Compliance Overview
Forged Endorsements

In Theory
A bank of first deposit (the depository bank) and any other collecting bank makes a warranty to the paying bank that a check presented for payment is properly endorsed and that no endorsements are forged under §4.207(a)(1) of the Texas Business & Commerce Code.

In Practice
A paying bank (the bank of the maker of the check) can return a check before or after the midnight deadline to the bank of first deposit (the bank that gave value for the check) citing a breach of warranty and demand payment from the bank of first deposit. That is because a bank or an individual who gives value for a check with a forged or missing endorsement can’t be a “holder in due course” even if they act in good faith and without any prior knowledge of a defense or claim.

Who Pays
Generally speaking, the depository bank is liable to the paying bank for a check that has a forged or missing endorsement. The customer who was given value for a check from the bank of first deposit is generally liable to that bank for a check that has a forged or missing endorsement. The bank of first deposit can charge the customer who deposited or cashed the check for the amount of the check plus reasonable expenses incurred as a result of the forged or missing endorsement.

Defenses for Bank of First Deposit Liability
The bank of first deposit has a number of rebuttable defenses it can make. The bank of first deposit can claim that:

1. No forgery occurred – in other words, the check was properly endorsed and/or the payee received the benefit of the proceeds.

2. The payor bank (bank of the maker) was not liable to the maker – in other words, if the payor’s bank is not liable, that bank can’t shift liability to the bank of first deposit because there is no liability.

3. Either the maker of the check or the payee was negligent – an example of this would be if the maker sent the check to a person or company with the same name as the intended payee.

4. Timeliness in making a claim for breach of warranty. Generally speaking, a payor bank or a claimant must make a claim within 30 days of when it has reason to know of the breach and the identity of the bank of first deposit (the warrantor).
5. The check has both a forged or missing endorsement and a forged maker’s signature. In that case, the check is treated as a forged check and liability can’t be shifted to the bank of first deposit under a breach of warranty claim.

6. The maker did not suffer a loss. For example, the check did pay a debt of the maker.

7. The payee did not suffer a loss. A payee has no interest in a check until the payee has possession and becomes a holder. If there is a joint payee, and the check has a forged or missing endorsement from one payee, the co-payee can only collect for his or her share of the check proceeds. If a check is payable to two or more payees, and is ambiguous as to being payable alternatively, it is payable to them alternatively.

Those are not the only defenses a bank of first deposit can make for a warranty claim under a forged or missing endorsement; they are only examples of potential defenses. A bank of first deposit should consult with its legal counsel before making a decision reject a breach of warranty claim.