



July 1, 2021

BY ELECTRONIC DELIVERY

Nacha
2550 Wasser Terrace, Suite 400
Herndon, VA 20171

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

To whom it may concern:

The Clearing House Payments Company L.L.C. (“The Clearing House”)¹ respectfully submits this comment letter in response to Nacha’s request for comment on Third-Party Sender Roles and Responsibilities (“Proposal”).² The Proposal covers two general topic categories: (i) nested Third-Party Sender relationships, and (ii) Third-Party Sender risk assessment obligations. The Clearing House supports the Proposal and agrees with Nacha that the proposed changes would provide clarity on the roles and responsibilities of Third-Party Senders and may help improve ACH network quality.

I. Discussion

A. Nested Third-Party Senders

The Proposal would make certain changes to the Nacha Rules intended to aid industry understanding regarding nested Third-Party Senders. First, it would add a definition of “Nested Third Party Sender” to the Nacha Rules.³

¹ Since its founding in 1853, The Clearing House has delivered safe and reliable payments systems, facilitated bank-led payments innovation, and provided thought leadership on strategic payments issues.

Today, The Clearing House is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. It continues to leverage its unique capabilities to support bank-led innovation, including launching the RTP® network, a real-time payment system that modernizes core payments capabilities for all U.S. financial institutions. As the country’s oldest banking trade association, The Clearing House also provides informed advocacy and thought leadership on critical payments-related issues facing financial institutions today. The Clearing House is owned by 26 financial institutions (23 class AA and 3 class A) and supports hundreds of banks and credit unions through its core systems and related services.

² Nacha Request for Comment on Third Party Sender Roles and Responsibilities (May 21, 2021), <https://www.nacha.org/rules/third-party-sender-roles-and-responsibilities>.

³ The term would mean “a Third-Party Sender that (i) has an Origination Agreement with another Third-Party Sender to act on behalf of an Originator, and (ii) does not have a direct agreement with the ODFI itself.” The definition would also provide that “[u]nless otherwise expressly stated in these Rules, each reference to a Third-Party Sender includes a Nested Third-Party Sender.”

In addition, the Proposal would establish a required “chain of agreements” and related responsibilities for Nested Third-Party Senders through revisions to Subsection 2.2.2.2 of the Nacha Rules (ODFI Must Enter Agreement with Third-Party Sender).⁴ The Proposal would also make changes to certain existing rules to cover Nested Third-Party Sender relationships, and add a new Subsection 2.15.7 to make a Third-Party Sender jointly and severally liable with each of its Nested Third-Party Senders for the performance of their obligations under the Nacha Rules. Finally, the Proposal would update the existing Third Party Sender registration rule in Subsection 2.17.3 to require ODFIs with Third-Party Senders to reflect in Nacha’s Risk Management Portal whether its registered Third Party Sender(s) originate for Nested Third-Party Senders.

The Clearing House supports the addition of a definition of “Nested Third-Party Sender” to the Nacha Rules, as well as the changes to require a “chain of agreements” and update other Third Party Sender obligations and warranties to cover Nested Third-Party Sender arrangements. We agree with Nacha that these changes will aid industry understanding regarding the roles and responsibilities of Third Party Senders, and that such added certainty may improve ACH network quality.

The rulemaking materials state that, if approved, the requirements related to origination agreements would apply on a “going-forward” basis (i.e., apply only to origination agreements executed after the effective date). The Clearing House encourages Nacha to make this clear within the text of the rules that ODFIs are not required to update existing agreements with Third-Party Senders, or provide other guidance to emphasize and clarify this point in order to avoid industry confusion, particularly for ACH rules compliance audit purposes.

B. Risk Assessment

The Proposal would add explicit references to Third-Party Senders to Subsection 1.2.4 (requiring an ACH risk assessment). In addition, the Proposal would add new language to the Subsection 2.15.3 (Warranty and Indemnification by Third-Party Senders) clarifying that the requirement that a Third Party Sender perform a risk assessment and an annual rules compliance audit cannot be passed to another Third Party Sender.

⁴ In particular, the Origination Agreement between an ODFI and a Third Party Sender would be required to include the right of the ODFI to (i) terminate or suspend a Nested Third Party Sender; and (ii) audit the Nested Third-Party Sender’s compliance with the Origination Agreement and the Nacha Rules. The Proposal would also add a new provision to Subsection 2.2.2.2 requiring the Third-Party Sender to agree that “before permitting a Nested Third-Party Sender to originate any Entry directly or indirectly through itself or the ODFI, it will enter into an agreement with the Nested Third-Party Sender that satisfies each of the requirements” of this revised Subsection. Further, the Proposal would add a new subsection 2.15.1 (Third Party Sender Agreements). These provisions would specify that where there is more than one Nested Third-Party Sender in the chain between the Originator and the ODFI, each Nested Third Party Sender must enter into an Origination Agreement meeting the requirements of Subsection 2.2.2.2 “with the immediately adjacent downstream Nested Third-Party Sender.”

The Clearing House supports these proposed changes and agrees with Nacha's aim to promote active risk management and a culture of compliance by Third-Party Senders.

* * * * *

Thank you for the opportunity to comment on the Proposal. If you have any questions or wish to discuss The Clearing House's comments, please do not hesitate to contact me using the contact information provided below.

Sincerely,

/s/

Jason Carone
Senior Vice President
The Clearing House
Jason.Carone@theclearinghouse.org