I. Meeting Objectives
    Subcommittee Objective
    Background
    Updated draft Canadian Commentary
    Canadian Return Reasons and Time for Returns
    Possible Future Changes
    Going forward

II. Subcommittee Revised Objective
    Develop ECCHO Rules for U.S. exchanges of Canadian images
    Develop Commentary to Rules

III. Background
    Canadian Phase IV Electronic Image Exchange was effective August 12, 2013
      • Canadian banks in various stages of implementation
         – Expect some image exchanges this year
    Banks questioned ECCHO about Rules coverage for Canadian items
      • Significant interest from members
      • CPA and Canadian banks participating
    Subcommittee agreed to development of rules
      • Rules completed
      • Presented to Operations Committee at April meeting for recommendation to Board for their approval at June meeting
         – Committee recommended changes to Return Rules, which was made
      • Board approved Canadian Rules effective August 3

IV. Supplemental Material
    During development of rules discussed numerous aspects of differences in Canadian law
During drafting of rules investigated number of court cases relative to Canadian exchanges
Subcommittee agreed to concept of single commentary to include
- Pertinent cases
- Significant differences (i.e. returns)
Drafts reviewed at previous meetings

V. Updated draft Canadian Commentary (attached, tracked)
- Commentary provides discussion of key elements of Rules governing exchange of Images of Canadian Items
- Document shows changes from last meeting – Can review entire document
  - Minor modifications throughout
  - Added “payable in Canada” to the Overview of Coverage section
  - CPA website referenced
  - Member is responsible for its check deposit relationship with depositing customer
  - Depositary bank should consider whether it needs to retain original Canadian Item until the maximum permitted retention period
  - Reg CC availability rules do not apply to deposits of foreign checks
    - Depositary Bank should consider disclosure to customer of funds availability and exceptions
  - Depositary Bank may want to consider whether image exchange for Canadian items has impact on regulatory responsibilities, such as AML
  - Availability of RDC for Canadian items may depend on Gateway Receiving Bank and Canadian Correspondent Bank used for exchange
  - Gateway Receiving Bank is responsible for handling returns
  - Return may be made to Gateway Receiving Bank
  - Eliminated sentence about delay settlement until Receiving Bank receives settlement
    - Not needed

VI. Canadian Return Reasons and Time for Returns
- Subcommittee discussed return reasons and time for returns
  - Bill Saffici has done work on this and distributed to Subcommittee
- Document has been posted to Check Image Collaborative website (www.checkimagecentral.org)
Understanding Canadian Return Reason Codes
• Provides US Banks with understanding of differences in Return Reason Codes when presenting deposited Canadian Cheques in electronic manner (X9.100-187) to Canadian Bank
• Explanation of occurrences when deposited return item may be "re-exchanged" (different than represented) included

Check it out
• Thanks Bill

VII. Possible Future Changes
• As with all ECCHO rules always opportunity to modify rules in future as processes change
• On previous call few comments regarding Rule changes
  • Will complete Commentary
  • Revisit Rules as more implementation and experience is gained

Identified Issues
• (I) Correspondent needs agreement - it was questioned the need for (I)(2) (Gateway Receiving Bank responsible for formatting into formats for exchange of Canadian items), since that would be in correspondent agreement
• (L) - Can the Sending Bank (A) make adjustment to Receiving Bank (B) or does A have to wait for B to make adjustment

VIII. Going Forward
• Approve Commentary for recommendation at Operations Committee Meeting, as appropriate
• Will review at in-person Operations Committee meeting
  • No additional meetings currently scheduled, will be scheduled if needed
This commentary provides a discussion of certain key elements of the ECCHO rules governing the exchange of Images of Canadian Items.

Overview of Coverage:

Section ## of the ECCHO Rules are intended to support the exchange of Images of Canadian Items (drawn on or payable at a Canadian Paying Bank) between two ECCHO Members in the United States. These rules do not address the cross-border exchange of Images of Canadian Items between a U.S. bank and a Canadian bank. The cross-border exchange of the Images of Canadian Items will be handled by the Gateway Receiving Bank under an exchange agreement between the Gateway Receiving Bank and the Canadian Correspondent Bank. Section ## of the Rules is not applicable to items drawn on a U.S. Paying Bank and imaged in Canada for presentment to the U.S. Paying Bank.

These rules do not mandate that a Member (whether a Gateway Receiving Bank or otherwise) accept Images of Canadian Items in an exchange with another ECCHO Member. A Member should discuss with its image exchange partners whether or not the Member can include Images of Canadian Items as part of its exchanges to the other Members. ECCHO Members that want to use these rules to govern exchanges of Images of Canadian Items should document the agreement between the two Members to exchange Images of Canadian Items under these rules. (See Section ##(A)(1) of the Rules.)

