

## ECCHO Rules Dispute Resolution Escalation Policies and Procedures

1. Overview – ECCHO will provide an avenue for Members to escalate issues before using the Dispute Resolution Procedures as defined in the ECCHO rules or initiating litigation for alleged violations of the ECCHO Rules. Dispute Resolution Procedures are an alternative to litigation where a neutral person(s) (the arbitrator) hears and decides the parties' dispute. Dispute Resolution under Section XIV of the ECCHO Rules may offer two significant advantages over more traditional court litigation:
  - a. Dispute Resolution may be substantially cheaper for the parties; and
  - b. The arbitrators will likely have more expertise than a judge and/or jury in the technicalities of the check image collection and return processing and systems generally and the ECCHO Rules specifically.

In certain cases, escalation or Dispute Resolution may identify issues or ECCHO Rule interpretations that ECCHO may determine would be informative for other Members or that necessitate a revision and/or clarification to the ECCHO Rules.

Dispute Resolution initiation is voluntary; however when one Member requests Dispute Resolution Procedures under the ECCHO Rules, the other Member involved must participate in such Dispute Resolution.

ECCHO escalation or Dispute Resolution is based on the ECCHO Rules. The ECCHO Rules incorporate UCC and Regulation CC by reference, so it is possible that some disputes will involve the UCC and/or Regulation CC as applicable under the ECCHO Rules.

The Dispute Resolution Procedures in the ECCHO Rules are an ECCHO specific arbitration process according to the process set forth in the ECCHO Rules. This ECCHO specific Dispute Resolution process is not governed under the American Arbitration Association (except for disputes involving three or more Members in which the dispute will be submitted to the AAA). The terms "Dispute Resolution Procedures" and "arbitration" are used synonymously in these Escalation Policies and Procedures.

2. Pre- Dispute Resolution – Under the ECCHO Rules all Members are required to initially make a good faith attempt to resolve any issue relating to the ECCHO Rules. An opportunity to resolve an issue without the need for Dispute Resolution exists, so prior to beginning official Dispute Resolution proceedings, ECCHO will ensure the following steps have been completed:
  - a. Confirm that a good faith attempt to resolve the matter between the parties has taken place before contacting ECCHO for assistance. This may include:
    - i. Contacting the other Member directly in resolving the matter during the normal course of business, including adjustments, phone and email communications, demand letters, etc.

- ii. Consulting ECCHO resources including ECCHO Rules, Frequently Asked Questions, etc.
    - iii. Consulting other payment resources including UCC 3 and 4 and Regulation CC.
  - b. Notify ECCHO by providing the information required for a “Notice of Potential ECCHO Rules Dispute” (See below for required information)
    - i. ECCHO will notify all parties involved that a matter is being escalated.
3. Pre-Dispute Resolution Escalation Policies based on Type of ECCHO Membership
- a. For Disputes with Members with direct ECCHO Operations Committee Representation: All Full Members and Participating Members and some Sponsored Members have direct ECCHO Operations Committee representation. ECCHO will contact the Operations Committee contact of the Member receiving the complaint with the facts of the matter as ECCHO understands them. The Operations Committee contact will identify the appropriate individual and department within their organization and request assistance in resolving the matter. The Operations Committee contacts at all organizations involved in the dispute will escalate within their organizations, as needed.
  - b. For Disputes with Members with ECCHO Board Representation: Most Full Members and some Sponsoring Organizations have ECCHO Board representation. If the matter is not able to be resolved through the Operations Committee representative, ECCHO will escalate to the Board Member contacts of all parties involved in the complaint, as applicable.
  - c. For Disputes with Sponsored Members with ECCHO Operations Committee Representation: Some Sponsored Members have ECCHO Operations Committee representation. If the matter is not resolved through the Operations Committee representative of the Sponsored Member, ECCHO will escalate to the Sponsored Member’s Sponsoring Organization’s ECCHO Operations Committee representative of all parties involved in the complaint, as applicable.
  - d. For Disputes with Sponsored Members without ECCHO Operations Committee Representation: Most Sponsored Members do not have direct ECCHO Operations Committee representation and are represented on the Operation’s Committee through their Sponsoring Organization. ECCHO will contact the Sponsoring Organization’s Operations Committee contact of the Sponsored Member receiving the complaint with the facts of the matter as ECCHO understands them. The Sponsoring Organization’s Operations Committee contact will identify the appropriate individual and department within the Sponsored Member and request assistance in resolving the matter. The contacts at all organizations involved in the dispute will escalate within their organizations as appropriate.

