



**NOTICE OF AMENDMENT  
TO THE  
2009 ACH RULES  
June 5, 2009**

**SUPPLEMENT #2-2009**

**1. AUTHORIZATION AND RETURNS**

**Effective March 19, 2010**

**2. STOP PAYMENTS AND REGULATION E**

**Effective March 19, 2010**

**3. RISK MANAGEMENT AND ASSESSMENT**

**Effective June 18, 2010**

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## **NACHA OPERATING RULES - SUPPLEMENT #2-2009**

Since the publication of the 2009 edition of the *ACH Rules*, NACHA's Voting Membership has approved three additional amendments to the *NACHA Operating Rules (Rules)*. The Authorization and Returns rule will enhance the quality of transactions in the ACH Network by more clearly defining an Originator's obligations for obtaining a consumer's authorization, and by improving processes related to the return of debits that Receivers claim are unauthorized. The Stop Payments rule includes specific modifications to *Rules* language governing stop payments that will re-align the *Rules* with the requirements of the Federal Reserve Board's Regulation E ("Reg E"). The Risk Management and Assessment rule will codify within the *Rules* additional risk management practices that are common in the industry that will improve risk management in the ACH Network when utilized by all DFIs. Each of these rule amendments is directly related to enhancing and maintaining Network quality. The Authorization and Returns and Stop Payments and Regulation E changes will be effective March 19, 2010, while the Risk Management and Assessment amendments will be effective June 18, 2010. Details of these changes follow.

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## NACHA OPERATING RULES: AUTHORIZATION AND RETURNS

### **SUMMARY:**

The rule on Authorization and Returns (“Rule”) enhances ACH Network quality by 1) refining the requirements for obtaining a Receiver’s authorization of an ACH payment and using language consistent with Regulation E, and 2) modifying processes by which RDFIs handle Receivers’ claims of unauthorized debits.

This Rule clarifies the requirements for authorization of ACH entries to specifically use the language of Regulation E that an authorization must be “clear and readily understandable.” This Rule further clarifies that when a purported authorization is not clear and readily understandable, it will not be considered a valid authorization.

With regard to returns, the Rule eliminates the requirement that a Receiver’s written statement regarding an unauthorized debit be made “under penalty of perjury.” The intent of this provision is to avoid triggering any jurisdiction’s requirement that such a statement be notarized.<sup>1</sup> By making it clear that notarization of a customer’s written statement is not required, RDFIs’ customer service will be improved, and RDFIs may be able to offer such written statements electronically.

The Rule also establishes minimum information requirements for the written statement. The standardization of minimum information required for the written statement will improve the efficiency of the process for all DFIs. The Rule also shortens the length of time in which an RDFI must produce a copy of a written statement to 10 banking days. This time period is identical to the timeframe in which an ODFI must provide a copy of an authorization to an RDFI, establishes more consistent timing within the *Rules*, and allows ODFIs to more quickly provide information to customers.

Finally, the Rule provides for an expanded use of R39 for duplicate check/check conversion payments. This will allow an RDFI to return a duplicate payment within a 2-day return timeframe without needing to be contacted by the customer, and without a requirement to obtain the customer’s written statement.

### **KEY COMPONENTS OF RULE AMENDMENT**

#### *Authorization Requirements*

This Authorization and Returns Rule revises the requirements for obtaining a Receiver’s authorization (Article Two, subsection 2.1.2 - Receiver Authorization and Agreement) by replacing the existing language requiring terms that are “clear and conspicuous” with a standard that the terms of the authorization be “clear and readily understandable.” This modification provides consistency with the terminology and requirements of Regulation E. This Rule also adds language to the *Rules* to clarify that a purported authorization that is not clear and readily understandable as to its terms or one that is invalid under applicable law is not a valid authorization. Any entry based on an authorization that does not conform to these specifications can be returned as unauthorized. This change clarifies the intent of the *Rules* that clear and readily understandable terms are a fundamental component of a proper and valid ACH authorization.

#### *Definition of an Unauthorized Entry*

The *NACHA Operating Rules* currently define an unauthorized transaction as, among other reasons, a debit entry initiated in an amount “greater than” that authorized by the Receiver. This has fallen under scrutiny

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<sup>1</sup> While the *Rules* do not require notarization, many RDFIs believe that state law necessitates notarization because the statement is “under penalty of perjury.” The NACHA guidelines currently note that notarization is not required to comply with the *Rules*.

because a transaction in any amount other than that authorized by the Receiver is unauthorized. As a result, this amendment revises the definition of an unauthorized entry to refer, instead, to an amount “different than” the amount authorized by the Receiver. Since the definition of an unauthorized entry also references the authorization requirements of subsection 2.1.2, a debit pursuant to a purported authorization that is not clear or is otherwise invalid under applicable law will also meet the definition of unauthorized.

#### *Modifications to Written Statements*

This Rule eliminates the requirement that a Receiver’s written statement regarding an unauthorized debit be made “under penalty of perjury,” and renames the current written statement under penalty of perjury (WSUPP) to more accurately reflect the document’s purpose. The name “Written Statement of Unauthorized Debit” (“Written Statement”) will be used in lieu of “written statement under penalty of perjury” or “affidavit” in order to avoid triggering any jurisdiction’s requirement that such a document be notarized. RDFIs will still be able, however, to incorporate appropriate language to emphasize the significance of signing the written statement, and RDFIs may, at their discretion, choose to require notarization of such documents.

#### *Minimum Information Requirements*

The Authorization and Returns Rule defines the minimum information about an entry that must be included in the Written Statement. The *Rules* currently allow the WSUPP to be in a form as required by the RDFI, resulting in non-standardization within the industry over what data elements should be included. The standardization of minimum information required for the Written Statement will improve the efficiency of the process for all DFIs. RDFIs will have a clearer understanding of the key data elements that are needed in a Written Statement, and ODFIs will be better able to identify and address potential areas of concern with respect to their Originators’ authorization practices. This standardization may also improve an RDFI’s ability to process Written Statements electronically, potentially enhancing their customer service capabilities.

The following information will be required in a Written Statement:

- Receiver’s printed name and signature;
- Receiver’s account number;
- Party debiting the account (the payee), as identified to the Receiver;
- Posting date of the entry;
- Dollar amount of the entry;
- Reason for return;
- Signature Date;
- Receiver assertion that the Written Statement is true and correct; and,
- Receiver assertion that the Receiver is an authorized signer or has authority to act on the account.

The requirements use language that a consumer is more likely to understand. The Receiver’s name is the name shown on the account. For practical purposes, the “party debiting the account” is the Originator as identified in the Company Name field of the entry. It is much easier, however, for a consumer to identify to its financial institution the identity of the party that debited his account as identified on the periodic statement. Similarly, it is easier for a consumer to identify the date his account was debited rather than the Settlement Date of the entry, even though those dates are likely to be the same.

The RDFI retains the ability to create a form of its own design, but such a form will still need to contain the minimum required information.

Two new provisions to the *Rules* also specify that:

1. the Written Statement must be signed and dated on or after the Settlement Date of the entry(ies) for which recredit is being requested; and

2. more than one unauthorized debit entry from a specific Originator may be documented on a Written Statement, provided that all the transaction details as described above are provided for each transaction(s) for which the Receiver is seeking recredit.

Inherent in these information requirements and other provisions is the policy that a Written Statement must be obtained on or after the Settlement Date for an entry(ies) that has already posted to the account and for which the Receiver is to be recredited. If a Receiver anticipates future debits for which he wants to order payment stopped, the *Rules* will not prohibit the RDFI from obtaining the stop payment order during the customer contact or even via the same form as the Written Statement. It will be an RDFI's business decision whether to do so, or whether to obtain the stop payment order separately.

#### Timeframes Associated with the Written Statement Process

- Copy of Written Statement of Unauthorized Debit

This amendment shortens the length of time in which an RDFI must produce a copy of a Written Statement. Under the current *Rules*, an ODFI may request, in writing, a copy of a WSUPP from the RDFI. The ODFI's request must be made within one year of the date of the adjustment entry. The RDFI currently has 60 days to provide the copy in response to this request. This Rule reduces the timeframe from 60 days to 10 banking days following receipt of the ODFI's request for such information. This time period is identical to the timeframe in which an ODFI must provide a copy of an authorization to an RDFI, establishes more consistent timing within the *Rules*, and allows ODFIs to more quickly provide information to customers.

- Retention Requirements for Written Statement

The Authorizations and Return Rule establishes a specific retention period for the Written Statement, requiring that the RDFI retain the Written Statement or a copy for one year after the Settlement Date of the adjustment entry. Such a retention period is sufficient to enable an RDFI to fulfill any request for a copy. Under the current *Rules*, there is no defined RDFI retention requirement for the WSUPP. Although an ODFI may request, and the RDFI is obligated to provide, a copy of the WSUPP within one year of the date of the adjustment entry, the *Rules* currently do not specifically state that the RDFI must retain the document for this or any other timeframe.

#### Use of Return Reason Code R39

This Rule expands the defined use of Return Reason Code R39 (Improper Source Document) to provide RDFIs with a means to more efficiently handle the return of check conversion entries (ARC, BOC, POP), when the RDFI (rather than the Receiver) has identified that both the check conversion entry and the related source document have been presented for payment and both have posted to the Receiver's account. Currently, the *Rules* require an RDFI to obtain a WSUPP from the Receiver prior to returning an ARC, BOC or POP entry when the related source document is subsequently presented for payment.

Since the various check conversion rules were adopted, many RDFIs have implemented technologies and processes to identify duplicate payments before being notified by the Receiver. The expansion of R39 for this additional purpose enables an RDFI to return the ACH entry without requiring a Written Statement from the customer, improving service to its customers by limiting the impact of a duplicate payment on the Receiver's account. Because R39 already provides the RDFI with the ability to return ARC, BOC, and POP entries within two days without a Written Statement, the additional use of this code for this purpose will have little, if any, software impact on the ACH Network. Returns outside of the two-day timeframe will continue to require a Written Statement of Unauthorized Debit from the Receiver.

#### IMPACT TO PARTICIPANTS

The costs to comply with this rule change will be borne by Originators that will need to modify their authorizations to ensure that their terms are clear and readily understandable, and by RDFIs whose written

statements do not already incorporate the minimum information that will be required. RDFIs may have implementation costs to take advantage of electronic written statements and the additional use of R39.

### **TECHNICAL SUMMARY**

Below is a summary of the impact of this rule change on the *NACHA Operating Rules*. Sections of the *Rules* that are affected by this amendment are included below and reflect rule language as it will read upon implementation.

