

I. DEFINITIONS

Unless otherwise defined or used herein, the following terms shall have the following meanings:

B. Administrative Reason. Any one or more of the following reasons for the return or adjustment by a Paying Bank or a Receiving Bank of an Electronic Image previously exchanged under these Rules:

- (i) poor quality image - image is unreadable, or the image is unusable (such as an unusable image caused by a non-standard TIFF tag); ~~or image quality does not meet bank's standards;~~
- (ii) Not Our Item;
- (iii) ineligible item – the Related Physical Check was not eligible for imaging under the Rules;
- (iv) blank or missing image – the image record does not contain an Electronic Image;
- (v) mismatched MICR – the Electronic Image does not match MICR information in the related Presentment Notice; or
- (vi) duplicate item -- Electronic Image is a duplicate of another image or item.

Q. Fully Qualified Item. An item which has full-field MICR encoding (i.e., routing transit number, and, when encoded, account number and, when encoded, the amount field, on-us field, auxiliary on-us field and EPC field. ~~the serial number and process control field.~~)

(Add new QQ.) Tagged Image File Format (TIFF) Tag. A tag-based file format for storing and interchanging images.

III. Items Eligible for Exchange; Repairs; Integrity; ~~Items Eligible for RNOTEs~~ (continued)

C. Repair of Item.

(1) Prior to sending the Electronic Image for exchange under these Rules, ~~A a~~ sending bank may repair the routing number and amount field information of (i) a paper check prior to imaging it, or of (ii) an item Electronic Image, and/or (iii) the MICR line information contained in the presentment notice prior to sending. A sending bank repairing the routing number and amount field information warrants that it has correctly repaired those fields. Damages for breach of this warranty shall not exceed the consideration received by the sending bank for the repaired item, plus interest compensation and expenses related to the item, if any.

(2) A sending bank may ~~, with the agreement of the receiving bank,~~ make repair other than as provided in Section III(B)(1), subject to the following provisions:

~~to an item without operator intervention prior to sending it for exchange under these Rules. To be eligible for repair, the eligible item shall conform to applicable industry standards as to size, weight of paper, magnetic ink encoding and quality of printing~~

(i) the repair may be to any other MICR line information of (i) a paper check prior to imaging it, (ii) an Electronic Image, and/or (iii) the MICR line information contained in the presentment notice; and

(ii) the receiving bank shall indemnify the A sending bank ~~making such repair~~ for any liability which arises from such repair and that exceeds the consideration received by the sending bank for the repaired Electronic Image (plus interest compensation and expenses) ~~shall have no liability for such repair, item has been repaired correctly~~ provided that the sending bank exercised ordinary care when conducting the repair. ~~except to the extent such liability arose from~~, except for the sending bank's gross negligence or willful misconduct. Liability for a sending bank which has been grossly negligent or acted with willful misconduct in connection with such a repair shall not exceed the consideration received by the sending bank for the repaired item, plus interest compensation and expenses related to the item, if any.

(3) The Sending Bank and the Receiving Bank may agree to ~~if a sending bank~~ repairs of ~~an~~ item other than as provided for Sections III(B)(1) or Section III(B)(2), and in such a situation, the ~~S~~ sending ~~h~~Bank will be subject to liability for such repair as provided under applicable law or other agreement.

III(C). COMMENTARY

Rule: Prior to sending the Electronic Image for exchange under these Rules, a sending bank may repair the routing number and amount field information of (i) a paper check prior to imaging it, (ii) an Electronic Image, and/or (iii) the MICR line information contained in the presentment notice. A sending bank repairing the routing number and amount field information warrants that it has correctly repaired those fields. Damages for breach of this warranty shall not exceed the consideration received by the sending bank for the repaired item, plus interest compensation and expenses related to the item, if any. ~~The sending bank is permitted but not required to repair the routing number and amount field of a paper check prior to imaging it or of an Electronic Image prior to sending for exchange under these Rules. any item prior to sending it for exchange. A sending bank repairing the routing number and amount field warrants that it has correctly repaired those fields. A sending bank that breaches this repair warranty may be liable to the receiving bank up to the consideration received by the sending bank for the repaired item (typically the amount of the item), plus interest compensation and any related receiving bank expenses.~~

Comment: Repair of the routing number and amount field can occur either with or without operator intervention. Accordingly, these fields can be repaired whether or not the item as received by the sending bank contains “readable” or any MICR in these fields. The agreement of the receiving bank or paying bank also is not necessary for this repair.

The sending bank warrants that the routing number and amount fields (or the MICR information from such fields in the case of a repair to a presentment notice) have (if amount field is encoded) been correctly repaired, i.e., the information is correctly encoded. The sending bank is liable for the receiving bank’s damages resulting from a breach of this sending bank warranty, up to the consideration received by the sending bank for sending the ~~item~~ Electronic Image (typically the amount of the ~~item~~ Electronic Image), plus interest compensation and any related receiving bank expenses. The sending bank is not, however, liable for any consequential or other damages arising from the wrongful dishonor of an item caused by the sending bank’s repair. This liability standard is consistent with that provided in Regulation CC for incorrect encoding (Regulation CC, Section 229.34(d)). However, the limitations on the potential liability of a Member set forth in this Section do not limit the liability of a Member under Section XIX(Q) or XX(L) relating to liability arising under the Check Clearing for the 21st Century Act.

Rule. A sending bank may make repair other than as provided in Section III(B)(1), subject to the following provisions: (a) the repair may be any other MICR line information of (i) a paper check prior to imaging it, (ii) an Electronic Image, and/or (iii) the MICR line information contained in the presentment notice; and (b) the receiving bank shall indemnify the sending bank for any liability which arises from such repair and that exceeds the consideration received by the sending bank for the repaired Electronic Image (plus interest compensation and expenses), provided that the sending bank exercised ordinary care when conducting the repair.

Comment: The sending bank is not obligated to make a repair of a paper item or an Electronic Image (or related presentment notice). However, a sending bank may not be able to collect the item under the ECCHO Rules if the Electronic Image (or related presentment notice) lacks the full MICR line information, as required by the eligibility rules in Section III(A). The sending bank does not need the agreement of the receiving bank or the paying bank in order to effect a repair under this section. Repair can be made to the paper check before imaging, the MICR line reflected on the Electronic Image itself, or the MICR line information from the item that is contained in the presentment notice associated with the Electronic Image.

In order to encourage the sending bank to repair items and collect such items by means of Electronic Image exchange under these Rules, this indemnification provides protection to the sending bank. This indemnification is intended to protect the sending bank from liability that may arise from an incorrect or erroneous repair under any applicable law (such as Reg. CC or the UCC) to any third party, such as a paying bank, subsequent receiving banks (regardless of whether or not they are ECCHO Members) and drawer and depositing customers. In the event that the sending bank incurs any such liability, the receiving bank will indemnify the sending bank for such liability, provided that the sending bank has acted with ordinary care when conducting the repair of the item.

~~URuleU: The sending bank also is permitted but not required to make other repair of an item if (1) the item conforms to applicable industry standards as to size, weight of paper, magnetic ink encoding and quality of printing, (2) the repair is without operator intervention, and (3) the receiving bank agrees to the repair. The sending bank making such repair has no liability for the repair, whether or not the item has been repaired correctly, unless it is grossly negligent or acted with willful misconduct. Liability for a sending bank which has been grossly negligent or acted with willful misconduct shall not exceed the consideration received by the sending bank for the repaired item, plus interest compensation and any related receiving bank expenses.~~

~~A repair without operator intervention occurs when the repair is effected by equipment on an automated basis, without intervention of an individual in the repair process. The receiving bank's agreement to the repair can be obtained for example in the provisions of its bilateral agreement with the sending bank addressing repairs generally or in an agreement regarding the repair of the particular item in question.~~

~~Rule: If a sending bank repairs an item other than as provided for Sections III(B)(1) or Section III(B)(2), the sending bank will be subject to liability for such repair as provided under applicable law.~~

~~Comment: If the sending bank repairs an item (other than the routing number or the amount field) and does not have an agreement of the receiving bank and the sending bank otherwise addressing permissible repair, the sending bank may repair other fields in an item and will be subject to responsibilities and liabilities under applicable law. In particular, the sending bank would be responsible for the encoding warranties of Regulation CC (Section 229.34(e)) and the UCC (Section 4-209) for an item that it repaired.~~

~~The receiving bank and sending bank may agree that the sending bank must, or may not, repair an item in certain agreed to circumstances and/or may agree to a different liability standard than that provided for in this Rule. This agreement could be in their bilateral agreement or in an agreement regarding a particular item.~~

This Rule should be read in conjunction with Section III(A), which requires that only items with full-field MICR encoding are eligible for exchange under the Rules. Thus, if any character in the MICR line is "unreadable" to the sending bank's capture system, the sending bank must repair the MICR line under this Rule (to the extent permitted to do so) if the item is to be eligible for exchange under ECCHO.

Section V(B):

[Drafting Note: Current Section V would be renumber Section V(A).

Draft Text:

Section V(B): TIFF: If the TIFF tags associated with an Electronic Image, received by a Receiving Bank under these Rules, are non-compliant with the TIFF standard for Image Exchange or the Receiving Bank encounters an allowable variant in such TIFF tags, the Receiving Bank may at its option reformat the TIFF tag(s) to comply with the TIFF standard for Image Exchange. The Receiving Bank shall have no liability under these Rules or any other applicable law to the Sending Bank or any other person for any loss or damage that such Sending Bank or other person may incur as a direct or indirect result of such re-formatting of the TIFF tags, unless the Sending Bank can demonstrate all of the following: (i) the reformatted TIFF tags do not comply with TIFF standard for Image Exchange, (ii) the Electronic Image was materially altered by the reformatting, and (iii) such alteration of the Electronic Image resulted in the loss or damage.

