



ACH Network Risk and Enforcement Topics *Proposed Modifications to the Rules*

November 11, 2013

Topic #1: Return Rate Thresholds – Proposed Effective Date: March 20, 2015

ARTICLE TWO

SUBSECTION 2.17.2 ODFI Return Rate Reporting

Upon receipt of a written request by the National Association to the ODFI's Chief Operating Officer, an ODFI must provide, via traceable delivery method, to the National Association within ten Banking Days the following information for each Originator or Third-Party Sender:

(a) the complete legal name; any doing-business-as name(s); and taxpayer identification number(s) of the Originator or Third-Party Sender;

(b) a statement as to whether the Originator or Third-Party Sender acts as the ODFI's Sending Point with direct access to the ACH Operator;

(c) the Originator's or Third-Party Sender's origination volume for the time period specified by the National Association;

(d) the **actual applicable** return rate(s) for **unauthorized Entries, debit Entries returned as unauthorized (Return Reason Codes R05, R07, R10, R29, R37, or R51), debit Entries returned due to account data quality issues (Return Reason Codes R03, R04, or R20), and/or debit Entries (excluding RCK Entries) that are returned for any reason,** in total and by SEC Code, for the Originator or Third-Party Sender when computed by either:

- (i) dividing the **respective** number of debit Entries returned **as unauthorized** for the preceding sixty days or two calendar months by the total number of debit Entries contained within the File(s) in which the original Entries were transmitted; or
- (ii) dividing the **respective** number of debit Entries returned **as unauthorized** for the preceding sixty days or two calendar months by the total number of debit Entries originated for the preceding sixty days or two calendar months, **respectively**; and

(e) a statement either:

- (i) refuting NACHA's claim that one or more of the Originator's or Third-Party Sender's return rates, as calculated in Subsection 2.17.2(d), ~~for unauthorized~~ exceeded one percent exceeded the applicable Return Rate Threshold; or
- (ii) explaining the reason(s) causing one or more of the Originator's or Third-Party Sender's return rates, as calculated in Subsection 2.17.2(d), ~~for unauthorized Entries to have exceeded one percent~~ to have exceeded the applicable Return Rate Threshold.

SUBSECTION 2.17.2.1 Additional ODFI Action and Reporting When the Return Rate Threshold is Exceeded¹

When one or more of the Originator's or Third-Party Sender's return rates ~~for unauthorized Entries,~~ as calculated in this Subsection 2.17.2 (ODFI Return Rate Reporting), exceeds ~~one percent~~ the applicable Return Rate Threshold, the ODFI must also provide the National Association with the following information within the ten Banking Day time frame:

- (a) a detailed plan and timeline for reducing the Originator's or Third-Party Sender's return rate(s) ~~for Entries returned as unauthorized to a rate~~ below ~~one percent for unauthorized Entries~~ the applicable Return Rate Threshold within thirty days after receipt of the National Association's written request for information, as described within Subsection 2.17.2;
- (b) the address, telephone number, contact person of the Originator or Third-Party Sender, and, when such Originator or Third-Party Sender is a privately-held company, the following additional information: principal owner(s) and officers of the Originator or Third-Party Sender;
- (c) a description of the nature of the business of the Originator or Third-Party Sender, and the methods used by the Originator(s) to obtain proper authorization for ACH transactions;
- (d) the length of the ACH relationship between the ODFI and the Originator or Third-Party Sender;
- (e) the date of the ODFI's most recent review of the exposure limit for the Originator or Third-Party Sender pursuant to Subsection 2.2.2 (ODFI Risk Management); and
- (f) date and proof of completion of the ODFI's most recent ACH audit in accordance with the requirements of these Rules and Appendix Eight (Rule Compliance Audit Requirements).

¹ Subsection 2.17.2.1 is also proposed to be modified in Topic # 3 – Third-Party Sender Topics. Only those proposed changes applicable to Topic 1 are shown here.