Payment of Checks and Check Images under Canadian Law:

Members that exchange Images of Canadian Items are responsible for understanding the risks and obligations generally arising under U.S. and Canadian law when accepting Canadian Items for deposit and sending Canadian Items as images for exchange and payment in Canada. Information regarding Canadian check law and the Canadian Payments Association rules is available on the Canadian Payments Association’s website located at this link: https://www.cdnpay.ca/imis15/eng/Act_Rules/eng/Act_Rules.aspx?hkey=87fa6393-9f02-45d5-b8ae-a78bfb2308e1.
The following is a summary of certain key points of Canadian check law identified during the drafting of this Section ## of the ECCHO Rules, and the following is not meant as a complete summary of legal issues associated with Images of Canadian Items.

The time periods under Canadian law for a paying bank to permissibly return a Canadian Item are different than the time periods applicable to U.S. items under the Uniform Commercial Code (“U.C.C.”), Regulation CC and clearing house rules. Accordingly, Canadian Items may in certain cases (such as in the case of unauthorized items and altered items) be returned by the Canadian paying bank for a longer period of time compared to U.S. items. In addition, once returned, there are limitations, based on return reason, for when the Canadian Item can be submitted for a second presentation to the Canadian paying bank. (See Section ##(L)(7) of the Rules.) As an operational matter, Canadian Items may take longer to complete the return process because of the number of banks involved in the forward and return process and the cross-border/cross-currency nature of the forward exchange and return. This overall longer return timeframe for Canadian Items (due to both legal and operational reasons) may increase risk to the BOFD Depositary Bank when handling Canadian items and allowing depositing customer access to funds, compared to funds arising from the deposit of a U.S. item.

Issues Associated with the Application of UCC and Canadian Law to Canadian Items Exchanged in the United States. This Section ## of the ECCHO Rules only applies to the ECCHO Members exchanging the Images of Canadian Items. This Section ## The Rules does not seek to alter any of the legal rights of other persons that have an interest in the check, such as the drawer, or the Canadian Paying Bank, or the payee. (See Section ##(A) of the Rules.) Canadian law governs the rights of these persons with respect to the Canadian Item and whether a return of the Image of the Canadian Item is timely. (See Section ##(B) of the Rules.)

In addition to these Rules and Canadian law, a Member exchanging an item should be aware the Uniform Commercial Code applicable to a particular exchange between two Members may impose additional warranties with respect to the transfer of the Image of the Canadian Item. Under the Rules, the Image of the Canadian Item is treated as an “item” under the UCC. (See Section ##(F) of the Rules.) The following summary of U.S. court decisions regarding the application of the UCC to the exchange of Canadian Items is for informational purposes only. Please also note that courts in different states or federal circuits could potentially rule in a different manner on the application of the UCC and Canadian law to a particular item or set of facts. A Member should consult with its legal counsel regarding specific questions of the application of U.S. law and Canadian Law to the exchange of its Canadian Items.

As a general matter, the exchange of a Canadian Item by a U.S. Bank to another U.S. bank or to a Canadian bank will result in the application of the transfer warranties under Article 4 of the
UCC and the other obligations and rights of a collecting bank under the UCC. (See Bank of Nova Scotia v. HSBC Bank U.S.A., 2005 U.S. Dist. Lexis 12053 (June 16, 2005). In a matter between a U.S. bank located in New York and a Canadian bank located in Canada, the New York bank’s actions with respect to handling the item is subject to New York UCC and the New York bank makes the warranties to the Canadian Bank under UCC with respect to the Canadian item exchanged between the two banks. The Court concluded that the U.S. bank was liable to the Canadian Bank for breaching the UCC 4-207 transfer warranty of no alteration of the item. Canadian law governs the relationship between the Canadian Bank and its drawer customer.)

In addition, while the exchange of a Canadian item between two banks may be subject to the UCC, the U.S. courts have generally held that the final payment rule of Article 4 of the UCC does not apply to foreign items. (See Margot J. Garant, Inc. v. Suffolk County Natl. Bank, 2015 NY Slip Op 50119 (Canadian items are not subject to U.S. return deadlines).) (Please note that the above summary of researched court decisions summary research is as of June 2015.)

Depositing Customer Relationship Issues. A Member that is the BOFD Depositary Bank with respect to the Canadian items is responsible for its check deposit relationship with the depositing customer. For example, the Depositary Bank Member should determine whether the Member has appropriate authority from its depositing customer to truncate the Canadian item and to collect the item as an image. The BOFD Member Depositary Bank also should consider how it will handle the return of a Canadian item to a depositing customer, if the item is returned for any reason (such as NSF). For example, the Depositary Bank BOFD Member may provide some form of an image return or a paper print-out of the image in the event of a return to its depositing customer. The Depositary Bank should consider whether it needs to retain the original paper Canadian Item, until the maximum permitted retention period, in order to protect itself in the event that the Depositary Bank does not receive back from the return process a print-out of the Canadian Item that is legally recognized under Canadian Law. It should be noted that a Depositary Bank cannot print a substitute check from an image of a Canadian item, since foreign items are not subject to the Check 21 Act. (See Section ##(N) of the Rules.) All of the above are issues that a Depositary Bank BOFD may want to consider in its account agreement with its depositing customer. (See also Section ##(C) of the Rules.)