Commentary: The purpose of this rule is to permit the Receiving Bank to reformat the TIFF tags of an Electronic Image in accordance with the current TIFF standard for Image Exchange. An example of such a standard is Specification of TIFF Image Format for Image Exchange - ANS X9.100-181. This rule does not permit a Receiving Bank to reformat the TIFF tags to an allowable variant within the current TIFF standard for Image Exchange when returning the image to the Sending Bank. Sending Banks are encouraged to comply with the TIFF standard for Image Exchange, and nothing in this rule limits or releases the Sending Bank from liability or obligations to a Receiving Bank that may arise in the event that the Sending Bank sends an Electronic Image with non-conforming TIFF tags to a Receiving Bank.

XIX. ELECTRONIC IMAGE (CONTINUED)

- C. Items Eligible for Imaging. An item is eligible for imaging under this Section XIX if: (i) the item is defined as a "check" under Section 229.2(k) of Regulation CC; (ii) the item is a Fully Qualified Item; and (iii) the Sending Bank and the Receiving Bank have entered into an agreement and the item is eligible for imaging under that agreement. With respect to the requirement in Section XIX(C)(ii), a Sending Bank and a Receiving Bank may under their image exchange agreement permit the exchange of images of items that are not fully qualified.

If any character anywhere in the MICR line of an item is unreadable, i.e., the sending bank's capture system discerns the presence of a character but cannot interpret it and so designates the character with an asterisk or other non-alphanumeric symbol, the item shall not be considered Fully Qualified for purposes of Section XIX(C)(ii).

If a Sending Bank and Receiving Bank enter into an agreement pursuant to this Section XIX(C) to exchange items that are not Fully Qualified, the following provisions shall apply:

(ia) The MICR line information in the presentment notice of an Electronic Image shall not include any other character (numeric or otherwise) not contained in the MICR line of the Related Physical Check or the Electronic Image of the Related Physical Check, except for asterisks (*) as provided in subparagraph (v). ~~read at point of image capture of the MICR line [or keyed or otherwise entered during a subsequent repair]~~

(bii) All information from the routing transit and dollar amount fields of the MICR line from the Related Physical Check or the Electronic Image of the Related Physical Check shall be included in the presentment notice of an Electronic Image.

(ciii) ~~At point of image capture,~~ The Sending Bank shall use acceptable industry standards and procedures (1i) to interrogate all ~~other~~ fields (other than routing transit and dollar amount fields) of the MICR line of the Related Physical Check or the Electronic Image, and (2ii) to make a reasonable attempt to read ~~and provide all such other~~ fields of the MICR line.

(div) For fields other than routing transit and dollar amount fields, the presentment notice of an Electronic Image shall include all ~~other~~ characters in these other fields that the Sending Bank was able to read

~~pursuant to subparagraph (iii). at point of image capture of the MICR line for was keyed or otherwise entered during a subsequent repair].~~

~~(ev) For fields other than routing transit and dollar amount fields, if the MICR line of the Related Physical Check or the Electronic Image has any identified but unreadable character, an asterisk character (*) shall be placed in the location of the unreadable character in the the applicable field in thea presentment notice of a the Electronic Image that relates to the unreadable character.~~

~~(fvi) If the Sending Bank is not the truncating entity and the truncating entity is not another ECCHO Member subject to this Rule, the Sending Bank shall impose the requirements in subparagraphs (i) through (v) on the truncating entity, and the failure of a truncating entity to satisfy any of the requirements in subparagraphs (i) through (v) shall be treated as a failure of the Sending Bank to comply with subparagraphs (i) through (v).~~

XIX(C). COMMENTARY

Rule: To be eligible for imaging under Section XIX, an item must meet the following conditions: it must be one of the type of items defined as a check under Section 229.2(k) of Regulation CC; the item is a Fully Qualified Item” as defined under these Rules; and the Sending Bank must have entered into an agreement with the Receiving Bank and the item must be eligible for imaging under that agreement.

Comment: The following types of items are defined as checks under Section 229.2(k) of Regulation CC and, provided they meet the other requirements of Section XIX(C), are eligible for imaging under Section XIX:

- a negotiable demand draft drawn on an office of a bank;
- a negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;
- a negotiable demand draft drawn on the Treasury of the United States;
- a demand draft drawn on a state or local government that is not payable through or at a bank;
- a United States Postal Service money order;
- a traveler’s check drawn on or payable through or at a bank; and
- a substitute check.

The following types of items, often referred to as “non-cash items,” are not defined as checks under Section 229.2(k) of Regulation CC and accordingly are not eligible for imaging under Section XIX:

- (i) an item with an attached passbook, certificate, or other document;
- (ii) an item accompanied by special instructions, such as a request for special advice of payment or dishonor; and
- (iii) an item consisting of more than a single thickness of paper, except an item that qualifies for handling by automated check processing equipment.

- (iv) An item that has not been preprinted or post encoded in magnetic ink with the routing number of the paying bank.

With respect the Fully Qualified Item requirement in Section XIX(C)(ii), the definition of Fully Qualified Item in Section I of the Rules states that a “fully qualified item” is an item which has full-field MICR encoding (i.e., routing transit number, and when encoded, account number, and, when encoded, the amount field, on-us field, auxiliary on-us field and EPC field). ~~serial number and process control field~~ If an item does not contain an encoded amount field on the MICR line, there is no obligation to encode the amount field on the item or the image of the item, in order for the item to be eligible for image exchange under the Rules.

Rule: With respect to the requirement in Section XIX(C)(ii), a Sending Bank and a Receiving Bank may under their image exchange agreement permit the exchange of images of items that are not fully qualified.

Comment: Section XIX(C)(ii) establishes a default rule that requires an item to be a “fully qualified item” in order to be eligible for imaging. This Rule also provides that a Sending Bank and a Receiving Bank may alter this default rule by separate agreement, and thereby exchange items that are not fully qualified. For example, if a Receiving Bank determines that it will not under any circumstances need to produce a substitute check from an image exchanged with the Sending Bank, the Receiving Bank may decide that it is willing to accept an image of the item that is not fully qualified. As a second example, a Receiving Bank may determine that the rate of non-fully qualified items coming from a Sending Bank is at a sufficiently low rate that the Receiving Bank can repair such items without significantly impacting the Receiving Bank's

repair and posting operational deadlines. Alternatively, the Receiving Bank may elect to have non-fully qualified items included in the image transmissions up until a specific deadline, after which only fully qualified items would be eligible. If the Banks enter into such an agreement, the requirements for the partial MICR exchange are set forth in Section XIX(C) shall apply to the Banks.

Rule: All information from the routing transit and dollar amount fields of the MICR line from the Related Physical Check or the Electronic Image of the Related Physical Check shall be included in the presentment notice of an Electronic Image.

Comment. Certain paper checks may have a bank routing number preprinted in the MICR line that contains eight (8) digits and a dash (this is referred to as the "4-4 format" and is four digits, dash, four digits and no check digit), as opposed to the standard nine digit routing number. In this situation, the Sending Bank has the option under the Rules to correct the routing number field. An allowable correction (to the MICR line on the check itself or the related Presentment Notice) would be to repair the routing number to a 9-digit Routing Number (with no dash and a valid check digit, calculated in accordance with industry standards for check digits), instead of a routing number formatted as 4-4 format.

Rule: The Sending Bank shall use acceptable industry standards and procedures (1) to interrogate all fields (other than routing transit and dollar amount fields) of the MICR line of the Related Physical Check or the Electronic Image, and (2) to make a reasonable attempt to read all such other fields of the MICR line.

Comment. It is recognized that the On-Us field in the MICR line of checks is not uniformly structured for all banks. However, it is expected that a Sending Bank will read all fields on the MICR line of a check when imaging the check for exchange under these Rules.

Rule: If the Sending Bank is not the truncating entity and the truncating entity is not another ECCHO Member subject to this Rule, the Sending Bank shall impose the requirements in subparagraphs (i) through (v) on the truncating entity, and the failure of a truncating entity to satisfy any of the requirements in subparagraphs (i) through (v) shall be treated as a failure of the Sending Bank to comply with subparagraphs (i) through (v).

Comment. This provision of Section XIX(C) recognizes that in many cases the Sending Bank obtains the Electronic Image and related presentment notice from another entity, such as a correspondent bank or a merchant that is using a remote deposit capture product. In such a case, the Sending Bank is responsible for ensuring that the truncating entity complies with the requirements for partial MICR exchange set forth in subparagraphs (i) through (v). The Sending Bank can seek to meet this requirement under Section XIX(C) by requiring under its deposit and/or exchange agreements with its correspondent banks and remote deposit capture merchants that such entities must adopt similar procedures as set forth in subparagraphs (i) through (v).

Comment: In certain cases, an ineligible item may be exchanged among the Member banks under these Rules. The ECCHO Rules will apply to the exchange of that ineligible item between the banks. In the event that an ineligible item is imaged and exchanged without the agreement of the Receiving Bank, the Receiving Bank would have a warranty claim under Section XIX(L)(1) against the Sending Bank for any loss or damages that arose from the sending of that item.

Comment: The Sending Bank and the Receiving Bank must enter into an agreement (in addition to the Rules) addressing items to be imaged under Section XIX. It is recommended that the banks state in that agreement that the ECCHO Rules will apply to those images exchanges, in order to make it clear that the banks want such exchanges governed under the ECCHO Rules. It is

anticipated that the banks would in this agreement specify for example the media on which Electronic Images are to be provided to the Receiving Bank (please see Section XIX(G)(1)), whether the Presentment Notice or image transmission is to be encrypted and/or authenticated, the location(s) for the transmission or other delivery of Electronic Images (please see Section XIX(G)(1)) and the Receiving Bank's Image Ledger Cutoff Time (please see Section XIX(H)). In the image-based truncation scenario, the banks also would specify in this agreement such matters as the procedures for retrieval requests and responses to retrieval requests (please see Section XIX(K)), and a retention period different than that provided for in Section XIX(K) if desired by the banks (please see Section XIX(K)). Particularly for those banks participating in the image-based truncation scenario, it also may be appropriate to incorporate in this agreement a reference to the Rules (specifically to Section XIX of the Rules), so that the Rules would continue to govern the arrangement (e.g., the retrieval of Related Physical Checks or copies thereof) in the event ECCHO at some point in the future ceases to exist and the Rules are not assumed by another organization. The item must be eligible for imaging under this agreement. For example, this agreement may provide that the Sending Bank may transmit an Electronic Image to the Receiving Bank only after a specified future date, in order to provide the Receiving Bank time to prepare for its participation in the image program. An item drawn on that paying bank that is otherwise eligible for imaging but that has been received by the Sending Bank before the start date specified in this agreement would not be eligible for imaging under Section XIX. Alternatively, the agreement may provide that items will not be imaged if they are drawn in an amount above an agreed to dollar amount. Again, an item drawn on the paying bank that is otherwise eligible for imaging but that has been drawn in an amount that exceeds the agreed to dollar cut off would not be eligible for imaging under Section XIX.

