



ACH Operations Bulletin #3-2013

Reinitiation of Returned Debit Entries

July 15, 2013

EXECUTIVE SUMMARY

This ACH Operations Bulletin describes the provisions of the *NACHA Operating Rules (NACHA Rules)* regarding the “reinitiation” of a returned ACH debit Entry, and provides examples of practices that would be considered to violate these provisions of the *NACHA Rules*. This ACH Operations Bulletin should be considered in conjunction with another recently issued ACH Operations Bulletin on High-Risk Originators and Questionable Debit Activity (March 14, 2013; see <https://www.nacha.org/OpsBulletins>).¹

REINITIATION OF RETURNED ENTRIES

The *NACHA Rules* allow a returned Entry to be reinitiated by the Originator or ODFI under limited circumstances:²

- An ACH debit was returned for reasons of insufficient or uncollected funds (as denoted by the return codes R01 and R09, respectively). In such a case, the Entry may be reinitiated a maximum of two times in an attempt to collect funds;
- An ACH debit was returned for the reason of stop payment (return code R08), and reinitiation has been authorized by the Receiver;
- An ACH entry was returned for another reason, and the Originator or ODFI has corrected or remedied the reason for the return.

In any of these circumstances, reinitiation must take place within 180 days of the Settlement Date of the original Entry. After the expiration of this 180-day period, any additional action on, or resolution of, a returned Entry must take place outside the ACH Network.

The March 2013 Bulletin recommended that ODFIs with high-risk Originators:

“monitor transactions for patterns that may be indicative of attempts to evade the limitations on the reinitiation of returned Entries. Modification of transactions in an

¹ Recently, the collection practices of certain high-risk Originators, such as payday lenders, have received significant attention in numerous press reports.

² See 2013 NACHA Operating Rules, Subsection 2.12.4 Reinitiation of Returned Entries (2013 NACHA Operating Rules & Guidelines, Page OR28). Also note that there are separate provisions for the reinitiation of RCK Entries (Subsection 2.5.13.7, Page OR18), which permit a combined maximum of three presentments between the original check and the RCK Entry.

attempt to escape these limits (e.g., resubmission under a different name or for slightly modified dollar amounts) will be treated as a violation of the *NACHA Rules*.”

A reinitiated Entry should contain the identical data as the original Entry, except as minimally necessary to accurately process the transaction.³ This includes, but is not limited to, the data in the Company Name field, the Company Identification field, and the Amount field, each of which should contain the identical data as in the original Entry. Any modification of these fields in an attempt to make an Entry appear as a new Entry(ies) rather than as a reinitiated Entry will be treated as a violation of the *NACHA Rules*. An ODFI should be mindful of the indemnities it provides to an RDFI under the *NACHA Rules*, including for any breach of the warranty that its Entry complies with the Rules.⁴

An Originator may reinitiate an Entry returned due to stop payment (R08) only if it obtains a valid authorization from the Receiver to do so. Such an authorization must be obtained after the return of the original Entry. An Originator that reinitiates a debit Entry in such circumstances also should instruct the Receiver to notify his/her RDFI so that the RDFI can remove any stop-payment block. As with the original debit Entry, an ODFI must comply with an RDFI’s request to provide proof of authorization of a reinitiated debit Entry to a Consumer Account, and the Originator must comply with the ODFI’s request to provide it with this proof of authorization.

An Originator cannot reinitiate an ACH debit that was returned for a reason of unauthorized (such as R07 - Authorization Revoked). An unauthorized Entry cannot be remedied. This does not prevent an Originator from later obtaining a new authorization, in compliance with all requirements for an original authorization, for a transaction of an equal amount. As with any original debit Entry, an ODFI must comply with an RDFI’s request to provide proof of authorization of a new debit Entry to a Consumer Account, and the Originator must comply with the ODFI’s request to provide it with this proof of authorization.

COLLECTION OF RETURN FEES

The *NACHA Rules* also restrict the use of the ACH Network to collect fees for an Entry that was returned for insufficient or uncollected funds.⁵ Among other things, the *Rules* provide:

- A Return Fee Entry may be initiated only to the extent permitted by applicable law, and only for an Entry that was returned for reasons of insufficient or uncollected funds (as denoted by the return codes R01 and R09, respectively);
- The Originator must provide specific prior notice regarding the Return Fee Entry;
- A Return Fee Entry must be specifically labeled “RETURN FEE” in the Company Entry Description field;
- Only one Return Fee may be assessed with respect to any returned Entry;

³ For example, just as with the return of an ACH Entry, a reinitiated Entry could have a different Effective Entry Date than the original Entry, as well as a different ACH Trace Number. As another example, an Entry returned for an incorrect account number would require a correct account number in order to be processed accurately as a reinitiated Entry.

⁴ See Subsection 2.4.4.1 Indemnity for Breach of Warranty (Page OR9).

⁵ See 2013 NACHA Operating Rules, Subsection 2.14 Return Fee Entries (2013 NACHA Operating Rules & Guidelines, Page OR29).

- A Return Fee may not be assessed with respect to the return of a Return Fee Entry (i.e., no “fees on fees”).

ADDITIONAL DISCUSSION

“Reinitiation” is the method permitted in the *Rules* by which to resubmit a returned Entry, and a “Return Fee Entry” is the method permitted in the *Rules* by which to collect a Return Fee. Language in an original authorization (or elsewhere) that is inconsistent with these provisions is prohibited.

As a simple example, even if an Originator obtains a consumer’s signature on a purported authorization that allows for three attempts to collect a debit Entry returned for insufficient funds, the third attempted collection would be impermissible under the *Rules*.

If an Originator chooses to use a new Entry(ies) to collect funds related to a returned Entry, the Originator would need to obtain a proper authorization to do so after the return of the original Entry. For example, an Originator and consumer Receiver might negotiate a *bona fide* new payment plan following the return of an Entry for insufficient funds. The new payments would be authorized by the consumer via a new authorization that allows the Originator to originate new ACH debits for lesser amounts as part of the revised payment plan. This would be viewed as new Entries and not an attempt to evade the restrictions on reinitiation of the original Entry. As with the original debit Entry, an ODFI must comply with an RDFI’s request to provide proof of authorization of a new debit Entry to a Consumer Account, and the Originator must comply with the ODFI’s request to provide it with this proof of authorization.

NACHA CONTACTS

Questions about this ACH Operations Bulletin should be submitted via information@nacha.org.

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