- e. For Disputes with Associate Members: ECCHO will reach out to the Associate Member's contact as established in ECCHO's records who is receiving the complaint with the facts of the matter as ECCHO understands them. Associate Member's contact will identify the correct individual and department within the Associate Member and request assistance in resolving the matter. The contacts at all organizations involved in the dispute will escalate within their organizations, as appropriate.
- f. For Disputes with CHECCS Participants (The Clearing House): Some CHECCS Participants are not members of ECCHO but have ECCHO Rules coverage through The Clearing House Licensing agreement with ECCHO; these participants do not have direct ECCHO Operations Committee representation and are represented on the Operation's Committee through TCH. ECCHO will contact TCH's Operations Committee contact of the Participant receiving the complaint with the facts of the matter as ECCHO understands them. TCH's Operations Committee contact will identify the appropriate individual and department within the Participant and request assistance in resolving the matter. The contacts at all organizations involved in the dispute will escalate within their organizations as appropriate.

4. Estimated Amount of Loss<sup>1</sup> –

In order to bring a dispute under Section XIV of the ECCHO Rules, a Member has to allege to have suffered a monetary loss. To implement the escalation procedures the amount of the loss (if applicable) is determined by these procedures.

- a. For Disputes with Monetary Losses - The amount of the loss is determined by the applicable provisions in the ECCHO Rules<sup>2</sup>, UCC or Regulation CC as they relate to the issue being raised. For example, under the ECCHO Rules some indemnifications are full indemnifications including all losses (i.e. § XIX(L)), while others may be limited to certain amounts; for example, the amount of notification to the Receiving Bank's customers (i.e. § IX(C)). The Dispute Resolution section of the ECCHO Rules does not impose any new liabilities on Members beyond what is already stated in the ECCHO Rules.

More than one item/check image may be included in calculating the amount of the claim, provided that:

- i. All items involved in the claim relate to the same potential dispute under the ECCHO Rules;

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<sup>1</sup> The ECCHO Rules do not specifically state that the Member must have paid the loss either to a customer or another member in order to file a claim.

<sup>2</sup> For reference, the sections of the ECCHO rules that provide indemnifications are: § III(C)(1) & (2) – Repair of Item, § IX(C) – Data Security Electronic Image Information, § XV(I) – Image Exchange and Return of Imperfect Image Items, § XIX(D)(2) – Provision of Electronic Image of Eligible Item, § XIX(L) - Indemnity for Breach of Sending Bank Warranties, § XIX(M) - Indemnity for Breach of Receiving Bank Warranties, § XIX(Q) - Sending Bank Responsibility for Check 21 Liability incurred by Receiving Bank, § XX(D)(9) – Electronic/Image Returns, § XX(G)(5) – Electronic Message Return In Lieu Of Return Of Related Physical Check, § XX(J) - Indemnity for Breach of Returning Member Warranties, § XX(K) - Indemnity for Breach of Returnee Member Warranties and § XX(L) - Returning Member Responsibility for Check 21 Liability incurred by Returnee Member.

- ii. The items are part of the same facts and circumstances giving rise to the alleged loss; and
- iii. The items were presented to the paying bank or returnee member within a contiguous five (5) business day period.

The escalation procedures will not provide any monetary award. The determination of a potential amount of loss is only being used to limit the number of potential disputes that might use the escalation procedures. For a monetary award, the Members involved in the dispute would need to settle the matter among themselves or bring a Dispute Resolution under the ECCHO Rules or court action.

