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INTRODUCTION TO THE ECCHO OPERATING RULES

Participation and exchange under these ECCHO Operating Rules (“Rules”) are voluntary. Members are not required to exchange Electronic Checks or Electronic Returned Checks. Members can decide in which programs they will participate. However, once a Member agrees with another Member to exchange under the Rules, those exchanges must comply with the Rules.

Under the ECCHO Rules for electronic check exchange, the Sending Bank images the physical check and captures electronic information from the MICR line of the check to create an Electronic Check (consisting of both the Image and the Electronic Information from the check). In other cases, the Sending Bank obtains the Electronic Check from its customer (in remote deposit capture) or another bank (in correspondent exchanges). The Sending Bank sends the Electronic Check to the Receiving Bank to collect the item. The Receiving Bank only receives in the normal course an Electronic Check; the physical check is not provided to the Receiving Bank. The Rules also provide rules with respect to such matters as what items are eligible to be exchanged pursuant to the ECCHO Rules and permissible MICR repair.

Under ECCHO Rules, the Electronic Check (consisting of the Electronic Information and Image) must be provided or made available to the Receiving Bank by the applicable deadline designated by the Receiving Bank. Presentment is deemed to occur when both the Electronic Information and the Image are received at or made available to the Paying Bank. The Rules also cover such matters as indorsement, status of the Electronic Check and Electronic Returned Check under the Uniform Commercial Code (“Code”), transmission of Electronic Checks, storage and retrieval of the physical check, and certain warranties and indemnifications. Regulation CC imposes additional warranties and obligations on banks when transferring and returning Electronic Checks.

The ECCHO Rules also apply to the use of Electronic Checks to create substitute checks which are governed by the Check Clearing For The 21st Century Act (Check 21 Act) and the Federal Reserve’s Regulation CC. These Rules provide recourse for a bank that creates a substitute check to a prior bank when the bank creating the substitute check incurs liability under the Check 21 Act and Regulation CC as a result of an act or omission of the prior bank. It also provides an expedited recredit right for the bank that created the substitute check to mirror the expedited recredit claim that may be made against that bank under the Check 21 Act and Regulation CC.

The Rules also address Electronic Returned Checks. The Code and Regulation CC allow banks to agree to return items electronically. Under the Electronic Returned Check section, a returning member may send an Electronic Returned Check to return an original check, an Electronic Check or substitute check in connection with the return process. These Rules cover such matters as third party agents, eligibility for Electronic Returned Checks, status of Electronic Returned Checks, the return process, re-presentment of the Electronic Returned Check, and certain warranties and indemnifications. Regulation CC imposes additional warranties and other obligations on banks when returning Electronic Returned Checks.

A data security rule provides a warranty from the Sending Bank to the Receiving Bank that it has established and implemented appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of check exchange data. If there is a breach of data security for Electronic Check data the Sending Bank will notify the Receiving Bank and if the Receiving Bank must notify its customers, the Sending Bank indemnifies the Receiving Bank for the direct costs of that notification.

The Rules leave a number of matters to bilateral or multilateral agreements between participating banks, such as the determination of the time for transmitting or delivering Electronic Checks and Electronic Returned Checks and settlement for items, and adjustments.
INTRODUCTION TO THE ECCHO OPERATING RULES (CONTINUED)

The commentary provided after each of the Rules is designed to assist banks participating, and banks considering participating, in ECCHO to better understand and utilize the Rules. The commentary does not impose an independent obligation on a Member separate from the related Rule. To the extent of any inconsistency between the Rules and this commentary, the Rules take precedence. To the extent of any inconsistency between the Rules or the commentary and this Introduction, the Rules or commentary take precedence.

ECCHO Rules may be amended from time to time. The version of the ECCHO Rules in effect at the time of Electronic Check exchange or Electronic Returned Check return under the ECCHO Rules will govern that particular transaction.

Style Note: In places where the ECCHO Rules or Commentary use the term “and/or” between two or more terms or clauses, this “and/or” indicates that the meaning of the sentence applies equally to each term or clause in the sequence of terms or clauses. “And/or” is used where it may be possible that all of the terms or clauses apply or only certain terms or clauses may apply to the situation at hand. This means that “and/or” can be read to mean “both” (if referring to two items) and “all” (if referring to more than two items) or “any” or “either”, as applicable.

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OPERATING RULES

I. DEFINITIONS

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

A. Adjustment Claim. A claim for an adjustment made under Section XII.

B. Adjustment Provider. A check clearinghouse, an Electronic Check exchange or network, or other check processing service provider that has agreed to provide in accordance with the Rules handling and/or settlement services in connection with Adjustment Claims.