Additionally, in the case where not all of the items drawn on the paying bank are to be truncated, the Sending Bank and Paying Bank should specify in their agreement how the Sending Bank will identify those items that are to be truncated. In certain cases, it may be the customer of the Paying Bank that will pick and choose the items to be truncated in connection with the program. The Sending Bank and the paying bank could for example agree that the paying bank or the paying bank's customer, as the case may be, will place or arrange for the placement of a "9" in position 44 of the MICR line of items eligible to be truncated under the program. The Sending Bank and paying bank may, however, agree to identify an item eligible for the image-based truncation scenario in a way other than through a "9" in position 44 of the MICR line, such as through tables of eligible accounts or through other agreed upon means.

Comment: In addition to a written exchange agreement directly between two ECCHO Members, there are a number of other ways in which two or more ECCHO Members could establish an agreement for purposes of Section XIX.C and any other provision of the ECCHO Rules that requires an agreement of ECCHO Members.

Set forth below are examples of ways in which two or more ECCHO Members could establish an agreement for purposes of the ECCHO Rules. The following list of examples is not intended to be a conclusive list of all possible types of agreements between ECCHO Members.

1. An agreement could take the form of clearing house rules that are binding on both the ECCHO Member Sending Bank and the ECCHO Member Receiving Bank and authorize the exchange of Electronic Images under the ECCHO Rules.
2. For an ECCHO Member that uses a third party processor to handle its forward presentment and return of Electronic Images on behalf of the ECCHO Member (the "serviced bank"), the serviced bank could authorize the processor to enter into exchange agreements on behalf of the serviced bank with other ECCHO Members and/or

payment networks that exchange under the ECCHO Rules. The processor would need sufficient agency authority from the serviced bank under the service agreement or otherwise to enter into exchange agreements with other ECCHO members on behalf of the serviced bank. The serviced bank should recognize that it will have legal obligations under the ECCHO Rules to the other ECCHO Members under the agreements that the processor enters into on behalf of the serviced bank.

3. For ECCHO Members that exchange through an archive or other payment network, each ECCHO Member could enter into an agreement with the archive/payment network under which the ECCHO Member agrees to exchange images with other ECCHO Members that also use the same archive/payment network. In this case, each Member would have an agreement with the archive/payment network, but no direct agreement with each other.
 4. Two ECCHO Members may form an agreement to exchange images under the ECCHO Rules without an executed (signed) written agreement between the two ECCHO Members. This could be done, for example, through an oral agreement to the ECCHO Rules or through a course of dealing of image exchanges. The oral agreement or course of dealing may be supplemented by written business practice requirements and technical documentation and operational requirements relating to image exchanges, which may or may not reference the ECCHO Rules.
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Commentary to XIX(L)

Rule: Each Sending Bank makes the warranties set forth in clauses (1) through (6) of Section XIX(L) with respect to each Electronic Image it sends to the Receiving Bank.

Comment: The warranties provided for in Section XIX(L) are in addition to the warranties otherwise made generally by a Presenting Bank or collecting bank, as applicable, under the Code. Under the Code, the Presenting Bank warrants that it has good title to the item, the item has not been altered, and it has no knowledge of an unauthorized drawer's signature (Section 4-208 (1990 Official Text) and 4-207 (1978 Official Text)). The Receiving Bank may recover from a Sending Bank that has breached one of these Code warranties an amount equal to the amount of the item plus the Receiving Bank's expenses and loss of interest resulting from the breach. *Id.* The Receiving Bank's recovery may be reduced by its comparative negligence (Section 3-406(b) (1990 Official Text)). A Sending Bank breaching any of the foregoing Code warranties as a result of acts or omissions of others typically would have a corresponding breach of warranty claim against the party from whom it received the item (Section 4-207 (1990 Official Text)).

The warranties provided for in Section XIX(L) also are in addition to the warranties otherwise made generally by a Presenting Bank or collecting bank under Regulation CC. Under Regulation CC, a Presenting Bank that presents an Electronic Image warrants that: (1) the total amount of the items presented is equal to the amount of settlement demanded; (2) the accompanying information, if any, accurately indicates the total amount of items presented; and (3) information, if any, encoded after issuance in magnetic ink on the Related Physical Check is correct (Regulation CC, Section 229.34(c)). The first two of these warranties are designed, in part, to promote batch integrity. Damages for breach of any of these Regulation CC warranties may not exceed the amount of the item, plus interest compensation and expenses related to the item (Regulation CC, Section 229.34(d)). The Receiving Bank's recovery may be reduced by its comparative negligence (Regulation CC, Section 229.38(c)).

The warranties provided for in Section XIX(L) also are in addition to the indemnification provided for in Section XIX(D) concerning the failure of the Sending Bank to transmit or otherwise provide or make available an Electronic Image in a timely manner. This Section XIX(D) indemnification is treated separately from the Section XIX(L) warranties because of the unique limitation on the Section XIX(D) indemnification relating to the Paying Bank reversal of any posting to the drawer's account (please see Section XIX(D)(2) and related Commentary).

Section XIX(L), along with Section XIX(M), in essence, constitutes the enforcement mechanism for Section XIX image-based truncation programs. Under clause (1) of Section XIX(L), the Sending Bank warrants that it has complied with the requirements of Section XIX applicable to Sending Banks. Given the relative newness of imaging, ECCHO determined it to be particularly important that each bank fully comply with its Section XIX responsibilities, and this warranty is designed to appropriately incent the Sending Bank to do so.

Clause (2) is intended to ensure that the Electronic Image accurately reflects the Related Physical Check. A Sending Bank would breach this warranty if, for example, the amount of the Electronic Image for some reason did not correspond to the amount of the Related Physical Check. This warranty is in some sense comparable to the encoding warranty of Regulation CC, Section 229.34(c)(3) for information encoded after issuance in magnetic ink on the Related Physical Check.

Clause (3) requires that the Presentment Notice accurately describe the Related Physical Check to ensure that the information contained in the Presentment Notice is accurate and complete so as to permit the Paying Bank to post to the drawer's account based on the Presentment Notice, if the Paying Bank chooses to do so. This warranty would address a mis-match between the MICR Line information in the Presentment Notice and the Electronic Image.

Clause (4) is the Electronic Image quality warranty. The effect of this image quality warranty is to place liability for loss arising from an unusable Electronic Image on the Sending Bank, regardless of whether the Sending Bank created the image from the Related Physical Check or has access to the Related Physical Check. For example, the Sending

Bank makes this image quality warranty even if the Sending Bank has received the Electronic Image from a customer that is using remote capture and the Sending Bank did not itself create the image. To protect itself in such a situation, a Sending Bank may seek to impose a similar image quality warranty on its remote capture customer under its deposit agreement.

The image quality warranty creates a presumption that the unusable Electronic Image – that is not an Acceptable Copy of the Related Physical Check – is caused by the Sending Bank or by the customer or bank that imaged the original check before it was received by the Sending Bank. As a result of this warranty and the related presumption, the Sending Bank would be responsible to the Receiving Bank for losses caused by an unusable Electronic Image.

The Sending Bank can defend a warranty claim if the Sending Bank can establish that the loss would have arisen had the Related Physical Check, instead of the Electronic Image, been sent to the Receiving Bank. For example, if the Related Physical Check was not readable, such as smeared ink on the payee name, and the corresponding image was not readable, then the Sending Bank is not responsible for losses under the warranty. By contrast, if the Related Physical Check was readable, but was written with an ink color that was not readable when it was imaged, the Sending Bank would be responsible for any losses arising from a breach of the warranty. The burden is on the Sending Bank to show that the loss would have occurred had the Related Physical Check been sent to the Receiving Bank. Accordingly, if the Sending Bank does not have access to the Related Physical Check, it may be difficult for the Sending Bank to meet this burden of proof.

Please also review Exhibit VI for further discussion of image quality issues.

Clause (5) is intended to ensure that the Electronic Image accurately corresponds to an item described in a Presentment Notice transmitted to the Receiving Bank. This warranty is designed to address two situations. First, it is designed to ensure that the Sending Bank has provided a Presentment Notice for the item to be imaged in compliance with the requirements of the Rules applicable to Presentment Notices. Second, it is designed to ensure that the information in the Presentment Notice about that item corresponds to the Electronic Image (which under Clause (2) must correspond to the Related Physical Check). This is particularly important since it is anticipated that in many cases the Paying Bank will debit the drawer's account based on the Presentment Notice (please see Section XIX(M)). Clause (5) does not, however, address an Electronic Image that is not provided to the Receiving Bank in a timely fashion; as discussed earlier in the Commentary to Section XIX(L), this is addressed in Section XIX(D).

Clause (6) provides that the Electronic Image must contain all of the required information in the required format.