SUBSECTION 2.17.2.2 ODFI Reduction of Return Rate

When one or more of the Originator's or Third-Party Sender's return rates, as calculated in Subsection 2.17.2 (ODFI Return Rate Reporting), exceeds the applicable Return Rate Threshold, the ODFI must reduce the Originator's or Third-Party Sender's that return rate(s) for unauthorized Entries to a rate below one percent the applicable Return Rate Threshold within thirty days after receipt of the National Association's written request for information and maintain that return rate(s) below one percent the applicable Return Rate Threshold for an additional one hundred eighty days.

ARTICLE EIGHT

SECTION 8.89 "Return Rate Threshold" (new section)

refers to one or more of the following, as applicable:

- (a) for debit Entries returned due to a reason of unauthorized (Return Reason Codes R05, R07, R10, R29, R37, or R51), one half of one percent (0.5%);
- (b) for debit Entries returned due to a reason of account data quality (Return Reason Codes R03, R04, or R20), three percent (3%); and
- (c) for debit Entries (excluding RCK Entries) returned for any reason, fifteen percent (15%).

APPENDIX TEN

PART 10.1 Scope

Appendix Ten governs the rules enforcement procedures to be applied in the event of (1) an ACH rules violation, including a breach of warranty under these rules, filed against a Participating DFI by a Participating DFI or an ACH Operator that is a party to the transaction, (2) the identification of a return rate for where an Originator or Third-Party Sender exceeds a Return Rate Threshold, unauthorized Entries by an Originator or Third-Party Sender that exceeds a defined threshold, or (3) the failure of a Participating DFI to comply with a direct obligation to the National Association, as defined by these *Rules*.

This Appendix Ten (1) defines the criteria under which a rules enforcement proceeding may be initiated for any violation of these *Rules*; and (2) establishes the parameters under which the National Association may undertake specific actions with respect to the monitoring and reporting of activity causing potential harm to Participating DFIs or the ACH Network.

The purpose of these enforcement mechanisms is to maintain the quality of ACH services and the satisfaction of Participating DFIs and their customers by promoting compliance with these

rules and reducing the risks to Participating DFIs and their customers by limiting the number of unauthorized Entries.

PART 10.2 ODFI Reporting Requirements

SUBPART 10.2.1 National Association Request for Information

If, in its sole discretion, the National Association believes that the return rate, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), that debit Entries are returned as unauthorized exceeds one percent the applicable Return Rate Threshold for one or more Originators or Third-Party Senders using the ODFI to originate Entries, the National Association may send, via traceable delivery method, a written request to the ODFI's Chief Operating Officer for information described in Article Two, Subsection 2.17.2 (ODFI Return Rate Reporting). A copy of this request will also be sent to the ODFI's ACH Manager. The National Association may use and rely on return data provided by an RDFI for the purpose of the written request to the ODFI.

SUBPART 10.2.2 National Association Action on Receipt of Information Reported by ODFI

The National Association may initiate a rules enforcement proceeding according to Part 10.4 (National System of Fines) of this Appendix Ten for a Class 2 Rules Violation, as defined within Subpart 10.4.7.4 (Class 2 Rules Violation), if the ODFI

(1) fails to provide the National Association with complete and accurate information, as required by Article Two, Section 2.17.2 (ODFI Return Rate Reporting), within ten Banking Days of receipt of NACHA's written request for information;

(2) substantiates the claim that one or more of the Originator's or Third-Party Sender's respective return rates, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), for unauthorized Entries exceeded one percent the applicable Return Rate Threshold, and the ODFI fails to reduce that return rate(s) to a rate below the return threshold for unauthorized Entries the applicable Return Rate Threshold within 30 days after receipt of the National Association's written request, according to Article Two, Section 2.17.2 (ODFI Return Rate Reporting); or

(3) substantiates that the one or more of the Originator's or Third-Party Sender's return rates, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), for unauthorized Entries exceeded one percent the applicable Return Rate Threshold and the ODFI successfully reduced the return rate(s) to below the return threshold applicable Return Rate Threshold within the 30 day time period, but the ODFI failed to maintain the return rate(s) below the applicable Return Rate Threshold one percent for 180 additional days.