C. 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 Check exchanged under these Rules:

   (1) poor quality image – Image is unreadable or the Image is unusable (such as an unusable Image caused by a non-standard TIFF tag);
   
   (2) Not Our Item;
   
   (3) ineligible item – the Related Physical Check was not eligible for exchange under the Rules;
   
   (4) blank or missing image – the Image record does not contain an Image;
   
   (5) mismatched MICR – the Image does not match MICR information in the related Electronic Information for the Electronic Check or Electronic Returned Check; or
   
   (6) duplicate item - Electronic Check is a duplicate of another Electronic Check or item.

D. Archive. A facility of the Sending Bank and/or the Receiving Bank, or a Third-Party Agent of the Sending Bank and/or the Receiving Bank, that stores Images or Electronic Checks for and makes them available to the Receiving Bank and/or the Sending Bank.

E. As-Read MICR Information. The MICR line information obtained from an automated scanning or reading of a Related Physical Check or an Image of the Related Physical Check, without repair, modification, or manual keying of the MICR line information. The only allowable characters for inclusion in As-Read MICR Information are numeric and the special symbols allowable in MICR line under applicable industry standards.

F. Available Amount. The available funds in a customer’s account defined as “Available for Withdrawal” in Section 229.2(d) of Regulation CC or as further specified by the bank’s agreement with its customer.
OPERATING RULES

I. DEFINITIONS (CONTINUED)

G. Banking Day. Any Business Day on which the Receiving Bank or Sending Bank, as the case may be, is open to the public during any part of such day for carrying on substantially all of its banking functions.

H. Business Day. A calendar day, other than a Saturday, Sunday or a legal holiday on which the bank is closed.

I. Canadian Correspondent Bank. A bank or other member of Payments Canada engaged in business in Canada which receives the Image of a Canadian Item from the Gateway Receiving Bank for further exchange and/or payment in Canada. The Canadian Correspondent Bank also may be the Canadian Paying Bank.

J. Canadian Item. An item denominated in U.S. or Canadian dollars eligible for exchange as an Image to a Canadian Paying Bank under Canadian Law.

K. Canadian Law. Any law, statute, rule or regulation of a Canadian governmental authority, any binding court decision or interpretation or order of a Canadian governmental authority, and the rules and standards of Payments Canada that are applicable to the Canadian Item, an Image of the Canadian Item or a person or financial institution with an interest in the Canadian Item or an Image of the Canadian Item.

L. Canadian Paper Return Item. A paper item, created by a Canadian Paying Bank or a Canadian Correspondent Bank from a previously presented or exchanged Image of a Canadian Item, which is returned to a Gateway Receiving Bank or any Member. The term Canadian Paper Return Item includes without limitation an “Image Printout,” a “Return Replacement Document” (RRD) or a “Clearing Replacement Document” (CRD), as those three terms are defined under Canadian Law.

M. Canadian Paying Bank. A bank or other member of Payments Canada engaged in business in Canada to which the Image of the Canadian Item is sent for payment or at which the Canadian Item is payable through or at.


O. Claimant Bank. A Member or other bank that has agreed to the Rules and meets the Regulation CC definition of a “Claimant Bank”.

P. Clearing House. The facility utilized by the Organization as a clearing house for the exchange of eligible items between Members as provided for in these Rules.


R. Depositary Bank. The first depository institution (as defined in Section 19(b) of the Federal Reserve Act) to take an item for collection other than the Paying Bank.
I. DEFINITIONS (CONTINUED)

S. **Director of the ECCHO Business Line or Director.** The current head or director of the Organization.

T. **ECCHO Business Committee or Business Committee.** The committee established by the TCH Managing Board in connection with the operation of the Organization and pursuant to the TCH LLC Agreement and ECCHO Business Committee Charter. The Business Committee is responsible for certain activities in connection with the management of the Organization, including the adoption of, and maintenance of, the Rules.

U. **ECCHO Business Committee Charter or ECCHO Charter.** The document adopted by the TCH Managing Board which governs the operation of the ECCHO Business Committee.

V. **Electronically-Created Item.** This term shall have the meaning as defined in Section 229.2(hhh) of Regulation CC. An Electronically-Created Item is not an Electronic Check or an Electronic Returned Check for purposes of these Rules.

W. **Electronic Check.** This term shall have the meaning as defined in Section 229.2(ggg) of Regulation CC.

X. **Electronic Indorsement.** An electronic record associated with an Electronic Check or Electronic Returned Check that identifies the Routing Number of the bank that handled such Electronic Check or Electronic Returned Check. An Electronic Indorsement shall conform to Regulation CC and applicable industry standards for the use of electronic indorsements in check image collection. The Electronic Indorsement may be contained in the Electronic Information associated with an Electronic Check or Electronic Returned Check.