Clause (7) is intended to protect the Receiving Bank in the event of an inappropriate duplicate or multiple presentments or sending of the same item. Clause (7) is structured to be similar to the warranty relating to duplicate presentment/transfer/return that is set forth in Section 229.52(a)(2) of Regulation CC. This warranty is intended to protect a Receiving Bank regardless of the form (image, original check or substitute check) in which the duplicate item is, or multiple items are, received by the receiving bank. This warranty would also cover duplicate Presentment Notices that are received by a Receiving Bank from a Sending Bank, even if the related Electronic Images were never sent to the Receiving Bank. A warranty breach from the payment of duplicate items can occur in a number of ways. While not a complete list, the following are examples of such duplicate payments: (a) an Electronic Image is received and paid (and not returned) by the Paying Bank and the Paying Bank subsequently receives presentment of the original paper check and pays that check; (b) the Paying Bank receives from the same Sending Bank two Electronic Images created from the same original paper check, pays both items, and does not subsequently return them, or (c) the Paying Bank receives, from two different Sending Banks, two Electronic Images that purport to be created from the same original check, pays both items, and does not subsequently return them. However, by its terms, this warranty against duplicate presentment is limited to a situation where the Receiving Bank pays an item that it has already paid. Accordingly, this warranty is not applicable to a situation where the Receiving Bank has returned and undone provisional settlement of the first item, and then receives a second presentment of the same item. In this situation, the Receiving Bank has only paid a single item, and has not paid the item twice. For example, the resending

of an Electronic Image after a return, which is allowed under the Rules, does not constitute a breach of the warranty in Clause (7).

XIX. ELECTRONIC IMAGE (CONTINUED)

O. Forged and Counterfeit Check Warranties (This is generally referred to as Rule 9)

- (1) (i) *This Section XIX(O) shall not apply with respect to Electronic Images that are exchanged by a Sending Bank with a Receiving Bank if a Member in that exchange has previously notified the Organization of its election to have its Electronic Image exchanges not subject to this Section XIX(O). The Organization shall maintain and publish to other Members a list of Members that have elected to not have this Section XIX(O) apply to Electronic Images that Member sends to or receives from another Member. A Member that has elected that its exchanges are not subject to this Section XIX(O), may cancel that election at any time by notifying the Organization. A Member that has canceled its election may not make the election again under Section XIX(O) for a period of six months. Except as provided in Section XIX(O)(1)(ii), the Member's election is effective with respect to all of its Electronic Image exchanges with any other Member under these Rules, as of and after the effective date of the election. The effective date of a Member's election or cancellation of election shall be determined by the Organization, based on the reasonable amount of time it takes the Organization to notify all other Members of the election.*
- (ii) *A Member may not make, or subsequently cancel, its election under this Section XIX(O)(1), if the Member is subject to a bilateral or multilateral exchange agreement or clearing house rule (other than these Rules) that expressly establishes whether or not the Members subject to that agreement or clearinghouse rule may make an election under this Section XIX(O)(1). If a Member is required to make the election under an agreement or clearinghouse rule (other than these Rules), the Member may limit the scope of that election to only those Electronic Image exchanges with other Members subject to the same agreement or clearinghouse Rule:*
- (iii) *Notwithstanding any other provision in Section XIX(O), a Sending Bank does not make the warranty in Section XIX(O)(2) with respect to an Electronic Image if the Related Physical Check or an image of the Related Physical Check was first deposited into, or received by, a foreign office of a non-U.S. bank or a foreign office of U.S. bank.*

(2) *In addition to the warranties set forth in Section XIX(L), a Sending Bank that is also the Depository Bank and any subsequent Sending Bank warrants to ~~a~~the Receiving Bank~~– and any other Receiving Bank that subsequently receives the Electronic Image in a subsequent image exchange governed under the ECCHO Rules~~ that is the Paying Bank that, with respect to an Electronic Image that is exchanged under these Rules:*

- (i) *the signature of the purported drawer of the Related Physical Check is not forged or otherwise unauthorized, and*
- (ii) *the Related Physical Check is not counterfeit.*

When the Sending Bank that is also the Depository Bank makes the warranty under Section XIX(O)(2), a paying bank that receives the Electronic Image in a subsequent exchange governed under the rules of a Licensed Entity is an intended third party beneficiary of the warranty by such Sending Bank.

(3) *A Depository Bank is liable to the Paying Bank under the warranty prescribed in Section XIX(O)(2) only if all of the following exist:*

- (i) *within 60 calendar days after the account statement which first reflects the paid Electronic Image subject to the warranty prescribed in Section XIX(O)(2) (or substitute check created from such Electronic Image) has been made available to the Paying Bank’s customer, the customer completes, signs and delivers a written statement under penalty of perjury (the “Customer’s written statement”) for each such Electronic Image or substitute check, specifying in reasonable detail, that (A) the signature of the purported drawer of the Related Physical Check is forged or otherwise unauthorized and/or (B) the Related Physical Check is counterfeit, and, if applicable returns such substitute check to the Paying Bank;*
- (ii) *a warranty claim is made for each Electronic Image subject to the warranty prescribed in Section XIX(O)(2) by the Paying Bank by delivering (i) the Electronic Image, (ii) a paper copy of the front and back of such Electronic Image or (iii) a substitute check created from such Electronic Image to the Depository Bank in accordance with Section XIX(O)(8) with a notation of “Breach of Warranty” and/or “Do Not Redeposit or Re-Present” or with similar language or reason code, within 15 Business Days after the Paying Bank has received its Customer’s written statement; and*
- (iii) *the Available Amount on deposit in the account of the customer of the Depository Bank, in which the Electronic*

Image or Related Physical Check subject to the warranty prescribed in Section XIX(O)(2) was deposited, is equal to or greater than the amount of the warranty claim on at least one day during the period beginning on the day that the claim is delivered to the Depository Bank and ending on the day which is the earlier of (A) one day before the Depository Bank delivers the Disclaimer Form to the Paying Bank pursuant to Section XIX(O)(9) or (B) up to 15 Business Days following receipt of the warranty claim by the Depository Bank.

- (4) Within 15 Business Days of receipt of a request from the Depository Bank for a copy of the Customer's written statement referenced in Section XIX(O)(3)(i), the Paying Bank shall deliver to the Depository Bank at a place specified in the request a copy of the Paying Bank Customer's written statement referenced in Section XIX(O)(3)(i).*
- (5) If the Depository Bank receiving a warranty claim under Section XIX(O)(2) has a defense under Section XIX(O)(1), (2), (3) or (4), or has a UCC Defense, the Depository Bank may deliver to the Paying Bank in accordance with Section XIX(O)(9), a Disclaimer Form in the form set forth in Exhibit VIII, signed by a representative of the Depository Bank, attached to the warranty claim, within 15 Business Days of receipt of the claim. In the event the Depository Bank requests a copy of the Paying Bank's Customer's written statement pursuant to Section XIX(O)(4) within the 15 Business Day period prescribed in the preceding sentence, such 15 Business Day period may be extended until the expiration of 5 Business Days after it receives the requested copy, or if the requested copy is not received, until the expiration of 5 Business Days after the day on which the Paying Bank is required to have provided such copy under Section XIX(O)(4). A Depository Bank that fails to deliver a Disclaimer Form within the time period and in accordance with the requirements prescribed in this Section XIX(O)(5) thereafter waives any right to refuse the warranty claim.*
- (6) A Paying Bank that receives a Disclaimer Form may not return the Electronic Image (or a substitute check created from such Electronic Image) or otherwise resubmit the warranty claim to the Depository Bank under Section XIX(O)(3) of these Rules. The Paying Bank may pursue its warranty claim provided for in Section XIX(O)(2) directly with the Depository Bank outside of the process specified in Section XIX(O)(3).*
- (7) A Depository Bank's authority to debit the account of its customer in which the Electronic Image or Related Physical Check subject to the warranty under Section XIX(O)(2) was deposited for some or all of*

such warranty claim is governed by applicable law, including the agreement of the Depository Bank and its customer.

- (8) Unless a specific delivery location is agreed to by the Depository Bank, the Paying Bank shall deliver a Section XIX(O)(2) warranty claim to any location of the Depository Bank at which the Depository Bank receives returns of checks or Electronic Images from the Paying Bank in the normal course of check collection.*
- (9) Unless a specific delivery location is agreed to by the Paying Bank, the Depository Bank shall deliver a Section XIX(O)(5) disclaimer of a warranty claim to any location of the Paying Bank at which the Paying Bank receives checks or Electronic Images from the Depository Bank in the normal course of paper check collection.*
- (10) Depository Bank shall pay the amount of the warranty claim under Section XIX(O)(5) to the Paying Bank no later than the second Business Day after receiving the warranty claim from the Paying Bank. In the event that the Depository Bank disclaims the warranty claim in accordance with Section XIX(O)(5), the Paying Bank shall pay the amount of the disclaimed warranty claim to the Depository Bank no later than the second Business Day after receiving the disclaimed warranty claim from the Depository Bank. Settlement for the warranty claim and any disclaimed warranty claim shall be made by appropriate crediting of the due to account maintained by one Member with another Member, by Fedwire transfer from the one Member to the other Member, through a settlement system operated by another clearing house that permits payment of this type of claim, or in such other manner as may be agreed upon by the two Members.*
- (11) If the Depository Bank breaches the warranty set forth in Section XIX(O)(2), the amount of the warranty claim by the Paying Bank shall not exceed the amount of the Electronic Image. If the Depository Bank's breach of warranty results in whole or in part from the Paying Bank's failure to exercise ordinary care or act in good faith, the Depository Bank's liability shall be reduced in proportion to the amount of negligence or bad faith attributable to the Paying Bank.*

(12) Processing of Warranty Claims Involving Multiple Receiving Banks and Licensed Entities.

(i) If the Paying Bank receives the Electronic Image from a Receiving Bank that is not the Depository Bank, the Paying Bank may only bring a warranty claim under this Section XIX(O)(2) by delivering the warranty claim directly to the Sending Bank that is also the Depository Bank. A Receiving Bank that is not the Depository Bank shall reject any warranty claim that is delivered to it by a Paying Bank.