PART 10.4 National System of Fines²

SUBPART 10.4.1 Initiation of a Rules Enforcement Proceeding

A rules enforcement proceeding may be initiated for any violation of these rules. A rules enforcement proceeding may be conducted by the National Association in response to an ACH rules violation, including a breach of warranty under these rules, filed against a Participating DFI. The complainant must be a Participating DFI or an ACH Operator that is party to the transaction. A rules enforcement proceeding initiated by a Participating DFI or an ACH Operator must comply with the requirements of Subpart 10.4.2 (Submission Requirements for Rules Enforcement Proceedings Initiated by a Participating DFI or an ACH Operator.) The Report of Possible ACH Rules Violation Form and filing instructions are located in the NACHA Operating Guidelines.

A rules enforcement proceeding may also be initiated and conducted by the National Association in response to (1) a violation ~~of unauthorized Entries,~~ involving a return rate that exceeds a Return Rate Threshold according to Part 10.2 (ODFI Reporting Requirements) of this Appendix Ten; or (2) the failure of a Participating DFI to comply with a direct obligation to the National Association, as defined by these rules. A rules enforcement proceeding initiated by the National Association must comply with the requirements of Subpart 10.4.3 (Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association).

SUBPART 10.4.3 Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association

Each rules enforcement proceeding initiated by the National Association must contain the following information and conform to the following requirements:

- a statement outlining the reason(s) for the initiation of a rules enforcement proceeding:
 - (1) the ODFI failed, within the required timeframe, to provide the National Association with complete and accurate information as required by Article Two, Section 2.17.2 (ODFI Return Rate Reporting);
 - (2) the information provided by the ODFI substantiates the claim that ~~one or more of the Originator's or Third-Party Sender's return rates, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), exceeded the return rate for unauthorized Entries applicable Return Rate Threshold,~~ and the ODFI has failed to reduce the Originator's or Third-Party Sender's return rates ~~for Entries returned as unauthorized to a rate below the return threshold for unauthorized Entries below the applicable Return Rate Threshold~~ within 30 days after receipt of the National Association's written request, according to Article Two, 2.17.2 (ODFI Return Rate Reporting);

² Appendix Ten on the National System of Fines is also proposed to be revised in Topic # 4 – NACHA Enforcement Authority. Only those proposed changes applicable to Topic # 1 are shown here.

- (3) the information provided by the ODFI substantiates that one or more of the Originator's or Third-Party Sender's return rates, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), ~~for unauthorized Entries~~ exceeded the return rate, and the ODFI successfully reduced the return rates ~~to~~ below the ~~return threshold applicable~~ Return Rate Threshold within the 30 day time period, but the ODFI failed to maintain the return rates below the ~~return threshold applicable~~ Return Rate Threshold for 180 additional days; or
- (4) the Participating DFI failed to comply with a direct obligation to the National Association, as defined by these rules;
 - for a rules enforcement proceeding initiated in response to a violation of unauthorized Entries involving Return Rate Thresholds according to Part 10.2 (ODFI Reporting Requirements) of this Appendix Ten, a copy of the National Association's written request for information according to Subpart 10.2.1 (National Association Request for Information) of this Appendix Ten.

A rules enforcement proceeding initiated by the National Association must be submitted within 90 days of the occurrence of the rule violation(s) asserted.

SUBPART 10.4.4 Assessment of Rules Enforcement Submission

SUBPART 10.4.4.2 Notice of Possible Fine

If the National Association determines that the violation is a Class 1, Class 2, or Class 3 Rules Violation, as defined by Subpart 10.4.7 (Fines and Penalties), a Notice of Possible Fine will be sent to the Participating DFI and the National Association will forward the issue to the ACH Rules Enforcement Panel to consider the imposition of a fine against the Participating DFI in accordance with Subpart 10.4.7 of this Appendix Ten.