Y. **Electronic Information.** Electronic information describing the Electronic Check or the Electronic Returned Check exchanged or returned under Section XIX (for Electronic Checks) or Section XX (for Electronic Returned Checks) and the agreement of the sending Member and receiving Member applicable to such exchange or return. This Electronic Information may be included or associated with the Image of the Electronic Check/Electronic Returned Check or sent separately from the Image. The Electronic Information shall include information from the MICR line of the Related Physical Check or the Image and the Electronic Indorsements, in accordance with the Rules, Regulation CC and applicable industry standards.

Z. **Electronic Returned Check.** This term shall have the meaning as defined in Section 229.2(ggg) of Regulation CC. For purposes of Section XVIII and the Rules made applicable by Section XVIII, this term includes an Image of a Canadian Item that is being returned to a Sending Bank (the Returnee Member).

AA. **Exchange Provider.** A facility, other than the Clearing House, utilized by two or more Members for the exchange of Electronic Checks and/or Electronic Returned Checks between Members as provided for in these Rules. An Exchange Provider may be an electronic switch, data archive or network that provides for the
OPERATING RULES

I. DEFINITIONS (CONTINUED)

exchange of Electronic Checks and/or Electronic Returned Checks between Members.


CC. **Fully Qualified Item.** An item which has full-field MICR encoding (i.e., Routing Number and, when encoded, amount field, on-us field, auxiliary on-us field and EPC field.)

DD. **Gateway Receiving Bank.** The Receiving Bank that sends the Image of a Canadian Item to a Canadian Correspondent Bank.

EE. **Group Adjustment Claim.** An Adjustment Claim that relates to more than one Electronic Check or Electronic Returned Check, or more than one bundle of such items, in a single file or cash letter of items sent for forward exchange or return. The items in a Group Adjustment Claim do not have to be sequential and do not have to be within the same bundle. The items in a Group Adjustment Claim shall:

1. be from the same cash letter,
2. have the same transaction date, and
3. have the same adjustment reason for all items.

FF. **Image.** An electronic image derived from the Related Physical Check that conforms to applicable industry standards for electronic check exchange, as amended from time to time. For purposes of Section XVIII and the Rules made applicable by Section XVIII, this term includes an electronic image of a Canadian Item.

GG. **Image Ledger Cutoff Time.** A time of day established by the Receiving Bank after which any Image or Electronic Information received by the Receiving Bank is deemed to be received at the opening of the Receiving Bank’s next Banking Day.

HH. **Imperfect Image Item.** An Electronic Check or an Electronic Returned Check that is flagged in accordance with Section XV(D) and contains any of the following:

1. an Image which does not conform to industry standards for electronic image exchange,
2. an Image which does not pass agreed upon image quality standard edits for exchange as an Electronic Check or an applicable exchange agreement; or
3. an Image of a Photocopy or an Image of an item in a carrier that does not otherwise qualify for exchange or return under Sections XIX(C)(6) or XX(C).
I. DEFINITIONS (CONTINUED)

II. Licensed Entity. A clearing house or other entity listed at Exhibit II to which the Electronic Check Clearing House Organization has licensed the right to use these Rules.

JJ. Magnetic Ink Character Recognition Line or MICR line. This term shall have the meaning as defined in Regulation CC.

KK. Member. Depository institution, as defined in Section 19(b) of the Federal Reserve Act, that has executed a membership agreement with the Organization and has been accepted by the Organization as a Member. To the extent that the term is used in a Rule that is also applicable to exchanges under the rules of a Licensed Entity, the term also includes a participant in that exchange.

LL. Not Our Item (NOI). For presentment of an Electronic Check, the Electronic Check received by a Receiving Bank that contains a Routing Number that does not belong to the Receiving Bank or an institution authorized to process the Electronic Check for the Receiving Bank. For an Electronic Returned Check, the Electronic Returned Check was returned and charged to an entity other than the Depository Bank, the Depository Bank’s agent or any Collecting Bank in the forward collection of the same item.

MM. Organization or ECCHO. The business line of TCH that is responsible for the maintenance of the Rules and certain other services and functions related to check image exchange.

NN. Originally Received Item. The Related Physical Check or Electronic Check, as applicable, that was originally received by the Returning Member, and is returned by a Returning Member by means of an Electronic Returned Check.

OO. Paying Agent. Set forth in 31 C.F.R. Section 321(i) of the U.S. Treasury Department’s regulations.

PP. Paying Bank. A Receiving Bank by, at or through which an Electronic Check is payable as drawn or accepted and to which the Electronic Check is presented by a Presenting Bank pursuant to these Rules.

QQ. Photocopy. A legible paper copy of the front and back of the Related Physical Check that contains a legend, signed by the bank creating the photocopy, that guarantees the validity of the copy. This legend on the photocopy shall be in accordance with general banking industry practice for the creation and exchange of a photocopy of a check.

RR. Presenting Bank. A Sending Bank that presents an Electronic Check received for collection to a Paying Bank pursuant to these Rules.