- b. For Disputes without Monetary Losses - Other ECCHO Rules disputes may occur that do not involve financial loss. These disputes are typically handled by the receiving Member regardless of the effort or considerations involved in resolving the matter. These disputes may include among others: bad quality items, returns sent to a bank that is not the depository bank (not our item) or lack of full field MICR data. While these disputes may not involve monetary losses, the effort involved in resolving these issues should not be underestimated. These escalation procedures may be used to help resolve chronic reoccurrences of these matters. It must be for the same disputed matter and with the same bank. If a Member experiences these types of ECCHO Rules disputes where the other Member appears to be disregarding the ECCHO Rules, they can invoke the escalation procedures.

Specifically defining a quantitative measurement did not seem possible, based on the sizes of various institutions within the ECCHO membership. Members are encouraged to initially determine appropriate levels before implementing the escalation procedures for disputes without monetary loss.

- 5. Notice of Potential Rules Dispute – Any Member claiming to have suffered a loss (as defined above) due to an alleged failure by another Member to follow the ECCHO Rules or experiencing a chronic disregard for the ECCHO Rules by one (or more) other Member(s), may escalate the matter, provided that:
  - a. The Member registering the complaint has attempted to resolve the matter as set forth in Section 2 above;
  - b. The complaint is submitted to ECCHO no later than one year after the date of the initial transaction; and
  - c. The amount (as defined above and if applicable) of the potential claim is greater than \$250 or is an alleged chronic violation of an ECCHO Rule.

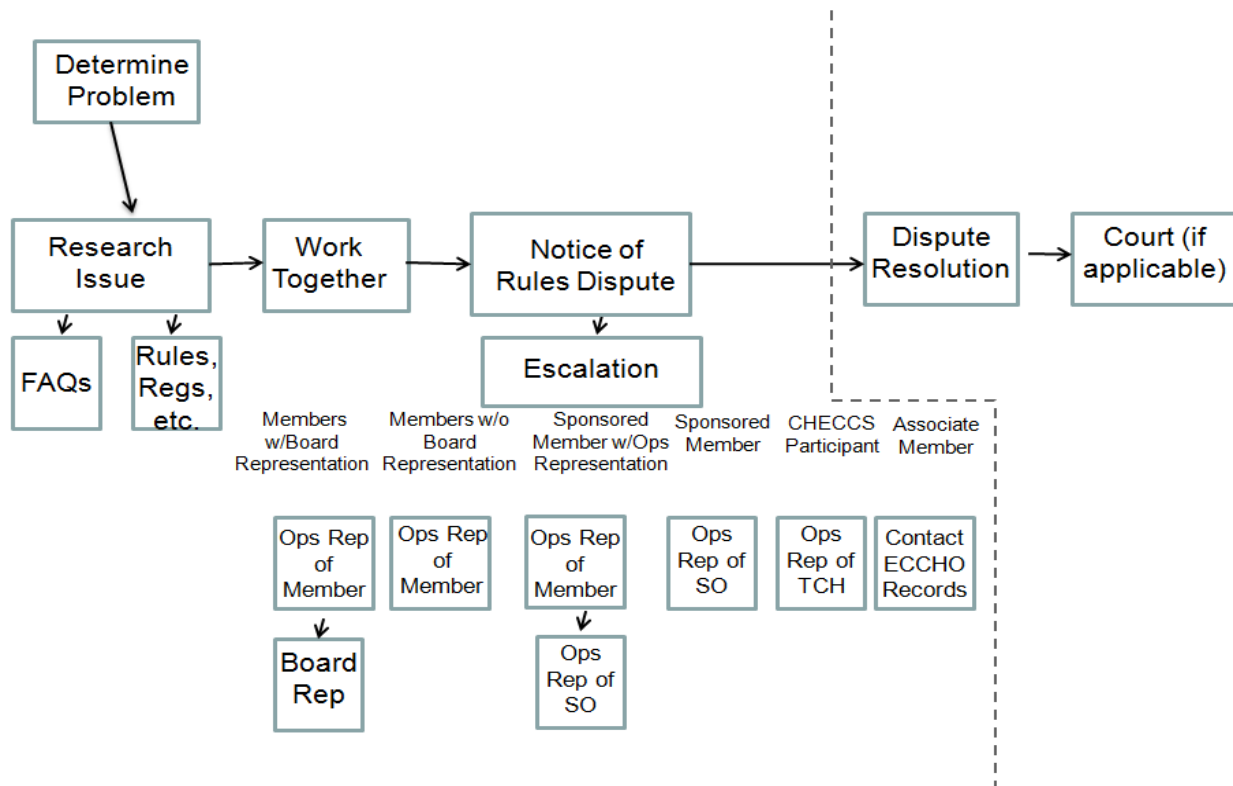
There is no established minimum timeframe for asserting pre-disputes before bringing a claim to ECCHO under this Section 5, however ECCHO reserves the right to reject a complaint, if it does not appear that a good faith attempt (as described in Section 2 above) to resolve the matter was made.