(ii) Subject to the conditions and limitations on liability in subsections (3)-(11) of Section XIX(O), the Sending Bank that is also the Depository Bank shall be obligated for losses arising from the breach of the Section XIX(O)(2) warranty (i) to a Paying Bank under these Rules, or (ii) to a paying bank under the rules of a Licensed Entity.

(iii) If the initial exchange of the Electronic Image by the depository bank was under the rules of a Licensed Entity, the Paying Bank must bring the Section XIX(O)(2) warranty claim under the rules of the Licensed Entity and subject to the conditions of the warranty claim process set forth in the rules of the Licensed Entity.

XIX(O). COMMENTARY

Rule: This Section XIX(O) shall not apply with respect to Electronic Images that are exchanged by a Sending Bank with any Receiving Bank if a Member in that exchange has previously notified the Organization of its election to have its Electronic Image exchanges not subject to this Section XIX(O).

Comment: The Section XIX(O) warranty is an opt-out warranty. This Rule applies to a Member's exchange of Electronic Images unless either Member to that exchange has opted-out of this warranty. Except as provided in Section XIX(O)(1)(ii), a Member may only opt-out with respect to all exchanges with other Members, and may not opt-out on a Member-by-Member basis. Except as provided in Section XIX(O)(1)(ii), a Member's opt-out is effective with respect to all Electronic Images exchanged with any other Member, regardless of whether or not the other Member also has opted out. A Member that has opted-out cannot seek to bring a warranty claim under Section XIX(O) against another Member.

Rule: Except as provided in Section XIX(O)(1)(ii), the Member's election is effective with respect to all of its Electronic Image exchanges with any other Member under these Rules, as of and after the effective date of the election. The effective date of a Member's election or cancellation of election shall be determined by the Organization, based on the reasonable amount of time it takes the Organization to notify all other Members of the election.

Comment: The Organization needs a reasonable time period to notify other Members of a Member's decision to opt-out or cancel its opt-out of coverage under this Rule. Accordingly, the Organization will determine the effective date of the opt-out election or cancellation after the Organization receives notice of the opt-out election or cancellation from the Member. The Organization may arrange for third party entities, such as check image exchange networks or other check clearing houses, to assist the Organization in maintaining and publishing a list of Members that have opted-out or canceled their opt-out under this Rule. The Organization may use a website or other forms of electronic communications to publish a list of Members opting-out or canceling their opt-out under this Rule.

Rule: A Member that has elected that its exchanges are not subject to this Section XIX(O), may cancel that election at any time by notifying the Organization. A Member that has canceled its opt-out election may not make the election again under Section XIX(O) for a period of six months in order to encourage stability and predictability in the opt-out elections.

Comment: A Member that has previously made the election may cancel that election by notifying the Organization. Once the Organization has notified the other Members of the effective date of that cancellation of the election, the Member's exchanges of Electronic Images will be subject to Section XIX(O). However, a Member may not make the election again for a period of six months.

Rule: A Member may not make, or subsequently cancel, its election under this Section XIX(O)(1), if the Member is subject to a bilateral or multilateral exchange agreement or clearing house rule (other than these Rules) that expressly establishes whether or not the Members subject to that agreement or clearing house rule may make an election under this Section XIX(O)(1).

Comment: In certain cases a Member may enter into an agreement governing its images exchanges with one or more other Members in which that subset of Members agrees that the Members will (or will not) make an election to opt-out of coverage of Section XIX(O). For example, all Members that are exchanging images through a particular electronic network may agree that all Members must be subject to the warranty in Section XIX(O) in order to exchange images through the network.

Rule: If a Member is required to make the election under an agreement or clearing house rule (other than these Rules), the Member may limit the scope of that election to only those Electronic Image exchanges with other Members subject to the same agreement or clearing house Rule:

Comment: As a general matter, a Member's election to have its exchanges not subject to Section XIX(O) is applicable to all of its exchanges of Electronic Images with all other Members. The exception to this general rule is when a Member is required to make the election, or not make the election as the case may be, under a clearing house rule (other than these Rules), or agreement with other Members. In that situation, a Member may (at its option) limit the scope of its election to those other Members that are similarly governed by such agreement or clearing house Rule:

Rule: Notwithstanding any other provision in Section XIX(O), a Sending Bank does not make the warranty in Section XIX(O)(2) with respect to an Electronic Image if the Related Physical Check or an image of the Related Physical Check was first deposited into, or received by, a foreign office of a non-U.S. bank or a foreign office of a U.S. bank.

Comment: The warranty in Section XIX(O)(2) does not apply to an Electronic Image if the Related Physical Check or an image of the Related Physical Check was first deposited into, or received by, a foreign office of a non-U.S. bank or a foreign office of a U.S. bank. This excludes from the warranty items received at a foreign office of a bank and transferred to a correspondent Sending Bank in the United States for collection. This express exception to the Rule is necessary in order to treat correspondent items received from a bank outside the United States the same as correspondent items received from banks in the United States. Correspondent items that are first deposited in a bank in the United States are excluded from the warranty in Section XIX(O)(2) because the warranty only applies to a Sending Bank that is also the Depository Bank. A Sending Bank that receives an item from another bank in the United State for collection is a collecting bank, not the bank of first deposit/depositary bank. By comparison, under check law, a Sending Bank (acting as U.S. correspondent bank) that receives an item from a foreign office of a bank is viewed as the bank of first deposit/depositary bank on the item. (See Commentary to Section 229.2(o) of Regulation CC). The warranty in Section XIX is not intended to apply to a Sending Bank when acting as correspondent, regardless of the location of the bank from which the Sending Bank receives the item.

Rule: A Sending Bank that is also the Depository Bank and any subsequent Sending Bank warrants to a Receiving Bank and any other Receiving Bank that subsequently receives the Electronic Image in a subsequent image exchange governed under the ECCHO Rules that is the Paying Bank that, with respect to an Electronic Image that is exchanged under these Rules: (a) the signature of the purported drawer of the Related Physical Check is not forged or otherwise unauthorized, and (b) the Related Physical Check is not counterfeit.

Comment: This warranty has the effect of making ~~the a~~ Sending Bank responsible, in certain situations subject to the preconditions set forth in this Rule, for losses related to the forged or unauthorized signature of the purported drawer. Under check law, the Paying Bank typically would be responsible for the validity of the signature of its drawer customer, without recourse to the Depository Bank.

Comment: In all cases, the warranty under this Section XIX(O) only applies if the first Sending Bank is also the Depository Bank with respect to the item. Assuming the Sending Bank is also the Depository Bank, the warranty under Section XIX(O)(2) is made by each ECCHO Member Bank in a forward exchange of an Electronic Image up to a Paying Bank that is also an ECCHO Member Bank. This-The Section XIX(O)(2) warranty is ~~only~~ provided by (i) a Sending Bank that is also the Depository Bank and (ii) and subsequent Sending Bank. The warranty is made to (a) the ~~to a first~~ Receiving Bank that receives the Electronic Image from the Sending Bank that is the Depository Bank, and (b) any subsequent Receiving Bank that subsequently receives the Electronic Image in an exchange governed under the ECCHO Rules. is also the Paying Bank. If a Receiving Bank ~~(that is not the Paying Bank)~~ receives an Electronic Image from a Sending Bank, and then converts that Electronic Image to a substitute check for delivery to another bank, the warranty provided under Section XIX(O)(2) does not apply to either exchange, since the Paying Bank was not a Receiving Bank under these Rules. However, if the Sending Bank (which is also the Depository Bank) exchanges an Electronic Image with an intermediary Receiving Bank (such as a collecting bank), and that collecting bank then exchanges the Electronic Image with the Receiving Bank that is also the Paying Bank, the Section XIX(O)(2) warranty would apply to that Electronic Image.

Comment: If a bank (including a bank that is a Member of ECCHO) receives a substitute check from another bank (including a bank that is a Member of ECCHO), either through another clearing house or in a direct exchange of paper items between the banks, that Receiving Bank will not receive the Section XIX(O)(2) warranty even if the substitute check was created from an Electronic Image originally exchanged under the Rules.

Comment: A Paying Bank should send the warranty claim directly to the Depository Bank that first transferred the Electronic Image under the Rule, even if the Paying Bank received the Electronic Image from an intermediary collecting bank.

Rule. When the Sending Bank that is also the Depository Bank makes the warranty under Section XIX(O)(2), a paying bank that receives the Electronic Image in a subsequent exchange governed under the rules of a Licensed Entity is an intended third party beneficiary of the warranty by such Sending Bank.

Comment: There are other entities, such as other clearing houses, that have licensed the ECCHO Rules for adoption under their rule sets. These entities are called Licensed Entities under the ECCHO Rules. Exchanges subject to the rules of a Licensed Entity are not directly subject to the ECCHO Rules, although the terms of the Licensed Entity's rules are identical or substantially the same as the ECCHO Rules. This rule is intended to permit a paying bank that is a member of a Licensed Entity, and has received the check image in an exchange governed under the rules of the Licensed Entity, to make a claim directly back to the Depository Bank that exchanged the Electronic Image initially under the ECCHO Rules. It is expected that the rules of the Licensed Entity will have a similar provision that provides for third party beneficiary status for ECCHO Members that are paying banks of Electronic Images that are first exchanged under the rules of the Licensed Entity.

Rule: The customer completes, signs and delivers a written statement under penalty of perjury (the "Customer's written statement") for each Electronic Image or substitute check, specifying in reasonable detail, that (A) the signature of the purported drawer of the Related Physical Check is forged or otherwise unauthorized, and/or (B) the Related Physical Check is counterfeit, and, if applicable returns such substitute check to the Paying Bank.

Comment: The first condition under the Section XIX(O) warranty for liability of the Depository Bank is completion of a Customer's written statement. The Customer's written statement should set forth the factual basis that the signature of the customer is forged or unauthorized, or the check is a counterfeit. The information from the statement provides the basis for the Paying Bank's claim to the Depository Bank that the warranty under Section XIX(O)(2) has been breached, and therefore a warranty claim is appropriate.