SS. Receiving Bank. A Member to which the Electronic Check is sent by a Sending Bank pursuant to these Rules.
OPERATING RULES

I. Definitions (Continued)

TT. Receiving Bank’s Acknowledgement. An acknowledgement provided by the Receiving bank to the Sending bank for an Electronic Check received by the Receiving Bank from the Sending Bank.

UU. Reconvertsing Bank. A Member or other bank that has agreed to the Rules and meets the Regulation CC definition of a “Reconvertsing Bank”.

VV. Regulation CC. Regulation CC of the Board of Governors of the Federal Reserve System (12 CFR Part 229).

WW. Related Physical Check. The original paper item from which an Image and/or Electronic Information is derived. This may include a substitute check.

XX. Remotely Created Check. The term “remotely created check” shall have the meaning as defined in Section 229.2(fff) of Regulation CC.

YY. Representative(s). A representative of a Member or Sponsoring Organization on the ECCHO Business Committee.

ZZ. Returnee Member. The depository institution to which the Electronic Returned Check is returned by the Returning Member pursuant to these Rules. The Returnee Member may be the Depositary Bank or any other Member Bank, other than the Paying Bank.

AAA. Returning Member. The depository institution returning the Electronic Returned Check to the Returnee Member pursuant to these Rules. The Returning Member may be the Paying Bank or another Member Bank, other than the Depositary Bank.

BBB. Routing Number. This term shall have the meaning as defined in Regulation CC.

CCC. Rules. These operating rules as amended from time to time.

DDD. RNA Partial MICR Information. The MICR line information for the complete Routing Number and the amount fields obtained from a Related Physical Check or an Image of the Related Physical Check.

EEE. Savings Bond. A savings bond that:

(1) is eligible under the Fed Quick Reference Guide and Federal Reserve Operating Circular No. 3 for redemption by means of a transmission of an image of the savings bond to a Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department); and

(2) has been accepted for payment and redemption by a Member acting as a Paying Agent, and that Member is in compliance with all applicable regulations and guidelines of the Bureau of the Fiscal Service of the U.S. Treasury Department.
OPERATING RULES

I. Definitions (continued)

FFF. Sending Bank. A Member that sends an Electronic Check to a Receiving Bank pursuant to these Rules.

GGG. Sending Bank’s Acknowledgement. An acknowledgement provided by the Sending Bank to the Receiving Bank for an Electronic Check made available (but not transmitted or otherwise provided) to the Receiving Bank by the Sending Bank.

HHH. Sponsoring Organization. An organization that:

1. is comprised primarily of Members that are depository institutions (as defined in Section 19(b) of the Federal Reserve Act) or whose primary business involves the provision of services to depository institutions,

2. is accepted as a Sponsoring Organization by the Director of the Organization and

3. has executed a Sponsoring Organization Agreement with the Organization.

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

JJJ. Third Party Agent. A bank or nonbank, including without limitation an Archive, that the Sending Bank or Receiving Bank utilizes to perform one or more of the functions provided for in these Rules.

KKK. Transmitted Customer Data. Data contained in Electronic Checks, Electronic Returned Checks, and other electronic data that contains information relating to another Member’s customers.

LLL. UCC Defense. A UCC Defense is one or more of the following defenses which must be proven by the Depositary Bank:

1. that the signature of the purported drawer of the Related Physical Check is effective under applicable law,

2. that such drawer is precluded under applicable law from asserting the making of a forged or otherwise unauthorized signature against either the Paying Bank or the Depositary Bank who, in good faith paid the Related Physical Check or Electronic Check (as applicable) or took it for value or for collection, or

3. that by clear and convincing evidence, the Paying Bank failed to use ordinary care (as that term is defined in Section 3.103(a)(7) of the UCC in dealing with the Electronic Check that is the subject of the warranty in Section XIX(O).

MMM. TCH. The Clearing House Payments Company L.L.C.
I. DEFINITIONS (CONTINUED)

NNN. TCH LLC Agreement. The Limited Liability Company Agreement of The Clearing House Payments Company L.L.C.

OOO. TCH Managing Board. The Board of Managing Directors of TCH.

Unless the context requires otherwise, the terms not defined in this Section or in other Sections of the Rules have the meanings set forth in Regulation CC.
I. COMMENTARY

Comment: Key terms used in the Rules are defined in this Section. These definitions generally will be discussed further in the context of the commentary following the particular sections of the Rules in which these defined terms are used. A few definitions merit discussion at this point. The Rules define a Depositary Bank as the first depository institution to take an item for collection other than the Paying Bank. A Depositary Bank may, but will not necessarily, be an ECCHO Member or the Sending Bank. The Rules define a Presenting Bank as an ECCHO Member that presents items received for collection to a Paying Bank pursuant to the Rules. A bank is a Presenting Bank if it meets that definition, even if it does not indorse the items presented but merely delivers them without sorting or processing to the Paying Bank. An electronic file exchanged by Members can include a single Electronic Check or multiple Electronic Checks. The Electronic Information for an Electronic Check shall contain information from the MICR line of the item in accordance with the Rules, Regulation CC and applicable industry standards. For example, two Members may agree pursuant to Section XIX(C) that the Sending Bank does not have to include all the MICR line information from the item in the Electronic Information. The Rules define a Paying Bank as the Member by, at or through which an item is payable as drawn or accepted and to which the item is presented by the Presenting Bank.