- *The sections listed below are each changed to replace “written statement under penalty of perjury” with “Written Statement of Unauthorized Debit”*
  - Article One, Subsection 1.7.2 (Record Retention)
  - Article One, Subsection 1.7.3 (Electronic Records Permitted)
  - Article Eight, Subsection 8.6.1 (Receiver’s Right to Recredit)
  - Article Eight, Subsection 8.6.2 (Receiver’s Right to Recredit for POP Entries)
  - Article Eight, Subsection 8.6.3 (Receiver’s Right to Recredit for RCK Entries)
  - Article Eight, Subsection 8.6.4 (Receiver’s Right to Recredit for ARC and BOC Entries)
  - Article Eight, Subsection 8.6.5 (Receiver’s Right to Recredit for IAT Entries)
  - Article Eight, Subsection 8.6.6 (Receiver’s Written Statement Under Penalty of Perjury)
  - Article Eight, Subsection 8.6.6.1 (Receiver’s Written Statement Under Penalty of Perjury for ARC and BOC Entries)
  - Article Eight, Subsection 8.6.6.2 (Receiver’s Written Statement Under Penalty of Perjury for IAT Entries)
  - Article Eight, Subsection 8.6.6.3 (Receiver’s Written Statement Under Penalty of Perjury for POP Entries)
  - Article Eight, Subsection 8.6.6.4 (Receiver’s Written Statement Under Penalty of Perjury for RCK Entries)
  - Article Eight, Subsection 8.6.9 (Effect of Execution of Waiver)
  - Article Eight, Subsection 8.7.1 (RDFI’s Right to Adjustment)
  - Article Eight, Subsection 8.7.2 (RDFI’s Right to Adjustment for POP Entries)
  - Article Eight, Subsection 8.7.3 (RDFI’s Right to Adjustment for RCK Entries)
  - Article Eight, Subsection 8.7.4 (RDFI’s Right to Adjustment for ARC and BOC Entries)
  - Article Eight, Subsection 8.7.5 (RDFI’s Right to Adjustment for IAT Entries)
  - Article Eight, Subsection 8.7.6 (Warranty of RDFI)
  - Article Eight, Subsection 8.7.7 (Copy of Written Statement of Unauthorized Debit)
  - Appendix Five, Section 5.4 (Table of Return Reason Codes) - Return Reason Codes R05, R07, R10, R37, R51, and R53
  - Appendix Eight Section 8.2 (Audit Requirements for Participating DFI’s), items I and J
- *Article One, Subsection 1.7.2 (Record Retention) – title changes to Electronic Record Retention.*
- *Article One, Subsection 1.7.3 (Electronic Records Permitted) – title changes to Electronic Records and Signatures.*
- *Article Two, Subsection 2.1.2 (Receiver Authorization and Agreement) – modifies language related to the “clear and conspicuous” standard to be consistent with Regulation E language; adds specific language to define when authorizations are considered invalid under the Rules.*
- *Article Eight, Section 8.6.6 (Receiver’s Written Statement of Unauthorized Debit) – revises the following subsections to eliminate references to the written statement being in any particular form, as determined by the RDFI, and replaces it with language referencing new, standardized form requirements; also removes references to the requirement that a written statement be a sworn declaration under oath:*

- 8.6.6 (Receiver’s Written Statement of Unauthorized Debit);
- 8.6.6.1 (Receiver’s Written Statement of Unauthorized Debit for ARC and BOC Entries)
- 8.6.6.2 (Receiver’s Written Statement of Unauthorized Debit for IAT Entries)
- 8.6.6.3 (Receiver’s Written Statement of Unauthorized Debit for POP Entries)
- 8.6.6.4 (Receiver’s Written Statement of Unauthorized Debit for RCK Entries)
  
- *Article Eight, Subsection 8.6.6.5 (Minimum Information Requirements)* – new section added to detail standard information requirements for the written statement of unauthorized debit.
- *Article Eight, Subsection 8.6.6.6 (Retention Requirement)* – new section added to state specific retention period for written statements of unauthorized debit.
- *Article Eight, Subsection 8.6.7 (Unauthorized Debit Entry)* - updated to clarify the definition of an unauthorized debit entry as one that is in an amount different than authorized.
- *Article Eight, Subsection 8.7.6 (Warranty of RDFI)* – modified to correct cross reference to Article Eight, Subsection 8.6.6 (Receiver’s Written Statement Under Penalty of Perjury).
- *Article Eight, Subsection 8.7.7 (Copy of Statement of Unauthorized Debit)* - shortens the timeframe within which an RDFI must respond to a request for a copy of the statement of unauthorized debit; corrects the cross reference to Subsection 8.6.6 (Receiver’s Written Statement Under Penalty of Perjury).
- *Appendix Five, Section 5.4 (Table of Return Reason Codes)* – updated to reflect new definition of an unauthorized debit (i.e., amount *different* than authorized) in Return Reason Codes R05 and R10. Return Reason Code R39 changed to allow RDFIs to return ARC, BOC and POP entries without a written statement within the two-day return time frame, if the ACH entry and related source document are both presented for payment and posted to the Receiver’s account.
- *Appendix Eight, Section 8.2 (Audit Requirements for Participating DFIs)* – replaces the term “written statement under penalty of perjury” with “Written Statement of Unauthorized Debit.” (NOTE: The modifications to Appendix Eight (Rules Compliance Audit) are based on the *NACHA Operating Rules* currently in effect. These modifications will also be incorporated, as appropriate, into the revised rules compliance audit language that has been approved by the NACHA voting membership for implementation on December 18, 2009.)

**Implementation Date: March 19, 2010**

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*As approved May 1, 2009, effective March 19, 2010, the Rules will be modified as follows for the Authorization and Returns changes:*

**ARTICLE ONE**

■ SUBSECTION 1.7.2 Record Retention [*Electronic Record Retention*]

Any agreement, authorization, written statement under penalty of perjury, or other record required by these rules may be retained as an electronic record that (1) accurately reflects the information in the record, and (2) is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise. [Any agreement, authorization, Written Statement of Unauthorized Debit, or other record required by these rules may be retained as an electronic record that (1) accurately reflects the information in the record, and (2) is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.]

■ SUBSECTION 1.7.3 Electronic Records Permitted [*Electronic Records and Signatures*]

Any agreement, authorization, written statement under penalty of perjury, or other record required by these rules to be in writing may instead be in electronic form. [*Any agreement, authorization, Written Statement of Unauthorized Debit, or other record required by these rules to be in writing may instead be in electronic form.*] Any record that is required to be signed or similarly authenticated may be signed with an electronic signature in conformity with the terms of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7001, et seq.) and in a manner that evidences the identity of the person who signed and that person's assent to the terms of the record. Any record that is signed or similarly authenticated according to the terms of an applicable state version of the Uniform Electronic Transaction Act is deemed to be signed in conformity with the terms of the Electronic Signatures in Global and National Commerce Act.

**ARTICLE TWO**

SUBSECTION 2.1.2 Receiver Authorization and Agreement

The Receiver has authorized the Originator to initiate the entry to the Receiver's account. In the case of IAT entries to a non-Consumer Account, and CCD and CTX entries, the Receiver has an agreement with the Originator under which the Receiver has agreed to be bound by these rules as in effect from time to time.

In the case of credit entries to a Consumer Account, the authorization may be provided orally or by other non-written means. Except as noted later in this subsection 2.1.2, in the case of debit entries to a Consumer Account, the authorization must be in writing and signed or similarly authenticated by the consumer. The similarly authenticated standard permits signed, written authorizations to be provided electronically, and the authorization process must evidence both the consumer's identity and his assent to the authorization.

With respect to the use of electronic authorizations, an electronic authorization must be able to be displayed on a computer screen or other visual display that enables the consumer to read the communication. The writing and signature requirements are satisfied by compliance with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7001 et seq.), which defines electronic records (as contracts or other records created, generated, sent, communicated, received, or stored by electronic means) and electronic signatures. Electronic signatures include, but are not limited to, digital signatures and security codes.

The authorization must be readily identifiable as an authorization, must clearly and conspicuously state its terms, and, for all entries except POP entries and Single-Entry WEB entries, the authorization must provide that the Receiver may revoke the authorization only by notifying the Originator in the manner specified in the authorization. [*The authorization must be readily identifiable as an authorization, its terms must be clear and readily understandable, and, for all entries except POP entries and Single-Entry WEB entries, the authorization must provide that the Receiver may revoke the authorization only by notifying the Originator in the manner specified in the authorization.*]

■ [*Any purported authorization that is not clear and readily understandable as to its terms (including the amount or timing of debits), or that is otherwise invalid under applicable law, does not satisfy the requirements of this subsection 2.1.2.*]

The authorization for POP entries consists of a written authorization in accordance with the requirements of this subsection 2.1.2 and a notice meeting the requirements of subsection 2.1.6 (Notification for Point-of-Purchase Entries). The authorization for ARC Entries consists of a notice meeting the requirements of subsection 2.1.4 (Notification for Accounts Receivable Entries) and the receipt of the Receiver's source document. The authorization for BOC Entries consists of a notice meeting the requirements of subsection 2.1.5 (Notification for Back Office Conversion Entries) and the receipt of the Receiver's source document. The authorization for RCK entries consists of a notice meeting the requirements of subsection 2.1.7 (Notification for Re-presented Check Entries) and the receipt of the item to which the RCK entry relates.

Entries subject to subsections 2.1.3 (Exception to Authorization Requirement) and 2.1.8 (Authorization for

Telephone-Initiated Entries) are excepted from these Receiver authorization requirements.