Rule: A Section XIX(O)(2) warranty claim is made for an Electronic Image by the Paying Bank by delivering (i) the Electronic Image, (ii) a paper copy of the front and back of such Electronic Image, or (iii) a substitute check created from such Electronic Image to the Depository Bank with a notation of "Breach of Warranty" and/or "Do Not Redeposit or Re-Present" or with similar language or reason code.

Comment: The second condition under the Section XIX(O) warranty for liability of the Depository Bank is the Paying Bank's delivery of the warranty claim to the Depository Bank. The Section XIX(O)(2) warranty claim is made by delivery of the Electronic Image, a paper copy of such Image or a substitute check to the Depository Bank. A Paying Bank may use a return process of a clearinghouse or otherwise to deliver the Section XIX(O)(2) warranty claim to the Depository Bank. However, the delivery of the Section XIX(O)(2) warranty claim is not a return (for purposes of these Rules or other applicable check law) of the underlying item to which the warranty claim relates. A Paying Bank may use a reason code that appropriately reflects that the item (either Electronic Image or paper reproduction) is being sent as a warranty claim.

Rule: The available amount on deposit in the account of the customer of the Depository Bank is equal to or greater than the amount of the warranty claim on at least one day during the period beginning on the day that the claim is

delivered to the Depository Bank and ending on the day which is the earlier of (A) one day before the Depository Bank delivers the Disclaimer Form to the Paying Bank or (B) up to 15 Business Days following receipt of the warranty claim by the Depository Bank.

Comment: The third condition under the Section XIX(O) warranty for liability of the Depository Bank relates to the available amount of funds on deposit in the account of the customer. The Depository Bank is not liable under the Section XIX(O)(2) warranty claim if there are not funds in the account of the depositing customer sufficient to cover the amount of the warranty claim, during the applicable time period described in the Rule: However, if sufficient funds are in the customer's account, the Depository Bank is liable to the Paying Bank for a warranty claim even if the Depository Bank chooses not to charge the amount of the warranty claim to the customer's account, or if the Depository Bank is unable for any legal reason to charge the customer's account for the warranty claim. A Depository Bank is only required to review the balance of funds in its customer's account once during the relevant period to determine whether or not this condition is satisfied.

Rule: Within 15 Business Days of receipt of a request from the Depository Bank for a copy of the Customer's written statement, the Paying Bank shall deliver to the Depository Bank at a place specified in the request a copy of the Paying Bank Customer's written statement.

Comment: A Depository Bank is not required for each warranty claim to request a copy of the Customer's written statement for review. Depending on the situation, a Depository Bank may determine whether to pay or disclaim a warranty claim based on information in its own records.

Rule: If the Depository Bank has a defense under Section XIX(O)(1), (2), (3) or (4), or has a UCC Defense, the Depository Bank may deliver to the Paying Bank a Disclaimer Form attached to the warranty claim within 15 Business Days of receipt of the claim.

Comment: For example, if a Depository Bank has previously elected not to have its exchanges subject to Section XIX(O), and receives a warranty claim from a Paying Bank under Section XIX(O)(3), the Depository Bank may disclaim this warranty claim. The Rule does not establish specific burdens of proof or types of evidence that a Depository Bank must have in order to establish a defense under this Rule or the UCC. The Depository Bank and the Paying Bank are encouraged to use good faith and fair dealing in investigating, resolving and processing claims and disclaimers of warranty claims.

Rule: A Depository Bank that fails to deliver a Disclaimer Form attached to the warranty claim within the time period and in accordance with the requirements prescribed in Section XIX(O)(5) thereafter waives any right to refuse the warranty claim.

Comment: The Depository Bank would have to settle funds for the warranty claim, if the Depository Bank fails to deliver the Disclaimer Form in compliance with the Rule: The Depository Bank cannot make a late disclaimer of the warranty claim. A Depository Bank that fails to deliver a Disclaimer Form on a timely basis would be barred from bringing an action against the Paying Bank outside of these Rules alleging that it is not responsible for the losses arising from the warranty claim on the basis that the Paying Bank is responsible under other check law for an unauthorized or forged drawer customer's signature.

Rule: A Paying Bank that receives a Disclaimer Form may not return the Electronic Image (or a substitute check created from such Electronic Image) or otherwise resubmit the warranty claim to the Depository Bank. The Paying Bank may pursue its warranty claim directly with the Depository Bank outside of the process specified in Section XIX(O)(3).

Comment: The process for making a warranty claim under this Rule must only be used once by the Paying Bank with respect to a particular Electronic Image received from the Depository Bank. This is to prevent warranty claims and disclaimers moving back and forth between the banks without resolution. A Paying Bank could seek to bring a court action or other action outside of these Rules to enforce its Section XIX(O)(2) warranty claim against the

Depository Bank. In such a court or other action, the Paying Bank would have to establish that each of the preconditions in Section XIX(O)(3) for liability of the Depository Bank were satisfied at the time of the first warranty claim was processed under this Rule:

Rule: A Depository Bank's authority to debit the account of its customer in which the Electronic Image or Related Physical Check subject to the warranty under Section XIX(O)(2) was deposited for some or all of such warranty claim is governed by applicable law, including the agreement of the Depository Bank and its customer.

Comment: Because the Rule does not provide authority to debit the account of a customer, a situation may arise where the Depository Bank has to pay the amount of the warranty claim to the Paying Bank under this Rule, but the Depository Bank is unable to recover the funds for such claim from its customer that deposited the check. If sufficient funds are in the customer's account, the legal inability or refusal to recover from the customer is not a defense of the Depository Bank to a warranty claim.

Rule: Unless a specific delivery location is agreed to by the Depository Bank, the Paying Bank shall deliver a Section XIX(O)(2) warranty claim to any location of the Depository Bank at which the Depository Bank receives returns of checks or Electronic Images from the Paying Bank in the normal course of check collection.

Comment: The Paying Bank and the Depository Bank may agree to a specific delivery location and format for processing Section XIX(O)(2) warranty claims. For example, a Depository Bank may want all warranty claims to be in paper form (substitute check or paper copy of the image) and to be delivered to the Depository Bank through a specific paper-check clearing house. As noted above, the delivery of the Section XIX(O)(2) warranty claim to the Depository Bank is not a return of the underlying check or Electronic Image to which the warranty claim relates. If the Paying Bank seeks to use a return process of a paper-check clearing house to deliver the Section XIX(O)(2) warranty claim, the Paying Bank should confirm that the clearing house allows a Section XIX(O)(2) warranty claim to be delivered through such clearing house.

Rule: Unless a specific delivery location is agreed to by the Paying Bank, the Depository Bank shall deliver a disclaimer of a warranty claim to any location of the Paying Bank at which the Paying Bank receives checks or Electronic Images from the Depository Bank in the normal course of paper check collection.

Comment: The delivery of the Disclaimer Form, and the attached warranty claim, to the Paying Bank does not constitute the presentment or forward exchange for purposes of these Rules or other applicable check law of the substitute check or Electronic Image to which the attached warranty claim relates. Rather, the delivery of the Disclaimer Form (and attached warranty claim) acts only as a disclaimer of the Section XIX(O)(2) warranty claim. A Depository Bank should take reasonable and appropriate steps to clearly mark or otherwise identify the Disclaimer Form, and the attached warranty claim, so they are not treated by the Paying Bank as the forward presentment of the item. It is contemplated that a Depository Bank would use the adjustment process of a clearing house or other correspondent to deliver the Disclaimer Form to the Paying Bank.

Rule: Settlement for the warranty claim and any disclaimed warranty claim shall be made by appropriate crediting of the due to account maintained by one Member with another Member, by Fedwire transfer from the one Member to the other Member, through a settlement system operated by another clearing house that permits payment of this type of claim, or in such other manner as may be agreed upon by the two Members.

Comment: As noted above, the delivery of a Section XIX(O)(2) warranty claim and/or a Disclaimer Form (with the related warranty claim attached) does not constitute the return of the underlying check/Electronic Image or the forward presentment of such item. Rather, the delivery is a method of processing the warranty claim and the resulting disclaimer of the warranty claim. However, it is contemplated that Members may use the same settlement processes that they use for settling funds arising from the exchange of Electronic Images in order to settle funds payable as a result of the warranty claim and the disclaimer of such warranty claim. Members that are settling funds through a clearing house settlement process should confirm that the clearing house permits settlement of Section XIX(O)(2) warranty claims.

Rule: If the Depository Bank breaches the warranty set forth in Section XIX(O)(2), the amount of the warranty claim by the Paying Bank shall not exceed the amount of the Electronic Image. If the Depository Bank's breach of warranty results in whole or in part from the Paying Bank's failure to exercise ordinary care or act in good faith, the Depository Bank's liability shall be reduced in proportion to the amount of negligence or bad faith attributable to the Paying Bank.

Comment: The liability of a Depository Bank for breach of the Section XIX(O)(2) warranty is limited to the amount of the Electronic Image to which the warranty claim relates. This Rule includes a comparative negligence provision that is similar to the comparative negligence provision established for other warranties provide by a Sending Bank to a Receiving Bank under Section XIX(L) of the Rules when exchanging Electronic Images. (See Section XIX(L) and related Commentary.)

Rule If the Paying Bank receives the Electronic Image from a Receiving Bank that is not the Depository Bank, the Paying Bank may only bring a warranty claim under this Section XIX(O)(2) by delivering the warranty claim directly to the Sending Bank that is also the Depository Bank. A Receiving Bank that is not the Depository Bank shall reject any warranty claim that is delivered to it by a Paying Bank.

Comment. This rule establishes the procedure for a Paying Bank to make a warranty claim under Section XIX(O) when the Electronic Image was presented to it by a bank other than the Depository Bank. That is, there is at least one collecting bank in the forward exchange collection of the Electronic Image to the Paying Bank. The Paying Bank is required to go directly to the Depository Bank to make the warranty claim under Section XIX(O). An intermediary collecting bank that handled the Electronic Image as a Sending Bank in the forward collection of the Electronic Image may reject the warranty claim that is incorrectly sent to it by a Paying Bank. Since the intermediary Sending Bank does not have the relationship with the depositing customer, this bank is not in a position to evaluate or resolve a Section XIX(O) warranty claim.