In the Notice of Possible Fine, the Participating DFI will be asked to correct the rule violation that is the basis for the Notice of Possible Fine and to respond to the National Association within ten Banking Days after the date on which it received a Notice of Possible Fine. The Notice of Possible Fine Response Form must be sent, via traceable delivery method, to the National Association and must include either (1) an acknowledgment of the Participating DFI's recognition of and intent to correct the problem causing the rule violation that is the basis for the Notice of Possible Fine, along with a statement specifying the Resolution Date, or (2) a statement, along with supporting documentation, that the Participating DFI does not believe that a rules violation occurred.

Where the ODFI fails to provide a complete and accurate response in accordance with the requirements of Section 2.17.2 (ODFI Return Rate Reporting), the ODFI's acknowledgment to the Notice of Possible Fine must include the reporting information required by Section 2.17.2. In situations involving the ODFI's affirmation of a return rate for unauthorized return Entries that its Originator's or Third-Party Sender's return rates exceeded the applicable Return Rate Thresholds, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), in excess of

~~the return threshold,~~ the ODFI's acknowledgment to the Notice of Possible Fine must include updated information on, and the timetable for, the implementation of the ODFI's plan to reduce ~~its those~~ return rates below the applicable Return Rate Thresholds.

Where the ODFI fails to register or provide data reporting in accordance with the requirements of Article Two, Section 2.17.1 (Direct Access Registration), the ODFI's acknowledgement to the Notice of Possible Fine must include the registration information required by Section 2.17.1.

If the National Association receives the Participating DFI's completed response form and related information within the ten Banking Day time frame, and the National Association determines that the response refutes the claim in the Notice of Possible Fine, the National Association will take no additional action at that time. In all other circumstances described within this Subpart 10.4.4.2, the National Association will forward the issue to the ACH Rules Enforcement Panel for its consideration and possible imposition of a fine in accordance with Subpart 10.4.7 (Fines and Penalties) of this Appendix Ten.

SUBPART 10.4.7 Fines and Penalties

SUBPART 10.4.7.4 Class 2 Rules Violation

A Class 2 Rules Violation is one in which:

(1) the Participating DFI has not responded to either the Notice of Possible ACH Rules Violation or the Notice of Possible Fine;

(2) the Participating DFI responds to either notice that it does not intend to correct the rules violation;

(3) the Participating DFI

(i) fails to respond completely and accurately, within the proper time frame, to the National Association's request for information in accordance with the requirements of Article Two, Section 2.17.2 (ODFI Return Rate Reporting);

(ii) substantiates the claim that one or more of the Originator's or Third-Party Sender's return rates, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), exceeded the ~~return rate for unauthorized Entries~~ applicable Return Rate Threshold and the ODFI has failed to reduce the Originator's or Third-Party Sender's return rate for those Entries ~~returned as unauthorized to a rate below the return threshold for unauthorized Entries~~ below the applicable Return Rate Threshold within 30 days of receipt of the National Association's written request; or

(iii) substantiates that one or more of the Originator's or Third-Party Sender's return rates, as calculated under Subsection 2.17.2(d) (ODFI Return Rate Reporting), ~~for unauthorized Entries~~ exceeded the return rate applicable Return Rate Threshold, and the ODFI successfully reduced the return rates ~~to~~ below the return threshold

~~return threshold~~ **applicable Return Rate Threshold** within the 30 day time period, but the ODFI failed to maintain the return rates below the ~~return threshold~~ **applicable Return Rate Threshold** for 180 additional days. The Panel may consider the Originator's or Third-Party Sender's volume of debit Entries as an extenuating circumstance in determining whether a violation under this provision constitutes a Class 2 Rules Violation.

(4) the Participating DFI fails to register its Direct Access Debit Participant status or provide data reporting on a Direct Access Debit Participant, as required by Article Two, Section 2.17.1 (Direct Access Registration);

(5) the Participating DFI fails to provide the National Association with proof of completion of a rules compliance audit, as required by Appendix Eight (Rule Compliance Audit Requirements);

(6) the ACH Rules Enforcement Panel determines the time frame and resolution date asserted by a Participating DFI as necessary to resolve the problem causing the rules violation are excessive;

(7) the National Association believes that the violation causes excessive harm to one or more Participating DFIs or the ACH Network; or

(8) it is the fourth or subsequent recurrence of the same rules violation.