## ARTICLE EIGHT

### SECTION 8.6 Receiver's Right to Recredit

#### SUBSECTION 8.6.1 Receiver's Right to Recredit

For all entries to a Consumer Account except ARC, BOC, IAT, POP, and RCK entries, an RDFI must promptly credit the amount of a debit entry to a Consumer Account of a Receiver if (1) the Receiver sends or delivers to the RDFI a written statement under penalty of perjury as described in subsection 8.6.6 (Receiver's Written Statement Under Penalty of Perjury) that the debit entry was not authorized by the Receiver, and (2) this written statement is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements). *[For all entries to a Consumer Account except ARC, BOC, IAT, POP, and RCK entries, an RDFI must promptly credit the amount of a debit entry to a Consumer Account of a Receiver if (1) the Receiver sends or delivers to the RDFI a Written Statement of Unauthorized Debit as described in subsection 8.6.6 (Receiver's Written Statement of Unauthorized Debit) that the debit entry was not authorized by the Receiver, and (2) this Written Statement of Unauthorized Debit is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements).]*

#### SUBSECTION 8.6.2 Receiver's Right to Recredit for POP Entries

For POP entries, an RDFI must promptly credit the amount of a debit entry to an account of a Receiver if (1) the Receiver sends or delivers to the RDFI a written statement under penalty of perjury as described in subsection 8.6.6.3 (Receiver's Written Statement Under Penalty of Perjury for POP Entries) stating that (i) the debit entry was not authorized by the Receiver in accordance with the requirements of subsections 2.1.2 (Receiver Authorization and Agreement), (ii) the source document used for the debit entry was improper pursuant to subsection 3.8.2 (Source Documents), or (iii) the source document was presented for payment, and (2) this written statement is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements). *[For POP entries, an RDFI must promptly credit the amount of a debit entry to an account of a Receiver if (1) the Receiver sends or delivers to the RDFI a Written Statement of Unauthorized Debit as described in subsection 8.6.6.3 (Receiver's Written Statement of Unauthorized Debit for POP Entries) stating that (i) the debit entry was not authorized by the Receiver in accordance with the requirements of subsections 2.1.2 (Receiver Authorization and Agreement), (ii) the source document used for the debit entry was improper pursuant to subsection 3.8.2 (Source Documents), or (iii) the source document was presented for payment, and (2) this Written Statement of Unauthorized Debit is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements).]*

#### SUBSECTION 8.6.3 Receiver's Right to Recredit for RCK Entries

For RCK entries for which a stop payment order has been placed on the item to which the RCK entry relates, an RDFI must promptly credit the amount of the debit entry to the Consumer Account of the Receiver, provided the Receiver notifies the RDFI of the stop payment order within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements).

For RCK entries for which either (i) notice stating the terms of the re-presented check entry policy was not provided by the Originator in accordance with subsection 3.6.2 (Notice Obligation), (ii) the item to which the RCK entry relates is not an eligible item, (iii) all signatures on the item to which the RCK entry relates are not authentic or authorized, or the item to which the RCK entry relates has been altered, (iv) the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and

the item to which the RCK entry relates have been presented for payment, an RDFI must promptly credit the amount of the debit entry to a Consumer Account of the Receiver if (1) the Receiver sends or delivers to the RDFI a written statement under penalty of perjury as described in subsection 8.6.6.4 (Receiver's Written Statement Under Penalty of Perjury for RCK Entries) that either (i) notice stating the terms of the re-presented check entry policy was not provided by the Originator in accordance with subsection 3.6.2, (ii) the item to which the RCK entry relates is not an eligible item, (iii) all signatures on the item to which the RCK entry relates are not authorized or authentic, or the item to which the RCK entry relates has been altered, (iv) the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and the item to which the RCK entry relates have been presented for payment, and (2) this written statement is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements). [For RCK entries for which either (i) notice stating the terms of the re-presented check entry policy was not provided by the Originator in accordance with subsection 3.6.2 (Notice Obligation), (ii) the item to which the RCK entry relates is not an eligible item, (iii) all signatures on the item to which the RCK entry relates are not authentic or authorized, or the item to which the RCK entry relates has been altered, (iv) the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and the item to which the RCK entry relates have been presented for payment, an RDFI must promptly credit the amount of the debit entry to a Consumer Account of the Receiver if (1) the Receiver sends or delivers to the RDFI a Written Statement of Unauthorized Debit as described in subsection 8.6.6.4 (Receiver's Written Statement of Unauthorized Debit for RCK Entries) that either (i) notice stating the terms of the re-presented check entry policy was not provided by the Originator in accordance with subsection 3.6.2, (ii) the item to which the RCK entry relates is not an eligible item, (iii) all signatures on the item to which the RCK entry relates are not authorized or authentic, or the item to which the RCK entry relates has been altered, (iv) the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and the item to which the RCK entry relates have been presented for payment, and (2) this Written Statement of Unauthorized Debit is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements).]

#### SUBSECTION 8.6.4 Receiver's Right to Recredit for ARC and BOC Entries

For ARC and BOC entries for which a stop payment order has been placed on the source document to which the ARC or BOC entry relates, an RDFI must promptly credit the amount of the debit entry to the account of the Receiver, provided the Receiver notifies the RDFI of the stop payment order within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements).

For ARC and BOC entries for which either (i) the Receiver opted out of check conversion, (ii) notice was not provided by the Originator in accordance with subsection 3.7.1 (Notice Obligation) or subsection 3.8.1 (Notice Obligation), (iii) the source document used for the debit entry is improper pursuant to subsection 3.7.2 (Source Documents) or subsection 3.8.2 (Source Documents), (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document, an RDFI must promptly credit the amount of the debit entry to an account of the Receiver if (1) the Receiver sends or delivers to the RDFI a written statement under penalty of perjury as described in subsection 8.6.6.1 (Receiver's Written Statement Under Penalty of Perjury for ARC and BOC Entries) that either (i) the Receiver opted out of check conversion, (ii) notice was not provided by the Originator in accordance with subsection 3.7.1 or 3.8.1, (iii) the source document used for the entry is improper, (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document, and (2) this written statement is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements). [For ARC and BOC entries for which either (i) the Receiver opted out of check conversion, (ii) notice was not provided by the Originator in accordance with subsection 3.7.1 (Notice Obligation) or subsection 3.8.1 (Notice Obligation), (iii) the source document used for the debit entry is improper pursuant to subsection 3.7.2 (Source Documents) or

■ subsection 3.8.2 (Source Documents), (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document, an RDFI must promptly credit the amount of the debit entry to an account of the Receiver if (1) the Receiver sends or delivers to the RDFI a Written Statement of Unauthorized Debit as described in subsection 8.6.6.1 (Receiver's Written Statement of Unauthorized Debit for ARC and BOC Entries) that either (i) the Receiver opted out of check conversion, (ii) notice was not provided by the Originator in accordance with subsection 3.7.1 or 3.8.1, (iii) the source document used for the entry is improper, (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document, and (2) this Written Statement of Unauthorized Debit is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements).]

SUBSECTION 8.6.5 Receiver's Right to Recredit for IAT Entries

Except as otherwise provided for in subsection 1.2.5 (Effect of Illegality), an RDFI must promptly credit the amount of a debit entry to an account of a Receiver if (1) the Receiver sends or delivers to the RDFI a written statement under penalty of perjury as described in subsection 8.6.6.2 (Receiver's Written Statement Under Penalty of Perjury for IAT Entries) stating that the debit entry was not authorized by the Receiver in accordance with the requirements of subsection 2.1.2 (Receiver Authorization and Agreement), and (2) this written statement is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements). [Except as otherwise provided for in subsection 1.2.5 (Effect of Illegality), an RDFI must promptly credit the amount of a debit entry to an account of a Receiver if (1) the Receiver sends or delivers to the RDFI a Written Statement of Unauthorized Debit as described in subsection 8.6.6.2 (Receiver's Written Statement of Unauthorized Debit for IAT Entries) stating that the debit entry was not authorized by the Receiver in accordance with the requirements of subsection 2.1.2 (Receiver Authorization and Agreement), and (2) this Written Statement of Unauthorized Debit is sent or delivered to the RDFI within 15 calendar days from the date the RDFI sends or makes available to the Receiver information relating to the debit entry in accordance with section 4.5 (Periodic Statements).]

■ SUBSECTION 8.6.6 Receiver's Written Statement Under Penalty of Perjury [Receiver's Written Statement of Unauthorized Debit]

For all entries to a Consumer Account other than ARC, BOC, IAT, POP, or RCK entries, a Receiver must sign or similarly authenticate a written statement under penalty of perjury in the form required by the RDFI, that the debit entry for which the Receiver is seeking recredit under this section 8.6 was not authorized by the Receiver. [For all entries to a Consumer Account other than ARC, BOC, IAT, POP, or RCK entries, a Receiver must sign or similarly authenticate a Written Statement of Unauthorized Debit complying with the requirements of subsection 8.6.6.5 (Minimum Information Requirements) and stating that the debit entry for which the Receiver is seeking recredit under this section 8.6 was not authorized by the Receiver.]

■ SUBSECTION 8.6.6.1 Receiver's Written Statement Under Penalty of Perjury for ARC and BOC Entries [Receiver's Written Statement of Unauthorized Debit for ARC and BOC Entries]

For ARC and BOC entries for which a Receiver is seeking recredit, the Receiver must execute a written statement under penalty of perjury, in the form required by the RDFI, declaring and swearing under oath that either (i) the Receiver opted out of check conversion, (ii) notice was not provided by the Originator in accordance with subsection 3.7.1 (Notice Obligation) or subsection 3.8.1 (Notice Obligation), (iii) the source document used for the debit entry is improper pursuant to subsection 3.7.2 (Source Documents) or 3.8.2 (Source Documents), (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document. [For ARC and BOC entries for which a Receiver is seeking recredit, the Receiver must sign or similarly authenticate a Written Statement of Unauthorized Debit complying with the requirements of subsection 8.6.6.5 (Minimum Information Requirements) and stating that either (i) the Receiver opted out of check conversion, (ii) notice was not provided by the Originator in accordance with subsection 3.7.1 (Notice Obligation) or subsection 3.8.1

- *(Notice Obligation), (iii) the source document used for the debit entry is improper pursuant to subsection 3.7.2 (Source Documents) or 3.8.2 (Source Documents), (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document.]*

- SUBSECTION 8.6.6.2 Receiver's Written Statement Under Penalty of Perjury for IAT Entries [Receiver's Written Statement of Unauthorized Debit for IAT Entries]

For IAT entries for which a Receiver is seeking recredit, the Receiver must sign or similarly authenticate a written statement under penalty of perjury, in the form required by the RDFI, that the debit entry for which the Receiver is seeking recredit under this section 8.6 was not authorized by the Receiver in accordance with subsection 2.1.2 (Receiver Authorization and Agreement). *[For IAT entries for which a Receiver is seeking recredit, the Receiver must sign or similarly authenticate a Written Statement of Unauthorized Debit complying with the requirements of subsection 8.6.6.5 (Minimum Information Requirements) and stating that the debit entry for which the Receiver is seeking recredit under this section 8.6 was not authorized by the Receiver in accordance with subsection 2.1.2 (Receiver Authorization and Agreement).]*

- SUBSECTION 8.6.6.3 Receiver's Written Statement Under Penalty of Perjury for POP Entries [Receiver's Written Statement of Unauthorized Debit for POP Entries]

