



# UCC (Uniform Commercial Code) Article 4A

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## Uniform Commercial Code



- Detailed Code Addressing Most Aspects of Commercial Law
  - Set of standardized state laws that govern financial contracts
  - Establishes general duty standards for parties to act in Good Faith and exercise Ordinary Care.

## Uniform Commercial Code

- 1 General Provisions-Definitions, rules of interpretation
- 2 Sales-Sales of goods
- 2A Leases-Leases of goods
- 3 Negotiable Instruments Promissory notes and drafts
- 4 Bank Deposits-Banks and banking, check collection process
- 4A Funds Transfers-Transfers of money between banks
- 5 Letters of Credit-Transactions involving letters of credit
- 6 Bulk Transfers and Bulk Sales-Auctions and liquidations of assets
- 7 Warehouse Receipts, Bills of Lading
- 8 Investment Securities-Securities and financial assets
- 9 Secured Transactions-Transactions secured by security interests

## Uniform Commercial Code Article 3 & 4

- Articles 3 & 4 document legal boundaries for most aspects of check processing and collection
  - Article 3 – Negotiable Instruments
    - Definition and requirements of a negotiable instrument
    - Negotiation, transfer and endorsement of these instruments, and
    - Liability of the parties
  - Article 4 – Bank Deposits and Collections
    - Covers the liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection.

## Uniform Commercial Code Article 4A

- Covers wholesale wire transfers and ACH credit transfers not subject to the Electronic Funds Transfer Act and Regulation E
- Choice of Law: *NACHA Operating Rules* specify that lacking agreements to the contrary, ACH transactions are governed by UCC 4A adopted by the State of New York
- Commercially Reasonable

## What is NOT Covered

- Check or other debit transfers, including ACH debit transactions





## UCC4A Notice

- DISCLOSURES REGARDING ELECTRONIC “WHOLESALE CREDIT” TRANSACTIONS
- Subject to Uniform Commercial Code Article 4A
- Provisional Payment:
  - Credit given by us to you with respect to an automated clearing house credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e. the originator of the entry) shall not be deemed to have paid you in the amount of such entry.
- Notice of Receipt of Entry:
  - Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statements we provide to you.
- Choice of Law:
  - We may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses (ACH) and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of New York, as provided in the operating rules of the National Automated Clearing House Association, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern.



## Uniform Commercial Code 4A

- Some provisions of Article 4A cannot be altered by agreement;
  - Financial institutions and corporations should not rely on favorably-negotiated contract terms if they are contrary to the provisions of UCC 4A
- Provisions of Article 4A that may be altered may be overruled by provisions of the *NACHA Operating Rules* (*NACHA Operating Rules* do not address issues/disputes between Financial Institutions and their customers)
- Article 4A provisions prevail for issues/disputes related to “on-us” entries (i.e., entries transmitted to an ODFI for payment to Receivers’ accounts maintained at the ODFI)

## Provisions that cannot be Altered

- ODFI is obligated to transmit all entries it accepts from the Originator
- ODFI is liable to Originator for interest payments to Originator or Receiver if entries are delayed and not transmitted for payment on an appropriate settlement date
- Originator is obligated to pay the ODFI for entries properly executed
- ODFI must make funds for “on-us” entries available to Receiver on the agreed-upon settlement date (in an on-us transaction the ODFI of the Originator is also the RDFI of the Receiver)

## Provisions that cannot be Altered

- If ODFI transmits duplicate entries or amounts greater than amount intended by the Originator, Originator is obligated only for intended amount
  - If the Originator’s account was charged for the duplicate or erroneous amount, it is also entitled to interest payment on the excess amount
- If the ODFI transmits an amount less than the Originator’s intended amount, and the error is not corrected, the Originator is only obligated for the amount sent
  - If the Originator’s account was charged the full amount, the ODFI would also be responsible for interest payments to the Originator on the amount not appropriately transmitted
- If the ODFI transmits payment to a Receiver other than the Originator’s intended Receiver, the Originator is not obligated to the ODFI for the entry
  - ODFI may recover the amount from the unintended Receiver under the law of mistake and restitution

## Provisions that cannot be Altered

- Originator is NOT liable to the ODFI for an unauthorized entry sent in its name
  - Unless the ODFI can prove that the “unauthorized” entry was submitted to the ODFI by a person who has “actual or apparent” authority to act for the Originator
- If the ODFI and Originator have an agreement that specifies “commercially reasonable” security procedures for determining entry authorization and the ODFI acted in “good faith” in complying with the procedure
  - Originator is responsible for the unauthorized entry
- If the Originator can prove that the entry was authorized by someone who was not entitled to act on the Originator’s behalf or access to the Originator’s facilities and security procedures was gained by an “interloper” not controlled by the Originator
  - ODFI is liable for the unauthorized entry