A Member that is a BOFD Depositary Bank and that will exchange Images of Canadian Items under this Rule should review the current terms of its account agreement that govern deposit of Canadian items/foreign items and consider whether any changes need to be made to that account agreement in light of the new option of image exchange of Canadian Items. For example, a BOFD Depositary Bank’s current terms may not address the exchange of Images of Canadian items and may set forth different terms for funds availability/financial settlement to the customer than will be applicable in the context of image exchange of Canadian items.
While Regulation CC’s funds availability rules do not apply to deposits of foreign checks, the Depositary Bank should consider disclosure to its customer of its applicable funds availability policy and any exceptions.

A Member that is a Depositary Bank may also want to consider whether the migration to check image exchange for Canadian Items has any impact on its regulatory responsibilities with respect to its depositing customers, such as the Member’s anti-money laundering (AML) compliance and monitoring programs when processing foreign items.

Remote Deposit Capture by Depositing Customer. These ECCHO Rules do not address whether or not a Member may permit its depositing customer to use RDC to deposit a Canadian Item. The issue of the use of RDC for Canadian Items is unresolved at the time of the drafting of this Commentary and a Member should consult with its legal counsel and possibly the applicable Gateway Receiving Bank when considering this question. The availability of RDC in the United States for the Canadian Items may depend on the particular Gateway Receiving Bank and Canadian Correspondent Bank used for exchange of Images into Canada.

Role of Gateway Receiving Bank. The Gateway Receiving Bank is responsible for the exchange of the Images of Canadian Items to the Canadian Correspondent Bank and for handling any subsequent returns. Section ##(J) of the Rules allows the Gateway Receiving Bank to impose additional requirements on the exchange of items by the ECCHO Member to the Gateway Receiving Bank. (See Section ##(J) of the Rules.) For example, if the Gateway Receiving Bank determines that additional legal or operational requirements are necessary to support the Gateway Receiving Bank’s exchange of Images of Canadian Items under its agreement with the Canadian Correspondent Bank, the Gateway Receiving Bank can impose such legal and operational requirements on the ECCHO Members that directly or indirectly send items to the Gateway Receiving Bank.

Return of Items/Adjustments. Once presented to a Canadian Paying Bank, a Canadian Item may be returned to a Member (such as the Gateway Receiving Bank, a Depositary Bank or intermediary sending bank) in the form of an Image of a Canadian Item (called an Electronic/Image Return) or a paper replacement document created under Canadian law. The Rules use the defined term “Canadian Paper Return Item” to cover all the different paper forms in which an image of a Canadian Item may be returned by the Canadian Paying Bank, printout of the image, or as Return Replacement Document (created under Canadian law). (See Section ##(L) of the Rules.) If a Member receives a Canadian Paper Return Item in the return process, the Member should maintain the item in paper form, and not convert the Canadian Paper Return Item to an image. (See Section ##(L)(6) of the Rules.) While items are not handled as adjustments within Canada, it is expected that some returns of Canadian Items from paying banks may be handled in the adjustment process once the items reach the U.S.
banks. Once a Canadian Item is returned to the Depositary Bank, the Item may only be sent again for exchange as permitted under Canadian Law and any representment limitations imposed by the Gateway Receiving Bank.

**Official Copy of an Image of a Canadian Item.** Canadian law establishes a process for a customer to request an Image Printout of an official image of a Canadian Item from the Canadian Bank that created such image. (See Section 6 of Rule A10 of the Canadian Payments Association). Section ##(L)(8) of the ECCHO Rules establishes a process for a Member Bank to make a request to the Gateway Receiving Bank to obtain such an Image Printout. (See Section ##(L) of the Rules.)- The ECCHO Rules do not establish an obligation on the Gateway Receiving Bank to obtain the Image Printout.

**Financial Settlement of Cash Letters of Canadian Items.** This Section ##es of the ECCHO Rules for exchanging and returning Images of Canadian items does not provide for a unique rules regarding for the financial settlement between the two exchanging Members for of image cash letters of Canadian items. Accordingly, Section VI of the Rules relating to settlement of items generally will apply to cash letters of Canadian items. Under Section VI of the Rules, Members have to specify by separate agreement outside the ECCHO Rules how financial settlement will occur.

It is possible that two Members exchanging items may determine to have a separate settlement process for Canadian items that is separate, as compared to from the settlement of their U.S. check image files. For example, Member banks may want to address such issues as foreign currency exchange and timing of settlement of Images of Canadian items. With respect to timing of settlement, Member banks may agree that the Receiving Bank can delay financial settling until the Receiving Bank receives financial settlement from the Gateway Receiving Bank for the Images of the Canadian Items. The timing of settlement for Images of Canadian items processed under the ECCHO Rules may be different than the timing of settlement that a BOFD Depositary Bank has experienced in the past with respect to its paper collection of Canadian Items. Financial settlement between the Member banks does not in any way limit the ability of the Receiving Bank to subsequently return an Image to the Sending Bank when the Canadian Paying Bank returns the Image unpaid for any reasons in accordance with Canadian law governing returns. (See Section ##(L)(2) of the Rules.)