For POP entries for which a Receiver is seeking recredit, a Receiver must execute a written statement under penalty of perjury, in the form required by the RDFI, declaring and swearing under oath that either (i) the debit entry for which the Receiver is seeking recredit was not authorized by the Receiver in accordance with the requirements of subsection 2.1.2 (Receiver Authorization and Agreement), (ii) the source document used for the debit entry is improper pursuant to subsection 3.9.2 (Source Documents), or (iii) the source document was presented for payment. *[For POP entries for which a Receiver is seeking recredit, a Receiver must sign or similarly authenticate a Written Statement of Unauthorized Debit complying with the requirements of subsection 8.6.6.5 (Minimum Information Requirements) and stating that either (i) the debit entry for which the Receiver is seeking recredit was not authorized by the Receiver in accordance with the requirements of subsection 2.1.2 (Receiver Authorization and Agreement), (ii) the source document used for the debit entry is improper pursuant to subsection 3.9.2 (Source Documents), or (iii) the source document was presented for payment.]*

- SUBSECTION 8.6.6.4 Receiver's Written Statement Under Penalty of Perjury for RCK Entries [Receiver's Written Statement of Unauthorized Debit for RCK Entries]

For RCK entries for which a Receiver is seeking recredit, the Receiver must execute a written statement under penalty of perjury, in the form required by the RDFI, declaring and swearing under oath that either (i) a notice stating the terms of the re-presented check entry policy was not provided by the Originator, (ii) the item to which the RCK entry relates is not eligible pursuant to subsection 2.8.2 (Eligible Item), (iii) all signatures on the item to which the RCK entry relates are not authorized or authentic, or the item to which the RCK entry relates has been altered, (iv) the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and the item to which the RCK entry relates have been presented for payment. *[For RCK entries for which a Receiver is seeking recredit, the Receiver must sign or similarly authenticate a Written Statement of Unauthorized Debit complying with the requirements of subsection 8.6.6.5 (Minimum Information Requirements) and stating that either (i) a notice stating the terms of the re-presented check entry policy was not provided by the Originator, (ii) the item to which the RCK entry relates is not eligible pursuant to subsection 2.8.2 (Eligible Item), (iii) all signatures on the item to which the RCK entry relates are not authorized or authentic, or the item to which the RCK entry relates has been altered, (iv) the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and the item to which the RCK entry relates have been presented for payment.]*

- [SUBSECTION 8.6.6.5 Minimum Information Requirements]

*A Written Statement of Unauthorized Debit must be obtained for each entry for which recredit is requested by the Receiver and must include the following minimum information related to each entry for which the*

■ *Receiver is seeking recredit:*

- *Receiver's printed name and signature;*
- *Receiver's account number;*
- *Identity of the party (i.e., the payee) debiting the account, as provided to the Receiver;*
- *Date the entry was posted to the account;*
- *Dollar amount of entry;*
- *Reason for return;*
- *Signature date;*
- *Receiver assertion that the Written Statement of Unauthorized Debit is true and correct; and*
- *Receiver assertion that the Receiver is an authorized signer or has corporate authority to act on the account.*

*The Written Statement of Unauthorized Debit must be dated on or after the Settlement Date of the entry(ies) for which recredit is requested.*

*More than one unauthorized debit entry from a single Originator may be documented on a Written Statement of Unauthorized Debit, provided that all of the information detailed above is provided for each debit entry for which the Receiver is seeking recredit.]*

■ [SUBSECTION 8.6.6 Retention Requirement

*Each RDFI must retain the original or a reproducible copy of each Written Statement of Unauthorized Debit for one year from the Settlement Date of the adjustment entry(ies) to which the Written Statement of Unauthorized Debit relates.]*

SUBSECTION 8.6.7 Unauthorized Debit Entry

For purposes of this section 8.6, a debit entry was not authorized by the Receiver if (1) the authorization requirements of subsection 2.1.2 (Receiver Authorization and Agreement) have not been met; (2) the debit entry was initiated in an amount greater than that authorized by the Receiver; or (3) the debit entry was initiated for settlement earlier than authorized by the Receiver. [For purposes of this section 8.6, a debit entry was not authorized by the Receiver if (1) the authorization requirements of subsection 2.1.2 (Receiver Authorization and Agreement) have not been met; (2) the debit entry was initiated in an amount different than that authorized by the Receiver; or (3) the debit entry was initiated for settlement earlier than authorized by the Receiver.] An unauthorized debit entry does not include a debit entry initiated with fraudulent intent by the Receiver or any person acting in concert with the Receiver.

SUBSECTION 8.6.8 Waiver of Right to Recredit

An Originator may request a Receiver to waive the Receiver's rights under subsection 4.4.5 (Rights of Receiver Upon Unauthorized Debit to Its Account) with respect to one or more specific debit entries initiated to the Receiver's account. This waiver must (1) be in writing in a document entitled "WAIVER WITH RESPECT TO PRE-ARRANGED DEBIT", (2) specify the amount of each entry to which the waiver applies, (3) specify the approximate date on which each entry was initiated by the Originator, (4) specify the Originator number designated in each entry, and (5) specifically state in substance that the Receiver waives any right to have a designated RDFI credit the amount of the entry or entries to the Receiver's account due to error, unless the error was made by the RDFI. Except for waivers complying with the requirements of this subsection 8.6.8, no waiver by a Receiver of rights provided in subsection 4.4.5 is effective for any purpose. If the ODFI and RDFI are parties to an agreement (other than these rules) for the provision of services relating to MTE or SHR entries, this subsection does not apply to such entries.

SUBSECTION 8.6.9 Effect of Execution of Waiver

If a waiver complying with the requirements of subsection 8.6.8 (Waiver of Right to Recredit) has been signed by the Receiver and received by the RDFI in sufficient time and in such manner as to afford the RDFI a reasonable opportunity to act upon it, subsections 8.6.1 (Receiver's Right to Recredit), 8.6.2 (Receiver's Right to Recredit for POP Entries), 8.6.3 (Receiver's Right to Recredit for RCK Entries), 8.6.4 (Receiver's Right to Recredit for ARC and BOC Entries), 8.6.5 (Receiver's Right to Recredit for IAT Entries), 8.6.6 (Receiver's Written Statement Under Penalty of Perjury), and section 8.7 (Adjustment Entries) shall not apply to the entry or entries to which the waiver relates. *[If a waiver complying with the requirements of subsection 8.6.8 (Waiver of Right to Recredit) has been signed by the Receiver and received by the RDFI in sufficient time and in such manner as to afford the RDFI a reasonable opportunity to act upon it, subsections 8.6.1 (Receiver's Right to Recredit), 8.6.2 (Receiver's Right to Recredit for POP Entries), 8.6.3 (Receiver's Right to Recredit for RCK Entries), 8.6.4 (Receiver's Right to Recredit for ARC and BOC Entries), 8.6.5 (Receiver's Right to Recredit for IAT Entries), 8.6.6 (Receiver's Written Statement of Unauthorized Debit), and section 8.7 (Adjustment Entries) shall not apply to the entry or entries to which the waiver relates.]* If an Originator transmits such a waiver, with a copy, to an RDFI, the RDFI, upon written request of the Originator, must acknowledge receipt on the copy of the waiver and promptly deliver or send that copy to the Originator.

SUBSECTION 8.6.10 Recredit Right Not Exclusive

The rights provided to the Receiver under this section 8.6 are in addition to any rights provided under Regulation E of the Board of Governors of the Federal Reserve System or other applicable law.

**SECTION 8.7 Adjustment Entries**

SUBSECTION 8.7.1 RDFI's Right to Adjustment

For all entries to a Consumer Account except ARC, BOC, IAT, POP, and RCK entries, an RDFI receiving the written statement under penalty of perjury described in subsection 8.6.6 (Receiver's Written Statement Under Penalty of Perjury of Unauthorized Debit) may transmit an adjustment entry to its ACH Operator in the amount of the unauthorized entry referred to in the written statement under penalty of perjury, provided that (1) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (2) the written statement under penalty of perjury described in subsection 8.6.6 was sent or delivered to the RDFI, and (3) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a written statement under penalty of perjury as timely if, in its reasonable judgment, the written statement under penalty of perjury appears to have been sent within the time limits described above. *[For all entries to a Consumer Account except ARC, BOC, IAT, POP, and RCK entries, an RDFI receiving the Written Statement of Unauthorized Debit complying with subsection 8.6.6 (Receiver's Written Statement of Unauthorized Debit) may transmit an adjustment entry to its ACH Operator in the amount of the unauthorized entry referred to in the Written Statement of Unauthorized Debit, provided that (1) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (2) the Written Statement of Unauthorized Debit complying with subsection 8.6.6 was sent or delivered to the RDFI, and (3) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a Written Statement of Unauthorized Debit as timely if, in its reasonable judgment, the Written Statement of Unauthorized Debit appears to have been sent within the time limits described above.]*

SUBSECTION 8.7.2 RDFI's Right to Adjustment for POP Entries

For POP entries (i) that were not authorized in accordance with the requirements of subsection 2.1.2 (Receiver Authorization and Agreement), (ii) for which the source document for the debit entry is improper pursuant to subsection 3.9.2 (Source Documents), or (iii) for which the source document was presented for payment, an RDFI receiving the written statement under penalty of perjury described in subsection 8.6.6.3 (Receiver's Written Statement Under Penalty of Perjury for POP Entries) may transmit an adjustment entry to its ACH Operator in the amount of the unauthorized entry referred to in the written statement under penalty of perjury, provided that (1) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (2) the written statement under penalty of perjury described in subsection 8.6.6.3 was sent or delivered to the RDFI, and (3) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a written statement under penalty of perjury as timely if, in its reasonable judgment, the written statement under penalty of perjury appears to have been sent within the time limits above. *[For POP entries (i) that were not authorized in accordance with the requirements of subsection 2.1.2 (Receiver Authorization and Agreement), (ii) for which the source document for the debit entry is improper pursuant to subsection 3.9.2 (Source Documents), or (iii) for which the source document was presented for payment, an RDFI receiving the Written Statement of Unauthorized Debit complying with subsection 8.6.6.3 (Receiver's Written Statement of Unauthorized Debit for POP Entries) may transmit an adjustment entry to its ACH Operator in the amount of the unauthorized entry referred to in the Written Statement of Unauthorized Debit, provided that (1) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (2) the Written Statement of Unauthorized Debit complying with subsection 8.6.6.3 was sent or delivered to the RDFI, and (3) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a Written Statement of Unauthorized Debit as timely if, in its reasonable judgment, the Written Statement of Unauthorized Debit appears to have been sent within the time limits above.]*

