

July 1, 2021

Via Electronic Submission

Maribel Bondoc
Manager, Network Rules
Nacha
2550 Wasser Terrace, Suite 400
Herndon, VA 20171

Re: Nacha Request for Comment – Third-Party Sender Roles and Responsibilities

Dear Ms. Bondoc:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to comment on Nacha’s request for feedback on proposals to clarify the roles and responsibilities of Third-Party Senders in the ACH Network. Specifically, Nacha has proposed certain changes to the Nacha Rules to clarify certain requirements for Nested Third-Party Senders, and to make explicit that each Third-Party Sender (“TPS”) must perform a Risk Assessment of its own ACH activities.

ETA members support Nacha’s efforts to clarify the role that Third-Party Senders play in processing ACH transactions, and to formalize certain requirements governing Third-Party Senders, particularly those that operate through a nested relationship. Third-Party Senders play an important role in facilitating ACH transactions, and we agree with Nacha that better clarity and knowledge by ACH participants about the roles and responsibilities of Third-Party Senders should help improve ACH quality and compliance.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction-processing products and services. ETA’s members include banks, mobile payment service providers, mobile wallet providers, money transmitters, and non-bank financial technology companies (“FinTech”) that provide access to credit, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives — facilitating over \$22 trillion in payments in 2019 worldwide.

Proposal 1 – Nested Third-Party Senders

1. Should a Nested TPS be defined within the Nacha Rules?

ETA agrees that Nested Third-Party Senders should be defined within the Nacha Rules, as well as the roles and responsibilities of (a) Nested Third-Party Senders, and (b) other ACH participants that engage in transactions with Nested Third-Party Senders. Consistent with this approach, ETA supports the proposal that each reference to a Third-Party Sender include a Nested Third-Party Sender to ensure that Nested Third-Party Senders are subject to the various Nacha Rules governing Third-Party Senders.

2. Do you agree with the proposed definition?

ETA supports the proposed definitions for Third-Party Sender (8.110) and Nested Third-Party Sender (8.60). One suggestion is that the definition of Third-Party Sender in 8.110 include a reference to “Nested Third-Party Sender,” in order to better connect the two definitions. For example, in 8.110: A Third-Party Sender must have an Origination Agreement with an ODFI or with another Third-Party Sender acting on behalf of the ODFI (a Nested Third-Party Sender).

3. Should an ODFI with TPS customers know whether their TPS customers allow Nested TPS relationships?

ETA supports a requirement that an ODFI have full transparency into whether the ODFI’s Third-Party Senders have nested relationships. This type of transparency will facilitate oversight and compliance by all of the parties involved in the relationships.

4. Should an ODFI with TPS customers address Nested TPS relationships within its ACH Origination Agreements?

ETA supports requiring ODFIs to include provisions in their ACH Origination Agreements that address Nested Third-Party Sender relationships, including the proposed provisions set forth in Subsection 2.2.2.2.

5. Should a Nested TPS have an ACH Origination Agreement between the TPS and Nested TPS?

ETA supports requiring a chain of agreements that flow from the ODFI to the Third-Party Sender and to each additional Nested Third-Party Sender. In this respect, ETA supports the proposed provisions set forth in Subsection 2.15.1.1. Requiring a clear chain of agreements ensures that each party in a transaction has a clear understanding of its rights and responsibilities, and provides a framework for ensuring that each party in the transaction can perform appropriate oversight as required under the Nacha Rules.

6. Should a TPS disclose Nested Relationships prior to originating entries for a Nested TPS?

ETA supports the proposal in Subsection 2.15.2 that a Third-Party Sender must disclose certain information to the ODFI about its Nested Relationships prior to originating entries for a Nested Third-Party Sender.

7. Should ODFIs be required to identify TPSs that allow Nested TPSs in the Risk Management Portal?

ETA supports this proposal.

8. Should the Rules address how many levels can exist in a chain of Nested Third-Parties Senders?



Provided that the Nacha Rules provide for sufficient transparency and oversight, ETA does not think that the Nacha Rules need to set specific limits on the levels that may exist in a chain of Nested Third-Party Senders. Providing overly prescriptive limitations may inhibit innovation or flexibility in the market to develop new products or services.

Proposal 2 – Third-Party Sender Risk Assessments

ETA supports the proposal that Third-Party Senders (including nested ones) perform an annual risk assessment. As noted, Third-Party Senders play an important role in facilitating ACH transactions. Accordingly, ETA supports requiring Third-Party Senders to review their operations and activities for risk and to ensure that their policies, procedures, and controls are appropriately tailored to address their risks and compliance with the Nacha Rules.

* * *

ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact myself or ETA's Senior Vice President of Government Affairs Scott Talbott at stalbott@electran.org.

Sincerely,



Jeff Patchen
Senior Manager of Government Affairs
Electronic Transactions Association
jpatchen@electran.org
(202) 677-7418

