



# ACH Agreements: Why Are They Important?

Mini Deck



## Disclosure

- ©2017 PaymentsFirst. All rights reserved.
- This material is not intended to provide any warranties or legal advice, and is intended for educational purposes only.
- NACHA owns the copyright for the *NACHA Operating Rules & Guidelines*.



## Anti Trust Laws



- PaymentsFirst is a not-for-profit organization and we closely adhere to all applicable laws and regulations.
- In accordance with Anti-Trust laws, we may not play any role in competitive decisions of members or their employees.
- During discussions with competitors and within the presentation materials we will and we ask participants to refrain from any discussion regarding pricing of products and services.

## Important Info



Regional Payments Associations, through their Direct Membership in NACHA, are specially recognized and licensed providers of ACH education, publications and support. Regional Payments Associations are directly engaged in the NACHA rulemaking process and Accredited ACH Professional (AAP) program.

NACHA owns the copyright for the *NACHA Operating Rules & Guidelines*. The Accredited ACH Professional (AAP) is a service mark of NACHA.

### DISCLAIMER:

- This presentation and applicable materials are intended for general education purposes and nothing in this presentation should be considered to be legal, accounting or tax advice.
- You should contact your own attorney, accountant or tax professional with any specific questions you might have related to this presentation that are of a legal, accounting or tax nature.

# Agenda

- General Rules
- ODFI Warranties
- ACH Agreements
- Third-Party Sender Agreements
- Sending Point Agreements
- Authorization
- Sound Business Practices

# General Rules

- DFIs must comply
  - Warrants legally able to comply with all rules
  - DFI responsible for its Third-Party Service Providers compliance
- Effect of Illegality
  - U.S. Legal Requirements supersede the *NACHA Operating Rules*
    - OFAC
    - FinCEN

## General Rules

- Security Requirements
  - Non-consumer Originator, ODFI, RDFI, Third-Party Service Provider
    - Establish, implement, update policies & procedures
  - Protected Information
    - Non-public personal information of a natural person
    - Used to create an Entry
  - Initiation, processing, storage of Entries
    - Protect confidentiality & integrity of Protected Information
    - Protect against threats to security of Protected Information
    - Protect against unauthorized use of Protected Information

## General Rules

- Secure Transmission of ACH Information via Unsecured Electronic Networks
  - Banking information related to an Entry
  - Commercially reasonable technology
  - Minimum equivalent to commercially reasonable encryption technology
  - Does not apply to communications between RDFI & Receiver
  - Does not apply to wireline or wireless telephone to a live operator or voice response

## ODFI Warranties

- General ODFI Warranties
  - Debit Entry
    - For an amount that is due and owing
    - For amount specified by Receiver
    - Corrects a previous Erroneous credit Entry
    - Reclaim from an RDFI amount received by recipient after death or legal incapacity of recipient or beneficiary

## ODFI Warranties

- General ODFI Warranties
  - Secure Transmission of Data
    - Banking information is transmitted securely
  - ODFI has verified identity of Originator, TPS
    - Origination agreement entered into via an unsecured electronic network
    - Commercially reasonable methods used to identify Originator or TPS

## ODFI Warranties

- General ODFI Warranties
  - Entry complies with the *NACHA Operating Rules*
  - Entry not transmitted on behalf of suspended Originator or TPS
  - Contains required information
    - Correct account number
    - Necessary information for posting
  - Credit entries timely

## ODFI Warranties

- General ODFI Warranties
  - ODFI warrants to each RDFI and ACH Operator that
    - Entry is properly authorized
    - Origination agreement not terminated
    - Originator has no knowledge of revocation by Receiver
    - Originator has no knowledge of termination of Receiver account agreement with RDFI
    - Authorization not terminated in whole or part by operation of law