In situations involving a Class 2 Rules Violation, the ACH Rules Enforcement Panel may levy a fine against the respondent Participating DFI in an amount up to \$100,000 per month until the problem is resolved. Where the violation relates to a specific Originator or Third-Party Service Provider at the DFI, a separate monthly fine may be assessed to the DFI with respect to each such Originator or Third-Party Service Provider.

Topic # 2 – Reinitiation – Proposed Effective Date: March 20, 2015

ARTICLE TWO

SUBSECTION 2.12.4 Reinitiation of Returned Entries

SUBSECTION 2.12.4.1 General Rule for Reinitiated Entries (new subsection)

An Originator or ODFI may **R**einstantiate any Entry, other than an RCK Entry, that was previously returned, **only** if:

- (a) the Entry was returned for insufficient or uncollected funds;
- (b) the Entry was **R**eturned for stopped payment and **R**einstitution has been **separately** authorized by the Receiver **after the receipt of the Return Entry**; or
- (c) the Originator or ODFI has taken corrective action to remedy the reason for the return.

The Originator or ODFI must **R**einstantiate the Entry within one hundred eighty days after the Settlement Date of the original Entry. An Originator or ODFI must not **R**einstantiate an Entry that has been returned for insufficient or uncollected funds more than two times following the **R**eturn of the original Entry.

A debit Entry will not be treated as a Reinitiated Entry if:

(e) The debit Entry is one in a series of preauthorized, recurring debit Entries and is not contingent upon whether an earlier debit Entry in the recurring series has been Returned; or,

(f) The Originator obtains a new authorization for the debit Entry after the receipt of a Return Entry.

SUBSECTION 2.12.4.2 Formatting Requirements for Reinitiated Entries (new subsection)

An Originator or ODFI must submit Reinitiated Entries as a separate batch that contains the word “REDEPOSIT” in the Company Entry Description field of the Company/Batch Header Record.

The content of the Company Name, Company ID and Amount fields of the Reinitiated Entry must be identical to the content of the original Entry. The content of other fields should be modified only as necessary to correct an error or facilitate proper processing of the Reinitiated Entry.

SUBSECTION 2.12.4.3 Improper Reinitiation Practices (new subsection)

All of the following will be treated as improper Reinitiation practices that do not meet the requirements of SUBSECTION 2.12.4.1 (General Rule on Reinitiated Entries):

(a) Following the Return of an Entry, initiating an Entry to the same Receiver in an amount greater than the amount of the previously Returned Entry in payment or fulfillment of the same underlying obligation plus an additional fee or charge.

(b) Following the Return of an Entry, initiating one or more Entries to the same Receiver in an amount(s) less than the original Entry in payment or fulfillment of a portion of the same underlying obligation.

(c) Reinitiating any Entry that was Returned as unauthorized.

(d) Initiating any other Entry that the National Association reasonably believes represents an attempted evasion of the limitations on Reinitiation.

ARTICLE EIGHT

SECTION 8.78 “Reinitiated Entry” or “Reinitiation” or “Reinitiate” (new section)

Following the Return of an Entry, an Entry initiated to the same Receiver’s account in the same amount in payment or fulfillment of the same underlying obligation.

APPENDIX ONE

PART 1.2 Data Specifications for ACH Records

UPPER CASE characters must be used for all of the following:

- all alphabetic characters within the Standard Entry Class Code field;
- all alphabetic characters within the File ID Modifier field;
- all alphabetic characters within the Change Code and Refused COR Code fields;
- all alphabetic characters within the Return Reason Code, Dishonored Return Reason Code, and Contested Dishonored Return Reason Code fields;
- Company Entry Description fields containing the words **“REDEPOSIT,”** **“REVERSAL,”** **“RETURN FEE,”** **“RECLAIM,”** **“NONSETTLED,”** **“AUTOENROLL”** (for ENR entries), **“REDEPCHECK”** (for RCK entries), **“NO CHECK”** (for XCK entries), and **“HCCLAIMPMT”** (for Health Care EFT Transactions); and
- Company Name fields containing the words **“CHECK DESTROYED”** (for XCK entries).