SUBSECTION 8.7.3 RDFI's Right to Adjustment for RCK Entries

- (1) For RCK entries for which a stop payment order has been placed on the item to which the RCK entry relates, an RDFI may transmit an adjustment entry to its ACH Operator in the amount of the RCK entry provided that the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the RCK entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries).
- (2) For RCK entries (i) for which the Originator did not provide notice that clearly and conspicuously stated the terms of the re-presented check entry policy in advance of receiving the item to which the RCK entry relates, (ii) that are not eligible pursuant to subsection 2.8.2 (Eligible Item), (iii) for which all signatures on the item to which the RCK entry relates are not authentic or authorized, or the item to which the RCK entry relates has been altered, (iv) for which the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and the item to which the RCK entry relates have been presented for payment, an RDFI receiving the written statement under penalty of perjury described in subsection 8.6.6.4 (Receiver's Written Statement Under Penalty of Perjury for RCK Entries) may transmit an adjustment entry to its ACH Operator in the amount of the RCK entry referred to in the written statement under penalty of perjury, provided that (i) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (ii) the written statement under penalty of perjury described in subsection 8.6.6.4 was sent or delivered

to the RDFI, and (iii) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the RCK entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a written statement under penalty of perjury as timely if, in its reasonable judgment, the written statement under penalty of perjury appears to have been sent within the time limits described above. *[For RCK entries (i) for which the Originator did not provide notice that clearly and conspicuously stated the terms of the re-presented check entry policy in advance of receiving the item to which the RCK entry relates, (ii) that are not eligible pursuant to subsection 2.8.2 (Eligible Item), (iii) for which all signatures on the item to which the RCK entry relates are not authentic or authorized, or the item to which the RCK entry relates has been altered, (iv) for which the amount of the RCK entry was not accurately obtained from the item, or (v) both the RCK entry and the item to which the RCK entry relates have been presented for payment, an RDFI receiving the Written Statement of Unauthorized Debit complying with subsection 8.6.6.4 (Receiver's Written Statement of Unauthorized Debit for RCK Entries) may transmit an adjustment entry to its ACH Operator in the amount of the RCK entry referred to in the Written Statement of Unauthorized Debit, provided that (i) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (ii) the Written Statement of Unauthorized Debit complying with subsection 8.6.6.4 was sent or delivered to the RDFI, and (iii) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the RCK entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a Written Statement of Unauthorized Debit as timely if, in its reasonable judgment, the Written Statement of Unauthorized Debit appears to have been sent within the time limits described above.]*

SUBSECTION 8.7.4 RDFI's Right to Adjustment for ARC and BOC Entries

- (1) For ARC and BOC entries for which a stop payment order has been placed on the source document to which the ARC or BOC entry relates, an RDFI may transmit an adjustment entry to its ACH Operator in the amount of the ARC or BOC entry provided that the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the ARC or BOC entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries).
- (2) For ARC and BOC entries for which (i) the Receiver opted out of check conversion, (ii) the Originator did not provide notice in accordance with subsection 3.7.1 (Notice Obligation) or subsection 3.8.1 (Notice Obligation), (iii) the source document used for the debit entry is improper pursuant to subsection 3.7.2 (Source Documents) or subsection 3.8.2 (Source Documents), (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document, an RDFI receiving the written statement under penalty of perjury as described in subsection 8.6.6.1 (Receiver's Written Statement Under Penalty of Perjury for ARC and BOC Entries) may transmit an adjustment entry to its ACH Operator in the amount of the ARC or BOC entry referred to in the written statement under penalty of perjury, provided that (a) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (b) the written statement under penalty of perjury described in subsection 8.6.6.1 was sent or delivered to the RDFI, and (c) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the ARC or BOC entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a written statement under penalty of perjury as timely if, in its reasonable judgment, the written statement

under penalty of perjury appears to have been sent within the time limits described above. *[For ARC and BOC entries for which (i) the Receiver opted out of check conversion, (ii) the Originator did not provide notice in accordance with subsection 3.7.1 (Notice Obligation) or subsection 3.8.1 (Notice Obligation), (iii) the source document used for the debit entry is improper pursuant to subsection 3.7.2 (Source Documents) or subsection 3.8.2 (Source Documents), (iv) the source document was presented for payment, or (v) the amount of the ARC or BOC entry was not accurately obtained from the source document, an RDFI receiving the Written Statement of Unauthorized Debit complying with subsection 8.6.6.1 (Receiver's Written Statement of Unauthorized Debit for ARC and BOC Entries) may transmit an adjustment entry to its ACH Operator in the amount of the ARC or BOC entry referred to in the Written Statement of Unauthorized Debit, provided that (a) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (b) the Written Statement of Unauthorized Debit complying with subsection 8.6.6.1 was sent or delivered to the RDFI, and (c) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the ARC or BOC entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a Written Statement of Unauthorized Debit as timely if, in its reasonable judgment, the Written Statement of Unauthorized Debit appears to have been sent within the time limits described above.]*

#### SUBSECTION 8.7.5 RDFI's Right to Adjustment for IAT Entries

For IAT entries that were not authorized in accordance with subsection 2.1.2 (Receiver Authorization and Agreement), an RDFI receiving the written statement under penalty of perjury described in subsection 8.6.6.2 (Receiver's Written Statement Under Penalty of Perjury for IAT Entries) may transmit an adjustment entry to its ACH Operator in the amount of the unauthorized entry referred to in the written statement under penalty of perjury, provided that (1) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (2) the written statement under penalty of perjury described in subsection 8.6.6.2 was sent or delivered to the RDFI, and (3) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a written statement under penalty of perjury as timely if, in its reasonable judgment, the written statement under penalty of perjury appears to have been sent within the time limits described above. *[For IAT entries that were not authorized in accordance with subsection 2.1.2 (Receiver Authorization and Agreement), an RDFI receiving the Written Statement of Unauthorized Debit complying with subsection 8.6.6.2 (Receiver's Written Statement of Unauthorized Debit for IAT Entries) may transmit an adjustment entry to its ACH Operator in the amount of the unauthorized entry referred to in the Written Statement of Unauthorized Debit, provided that (1) no error was made by the RDFI in the debiting of the entry to the Receiver's account, (2) the Written Statement of Unauthorized Debit complying with subsection 8.6.6.2 was sent or delivered to the RDFI, and (3) the RDFI transmitted the adjustment entry to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. The adjustment entry must comply with the requirements of section 6.1 (Return of Entries) and Appendix Five (Return Entries). An RDFI may consider a Written Statement of Unauthorized Debit as timely if, in its reasonable judgment, the Written Statement of Unauthorized Debit appears to have been sent within the time limits described above.]*

#### SUBSECTION 8.7.6 Warranty of RDFI

Each RDFI transmitting an adjustment entry pursuant to subsection 8.7.1 (RDFI's Right to Adjustment), 8.7.2 (RDFI's Right to Adjustment for POP Entries), 8.7.3(2) (RDFI's Right to Adjustment for RCK Entries), 8.7.4(2) (RDFI's Right to Adjustment for ARC and BOC Entries), and 8.7.5 (RDFI's Right to Adjustment for IAT Entries), warrants to each ODFI, ACH Operator, Gateway Operator, and Association that, prior to

initiating the adjustment entry, the RDFI obtained from the Receiver a written statement under penalty of perjury complying with section 8.6 (Receiver's Right to Recredit). *[Each RDFI transmitting an adjustment entry pursuant to subsection 8.7.1 (RDFI's Right to Adjustment), 8.7.2 (RDFI's Right to Adjustment for POP Entries), 8.7.3(2) (RDFI's Right to Adjustment for RCK Entries), 8.7.4(2) (RDFI's Right to Adjustment for ARC and BOC Entries), and 8.7.5 (RDFI's Right to Adjustment for IAT Entries) warrants to each ODFI, ACH Operator, Gateway Operator, and Association that, prior to initiating the adjustment entry, the RDFI obtained from the Receiver a Written Statement of Unauthorized Debit complying with subsection 8.6.6 (Receiver's Written Statement of Unauthorized Debit).]* Each RDFI breaching this warranty shall indemnify every ODFI, ACH Operator, Gateway Operator, and Association from and against any and all claim, demand, loss, liability, or expense, including attorneys' fees and costs, resulting directly or indirectly from the breach of such warranty.

**SUBSECTION 8.7.7 Copy of Written Statement Under Penalty of Perjury *[Copy of Written Statement of Unauthorized Debit]***

Each RDFI initiating an adjustment entry pursuant to subsection 8.7.1 (RDFI's Right to Adjustment), 8.7.2 (RDFI's Right to Adjustment for POP Entries), 8.7.3(2) (RDFI's Right to Adjustment for RCK Entries), 8.7.4(2) (RDFI's Right to Adjustment for ARC and BOC Entries), and 8.7.5 (RDFI's Right to Adjustment for IAT Entries) shall send to the ODFI, within sixty (60) days after receiving a written request from the ODFI, a copy of the written statement under penalty of perjury obtained from the Receiver in accordance with section 8.6 (Receiver's Right to Recredit), provided such request is received by the RDFI within one year of the date of the initiation of the adjustment entry. *[Each RDFI initiating an adjustment entry pursuant to subsection 8.7.1 (RDFI's Right to Adjustment), 8.7.2 (RDFI's Right to Adjustment for POP Entries), 8.7.3(2) (RDFI's Right to Adjustment for RCK Entries), 8.7.4(2) (RDFI's Right to Adjustment for ARC and BOC Entries), and 8.7.5 (RDFI's Right to Adjustment for IAT Entries) shall send to the ODFI, within ten (10) banking days after receiving a written request from the ODFI, a copy of the Written Statement of Unauthorized Debit obtained from the Receiver complying with subsection 8.6.6 (Receiver's Written Statement of Unauthorized Debit), provided such request is received by the RDFI within one year of the date of the initiation of the adjustment entry.]*

**APPENDIX FIVE**

**SECTION 5.4 Table of Return Reason Codes**

**R05 *Unauthorized Debit to Consumer Account Using Corporate SEC Code (adjustment entries [adjustment entry])***

A CCD or CTX debit entry was transmitted to a Consumer Account of the Receiver and was not authorized by the Receiver. The Receiver may request immediate credit from the RDFI for an unauthorized debit. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information pertaining to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury, pursuant to subsection 8.6.6 (Receiver's Written Statement Under Penalty of Perjury), that the debit entry was not authorized by the Receiver. *[The Receiver must also provide the RDFI with a Written Statement of Unauthorized Debit, pursuant to subsection 8.6.6 (Receiver's Written Statement of Unauthorized Debit), that the debit entry was not authorized by the Receiver.]* For purposes of this code and related Operating Rules provisions, a debit entry was not authorized by a Receiver if (1) the authorization requirements of Article Two, subsection 2.1.2 (Receiver Authorization and Agreement) have not been met; (2) the debit entry was initiated in an amount greater than that authorized by the Receiver; or (3) the debit entry was initiated for settlement earlier than authorized by the Receiver. *[For purposes of this code and related Operating Rules provisions, a debit entry was not authorized by a Receiver if (1) the authorization requirements of Article Two, subsection 2.1.2 (Receiver Authorization and Agreement) have not been met; (2) the debit entry was initiated in an amount different than that authorized by the Receiver; or (3) the debit entry was initiated for settlement earlier than authorized by the Receiver.]* An unauthorized

debit entry does not include a debit entry initiated with fraudulent intent by the Receiver or any person acting in concert with the Receiver. An RDFI using this return reason code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry.

