ACH Operations Bulletin #1-2019

Indemnification Agreement for Use by Financial Institutions in Requesting Return of Funds from ACH Entries
January 29, 2019

EXECUTIVE SUMMARY

NACHA is publishing the attached form, entitled "Indemnification Agreement – Request for Return of Funds from ACH Entry" ("Indemnification Agreement"), for use by financial institutions in certain situations in which an ODFI requests the return of funds from an ACH transaction, and the RDFI desires to receive a written indemnification in addition to the indemnification contained in the *NACHA Operating Rules ("Rules)."* NACHA encourages financial institutions to become familiar with this agreement and consider the situations in which to use it, as its use will reduce delays and costs associated with negotiating the terms of agreements between financial institutions.[1]

DISCUSSION

The *Rules* contain an indemnity that applies when an ODFI requests the return of an ACH transaction:

> **Subsection 2.12.3 Indemnification by ODFI for Requested Returns**
> An ODFI requesting that an RDFI return an Erroneous Entry, or a credit Entry originated without the authorization of the Originator, indemnifies the RDFI from and against any and all claims, demands, losses, liabilities and expenses, including attorneys' fees and costs, resulting directly or indirectly from compliance by the RDFI with such request.

NACHA has become aware that many financial institutions require an additional written indemnification agreement to be completed in connection with requested ACH returns, especially when the return of funds cannot be completed using an ACH Return Entry (e.g., an R06 Return Reason Code), or funds are returned by the RDFI outside the ACH Network (for example, via wire or check). These include situations in which the total amount of funds received from an ACH transaction are not available to be returned, or funds have been transferred to a different account at the RDFI. In such cases, an RDFI might request that it be indemnified by the ODFI, and that the ODFI complete and execute an indemnification agreement or form supplied by the RDFI. This can lead to a delay in returning the requested funds, as the financial institutions and their attorneys review the agreement and negotiate its terms, especially

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[1] This ACH Operations Bulletin is for information purposes only, and is not intended to provide legal advice. Readers should obtain their own legal advice regarding their obligations under the *NACHA Operating Rules* or applicable legal requirements.

because some of the indemnification agreements commonly in use are not designed to cover ACH transactions.

NACHA has created the attached Indemnification Agreement to serve as a standard written request and indemnification agreement that can be used in cases when such additional indemnification is desired by an RDFI. NACHA encourages financial institutions to become familiar with this agreement and consider the situations in which to use it, as its use will reduce delays and costs associated with the negotiation of the terms of agreements between financial institutions.

GUIDANCE FOR FINANCIAL INSTITUTIONS

Financial institutions should be aware that Subsection 2.12.3 of the *Rules* contains an indemnification provided by the ODFI to an RDFI when the former requests the return of an Erroneous Entry or a credit entry originated without the authorization of the Originator.

There are some cases in which financial institutions might believe that the indemnification in the *Rules* does not apply, or the RDFI seeks additional assurance from the ODFI. Such situations may include cases in which the original ACH Entry was not Erroneous; the full amount of the original ACH Entry is not available; or funds will be returned outside the ACH Network.

In such cases in which a written request and indemnification is desired, NACHA encourages financial institutions to use the following Indemnification Agreement, rather than independently and singly negotiating the terms of each request for the return of funds. The ODFI that requests the return of funds should provide a completed Indemnification Agreement to the RDFI, inserting correct information in all spaces shown. The Indemnification Agreement should be signed by an individual authorized to enter into the agreement on behalf of the ODFI. An RDFI is not required to take any action in response to receiving an Indemnification Agreement from an ODFI.

SPECIFIC INSTRUCTIONS FOR ODFIS REQUESTING RETURN OF FUNDS

1. In the appropriate spaces, insert the name of your financial institution (the ODFI), the name of the receiving institution (the RDFI), and the date of the ACH transaction (as indicated in the Effective Entry Date field of the ACH Entry).

2. Requested Amount – Insert the amount of funds being requested, either the original Amount of the ACH Entry, or a lesser amount if not requesting the full amount.

3. Indemnifying Bank customer name – Insert the name of the Originator as shown in the Company Name field of the Company Batch Header Record of the ACH Entry

4. Originating Company Identifier – Insert the Originator's identifier as shown in the Company Identification field of the Company Batch Header Record of the ACH Entry

5. Indemnified Bank Account number – Insert the Receiver's account number as shown in the DFI Account Number field of the Entry Detail Record of the ACH Entry

6. Trace Number – Insert the Trace Number as shown in the Trace Number field of the Entry Detail Record of the ACH Entry

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