The terms Sending Bank and Receiving Bank are used in these Rules to clarify that two ECCHO Members may exchange Electronic Checks under these Rules when the ECCHO Member sending the Electronic Checks is not the Presenting Bank with respect to such items and the other ECCHO Member receiving the items is not the Paying Bank with respect to such items. For example, an ECCHO Member may be a correspondent bank for one or more non-ECCHO Member banks. These non-ECCHO Member banks may have designated the ECCHO Member as their correspondent bank to receive, from sending ECCHO Members, Electronic Checks drawn on the non-ECCHO Member banks. In such a situation, the ECCHO Rules would govern the exchange of these items between the two ECCHO Members. However, the ECCHO Rules would not establish the rules governing the exchange of Electronic Checks between an ECCHO Member and a non-ECCHO Member bank. The relationship between the ECCHO Member and the non-ECCHO Member bank would be governed by the correspondent agreements, deposit agreements, applicable check law, and/or an exchange agreement between the ECCHO Member and the non-ECCHO Member bank. See Commentary to Section II(B) for additional discussion of parties bound by the ECCHO Rules.

Comment: “Administrative Reason”: The existence of an administrative reason with respect to a particular Electronic Check does not control whether a Paying Bank may or may not handle the item as a return or an adjustment of the item. The facts and circumstances will determine the handling of the item as either a return or an adjustment. The Paying Bank must evaluate these facts and circumstances and determine how to handle the item. In particular, the fact that an Electronic Check has an administrative reason associated with it does not qualify the item for return, if the midnight deadline under the UCC for return of such item has otherwise passed. Nothing in the ECCHO Rules extends or waives the midnight deadline for administrative reason items. Accordingly, items that have been presented, and for which the midnight deadline has passed and for which Regulation CC timely return requirements are not satisfied, should be handled as an administrative reason adjustment, provided that the applicable conditions for an adjustment claim are met. In many cases, an Electronic Check with an administrative reason associated with it will result in a possible warranty claim against the Sending Bank by the Receiving Bank. For example, an unusable image may result in a warranty claim by the Receiving Bank under the Electronic Check warranty in Regulation CC that the image accurately represents all of the information from the front and back of the original check.

In certain cases, an Electronic Check that has an administrative reason associated with it will not be deemed presented to the Paying Bank because the Electronic Check did not meet the requirements of presentment. For example, if the electronic cash letter file does not contain an Image (blank or missing image) then the item is not deemed presented to the Paying Bank. In other cases, presentment of an Electronic Check will occur, notwithstanding the existence of an administrative reason associated with that Electronic Check. For example, a duplicate Electronic Check and an Electronic Check with a mismatched MICR (but drawn on the Paying Bank identified in the MICR line information) will both meet the requirements for presentment under the ECCHO Rules.
I. COMMENTARY (continued)

Comment: With respect to the definition of “As-Read MICR Information” in Section I(E), the only non-numeric special symbols that are currently allowed under applicable industry standards for MICR lines are the forward slash, the dash, and the asterisk (indicating that the MICR character was unreadable or unrecognizable).

Comment: The definitions of “Claimant Bank” and “Reconverting Bank” are drafted to limit their scope to Members or other banks that have agreed to the Rules that also meet the definition of “Claimant Bank” and “Reconverting Bank,” as defined in the Check Clearing for the 21st Century Act. The term “substitute check” is not defined in this Section, and is instead defined for these purposes in Regulation CC.

Comment: “Electronic Indorsement”. For example, in the ANSI X9.100-187 standard, the Depository Bank’s Electronic Indorsement is contained in the Check Detail Addendum A Record (also referred to as the “Type 26 Record”) and the Collecting Bank’s Electronic Indorsement is contained in the Check Detail Addendum C Record (also referred to as the “Type 28 Record”).