## Provisions that cannot be Altered

- RDFI is obligated to pay the Receiver for all entries it accepts on behalf of the Receiver
  - Payment may be provisional until RDFI receives final settlement for the item if the ODFI, RDFI and the Receiver have appropriately agreed to abide by the *NACHA Operating Rules*, which provide that ACH credit entries covered by Article 4A are provisional in the case of such agreement
  - *NACHA Operating Rules* require that the ODFI and the RDFI provide notice to the Originator and Receiver of the provisional payment rule for entries subject to Article 4A

## Provisions that may be Altered by Agreement

- ODFI's liability begins with acceptance of entries
- ODFI accepts the entry when it transmits the entry to an ACH Operator
- ODFI may refuse any entry from an Originator unless it has an express agreement to the contrary
- On-us entries are accepted when the funds are credited or available to the Receiver
  - Or the next funds transfer day after the funds are available in the Originator's account
- ODFI must take action (either accept and execute or reject) on entries it receives if the Originator has a sufficiently funded non-interest bearing deposit account with the ODFI

## Provisions that may be Altered by Agreement

- Notice of rejected entries must be given to the Originator by a reasonable means
- RDFI is not an agent of the Originator nor is it a beneficiary of the transaction
- Lacking a previous agreement with a Receiver, UCC 4A does not mandate an RDFI to accept an entry



## Provisions that may be Altered by Agreement

- Article 4A allows for cancellation, withdrawal, or amendment of ACH entries after acceptance by the ODFI
  - NACHA rules supersede this portion of Article 4A
  - Entries cannot be withdrawn, canceled or otherwise amended after presentation to the ACH Operator
    - Except for duplicate or erroneous files
- Originator is obligated to inform ODFI of any errors in entries transmitted within 90 days of receiving sufficient notification from the ODFI to detect the error
- Originator is responsible to the ODFI if it initiates an erroneous entry and it is accepted by the ODFI according to agreed upon security procedures

## Provisions that may be Altered by Agreement

- RDFI accepts an entry when funds are available or credited to the account of the Receiver
  - Or when final settlement through the Federal Reserve is received
- RDFI is obligated to provide the Receiver notice of receipt of an entry before midnight on the next business day
  - *NACHA Operating Rules* supersede
  - Next day notification is not required for ACH credit entries
  - RDFI must provide the Receiver notice in an account disclosure or other agreement that it will not give notice of UCC 4A-covered ACH credit entries

## Provisions that may be Altered by Agreement

- Originator's obligation to the Receiver is considered fulfilled at the time the RDFI appropriately accepts an entry on behalf of the Receiver
  - Subject to the provisional credit rule
- Private sector ACH Operators are the agents of the Originator and ODFI
  - *NACHA Operating Rules* supersede this provision
  - Responsibilities of private sector ACH Operators closely parallel the responsibilities of Federal Reserve Bank ACH Operators

## Provisions that may be Altered by Agreement

- If account number and name of Receiver are inconsistent, the RDFI may credit the ACH entry based on account number alone provided it does not have actual knowledge that the name and number identify two different people
  - RDFI has no obligation to check name and account number to make ensure match
- Originator may not be liable to the ODFI for funds transmitted to a wrong account number
  - ODFI must give notice to the Originator that RDFI may make deposit to Receiver's account based on account number alone

## Provisions that may be Altered by Agreement

- Originators can only receive reimbursement for ODFI errors (including those based on breaches of security) for one year following the Originator's receipt of sufficient notice to determine the error
- Article 4A provides for a "choice of law" to determine which state's substantive law will be applied to the various parties of the electronic credit
  - *NACHA Operating Rules* provides for the selection of New York state law unless precluded by agreement

## Commercially Reasonable Security

- Applies to unauthorized entries
- If Originator and ODFI do not agree on a commercially reasonable security procedure
  - ODFI generally will be liable for unauthorized entries
- If the Originator and the ODFI agree on a commercially reasonable security procedure and the ODFI complies with the procedure
  - Originator generally will be liable for unauthorized entries
- Must determine that entry or communication is that of Originator
- Will detect an error in electronic transmission of entry or communication
- Circumstances of Originator as known to ODFI including size, type, and frequency of transactions normally processed by Originator

## Commercially Reasonable Security

- Alternative security measures offered to Originator
- Security measure generally in use by similarly-situated Originators and their ODFIs.
- Security measure is considered to be commercially reasonable if it has been chosen by Originator after ODFI has offered and Originator has refused another commercial-reasonable security procedure
  - And Originator agrees in writing to be responsible for any and all entries issued in compliance with the chosen security procedure
- In no case is signature comparison alone considered by UCC 4A to be commercially reasonable