■ **R07 Authorization Revoked by Customer (adjustment entries [adjustment entry])**

The RDFI's customer (the Receiver) has revoked the authorization previously provided to the Originator for this particular transaction. The Receiver may request immediate credit from the RDFI for an unauthorized debit. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information pertaining to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury that the authorization for the debit entry has been revoked by the

- Receiver. *[The Receiver must also provide the RDFI with a Written Statement of Unauthorized Debit that the authorization for the debit entry has been revoked by the Receiver.]* The RDFI must return the rescinded transaction to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. This code and related Operating Rule provisions apply to Consumer entries only. (Note: This Return Reason Code may not be used for POP entries, Single-Entry WEB entries, or TEL entries.)

■ **R10 Customer Advises Not Authorized, Notice Not Provided, Improper Source Document, or Amount of Entry Not Accurately Obtained from Source Document (adjustment entries [adjustment entry])**

• For entries to Consumer Accounts that are not ARC, BOC, IAT, POP, or RCK entries, the RDFI has been notified by its customer, the Receiver, that the Originator of a given transaction has not been authorized to debit his account. The Receiver may request immediate credit from the RDFI for an unauthorized debit. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information pertaining to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury, pursuant to subsection 8.6.6 (Receiver's Written Statement Under Penalty of Perjury), that the debit entry was not authorized by the Receiver. *[The Receiver must provide the RDFI with a Written Statement of Unauthorized Debit, pursuant to subsection 8.6.6 (Receiver's Written Statement of Unauthorized Debit), that the debit entry was not authorized by the Receiver.]* For purposes of this code and related Operating Rules provisions, a debit entry was not authorized by the Receiver if (1) the authorization requirements of Article Two, subsection 2.1.2 (Receiver Authorization and Agreement) have not been met; (2) the debit entry was initiated in an amount greater than that authorized by the Receiver; or (3) the debit entry was initiated for settlement earlier than authorized

- by the Receiver. *[For purposes of this code and related Operating Rules provisions, a debit entry was not authorized by the Receiver if (1) the authorization requirements of Article Two, subsection 2.1.2 (Receiver Authorization and Agreement) have not been met; (2) the debit entry was initiated in an amount different than that authorized by the Receiver; or (3) the debit entry was initiated for settlement earlier than authorized by the Receiver.]* An unauthorized debit entry does not include a debit entry initiated with fraudulent intent by the Receiver or any person acting in concert with the Receiver. The RDFI must return the rescinded transaction to its ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. With the exception of ARC, BOC, IAT, and POP entries, this code and related Operating Rule provisions apply to Consumer entries only.

OR

- For ARC and BOC entries, the RDFI has been notified by its customer, the Receiver, that (1) the Receiver opted out of check conversion, (2) the required notice was not provided by the Originator in accordance with Article Three, subsection 3.7.1 (Notice Obligation) or subsection 3.8.1 (Notice Obligation), (3) the source document used for the debit entry is improper pursuant to subsection 3.7.2 (Source Documents)

or subsection 3.8.2 (Source Documents), or (4) the amount of the ARC or BOC entry was not accurately obtained from the source document. The Receiver may request immediate credit from the RDFI for an ARC or BOC entry for the reasons described above. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information relating to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury, pursuant to subsection 8.6.6.1 (Receiver's Written Statement Under Penalty of Perjury for ARC and BOC Entries), that (1) the Receiver opted out of check conversion, (2) the required notice was not provided, (3) the source document used for the debit entry is improper, or (4) the amount of the ARC or BOC entry was not accurately obtained from the source document. *[The Receiver must provide the RDFI with a Written Statement of Unauthorized Debit, pursuant to subsection 8.6.6.1 (Receiver's Written Statement of Unauthorized Debit for ARC and BOC Entries), that (1) the Receiver opted out of check conversion, (2) the required notice was not provided, (3) the source document used for the debit entry is improper, or (4) the amount of the ARC or BOC entry was not accurately obtained from the source document.]* An RDFI using this Return Reason Code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the ARC or BOC entry.

OR

- For IAT entries, the RDFI has been notified by its customer, the Receiver, that the Originator of a given transaction has not been authorized to debit his account. Except where prohibited by subsection 1.2.5 (Effective of Illegality) of Article One, the Receiver may request immediate credit from the RDFI for an unauthorized debit. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information pertaining to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury, pursuant to subsection 8.6.6.2 (Receiver's Written Statement Under Penalty of Perjury for IAT Entries), that the debit entry was not authorized by the Receiver. *[The Receiver must also provide the RDFI with a Written Statement of Unauthorized Debit, pursuant to subsection 8.6.6.2 (Receiver's Written Statement of Unauthorized Debit for IAT Entries), that the debit entry was not authorized by the Receiver.]* An RDFI using this Return Reason Code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry.

OR

- For POP entries, the RDFI has been notified by its customer, the Receiver, that (1) the Originator of a given transaction has not been authorized to debit his account in accordance with the requirements of subsection 2.1.2 (Receiver Authorization and Agreement), or (2) the source document for the debit entry is improper pursuant to subsection 3.9.2 (Source Documents). The Receiver may request immediate credit from the RDFI for a POP entry for the reasons described above. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information relating to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury, pursuant to subsection 8.6.6.3 (Receiver's Written Statement Under Penalty of Perjury for POP Entries), that (1) the entry was not authorized, or (2) the source document for the entry is improper. *[The Receiver must also provide the RDFI with a Written Statement of Unauthorized Debit, pursuant to subsection 8.6.6.3 (Receiver's Written Statement of Unauthorized Debit for POP Entries), that (1) the entry was not authorized, or (2) the source document for the entry is improper.]* An RDFI using this Return Reason Code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the entry.

■ **R37 Source Document Presented for Payment [(adjustment entry)]**

The source document to which an ARC, BOC, or POP entry relates has been presented for payment. The Receiver may request immediate credit from the RDFI for an ARC, BOC, or POP entry for the reason described above. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information relating to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury that the source document was presented for payment. [The Receiver must also provide the RDFI with a Written Statement of Unauthorized Debit that the source document was presented for payment.] An RDFI using this return reason code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the ARC, BOC, or POP entry.

■ **R39 Improper Source Document [Improper Source Document/Source Document Presented for Payment]**

The RDFI determines that the source document used for an ARC, BOC, or POP entry to its Receiver's account is improper pursuant to subsections 3.7.2 (Source Documents), 3.8.2 (Source Documents), and 3.9.2 (Source Documents). [The RDFI determines that (1) the source document used for an ARC, BOC, or POP entry to its Receiver's account is improper pursuant to subsections 3.7.2 (Source Documents), 3.8.2 (Source Documents), and 3.9.2 (Source Documents); or (2) an ARC, BOC, or POP entry and the source document to which the entry relates have both been presented for payment and posted to the Receiver's account.] An entry returned using this Return Reason Code must be received by the RDFI's ACH Operator by its deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the second banking day following the Settlement Date of the original entry.

■ **R51 Item is Ineligible, Notice Not Provided, Signature Not Genuine, Item Altered, or Amount of Entry Not Accurately Obtained from Item (adjustment entries [adjustment entry])**

- An RCK entry may be considered to be ineligible if (1) the item to which the RCK entry relates is not an item within the meaning of Revised Article 4 of the Uniform Commercial Code (1990 Official Text); (2) the item is not a negotiable demand draft drawn on or payable through or at a Participating DFI, other than a Federal Reserve Bank or Federal Home Loan Bank; (3) the item does not contain a pre-printed serial number; (4) the item is in an amount of \$2,500 or more; (5) the item does not indicate on the face of the document that it was returned due to "Not Sufficient Funds," "NSF," "Uncollected Funds," or comparable language; (6) the item is dated more than 180 days from the date the entry is being transmitted to the RDFI (i.e., the item to which the RCK entry relates is stale dated); (7) the item is drawn on a non-Consumer Account; or (8) the item has been previously presented more than two times through the check collection system (as a physical item, substitute check, or image), or more than one time through the check collection system and more than one time as an RCK entry.

OR

- The Originator did not provide notice as provided for within Article Three, subsection 3.6.2 (Notice Obligation).

OR

- All signatures on the item to which the RCK entry relates are not authentic or authorized, or the item to which the RCK entry relates has been altered.

OR

- The amount of the RCK entry was not accurately obtained from the item.

An RDFI using this Return Reason Code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the RCK entry to which the item relates. The Receiver may request immediate credit from the RDFI for an RCK entry for the reasons described above. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information pertaining to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury, pursuant to subsection 8.6.6.4 (Receiver's Written Statement Under Penalty of Perjury for RCK Entries), that (i) notice stating the terms of the re-presented check entry policy was not provided by the Originator, (ii) the item to which the RCK entry relates is not eligible pursuant to subsection 2.8.2 (Eligible Item), (iii) all signatures on the item to which the RCK entry relates are not authorized or authentic, or the item to which the RCK entry relates has been altered, or (iv) the amount of the RCK entry was not accurately obtained from the item. *[The Receiver must also provide the RDFI with a Written Statement of Unauthorized Debit, pursuant to subsection 8.6.6.4 (Receiver's Written Statement of Unauthorized Debit for RCK Entries), that (i) notice stating the terms of the re-presented check entry policy was not provided by the Originator, (ii) the item to which the RCK entry relates is not eligible pursuant to subsection 2.8.2 (Eligible Item), (iii) all signatures on the item to which the RCK entry relates are not authorized or authentic, or the item to which the RCK entry relates has been altered, or (iv) the amount of the RCK entry was not accurately obtained from the item.]* An RDFI using this Return Reason Code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the RCK entry to which the item relates.

■ **R52 Stop Payment on Item (adjustment entries [adjustment entry])**

The RDFI determines that a stop payment order has been placed on the item to which the RCK entry relates. An RDFI using this Return Reason Code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the RCK entry to which the item relates.