Comment: With respect to “Imperfect Image Item” definition, examples of images of items that do not conform to industry standards for electronic check exchange include items in which: (1) the Related Physical Check represented in the image is mutilated, unreadable or obscured; (2) the image of the Related Physical Check or information on the image is partially or completely unreadable, obscured or blacked-over; (3) the front and/or back image is blank (no visible image of the Related Physical Check) because the data for the front and/or back of the image is not available or readable from the image file; and (4) the MICR line of the Related Physical Check represented in the image is partially or completely unreadable, obscured or blacked-over. An image is not “blank” if there is no image file present or if the image of the item in the file has been replaced with an image of a non-check document that indicates that the image of the item was not available. (The replacement document is sometimes called a “sorry document”). An image of a “sorry document” is not an Imperfect Image Item, and is therefore not eligible for exchange under Rule XV governing exchange of Imperfect Image Items. An image containing mis-matched MICR or a “piggy-back” image is also not considered an Imperfect Image Item for permissible exchange under this Rule. An image of a Photocopy is eligible for exchange as an Imperfect Image Item. Certain images of items in carriers also qualify as an Imperfect Image Item if the image of the carrier containing the item is unreadable or the image does not meet industry standards for check image processing. However, other images of items in carriers may qualify for standard Electronic Check and Electronic Returned Check exchanges under Sections XIX(C)(6) and XX(C) of the ECCHO Rule.

Comment: Regarding the definition of a “Photocopy”, the ECCHO Rules do not establish the specific requirements for the legend that must be placed on the Photocopy guaranteeing that it is a valid copy of the original check. Rather, a bank may use the same legend that the bank places on photocopies in traditional paper check exchange. For example, the Federal Reserve Operating Circular establishes a legend requirement for photocopies of checks that are exchanged through a Federal Reserve Bank. In addition, various paper check clearing houses have established by rules and industry practice requirements for the legend that banks use when creating and exchanging photocopies of checks. Typically, these legends include a statement that the original check is missing or lost, that the bank guarantees the validity of the copy and any missing indorsements, and that the bank holds the paying bank harmless from payment of the photocopy and the original check.

Photocopies are eligible for electronic check exchange under the ECCHO Rules as Imperfect Images in order to assist the financial services industry in collecting all or most paper items through the check image system, recognizing that transportation network for physical delivery of paper items is more expensive and/or being shut down with migration to a single check processing region in the United States. In adopting a rule to address exchange of photocopies, it is recognized that a bank should only create an image of a photocopy of a check where it is not practicable or possible for operational or legal reasons for the bank to create a substitute check or a traditional Electronic Check of the original check for exchange. For example, this would include a situation where the original check is damaged or all information required for creation of a substitute check is not available. A bank should not submit into electronic check exchanges governed by the ECCHO Rules images of photocopies of checks in the regular course of business as an alternative payment product or alternative method of exchange. ECCHO does not endorse or authorize such a
I. COMMENTARY (continued)

practice. Rather, banks are encouraged and expected to use Electronic Checks derived from original checks and/or substitute checks for exchange where possible.

Comment: “Electronic Information” is the electronic information describing the item from which the Image was created. This will include the MICR line data from the Related Physical Check and any electronic indorsements that are subsequently added by the banks handling the Electronic Check or Electronic Returned Check. The Electronic Information and the Image (together constituting the “Electronic Check”) are sent by the Sending Bank to the Receiving Bank for collection or presentment under these Rules. Banks, networks and clearinghouses may use different types of technology and processing models to create and send the Electronic Information associated with an Image. Under some electronic check exchange models, the Electronic Information may be logically or technically associated with the Image (such as within the same electronic file containing the Image or the Electronic Check). In such models, the Electronic Check (containing both the Electronic Information and the Image) are sent and received by the participating banks at the same time. In other models, the Electronic Information is in a separate electronic file from the Images of the items that are described in such Electronic Information. In those cases, the Sending Bank may send the Electronic Information before or after sending the Images.

Comment: A number of the Sections of the ECCHO Rules outside of Sections XIX and XX apply to Members when acting in either a Sending Bank/Receiving Bank capacity or a Returnee Member/Returning Member capacity. For example, the ECCHO Rules relating to adjustments apply to Members for their electronic check exchange/return activities under both Sections XIX and XX. In these ECCHO Rules of general applicability, the terms “sending Member” and “receiving Member” are occasionally used in the Rules to differentiate which Member is receiving or sending the Electronic Check or Electronic Returned Check in the context of a forward exchange (governed under Section XIX) or a return of the Electronic Returned Check (governed under Section XX).

Comment: Definition of “Not Our Item”/“NOI”: The ECCHO Rules do not at this time impose any unique requirements on a Bank’s handling of an NOI in a forward exchange of an Electronic Check. When handling returns of Electronic Returned Checks generally, including a return that results from an NOI, the Receiving Bank handling the return should handle it in compliance with the return hierarchy established in Section XX(D)(5) and the rule established in Section XX(D)(9).

Comment: The item being returned electronically as an Electronic Returned Check under Section XX is called the “Originally Received Item.” The Originally Received Item is the item which has been sent to the Receiving Bank. It could be the physical item negotiated by the drawer to the payee or a substitute check created from an image of the physical item (defined as the Related Physical Check) or an Electronic Check. The forward collection and presentment of the Originally Received Item is not addressed in Section XX, but rather is governed under other law (Section XIX of the ECCHO Rules, clearing house rules, Federal Reserve Operating Circulars, etc.).