APPENDIX THREE

SUBPART 3.2.2 Glossary of Data Elements

Company Entry Description: 10 Positions – Company/Batch Header Record – Mandatory (all batches)

The Originator establishes the value of this field to provide the Receiver with a description of the purpose of the Entry. For example, “Gas bill,” “Reg. Salary,” “ins. prem.,” “Soc. Sec.,” “DTC,” “Trade Pay,” “PURCHASE,” etc.

This field must contain the word “NONSETTLED” when the batch contains Entries that could not settle.

This field must contain the word “RECLAIM” when the batch contains Reclamation Entries.

This field must contain the word “REDEPOSIT” when the batch contains Reinitiated Entries.

This field must contain the words “RETURN FEE” when the batch contains Return Fee Entries.

This field must contain the word “REVERSAL” when the batch contains Reversing Entries. ADV: The Originator, i.e., the Originating ACH Operator, uses this field to describe to the institution receiving the ADV File the type of activity to which the accounting information relates.

CCD: This field must contain the word “HCCLAIMPMT” when the batch contains Health Care EFT Transactions.

ENR: This field must contain the word “AUTOENROLL” when the batch contains Automated Enrollment Entries.

RCK: This field must contain the word “REDEPCHECK”.

TRX: This field contains the routing number of the keeper.

WEB: For a Person-to-Person Entry, this field must contain a description that the Receiver would readily recognize as descriptive of a Person-to-Person Entry.

XCK: This field must contain the words “NO CHECK”.

Topic # 3 - Third-Party Sender Topics – Proposed Effective Date: September 19, 2014

ARTICLE TWO

SUBSECTION 2.15.3 Performance and Warranty of ODFI Obligations by Third-Party Senders

To the extent that a Third-Party Sender performs any of the obligations of an ODFI under these Rules, the Third-Party Sender must perform the requirements of these Rules otherwise applicable to the ODFI, **including by monitoring the origination and return activity of its Originators across multiple Settlement Dates, enforcing restrictions on the types of Entries that may be originated through its Originators, and enforcing, with respect to its Originators, the exposure limit set by the Third-Party Sender or ODFI as set forth in Subsection 2.2.2 (ODFI Agreement with Originator, Third Party Sender or Sending Point)**, and warrants that it is legally able to do so. The performance by a Third-Party Sender of any of the obligations of the ODFI under these Rules shall not relieve the ODFI of any of its obligations under these Rules.

SUBSECTION 2.17.2.1 Additional ODFI Action and Reporting When the Return Threshold is Exceeded³

When the Originator's or Third-Party Sender's return rate for unauthorized Entries, as calculated in Subsection 2.17.2 (ODFI Return Rate Reporting), exceeds one percent, the ODFI must also provide the National Association with the following information within the ten Banking Day time frame:

(a) a detailed plan and timeline for reducing the Originator's or Third-Party Sender's return rate for Entries returned as unauthorized to a rate below one percent for unauthorized Entries within thirty days after receipt of the National Association's written request for information, as described within Subsection 2.17.2;

(b) the address, telephone number, contact person of the Originator or Third-Party Sender, and, when such Originator or Third-Party Sender is a privately-held company, the following additional information: principal owner(s) and officers of the Originator or Third-Party Sender;

(c) a description of the nature of the business of the Originator or Third-Party Sender, and the methods used by the Originator(s) to obtain proper authorization for ACH transactions;

(d) the length of the ACH relationship between the ODFI and the Originator or Third-Party Sender;

(e) the date of the ODFI's most recent review of the exposure limit for the Originator or Third-Party Sender pursuant to Subsection 2.2.2 (ODFI Risk Management); **and**

(f) date and proof of completion of the ODFI's most recent ACH audit in accordance with the requirements of these Rules and Appendix Eight (Rule Compliance Audit Requirements); **and**

³ Subsection 2.17.2.1 is also proposed to be modified in Topic # 1 – Return Rate Thresholds. Only those proposed changes applicable to Topic 3 are shown here.