■ **R53 Item and ACH Entry Presented for Payment (adjustment entries [adjustment entry])**

In addition to an RCK entry, the item to which the RCK entry relates has also been presented for payment. The Receiver may request immediate credit from the RDFI for an RCK entry for the reason described above. The request must be made in writing within fifteen (15) days after the RDFI sends or makes available to the Receiver information relating to that debit entry. The Receiver must also provide the RDFI with a written statement under penalty of perjury, pursuant to subsection 8.6.6.4 (Receiver's Written Statement Under Penalty of Perjury for RCK Entries), that both the RCK entry and the item to which it relates were presented for payment. *[The Receiver must also provide the RDFI with a Written Statement of Unauthorized Debit, pursuant to subsection 8.6.6.4 (Receiver's Written Statement of Unauthorized Debit for RCK Entries), that both the RCK entry and the item to which it relates were presented for payment.]* An RDFI using this return reason code must transmit the return entry by its ACH Operator's deposit deadline for the return entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the RCK entry.

## APPENDIX EIGHT

### SECTION 8.2 Audit Requirements for Participating DFIs

- I. Review internal procedures to ensure that, for each RCK entry for which a stop payment has been placed on the item to which the RCK entry relates and for each ARC or BOC entry for which a stop payment order has been placed on the source document to which the ARC or BOC entry relates, the adjustment entry is received by the RDFI's ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. (NOTE: No

■ written statement under penalty of perjury is required for entries returned for these reasons. *[NOTE: No Written Statement of Unauthorized Debit is required for entries returned for these reasons.]*

- J. Review records and procedures to ensure that written statements under penalty of perjury are obtained from consumers for all returns bearing Return Reason Codes R05, R07, R10, R37, R51, and R53, and that each adjustment entry is received by the RDFI's ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. Verify that copies of written statements under penalty of perjury are provided to the ODFI within the required time frame, when such copies are requested, in writing, by the ODFI. *[Review records and procedures to ensure that Written Statements of Unauthorized Debit are obtained from consumers for all returns bearing Return Reason Codes R05, R07, R10, R37, R51, and R53, and that each adjustment entry is received by the RDFI's ACH Operator by its deposit deadline for the adjustment entry to be made available to the ODFI no later than the opening of business on the banking day following the sixtieth calendar day following the Settlement Date of the original entry. Verify that copies of Written Statements of Unauthorized Debit are provided to the ODFI within the required time frame, when such copies are requested, in writing, by the ODFI.]*
-

## **NACHA OPERATING RULES: STOP PAYMENTS AND REGULATION E**

### **SUMMARY**

The Stop Payments rule (“Rule”) re-aligns the *NACHA Operating Rules* (“Rules”) with the requirements of the Federal Reserve Board’s Regulation E (“Reg E”). As the Federal Reserve Board’s Staff Interpretation of Reg E has changed over time, there has been a divergence between the *Rules* and Reg E with respect to the intent of, and processing requirements for, stop payment orders on ACH debits. These differences have become significant enough to result in the potential for RDFIs to have difficulty reconciling their obligations under both the Rules and Reg E.

Currently, the *Rules* allow a consumer Receiver to place a stop payment order on an ACH debit entry, just as a stop payment order can be placed on a particular check in the check collection system. An ACH stop payment order, like a check stop pay order, applies to a single debit. The *Rules* currently provide that a stop payment order will remain in effect: (1) for six months from the date of the stop payment order; (2) until the debit entry has been stopped; or (3) until the Receiver withdraws the stop payment order, whichever occurs earliest.

On January 1, 2007, changes to the staff commentary on Reg E became effective that state that a consumer’s right to stop payment of pre-authorized electronic debits applies to all future debits from a specific Originator if that is the consumer’s intent, and that the financial institution must make arrangements so that no future debits are posted to the consumer’s account. The financial institution may not wait for the Originator to cease origination of the debits. RDFIs that followed the existing requirements of the *Rules* could not be certain they were meeting this Reg E requirement.

This Rule revises specific language regarding the expiration of a stop payment order that may create confusion for RDFIs in light of the requirements of Reg E. The Rule also adds language clarifying that the stop payment order would remain in effect until all entries related to the Receiver’s stop pay instruction have been stopped.

The Rule does not alter the manner in which an RDFI returns an entry as payment stopped via the ACH Network - a stop payment order is placed in advance of receipt of a specific entry or entries and ensures that the entry(ies) does not post to the Receiver’s account. The RDFI would return any such entry it receives using return code R08.

The Rule also has no impact on an RDFI’s obligations with respect to re-crediting an entry that has posted to the Receiver’s account for which the Receiver claims that authorization was revoked. In such a case, the RDFI is responsible for obtaining the Receiver’s written statement, re-crediting the account, and returning the entry using return code R07.

### **KEY COMPONENTS OF RULE AMENDMENT**

The Rule revises the requirements for the application of stop payment orders to ACH entries to consumer accounts, as required by Article Eight (Recall, Stop Payment, Recredit, and Adjustment). Specifically, the Rule will:

- eliminate the six-month time period after which a stop payment order placed by the consumer lapses;
- provide that, where the stop payment order applies to more than one debit entry, the order remains in effect until all such entries have been stopped;

- permit RDFIs to require, in cases where the Receiver desires to block all future payments related to a specific authorization/Originator, that the Receiver confirm in writing that the Receiver revoked authorization with the Originator; and
- simplify the description of Return Reason Code R08 (Payment Stopped) by removing redundant language specific to the lapse of a stop payment order.

### **IMPACT TO PARTICIPANTS**

The costs to comply with this Rule will be borne by RDFIs whose stop payment systems do not already have the ability to support the placement of stop payment orders on multiple transactions related to a specific authorization/Originator for longer than six months. These RDFIs will be required to modify their stop payments systems to accommodate this capability.

### **TECHNICAL SUMMARY**

Below is a summary of the impact of the Stop Payments rule change on the *NACHA Operating Rules*. Sections of the *Rules* that are affected by this amendment are included below and reflect rule language as it will read upon implementation.

- *Article Eight, Section 8.4 (Stop Payment Affecting Consumer Accounts)*
  - removes specific language that provides for an expiration of a stop payment order after a six-month period;
  - adds language that provides that, where the stop payment order applies to more than one debit entry, the order remains in effect until all such entries have been stopped; and
  - adds language with respect to an instruction to block all future payments that permits an RDFI to require the Receiver to confirm in writing that the Receiver revoked authorization with the Originator.
- *Appendix Five, Section 5.4 (Table of Return Reason Codes)* – removes redundant language from the description of Return Reason Code R08 (Payment Stopped).

**Implementation Date: March 19, 2010**

\* \* \* \* \*

*As approved May 1, 2009, effective March 19, 2010, the Rules will be modified as follows for the Stop Payment and Regulation E changes:*

## **ARTICLE EIGHT**

### **SECTION 8.4 Stop Payment Affecting Consumer Accounts**

For all entries except ARC, BOC, RCK, POP, Single-Entry WEB, and TEL entries, a Receiver may stop the payment of a debit entry initiated or to be initiated to a Consumer Account of the Receiver by providing either verbal or written notification to the RDFI at least three banking days before the scheduled date of the transfer. An RDFI may honor a stop payment order received within the three-banking-day limit prescribed above, and, if it honors such a request, the RDFI has no resultant liability or responsibility to any Originator, ODFI, or other person having any interest in the entry. For ARC, BOC, RCK, POP, Single-Entry WEB, and TEL entries, the stop payment order must be provided to the RDFI at such time and in such manner as to allow the RDFI a reasonable opportunity to act upon the stop payment order prior to acting on the

debit entry. The RDFI may require that written confirmation of a verbal stop payment order be made within 14 days of a verbal stop payment order, provided that the RDFI notifies the Receiver of this requirement and provides an address to which the written confirmation should be sent at the time the verbal order is provided. [The RDFI may require written confirmation of a verbal stop payment order within 14 days, provided that the RDFI notifies the Receiver of this requirement and provides an address to which the written confirmation should be sent at the time the verbal order is provided.] If the RDFI requires written confirmation, the verbal stop payment order will cease to be binding after 14 days. [If the Receiver instructs the RDFI to stop all future payments pursuant to a specific authorization involving a specific Originator, the RDFI may require the Receiver to confirm in writing that the Receiver has revoked the authorization given to the Originator.] A Receiver may withdraw a stop payment order by providing written notice to the RDFI. [Note: Effective March 19, 2010, the immediately preceding sentence will be deleted.]

A stop payment order will remain in effect (1) for six months from the date of the stop payment order, (2) until payment of the debit entry has been stopped, or (3) until the Receiver withdraws the stop payment order, whichever occurs earliest. [A stop payment order will remain in effect until the earlier of (1) the withdrawal of the stop payment order by the Receiver, or (2) the return of the debit entry, or, where a stop payment order is applied to more than one debit entry under a specific authorization involving a specific Originator, the return of all such debit entries.]

## APPENDIX FIVE

### SECTION 5.4 Table of Return Reason Codes

#### **R08**    *Payment Stopped*

The Receiver of a debit transaction has the right to stop payment on any specific ACH debit. A stop payment request should be handled in accordance with the provisions of Article Eight (Recall, Stop Payment, Recredit, and Adjustment) of these Rules. The RDFI should verify the Receiver's intent when a request for stop payment is made to ensure this is not intended to be a revocation of authorization (R07). A stop payment order shall remain in effect until the earliest of the following occurs: a lapse of six months from the date of the stop payment order, payment of the debit entry has been stopped, or the Receiver withdraws the stop payment order. [The Receiver of a debit transaction has the right to stop payment on any ACH debit. A stop payment request should be handled in accordance with the provisions of Article Eight (Recall, Stop Payment, Recredit, and Adjustment) of these Rules.]

## NACHA OPERATING RULES: RISK MANAGEMENT AND ASSESSMENT

### SUMMARY

Currently, the requirements of the *NACHA Operating Rules* (“*Rules*”) related to ODFIs’ risk management are limited to establishing, reviewing, and monitoring exposure limits for an Originator’s ACH activity. The Risk Management and Assessment rule (“*Rule*”) will codify within the *Rules* additional risk management practices that are common in the industry that will improve risk management in the ACH Network when utilized by all DFIs. Codifying such practices in the *Rules* ties the performance of basic risk management practices into the *Rules* and sends a strong message to the industry about the importance of risk management.

### KEY COMPONENTS OF RULE AMENDMENT

#### *Risk Assessments*

The Rule requires all Participating DFIs to conduct a risk assessment of their ACH activities, and to implement risk management programs based on the results of such assessments, in accordance with the requirements of their regulator(s).