Comment. “Electronically-Created Item” is defined by reference to the definition of that same term under Regulation CC. While this term is defined in the ECCHO Rules for certain explanatory purposes, an Electronically-Created Item is not an Electronic Check or an Electronic Returned Check for purposes of these Rules, and an Electronically-Created Item is not eligible for exchange under these Rules. Regulation CC defines an “Electronically-Created Item” (also known as an “ECI”) as an electronic image that has all the attributes of an Electronic Check or Electronic Returned Check but was created electronically and not derived from a paper check. Under Regulation CC, ECIIs do not qualify as either “Electronic Checks” or “Electronic Returned Checks.” Under Section XIX(C) of the ECCHO Rules, only Electronic Checks derived from paper checks are eligible for exchange under the ECCHO Rules. Accordingly, an Electronically-Created Item is not eligible for exchange under the ECCHO Rules. A Sending Bank that sends an ECI to a Receiving Bank in an exchange governed under the ECCHO Rules will have breached its warranty to the Receiving Bank under Section XIX(L) by sending an item for exchange that is ineligible for exchange in violation of the ECCHO Rules. It is the responsibility of a Sending Bank to know its depositing customer and limit its depositing customer to only depositing items that meet the eligibility requirements for exchange as an Electronic Check under the ECCHO Rules. In addition to breach of the ECCHO warranty under Section XIX(L) relating to compliance with the ECCHO Rules, a Sending Bank may have liability to a Receiving Bank under the indemnity provided for in Section 229.34(g) of Regulation CC by a bank that
I. COMMENTARY (continued)

transfers an ECI to another bank. Finally, the existence of the ECI indemnity under Regulation CC does not override the requirement under the ECCHO Rules that only Electronic Checks derived from paper items are eligible for exchange under the ECCHO Rules.

Comment. “Electronic Check” is defined by reference to the definition of that same term under Regulation CC. The Electronic Check consists of both an image (defined as the “Image” under the ECCHO Rules) and the electronic information (defined as the “Electronic Information” under the ECCHO Rules) derived from the item that has been truncated. ECCHO has added the defined terms “Image” and “Electronic Information” to its Rules to provide clarity under the ECCHO Rules when banks are handling Image or Electronic Information separately in the collection/return process. It is the intent that all Electronic Checks under the ECCHO Rules also meet the definition of “Electronic Check” under Regulation CC and are subject to Regulation CC as Electronic Checks. An “Electronically-Created Item” (also known as an “ECI”), as defined in Regulation CC, is not an “Electronic Check” or “Electronic Returned Check” under these Rules or Regulation CC because it is not derived from a paper check. See the above Commentary and the Commentary to Section XIX(C) regarding ECIs as ineligible for exchange under the ECCHO Rules.

Comment. The electronic return of the Originally Received Item is called the Electronic Returned Check. This ECCHO Rules term “Electronic Returned Check” is defined by reference to the definition of that same term in Regulation CC. The Electronic Returned Check consists of both an image (defined as the “Image” under the ECCHO Rules) and the electronic information (defined as the “Electronic Information” under the ECCHO Rules) derived from the item that has been truncated. ECCHO has added the defined terms “Image” and “Electronic Information” to its Rules to provide clarity under the ECCHO Rules when banks are handling Image or Electronic Information separately in the collection/return process. It is the intent that all Electronic Returned Checks under the ECCHO Rules also meet the definition of “Electronic Returned Check” under Regulation CC and are subject to Regulation CC as Electronic Returned Checks.

Comment. The bank returning the Originally Received Item via an Electronic Returned Check is called the Returning Member. As the Returning Member can be either the Paying Bank or another Receiving Bank (other than the Depositary Bank), this Section applies both to the Paying Bank’s and that other Receiving Bank’s electronic return. A bank receiving an Electronic Returned Check is referred to as the Returnee Member. If the Returnee Member transmits or provides an Electronic Returned Check under this Section, it is, with respect to that activity, a Returning Member. For example, if a bank receives an Electronic Returned Check from the Paying Bank and then transmits an Electronic Returned Check to the Depositary Bank, it is a Returnee Member with respect to the Electronic Returned Check that it received from the Paying Bank and a Returning Member with respect to the Electronic Returned Check it transmitted to the Depositary Bank.

Comment: For purposes of the Rules, the physical item that has been imaged (or truncated) is called the “Related Physical Check”. The image alone is called the Image and together with the Electronic Information constitutes the Electronic Check or Electronic Returned Check. The electronic image transmitted, provided or made available by a Receiving Bank to return an Electronic Check is called the Electronic Returned Check. (See related commentary on the terms “Electronic Check” and “Electronic Returned Check”).