(g) if applicable, proof of completion of the Third Party Sender's most recent ACH audit in accordance with the requirements of these Rules and Appendix Eight (Rule Compliance Audit Requirements).

APPENDIX EIGHT

PART 8.1 General Audit Requirements

Each Participating DFI, Third-Party Service Provider, and Third-Party Sender must, in accordance with standard auditing procedures, conduct an internal or external audit of compliance with provisions of the ACH rules in accordance with the requirements of this Appendix Eight. These audit provisions do not prescribe a specific methodology to be used for the completion of an audit but identify key rule provisions that should be examined during the audit process. An annual audit must be conducted under these Rule Compliance Audit Requirements no later than December 31 of each year. This audit must be performed under the direction of the audit committee, audit manager, senior level officer, or independent (external) examiner or auditor of the Participating DFI, Third-Party Service Provider, or Third-Party Sender. The Participating DFI, Third-Party Service Provider or Third-Party Sender must retain proof that it has completed an audit of compliance in accordance with these rules. Documentation supporting the completion of an audit must be (1) retained for a period of six years from the date of the audit, and (2) provided to the National Association upon request.

Upon the National Association's request, a Participating DFI must provide to the National Association proof that its Third-Party Service Providers and/or Third-Party Senders have completed an audit of compliance in accordance with these Rules. A Third-Party Service Provider or a Third-Party Sender must provide such proof to its ODFI for purposes of the ODFI's compliance with such a request from the National Association within 10 Banking Days of the ODFI's request. Failure of a Participating DFI to provide proof of completion of an its, its Third-Party Service Provider's, or its Third-Party Sender's audit according to procedures determined by the National Association may be considered a Class 2 rule violation pursuant to Appendix Ten, subpart 10.4.7.4 (Class 2 Rules Violation).

APPENDIX TEN

SUBPART 10.4.7.4 Class 2 Rules Violation

A Class 2 Rules Violation is one in which:

- (1) the Participating DFI has not responded to either the Notice of Possible ACH Rules Violation or the Notice of Possible Fine;
- (2) the Participating DFI responds to either notice that it does not intend to correct the rules violation;

(3) the Participating DFI (i) fails to respond completely and accurately, within the proper time frame, to the National Association's request for information in accordance with the requirements of Article Two, Section 2.17.2 (ODFI Return Rate Reporting); (ii) substantiates the claim that the Originator or Third-Party Sender exceeded the return rate for unauthorized Entries, and the ODFI has failed to reduce the Originator's or Third-Party Sender's return rate for Entries returned as unauthorized to a rate below the return threshold for unauthorized Entries within 30 days of receipt of the National Association's written request; or (iii) substantiates that the Originator's or Third-Party Sender's return rate for unauthorized Entries exceeded the return rate, and the ODFI successfully reduced the return rate to below the corresponding return threshold within the 30 day time period, but the ODFI failed to maintain the return rate below the return threshold for 180 additional days. The Panel may consider the Originator's or Third-Party Sender's volume of debit Entries as an extenuating circumstance in determining whether a violation under this provision constitutes a Class 2 Rules Violation.

(4) the Participating DFI fails to register its Direct Access Debit Participant status or provide data reporting on a Direct Access Debit Participant, as required by Article Two, Section 2.17.1 (Direct Access Registration);

(5) the Participating DFI fails to provide the National Association with proof of completion of its, **its Third-Party Service Provider's, or its Third-Party Sender's** rules compliance audit, as required by Appendix Eight (Rule Compliance Audit Requirements);

(6) the ACH Rules Enforcement Panel determines the time frame and resolution date asserted by a Participating DFI as necessary to resolve the problem causing the rules violation are excessive;

(7) the National Association believes that the violation causes excessive harm to one or more Participating DFIs or the ACH Network; or

(8) it is the fourth or subsequent recurrence of the same rules violation.