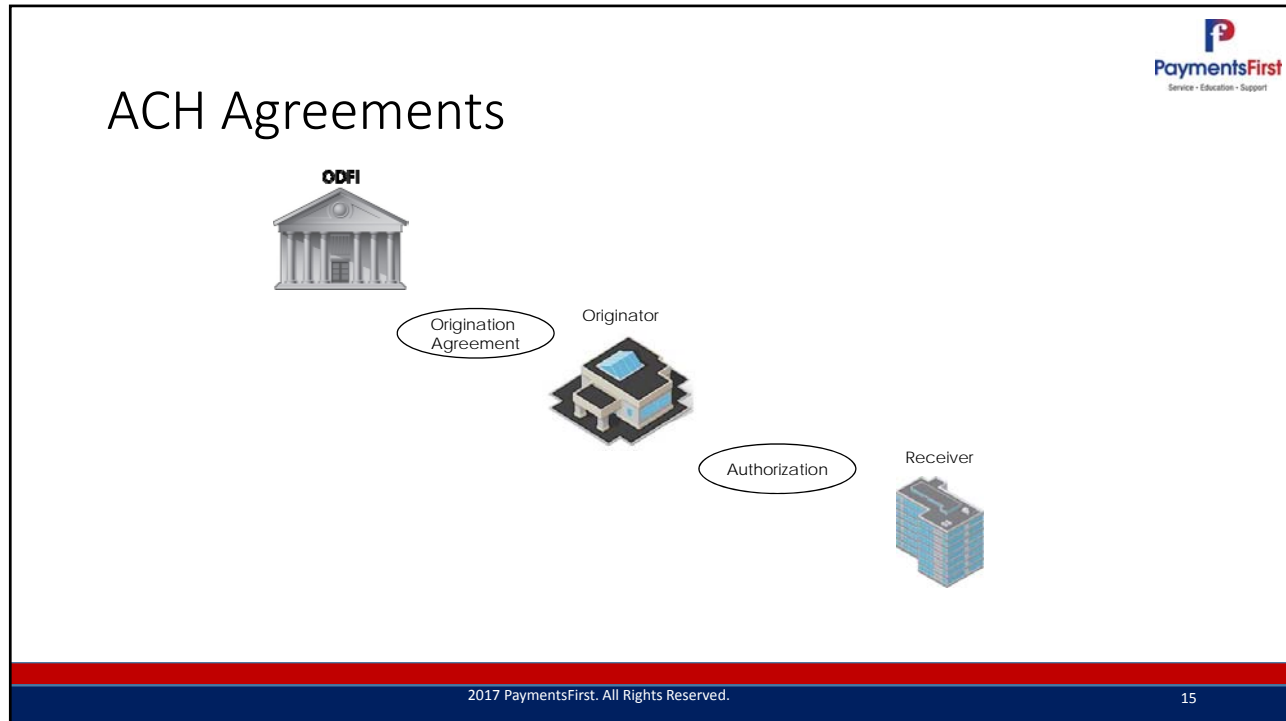
## ODFI Warranties

- ODFI is Responsible for Entries and Rules Compliance
  - All Entries originated through ODFI
    - Including through Third-Party Sender
    - Through Direct Access
  - ODFI responsible for Originator and Third-Party Sender *NACHA Operating Rules* compliance



## ACH Agreements

ACH Agreements in Detail



- # ACH Agreements
- ODFI Agreements at a minimum include
    - a) Must authorize the Originating Depository Financial Institution (ODFI) to originate Entries to the Receiver's account(s)
    - b) Must agree to be bound by the *NACHA Operating Rules*
    - c) Must agree not to originate any Entries that violate the laws of the United States
- 2017 PaymentsFirst. All Rights Reserved. 16



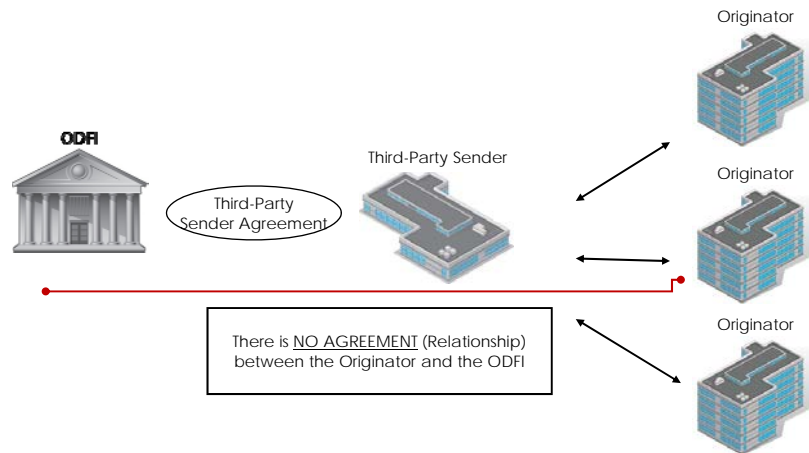
## ACH Agreements

- ODFI Agreements at a minimum include
  - d) Restrictions on the types of ACH Entries to be originated
  - e) The right of the ODFI to terminate or suspend the agreement for breach of the rules
  - f) The right of the ODFI to audit the Originator's, Third-Party Sender and its Originator's compliance to the rules
  - g) Third-Party Sender (exclusively) will enter into an Agreement with each of its Originators

