with Direct Access Debit Participants would provide specified information about each Participant;
 - An ODFI with no Direct Access Debit Participants would acknowledge a statement to that effect;
3. An ODFI with Direct Access Debit Participants would report via the registration process specified transaction data on a quarterly basis; and
4. An ODFI would 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:

- 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 these ODFI Registration 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 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, or a financial institution transmitting entries on behalf of another financial institution, respectively.

Change to Original Proposal

In June 2009, NACHA requested comment on proposed rules regarding Direct Access Registration (“Original Proposal”). The Original Proposal has been revised in response to comments received related to the proposed implementation date. The Original Proposal included an implementation date of March 19, 2010. While 66.7% of respondents supported the March 2010 implementation date, some respondents expressed a desire for a later effective date. A June 2010 effective date allows another three months for ODFIs who have these relationships to prepare for the registration requirements and to register.

Additional Issues

1. Registration of Direct Access credit relationships

A number of respondents indicated support for ODFIs registering Direct Access credit relationships in addition to debit relationships. RMAG has discussed the possible registration of these credit relationships, which typically involve payroll and disbursement entries, and determined that the best first step would be educational efforts. RMAG will continue to monitor the marketplace to determine if the nature of these transactions changes or evolves in some manner that supports the need for registration.

2. Registration Fee

Respondents were generally not supportive of a registration fee for Direct Access Registration. Therefore, this Rule does not include a registration fee. NACHA's costs to support the registration process will be funded by Network Administration Fees and the process will be supported by current staff on an ongoing basis.

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. There will be a Network-wide understanding of the number of Direct Access relationships and the volume of ACH transactions being transmitted through these relationships. Finally, there will be an assurance that ODFIs are verifying that their 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 entries 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 promote 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, provide quarterly reports about, and audit Direct Access relationships, to the extent that they do not have such processes in place today.

NACHA would incur some minor costs to support an expanded registration process and to 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, update that status 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

This Rule would have an effective date of June 18, 2010. ODFIs that have not registered under the current registration process would need to register no later than the effective date. ODFIs that have already registered, or that register prior to the effective date, would not need to "re-register" once this Rule becomes effective; they would only need to provide updates and changes as appropriate. The board-directed approval of Direct Access Debit Participants becomes applicable on a "going-forward" basis to new Direct Access Debit Participant relationships that are established after June 18, 2010.

This implementation timeframe provides sufficient lead time for those ODFIs with Direct Access Debit Participants to incorporate processes for the institution's board of directors, or its designee, to approve future Direct Access relationships, for periodic reporting, and to incorporate the required audit provisions.

Part VI: 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, ongoing 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 with certain exceptions.
- Appendix Eight, Section 8.4 (Audit Requirements for ODFIs) – An ODFI audit provision would be added requiring the ODFI to 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.