In situations involving a Class 2 Rules Violation, the ACH Rules Enforcement Panel may levy a fine against the respondent Participating DFI in an amount up to \$100,000 per month until the problem is resolved. Where the violation relates to a specific Originator or Third-Party Service Provider at the DFI, a separate monthly fine may be assessed to the DFI with respect to each such Originator or Third-Party Service Provider.

Topic # 4 – NACHA Enforcement Authority – Proposed Effective Date: September 19, 2014

PART 10.4 National System of Fines⁴

SUBPART 10.4.1 Initiation of a Rules Enforcement Proceeding

A rules enforcement proceeding may be initiated for any violation of these rules. A rules enforcement proceeding may be conducted by the National Association in response to an ACH rules violation, including a breach of warranty under these rules, filed against a Participating DFI. The complainant must be a Participating DFI or an ACH Operator that is party to the transaction. A rules enforcement proceeding initiated by a Participating DFI or an ACH Operator must comply with the requirements of Subpart 10.4.2 (Submission Requirements for Rules Enforcement Proceedings Initiated by a Participating DFI or an ACH Operator.) The Report of Possible ACH Rules Violation Form and filing instructions are located in the NACHA Operating Guidelines.

A rules enforcement proceeding may also be initiated and conducted by the National Association in response to (1) a violation of unauthorized Entries, according to Part 10.2 (ODFI Reporting Requirements) of this Appendix Ten; (2) the failure of a Participating DFI to comply with a direct obligation to the National Association, as defined by these rules; **or (3) the National Association's reasonable belief that an ODFI, Third-Party Sender or Originator has originated Entries without proper authorization in accordance with these Rules.** The National Association may initiate any such rules enforcement proceeding on the basis of, and utilize in connection with any such proceeding, any information available to the National Association, including information received from Participating DFIs and Operators.

A rules enforcement proceeding initiated by the National Association must comply with the requirements of Subpart 10.4.3 (Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association).

SUBPART 10.4.3 Submission Requirements for Rules Enforcement Proceedings Initiated by the National Association

Each rules enforcement proceeding initiated by the National Association must contain the following information and conform to the following requirements:

- a statement outlining the reason(s) for the initiation of a rules enforcement proceeding: (1) the ODFI failed, within the required timeframe, to provide the National Association with complete and accurate information as required by Article Two, Section 2.17.2 (ODFI Return Rate Reporting); (2) the information provided by the ODFI substantiates the claim that the Originator or Third-Party Sender exceeded the return rate for unauthorized Entries, and the ODFI has failed to reduce the Originator's or Third-Party Sender's return rate for Entries returned as unauthorized to a rate below the return threshold for unauthorized Entries within 30 days after

⁴ Appendix Ten on the National System of Fines is also proposed to be revised in Topic # 1 – Return Rate Thresholds. Only those proposed changes applicable to Topic # 4 are shown here.

receipt of the National Association's written request, according to Article Two, 2.17.2 (ODFI Return Rate Reporting); (3) the information provided by the ODFI substantiates that the Originator's or Third-Party Sender's return rate for unauthorized Entries exceeded the return rate, and the ODFI successfully reduced the return rate to below the return threshold within the 30 day time period, but the ODFI failed to maintain the return rate below the return threshold for 180 additional days; (4) the Participating DFI failed to comply with a direct obligation to the National Association, as defined by these rules; or (5) the National Association's reasonable belief that an ODFI, Third-Party Sender or Originator has originated Entries without proper authorization in accordance with these Rules;

- for a rules enforcement proceeding initiated in response to a violation of unauthorized Entries according to involving Part 10.2 (ODFI Reporting Requirements) of this Appendix Ten, a copy of the National Association's written request for information according to Subpart 10.2.1 (National Association Request for Information) of this Appendix Ten.

A rules enforcement proceeding initiated by the National Association must be submitted within 90 days of the occurrence of the rule violation(s) asserted.