## ACH Agreements

- Termination, Suspension, and Audit of Originators and TPS
  - Default termination is 10-banking days notice by ODFI
  - Amended by ODFI/Originator Agreement

## Third-Party Sender Agreements



## Third-Party Sender Agreements

- ODFI Agreement with Third Party Sender
  - TPS must be bound to the *NACHA Operating Rules*
  - TPS must agree not to Originate Entries in violation of U.S. law
  - Restrictions on types of Entries
  - Right of ODFI to terminate or suspend
  - Right of ODFI to audit
  - TPS enters into agreement with Originator
  - Must authorize the ODFI to originate

## Third-Party Sender Agreements

- Obligations of Third-Party Senders
  - Identification of Originators by Third-Party Senders (TPS)
    - Upon ODFI request, TPS must provide information necessary to identify the Originator within two Banking Days of receipt of ODFI request
  - TPS are required to complete an annual audit in accordance with Appendix 8 of the *NACHA Operating Rules* of any ACH function that they perform on behalf of a Participating DFI

## Third-Party Sender Agreements

- Obligations of Third-Party Senders
  - TPS are required to complete an annual audit in accordance with Appendix 8 of the *NACHA Operating Rules*

## Third-Party Sender Agreements

- TPS Warranty and Indemnification
  - TPS warrants to the ODFI Originator assumes responsibility of the *NACHA Operating Rules*
  - TPS Indemnity to ODFI for Breach of Warranty
    - Failure of Originator to perform Originator obligations
    - From and against any and all claims, demands
    - Losses, liabilities, and expenses
    - Result directly or indirectly

## Third-Party Sender Agreements

- Performance of ODFI Obligations by TPS
  - Extent that TPS performs any warranty of ODFI – including but not limited
    - Monitoring origination & return activity across multiple Settlement dates
    - Enforce restrictions on type of Entries originated
    - Enforcing set exposure limits
  - Does not relieve ODFI of any of its obligations

## Third-Party Sender Agreements

- Obligations of Third-Party Senders (TPS)
  - Payment to ODFI
    - TPS agrees to make payments to ODFI for any credit Entry initiated or debit Entry returned
    - Originator agrees to make payment to ODFI if payment not received from TPS
  - Delivery of Information
    - TPS warrants that Originator will retain and provide records or documents of records as required by the *NACHA Operating Rules*

## Sending Point Agreements

- ODFI Agreement with Sending Point
  - ODFI must enter into an agreement with each Sending Point
  - ODFI is liable for each Entry Transmitted by Sending Point containing ODFI's routing number

## Authorization

- Authorization must be obtained from Receiver
  - Consumer Accounts Credits
    - Not required in writing
    - No authorization required if Originator and Receiver are Natural Persons
  - Consumer Account Debits
    - Must be in writing and signed or similarly authenticated
    - Originator must provide electronic or hard copy of Receiver's authorization for debit entries to consumer account
    - Other specific authorization requirements may apply

## Authorization

- Form of Authorization
  - An authorization must
    - Be readily identifiable
    - Contain clear and readily understandable terms
    - Provide that Receiver may revoke the authorization only by notifying the Originator as specified in the authorization
  - Electronic Authorization
    - Signature compliance with E-Sign Act
    - Visually displayed and readable

## Authorization

- Retention and Provision of Record of Authorization – Consumer Accounts
  - Originator retains for two years from termination or revocation
  - Upon RDFI written request, ODFI must provide copy within 10 Banking Days
  - Originator must provide copy to ODFI in such time as to allow the ODFI to act on request for copies

## Authorization

- Agreement to Non-Consumer Accounts
  - Receiver agrees to be bound to the *NACHA Operating Rules*
- Notice by ODFI to Originator for Non-Consumer Credit Entries
  - Credit entries subject to UCC Article 4A
  - Entry may be transmitted through ACH
  - Laws of New York or superseded by agreement
  - Credit to Receiver provisional until final settlement
  - RDFI entitled to refund from Receiver if no final settlement

