



Rule Making Process

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March 28, 2003

TO: NACHA Family

FROM: Cari Conahan, AAP
Director, Network Services

RE: Operations Bulletin

ACTION REQUESTED:

Attached for your information is an Operations Bulletin highlighting important information relating to an ODFI's liability for ACH transactions.

If you have any questions concerning the attached Operations Bulletin, please do not hesitate to contact NACHA's Network Services Department at (703) 561-1100.

OPERATIONS BULLETIN

ODFI LIABILITY FOR BREACH OF WARRANTY

On a regular basis, NACHA receives questions from ACH participants concerning an ODFI's potential liability for a breach of its warranties under the *NACHA Operating Rules*. Specifically, the question relates to whether an ODFI's liability for a breach of its warranty that an ACH entry is authorized is limited to the period of time in which an RDFI has the right to return the entry through the ACH Network (i.e., sixty days after the settlement date of the entry for consumer transactions and two days after the settlement date of the entry for non-consumer transactions) or whether this liability exists for a longer period of time.

In order to ensure that debits to a Receiver's account are authorized, the *NACHA Operating Rules* place the responsibility on the ODFI to ensure that the Originator has obtained the authorization from the Receiver. This responsibility is implemented by the warranty in Article Two, subsection 2.2.1.1 of the *NACHA Operating Rules*. Each ODFI warrants that "each entry transmitted by the ODFI to an ACH Operator is in accordance with proper authorization provided by the Originator and the Receiver." This warranty is intended to impose strict liability on the ODFI in the event that a debit entry is unauthorized. Other provisions of the *NACHA Operating Rules* provide for a means by which the funds associated with debit entries can be recovered by RDFIs or Receivers through the ACH Network by means of return entries. These procedures are in addition to, rather than in lieu of, the liability established under this warranty. The right of return is simply a mechanism to simplify and automate this recovery for a limited period of time.

The *NACHA Operating Rules* also detail the potential liability of an ODFI that breaches any of its warranties under Section 2.2 (not simply the authorization warranty). For example, Article Two, subsection 2.2.3 (Liability for Breach of Warranty) states that:

Each ODFI breaching any of the preceding warranties shall indemnify every RDFI... from and against any and all claim, demand, loss, liability, or expense, including attorneys' fees and costs that result directly or indirectly from the breach of warranty or the debiting or crediting of the entry to the Receiver's account.

This language is broad and does NOT limit itself to the period of time in which an RDFI can recover funds through the ACH Network by the means of return entries.

An ODFI's potential liability under the *Rules* for breach of warranty is not limited to the return time frames, but is limited only by the statute of limitations for breach of contract claims under the applicable state law. For example, the ODFI's liability for a breach of warranty exists for seven years in some states.

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If you have any questions concerning this Operations Bulletin, please contact the Network Services Department at NACHA at (703) 561-1100.