Rule. Subject to the conditions and limitations on liability in subsections (3)-(11) of Section XIX(O), the Sending Bank that is also the Depository Bank shall be obligated for losses arising from the breach of the Section XIX(O)(2) warranty (i) to a Paying Bank under these Rules, or (ii) to a paying bank under the rules of a Licensed Entity.

Comment. This rule establishes that the Sending Bank that is also the Depository Bank is liable to two different categories of paying banks under Section XIX(O) for warranty claims. First, assuming the requirements of the warranty claim are met, the Depository Bank is liable to a Paying Bank that is also an ECCHO Member. Second, assuming the requirements of the warranty claim are met, the Depository Bank is liable to a paying bank that receives the Electronic Image (and the Section XIX(O) warranty) under the rules of a Licensed Entity. As explained in the commentary above to Section XIX(O)(2), a paying bank under the rules of a Licensed Entity is an expressed third party beneficiary of the Section XIX(O) warranty made by the Depository Bank under these ECCHO Rules. This third party beneficiary status is intended to provide the legal basis for a warranty claim by a paying bank that is not otherwise directly subject to the ECCHO Rules. The Depository Bank should honor valid warranty claims from both types of paying banks.

Rule. If the initial exchange of the Electronic Image by the depository bank was under the rules of a Licensed Entity, the Paying Bank must bring the Section XIX(O)(2) warranty claim under the rules of the Licensed Entity and subject to the conditions of the warranty claim process set forth in the rules of the Licensed Entity.

Comment. It is expected that the rules of a Licensed Entity will include a provision that establishes that the Paying Banks under the ECCHO rules are third party beneficiaries of the Section XIX(O) warranty made by a depository bank

under the rules of a Licensed Entity. Such a provision in the rules of the Licensed Entity will allow Paying Banks under the ECCHO Rules to bring a claim against a depository bank that exchanged the Electronic Image under the rules of the Licensed Entity. Accordingly, for a check image that is first exchanged under the rules of a Licensed Entity, this rule states that a Paying Bank under the ECCHO Rules must make a warranty claim back to the depository bank that first exchange the electronic image under the rules of a Licensed Entity. The Paying Bank should not make the warranty claim to the Sending Bank (acting as a collecting bank) that presented the Electronic Image to the Paying Bank.

XX. ELECTRONIC/IMAGE RETURNS (CONTINUED)

C. Eligibility for Electronic/Image Return.

- (1) *An Originally Received Item is eligible to be returned by an Electronic/Image Return under this Section XX if: (i) the Originally Received Item, or the item to which the Originally Received Item relates, is a “check” under Section 229.2(k) of Regulation CC; (ii) Originally Received Item, if it is an Electronic/Image Return, is a Fully Qualified Item” of the Rules; (iii) the Returning Member is returning the Originally Received Item in accordance with the time limitations and other requirements of applicable law, (iv) the Returning Member and the Returnee Member have entered into an agreement permitting Electronic/Image Returns, and (v) the return of the Originally Received Item via Electronic/Image Return is permitted under that agreement. With respect to the requirement in Section XX(C)(ii), a Returnee Member and a Returning Member may under their image exchange agreement permit the return of Electronic/Image Returns of items that are not fully qualified.*

If any character anywhere in the MICR line of an item is unreadable, i.e., the Sending Bank's capture system discerns the presence of a character but cannot interpret it and so designates the character with an asterisk or other non-alphanumeric symbol, the item shall not be considered Fully Qualified for purposes of Section XX(C)(1)(ii).

If two Members have entered into an agreement pursuant to Section XX(C)(1) to permit the return of Electronic/Image Returns of items that are not fully qualified, the provisions for exchange of partially qualified items set forth in Section XIX(C) shall apply to such agreement of the parties.

COMMENT TO SECTION XX(C)

With respect to the fully qualified requirement in Section XX(C)(ii), Section I of the Rules states that a "fully qualified item" is an item which has full-field MICR encoding (i.e., routing transit number ~~and, when encoded, account number, amount field, on-us field, auxiliary on-us field and EPC field, and, when encoded, the serial number and process control field~~).

Comment: Section XX(C)(ii) establishes a default rule that requires an item to be a "fully qualified item" in order to be eligible for return as an Electronic/Image Return. This Rule also provides that a Returnee Member and a Returning Member may alter this default rule by separate agreement, and thereby exchange Electronic/Image Returns of items that are not fully qualified. By cross reference in Section XX(C)(1), Section XIX(C) sets forth the provisions that are applicable to this agreement of the Members to return items that are not fully qualified. For example, if a Returnee Member determines that it will not under any circumstances need to produce a substitute check from an Electronic/Image Return received from a Returning Member, the Returnee Member may decide that it is willing to accept an Electronic/Image Return of the item that is not fully qualified.

XX. ELECTRONIC/IMAGE RETURNS

D. Electronic/Image Returns.

- (1) Electronic/Image Returns Generally. An Electronic/Image Return must clearly indicate ~~(i) that it is a return under the ECCHO Electronic/Image Return Rules; and (ii) that it is a return and the~~ reason for return. An Electronic/Image Return also must include the indorsement of the Returning Member and identification of the Paying Bank in accordance with applicable law.
- (2) Image Return. An Image Return must be an accurate representation of the front and back of the Related Physical Check.
- (3) Electronic Message Return. An Electronic Message Return must include (i) the name and routing number of the Paying Bank; (ii) the name of the payee(s), if provided to the Returning Member ; (iii) the amount of the Originally Received Item; (iv) the date of the indorsement of the depository bank (if provided); (v) the account number of the customer(s) of the depository bank, if provided to the Returning Member; (vi) the branch name or number of the depository bank from its indorsement, if provided to the Returning Member; (vii) the trace number associated with the indorsement of the depository bank; (viii) any other information required by the format utilized for the Electronic Message Return; (ix) any other information required under applicable law.
- (4) Return Reasons. A Returning Member is not required to indicate all applicable return reasons under Section XX(D)(1) that the Electronic Image is not subject to posting at that time or may not post upon representment of the Electronic Image or Related Physical Check to the Returning Member under the Rules or otherwise. If the Electronic Image or Related Physical Check (to which the Electronic/Image Return relates) is represented to the Returning Member under these Rules or otherwise, the Returning Member may return that Electronic Image or Related Physical Check for the previously unindicated return reason or any other applicable return reason, provided the return is timely and otherwise complies with these Rules and applicable law.
- (5) Return Routing. This subsection does not apply in a situation where (i) a Returning Member is returning an Electronic Image solely on the basis of an Administrative Reason, or (ii) a Collecting Bank is handling an Electronic Image prior to presentment of the Electronic Image. In the event that a Returning Member returns an Electronic Image, either as an Electronic/Image Return under Section XX or as a returned substitute check, the Returning Member shall comply with the following provisions in handling such returned item:

- a) *If a Depository Bank is identified in the Electronic Indorsement, the Returning Member shall return the item to the Depository Bank. If there is more than one Depository Bank indicated by an Electronic Indorsement, the Returning Member shall return to the Depository Bank in accordance with the newest (last appearing) Electronic Indorsement.*
 - b) *If the Depository Bank is not identified in the Electronic Indorsement, the Returning Member shall return the item to the Depository Bank that is identified in the Depository Bank's indorsement printed on the back of the Electronic Image.*
 - c) *If the Depository Bank is not identified in the Electronic Indorsement and the Depository Bank is not identified in an indorsement printed on the back of the Electronic Image or such printed indorsement is illegible, the Returning Member shall return the item in accordance with the oldest (first appearing) Electronic Indorsement of a Collecting Bank identified with an Electronic Indorsement.*
 - d) *If the Electronic Image cannot be returned in accordance with subsections D(5)(a) through (c), the Returning Member shall return the item to the Returnee Member that originally sent the Electronic Image to the Returning Member.*
- (6) *As an alternative to handling the return of an item in conformance with Section XX(D)(5), the Returning Member may return the item to a bank that has agreed to act as a returning bank, in conformance with Regulation CC, Sections 229.30 and 229.31.*
- (7) *A Returning Member may handle the return of an Electronic Image based on an Electronic Indorsement in conformance with Section XX(D)(5), notwithstanding the existence of a different indorsement of a Depository Bank or Collecting Bank that is physically printed on the back of the Electronic Image.*
- (8) *In the event that the Returning Member is returning the Electronic Image in accordance with Section XX(D)(5)(c) or (d) either as an Electronic Image/Return under Section XX or as a*

substitute check, the Returning Member is not required to provide an advice or notice to the Returnee Member that the Depository Bank indorsement was illegible, as otherwise required under Regulation CC, Section 229.30(b).

XX(D). COMMENTARY

Rule: An Electronic/Image Return must indicate that it is a return ~~under the ECCHO Electronic/Image Return rules.~~

Comment: The purpose of this requirement is to alert the Returnee Member and all subsequent bank and non-bank parties interested in the Originally Received Item that the item is a return ~~is governed by the ECCHO Electronic/Image Return Rules.~~ Also, Regulation CC requires a Paying Bank to clearly indicate on the face of a return item that it is a return item (Regulation CC, Section 229.30(d)). A Returning Member can satisfy this requirement through the use of an overlay on the Electronic Image itself or by including appropriate return reason codes and information in the electronic file, information sent with the Electronic Image in conformance with applicable industry standards for electronic image returns.

Rule: An Electronic/Image Return must indicate the reason for return.

Comment: Regulation CC requires a Paying Bank returning an item to clearly indicate on its face the reason for return (Regulation CC, Section 229.30(d)). The Electronic/Image Return is subject to this requirement. To ensure that this return reason identified by the Paying Bank remains on the return item throughout its return to the depository bank, a Returning Member other than the Paying Bank must include this reason for return on the Electronic/Image Return it transmits or otherwise provides to a Returnee Member. The Electronic/Image Return formats provide for various return reason codes for the Electronic/Image Return. It is recommended that a represented Originally Received Item indicate any indorsements relating to the original presentment or exchange to assist in tracking and research.