Examples of recent risk-management requirements and guidance by regulators include:

- OCC Bulletin 2006-39, Automated Clearing House Activities, September 1, 2006 (see <http://www.occ.treas.gov/ftp/bulletin/2006-39.pdf>);
- FFIEC’s BSA/AML Examination Manual, 2007 edition (see [http://www.ffiec.gov/bsa\\_aml\\_infobase/documents/BSA\\_AML\\_Man\\_2007.pdf](http://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2007.pdf), pages 199 through 205);
- OCC Bulletin 2008-12, Payment Processors, April 24, 2008 (see <http://www.occ.treas.gov/ftp/bulletin/2008-12.html>);
- FDIC Financial Institution Letter 127-2008, Payment Processor Relationships, November 7, 2008 (see <http://www.fdic.gov/news/news/financial/2008/fil08127.html>);
- FFIEC Guidance on Risk Management of Remote Deposit Capture, January 14, 2009 (see [http://www.ffiec.gov/pdf/pr011409\\_rdc\\_guidance.pdf](http://www.ffiec.gov/pdf/pr011409_rdc_guidance.pdf)).

Generally, these regulators stress the importance of 1) assessing the nature of risks associated with ACH activity; 2) performing appropriate know-your-customer due diligence; 3) establishing controls for Originators, third-parties, and direct-access to ACH Operator relationships; and 4) having adequate management, information and reporting systems to monitor and mitigate risk.

#### *Agreements with Originators and Third-Party Senders*

The Rule provides that each ODFI has:

- the right to terminate or suspend an Originator, or any Originator of a Third-Party Sender, for breach of the *Rules*; and
- the right to audit an Originator’s, or Third-Party Sender’s and its Originators’, compliance with the agreement and the *Rules*.

The Rule also requires an ODFI to expressly address each of the foregoing, as well as any restrictions on ACH origination activity, within a new or renewed agreement with an Originator or Third-Party Sender. The Rule does not prescribe new restrictions on origination activity. Rather, the Rule requires each ODFI to address its internally developed restrictions on origination, if any, within its Originator and Third-Party Sender agreements so as to highlight the importance, and improve the enforcement, of such restrictions.

#### *ODFI Risk Management Practices*

The Rule requires ODFIs to perform a more comprehensive set of risk management practices in addition to the current rules on exposure limits. Specifically, an ODFI will be required to:

- perform due diligence with respect to Originators and Third-Party Senders sufficient to form a belief that the party has the capacity to perform its obligation in conformance with the *Rules*;
- assess the nature of the Originator’s or Third-Party Sender’s ACH activity and the risks it presents; and
- establish procedures to (1) monitor the Originator’s or Third-Party Sender’s origination and return activity, relative to its exposure limit, across multiple settlement dates; (2) enforce the exposure limit; and (3) enforce restrictions on the types of ACH transactions that may be originated.

These requirements reflect ACH industry best practices to ensure that all ODFIs perform appropriate know-your-customer due diligence and establish appropriate procedures, systems and controls to manage the risks of Originators’ or Third Party Senders’ ACH activities.

#### **IMPACT TO PARTICIPANTS**

All Participating DFIs will be impacted by the requirement to perform a risk assessment. This impact will be lessened by the number of DFIs that already conduct such assessments. ODFIs will be further impacted by the requirement to conduct additional risk management practices prior to originating ACH entries, and by the requirement to cover specific topics in their Originator agreements. The scale of this impact depends on the nature and complexity of each ODFI’s ACH activity. ODFIs that do not currently conduct these or similar risk management practices, or that will need to revise their Originator agreements, will be the most significantly impacted. (Note: Modifications to Originator and Third-Party Sender agreements, as required by this amendment, apply on a “going-forward” basis and only impact agreements entered into or renewed after the effective date of this rule. Agreements in place prior to the effective date of this rule do not need to be modified.)

#### **TECHNICAL SUMMARY**

The following changes to the technical language within the *Rules* are included in this proposal:

- *Article One, subsection 1.2.2 (Risk Assessments)* – expands the general rule requirement section for Participating DFIs to incorporate an ACH risk assessment obligation in accordance with the requirements defined by the Participating DFIs’ regulator(s), and the establishment of a risk management program as fundamental requirements with which Participating DFIs must agree to comply.
- *Article Two, subsection 2.1.1 (Originator Authorization and Agreement)* – expands the current subsection to establish topics that must be addressed in ODFI agreements with Originators and Third-Party Senders.
- *Article Two, subsection 2.1.12 (ODFI Risk Management)* – expands the current subsection requiring ODFIs to establish exposure limits for Originators and Third-Party Senders to define a broader set of ODFI requirements governing risk management.

- *Article Three, section 3.14 (Termination, Suspension and Audit of Originators)* – provides that an agreement between an Originator and an ODFI can be terminated or suspended for breach of the *Rules*, and provides that an ODFI can audit an Originator’s compliance with the *Rules*.
- *Article Five, section 5.6 (Termination, Suspension and Audit of Third-Party Senders)* – provides that an agreement between a Third-Party Sender and an ODFI can be terminated or suspended for breach of the *Rules*, and provides that an ODFI can audit a Third-Party Sender’s compliance with the *Rules*.

**Implementation Date:** The Risk Management and Assessment Rule will become effective on **June 18, 2010**. ODFI agreements with Originators and Third-Party Senders entered into or renewed on or after the effective date will need to comply with the Rule.

\* \* \* \* \*

*As approved May 1, 2009, effective June 18, 2010, the Rules will be modified as follows for the Risk Management and Assessment Rule:*

## **ARTICLE ONE**

### **SECTION 1.2 Compliance With Rules**

Each Participating DFI agrees to comply with these rules and warrants that it is legally able to comply with all applicable requirements of these rules.

■ *[SUBSECTION 1.2.2 Risk Assessments*

*Each Participating DFI shall conduct or have conducted an assessment of the risks of its ACH activities, shall implement or have implemented a risk management program on the basis of such an assessment, and shall comply with the requirements of its regulator(s) with respect to such assessment and risk management program.]*

## **ARTICLE TWO**

### **SECTION 2.1 Prerequisites to Origination**

#### **SUBSECTION 2.1.1 Originator Authorization and Agreement**

The Originator or a Third-Party Sender has authorized the ODFI to transmit, and to credit or debit the amount of, one or more entries to the Receiver’s account. For all entries except CIE, either (1) the Originator and ODFI have entered into an agreement under which the Originator agrees to be bound by these rules as in effect from time to time and acknowledges that entries may not be initiated that violate the laws of the United States, or (2) any Third-Party Sender has entered into an appropriate agreement under which the Third-Party Sender is bound by these rules as in effect from time to time and acknowledges that entries may not be initiated that violate the laws of the United States, and the Originator has entered into an appropriate agreement under which the Originator has assumed the responsibilities of an Originator under these rules and has acknowledged that entries may not be initiated that violate the laws of the United States. Each Third-Party Sender is subject to the requirements of Article Five (Obligations of Third-Party Senders). For IAT entries, the agreement required by this subsection must also incorporate specific terms and conditions with respect to international payments as defined within section 2.11.1 (Originator and Third-Party Sender Agreements). This subsection does not apply to XCK entries initiated pursuant to section 2.7 (Destroyed Check Entries).

■ *[Each agreement between the Originator and the ODFI that is entered, renewed, or extended, and that provides for authorization of ACH transactions must expressly address:*

- any restrictions on the types of ACH transactions that may be originated;
- the right of the ODFI to terminate or suspend the agreement for breach of these rules in a manner that permits the ODFI to comply with these rules; and
- the right of the ODFI to audit the Originator's compliance with the agreement and these rules.

Each agreement between a Third-Party Sender and the ODFI that is entered, renewed, or extended, and that provides for authorization of ACH transactions must expressly address:

- any restrictions on the types of ACH transactions that may be originated;
- the right of the ODFI to terminate or suspend the agreement, or any Originator processed by the Third-Party Sender, for breach of these rules in a manner that permits the ODFI to comply with these rules; and
- the right of the ODFI to audit the Third-Party Sender and its Originator's compliance with the agreement and these rules.]

#### SUBSECTION 2.1.12 ODFI Exposure Limits [*ODFI Risk Management*]

In the case of an entry sent or transmitted to an ODFI directly by an Originator that is not a natural person or by a Third-Party Sender, the ODFI has (1) established an exposure limit for that Originator or Third-Party Sender, (2) implemented procedures to review that exposure limit periodically, (3) implemented procedures to monitor entries initiated by that Originator or Third-Party Sender relative to its exposure limit across multiple settlement dates, and (4) implemented procedures to monitor the payments system risk associated with IAT entries sent or transmitted by that Originator or Third-Party Sender. [*Effective June 18, 2010, the preceding sentence will be removed in its entirety and replaced with the following paragraph.*]

*In the case of an entry sent or transmitted to an ODFI directly by an Originator that is not a natural person or by a Third-Party Sender, the ODFI has performed due diligence with respect to such Originator or Third-Party Sender sufficient to form a reasonable belief that such Originator or Third-Party Sender has the capacity to perform its obligations in conformance with these rules. In addition, with respect to each Originator and Third-Party Sender, the ODFI has (a) assessed the nature of the Originator's or Third-Party Sender's ACH activity and the risks it presents; (b) established an exposure limit for the Originator or Third-Party Sender, and (c) established procedures to monitor the Originator's or Third-Party Sender's origination and return activity across multiple settlement dates, enforce restrictions on the types of ACH transactions that may be originated, and enforce the exposure limit.]*

### ARTICLE THREE

#### [*SECTION 3.14 Termination, Suspension, and Audit of Originators*]

*In addition to any other termination or suspension rights in any agreement between an Originator and an ODFI, including for breach, if an Originator breaches these rules, or causes its ODFI to breach these rules, the agreement between the Originator and the ODFI may be terminated or suspended by the ODFI upon ten (10) banking days' notice, or such shorter notice period as may be provided in such agreement. In addition to any other rights that may be set forth in any agreement between an Originator and an ODFI, the ODFI may audit the compliance of the Originator with respect to these rules and such agreement, subject to the procedural requirements, if any, set forth in such agreement.]*

### ARTICLE FIVE

#### [*SECTION 5.6 Termination, Suspension, and Audit of Third-Party Senders*]

*In addition to any other termination or suspension rights in any agreement between a Third-Party Sender and an ODFI, including for breach, if a Third-Party Sender breaches these rules, or causes its ODFI to*

- *breach these rules, the agreement between the Third-Party Sender and the ODFI may be terminated or suspended by the ODFI upon ten (10) banking days' notice, or such shorter notice period as may be provided in such agreement. In addition to any other audit rights that may be set forth in any agreement between a Third-Party Sender and an ODFI, the ODFI may audit the compliance of the Third-Party Sender with these rules and such agreement, subject to the procedural requirements, if any, set forth in such agreement.]*