A Member seeking to use these escalation procedures must submit the information below, including any supporting documentation, electronically to [DisputeResolution@eccho.org](mailto:DisputeResolution@eccho.org) or send it to ECCHO, attn Dispute Resolution, 3710 Rawlins Street, Suite 1075, Dallas, TX

75219. Supporting documentation submitted to ECCHO, must be signed by the Member registering the complaint and shall contain the following information:

- a. The name(s) of all Member parties involved in the issue;
- b. A statement of the facts involved in the dispute;
- c. The section(s) of the ECCHO Rules and/or other references in the UCC and/or Regulation CC in dispute;
- d. Identifying information and all available copies of the transaction(s) involved;
- e. The exact nature of the applicable ECCHO Rules dispute;
- f. The sequence of events involved, including dates of events;
- g. A statement of the estimated damages suffered (if any) by the Member escalating the dispute and an explanation of how the dispute caused the estimated damages indicated; and
- h. A summary of all efforts made to resolve the dispute including any written communications between the Members.

6. Pictorial Representation of Escalation Policy – The below shows a pictorial representation of the flow of the escalation policy.



## **Notice of ECCHO Rues Dispute Information Requirements Checklist**

The information below is intended to alert ECCHO of an ECCHO Rules dispute escalation between two or more Members. ECCHO will then work with the Members in an attempt to resolve the matter prior to a need for Dispute Resolution (Section XIV of the ECCHO Rules) or court action. When ECCHO receives this information about a potential ECCHO Rules dispute, ECCHO staff will contact all parties, as set forth above, who are indentified as being involved in the matter to explain the process and work with them to ensure that all reasonable avenues of resolution are explored.

### **1. Please send the following information to ECCHO:**

Please mail or email this information and accompanying documentation to:

Mail: ECCHO  
Attn: Dispute Resolution  
3710 Rawlins Street, Suite 1075  
Dallas, TX 75219

Email: [DisputeResolution@eccho.org](mailto:DisputeResolution@eccho.org)

If you need further assistance, please contact (214) 273-3200.

### **2. Disputing Member Information:**

- a. Disputing Bank
- b. Contact Name, Email address, Phone number

### **3. Description of the Dispute:**

- a. A statement of the facts involved in the dispute
- b. The section(s) of the ECCHO Rules and/or other references in the UCC and/or Regulation CC in dispute
- c. Identifying information and all available copies of the transaction(s) involved
- d. The exact nature of the applicable ECCHO Rules dispute
- e. The sequence of events involved including dates of events
- f. A statement of the estimated damages (if any) suffered by the Member escalating the dispute and an explanation of how the dispute caused the estimated damages indicated,
- g. A summary of all efforts made to resolve the dispute including any written communications between the Member parties

### **4. Respondent Information:**

- a. The name(s) of all Members involved in dispute
- b. Contact information including email address and phone number for a contact person at each party to the dispute who would have the most information about the dispute