Rule: An Electronic/Image Return must include the indorsement of the Returning Member.

Comment: Regulation CC requires the Returning Member to include its indorsement on returned checks (Regulation CC, Section 229.35(a)). The Electronic/Image Return is subject to this requirement. The Returning Member must place its indorsement on or with the Electronic/Image Return in accordance with the requirements of Regulation CC (Regulation CC, Section 229.35).

Rule: An Image Return must be an accurate representation of the front and back of the Related Physical Check.

Comment: In addition to this requirement that the Image Return be an accurate representation of the front and back of the Related Physical Check, the Returning Member also warrants that the Image Return is an Acceptable Copy of Related Physical Check (please see Section XX(J)(3) and the related Commentary). A Returnee Member that ~~is not the Paying Bank and~~ has received an Image Return under this Section XX that does not meet the requirements of this rule would be indemnified by the Returning Member transmitting or otherwise providing the Image to the Returnee Member (please see Section XX(J)(1)).

Rule: An Electronic Message Return must include: the name and routing number of the Paying Bank; the name of the payee(s) if provided to the Returning Member; the amount of the Originally Received Item; the date of the indorsement of the depository bank (if provided); the account number of the customer(s) of the depository bank if provided to the Returning Member; the branch name or number of the depository bank from its indorsement if provided to the Returning Member; the trace number associated with the indorsement of the depository bank; any other information required by the format utilized for the Electronic Message Return; and any other information required under applicable law.

Comment: This Section prescribes the information that must be included in the Electronic Message Return. The first seven informational items are required under Regulation CC (Regulation CC, Sections 229.30(f) and 229.31(f)). In addition to these Regulation CC-required informational items, the Electronic Message Return also must include any additional information required by the format utilized by the Returning Member or applicable law. Certain of these informational items will be available to the Returning Member only if provided to the Returning Member, and therefore the Returning Member must include these informational items in the Electronic Message Return only if it has received this information. The Returning Member and Returnee Member can vary these informational items by agreement, provided the Paying Bank's and depository bank's respective customers also have agreed to any variation in the

informational items provided to them. If there is no variation in the informational items provided to the customer, there is no need to obtain the agreement of that customer. For example, if the depository bank agrees with the Paying Bank that the Paying Bank will not provide certain of the specified information but the depository bank provides that information to its customer from other sources, the depository bank customer need not agree to the variation in the information provided by the Paying Bank.

Rule: A Returning Member is not required to indicate all applicable return reasons under Section XX(D)(1) that the Electronic Image is not subject to posting at that time or may not post upon representation of the Electronic Image or Related Physical Check to the Returning Member under the Rules or otherwise.

Comment: This Rule provides that a Returning Member is not required to indicate all return reason codes potentially applicable to a particular Electronic/Image Return. For example, a Returning Member may return an Electronic Image as an Electronic/Image Return in the event the Electronic Image does not meet certain technical or quality screens at the Returning Member, such as insufficient image quality for posting. In certain cases, there may be other reasons that the Returning Member could have returned of the same Electronic Image, such as "account closed" or "NSF" reasons.

If there is more than one potential reason for the return, the Returning Member may in its discretion, consistent with the general practices of that Returning Member, determine which return reason to place on an Electronic/Image Return.

Rule: If the Electronic Image or Related Physical Check (to which the Electronic/Image Return relates) is represented to the Returning Member under these Rules or otherwise, the Returning Member may return that Electronic Image or Related Physical Check for the previously unindicated return reason or any other applicable return reason, provided the return is timely and otherwise complies with these Rules and applicable law.

Comment: If an Electronic Image (or a Related Physical Check) is subsequently re-presented to a Returning Member, the Returning Member may return the item for any applicable reason, including a return reason that the Returning Member was aware of at the time it returned the first Electronic/Image Return.

Rule: In the event that a Returning Member determines to return an Electronic Image, either as an Electronic Image/Return under Section XX or as a returned substitute check outside of these Rules, the Returning Member shall comply with Section XX(D)(5) in handling such returned item.

Comment: The purpose of this rule is to establish a hierarchy among Electronic Indorsements and indorsements on the back of an Electronic Image. Paying Banks and other returning banks will follow the hierarchy when handling the return of an Electronic Image exchanged under these Rules. It is recognized that following the hierarchy set forth in Section XX(D)(5) may result in the handling of a return in a manner that is different than if the Paying Bank had routed the return only in accordance with indorsements on the back of the Electronic Image. This Rule is intended to facilitate banks' use of, and reliance upon, Electronic Indorsements and the ability of banks to process returns on a more automated basis, without reviewing indorsements that are printed on the back of the Electronic Image.

This Rule applies to any return of an Electronic Image that is exchanged under the ECCHO Rules between two Members, even if the return is handled as a paper substitute check and not as an Electronic/Image Return under Section XX of the ECCHO Rules. The ECCHO Rules do not generally govern the exchange or return of paper substitute checks. In this instance, because the original forward exchange of the Electronic Image was under the ECCHO Rules, it is appropriate for the ECCHO Rules to establish a rule governing how the return should be handled, including the bank to which the return should be sent by a Paying Bank. In the event a substitute check is used to return an Electronic Image, banks should recognize that the rules of another check collection system may impose additional requirements on the return.

In certain cases, a Sending Bank and a Receiving Bank and/or Paying Bank may have previously entered into an exchange agreement or a business practices agreement that expressly sets forth return instructions for Electronic Images exchanged by these banks. In such a situation, the express agreement of the banks regarding the handling of returns would govern over the Electronic Indorsements and the hierarchy of return handling set forth in Section XX(D)(5). (See Section XX(F)(2) which permits Members to agree to return locations in connection with a return.)

If a Returning Member handling the return fails to comply with the return hierarchy established by this Rule XX(D)(5), and a subsequent Returnee Member incurs a loss (such as the Depository Bank), the Member incurring the loss may have a claim under the ECCHO warranty in Section XX(J)(1) under which each Returning Member warrants that it has complied with the ECCHO Rules.

Rule: This subsection does not apply in the situation (i) where a Returning Member is returning an Electronic Image solely on the basis of an Administrative Reason, or (ii) where a Collecting Bank is handling an Electronic Image prior to presentation of the Electronic Image.

Commentary: The return hierarchy set forth in this subsection does not apply to the handling of a return that is being returned solely because of an Administrative Reason. A Paying Bank should handle the return for an Administrative Reason in accordance with any agreement with the Sending Bank, the agreement or procedures of the exchange network through which the Paying Bank received the Electronic Image, applicable check law, or other practice that the Paying Bank has developed with the Sending Bank. This return hierarchy rule only applies when a Paying Bank is returning an Electronic Image/Return or a substitute check created from an Electronic Image. As a result this return hierarchy also does not apply to a Collecting Bank when returning an Electronic Image back to a Sending Bank before the Electronic Image is presented to the Paying Bank. In these situations, the Collecting Bank will typically return the Electronic Image to the Sending Bank with a request for the Sending Bank to fix the problem associated with the Electronic Image or file of Electronic Images and then re-send the image file to the Collecting Bank.

Rule: A Returning Member may handle the return of an Electronic Image based on an Electronic Indorsement in conformance with Section XX(D)(5), notwithstanding the existence of a different indorsement of a Depository Bank or Collecting Bank that is physically printed on the back of the Electronic Image.

Comment: This Rule establishes that a bank (such as a Paying Bank or a Returning Member) may rely solely on the Electronic Indorsement of prior Collecting Banks and the Depository Bank when handling a return of a previously exchanged Electronic Image. Provided the bank making the return complies with Section XX(D)(5), the Returning Member may handle the return without reviewing the indorsement on the back of an Electronic Image. In the event of a conflict between the routing number in the Electronic Indorsement and the routing number in the indorsement on the back of the Electronic Image, the Returning Member may rely solely on the information in the Electronic Indorsement.

Rule: As an alternative to handling the return of the item in conformance with Section XX(D)(5), the Returning Member may return the item to a bank that has agreed to act as a returning bank, in conformance with Regulation CC, Sections 229.30 and 229.31.

Comment: This Rule recognizes that as an alternative to handling the item in conformance with Section XX(D)(5), a Returning Member may return the item to another bank that has agreed to handle the return. A Returning Member returning an Electronic Image in this manner would not conform to the hierarchy for returns as set forth in the hierarchy of returns in Section XX(D)(5). This type of return is expressly recognized in Regulation CC. In these cases, the bank agreeing to handle the return may follow the hierarchy of returns in Section XX(D)(5) or may instead look only to the indorsements on the back of the Electronic Image or substitute check for routing of the return. For example, if a Paying Bank that is an ECCHO Member returns its items by delivering unqualified substitute checks to the Federal Reserve Bank for processing, this Rule recognizes that the Paying Bank has not violated the requirements of Section XX(D)(5). The Federal Reserve Bank may apply its own routing rules when qualifying the substitute check for return to the Depository Bank.

Rule: In the event that the Returning Member is returning the Electronic Image in accordance with Section XI(D)(5) either as an Electronic Image/Return under Section XX or as a substitute check, the Returning Member is not required to provide an advice or notice to the Returnee Member that the depository bank indorsement was illegible, as otherwise required under Regulation CC, Section 229.30(b).

Comment: This Rule waives the requirement under Section 229.30(b) of Regulation CC that a bank making a return notify the bank to which the return is made that the Depository Bank indorsement on the item is illegible. Based on survey of Members, it is standard practice for banks to return an image or substitute check back to the bank that presented the items (a "return to source") when the bank of first deposit indorsement is illegible. Banks making these types of returns are not typically providing any sort of notice to the other bank of the illegible indorsement. Accordingly, this Rule is meant to codify current industry practice for handling items with illegible indorsements.