Comment: “Transmitted Customer Data” is intended to include the full range of electronic information that a Member may obtain regarding the customers of another Member in connection with exchanges under the ECCHO Rules. This definition includes information regarding both consumer and business customers, and would therefore include “non-public personal information” regarding consumers, as that phrase is defined under Section 509(4) of the federal Gramm Leach Bliley Act (15 USC Section 6809). The defined term “Transmitted Customer Data” is used in the Data Security Section (Section IX) and the Data Confidentiality Section (Section X) of the Rules.

These definitions are discussed further in the Commentary following the particular provisions of the Rules in which these defined terms are used.
II. RULES

A. 1. Application of Rules. These Rules apply to the exchange, either directly or through the Clearing House or an Exchange Provider, of items meeting the requirements of Section III(A), Section XIX(C) or Section XX(C) between Members agreeing to such exchange and to the settlement of balances resulting from such exchange. These Rules also apply to exchanges under the rules of a Licensed Entity. In the event of an inconsistency between the rules of a Licensed Entity and these Rules, these Rules shall govern to the extent of the inconsistency unless, as to items exchanged pursuant to the rules of that Licensed Entity, the rules of that Licensed Entity provide to the contrary. These Rules do not apply to exchanges under the rules of other check clearing houses or other organizations.

2. Transition to the Rules Effective July 1, 2018. This section applies to an exchange agreement, business practices agreement or clearinghouse rules, between or among two or more Members agreeing to use the Rules to govern their check image exchanges, which uses one or more defined terms from the Rules in effect prior to July 1, 2018. For such an exchange agreement, business practices agreement or clearinghouse rules, this subsection (A)(2) provides a transition between the defined terms appearing in such exchange agreement, business practices agreement or clearinghouse rules and the defined terms in the current Rules. The following defined terms or phrases in such exchange agreement, business practices agreement or clearinghouse rules shall correspond to the following defined terms or phrases in the Rules:

<table>
<thead>
<tr>
<th>Defined Term or Phrase in Exchange Agreement using pre-July 1, 2018 Rules Terms</th>
<th>Corresponding Defined Term or Phrase in the Rules (as of July 1, 2018)</th>
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</thead>
<tbody>
<tr>
<td>Electronic Image</td>
<td>Electronic Check</td>
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<tr>
<td>Electronic/Image Return or Image Return</td>
<td>Electronic Returned Check</td>
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<tr>
<td>Presentment Notice</td>
<td>Electronic Information</td>
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<tr>
<td>Section XIX - Electronic Images</td>
<td>Section XIX - Electronic Checks</td>
</tr>
<tr>
<td>Section XX – Electronic/Image Returns</td>
<td>Section XX - Electronic Returned Checks</td>
</tr>
</tbody>
</table>
II(A). COMMENTARY

Rule: This Section II(A)(1) sets out the subject matter of the Rules. The Rules apply to the exchange of eligible items between banks participating in ECCHO that have agreed to exchange items under the Rules directly or through the ECCHO Clearing House or an Exchange Provider, and to the settlement of resulting balances. The Rules also apply to exchanges of eligible items under the rules of an entity to which ECCHO has licensed the right to use the Rules. Section III(A)(1) of the Rules describes the requirements that an item must meet to be eligible for exchange under ECCHO.

Comment: Reference is made to exchange through the ECCHO Clearing House to allow for the possibility of exchange through a switch operated by or on behalf of ECCHO. Exchanges are generally affected through bilateral transmission between two participating banks or by means of an Exchange Provider.

A list of the entities to which ECCHO has licensed the right to use the Rules appears at Exhibit II of the Rules. The Rules do not apply to exchanges under the rules of other organizations not listed on Exhibit II. However, two or more ECCHO Members may agree that the ECCHO Rules govern certain image exchanges between them through the agreement created by another set of clearinghouse rules.

Rule: For those items exchanged under the rules of an entity to which ECCHO has licensed the right to use the ECCHO Rules, any inconsistency between the Rules and the rules of that other entity is governed by the ECCHO Rules, unless that other entity provides for another result in its rules.

Comment: This permits the entity to which ECCHO has licensed the right to use the ECCHO Rules to determine whether its own rules or the ECCHO Rules should control in the event of a conflict. However, if the rules of that other entity do not address this question (or if that other entity determines that the ECCHO Rules should govern), then the ECCHO Rules govern the conflict.

Rule: This Section II(A)(2) applies to an exchange agreement, business practices agreement or clearinghouse rules, between or among two or more Members agreeing to use the ECCHO Rules to govern their Electronic Check and Electronic Returned Check exchanges, which use one or more defined terms from the ECCHO Rules in effect prior to July 1, 2018. For such an exchange agreement, business practices agreement or clearinghouse rules, this section provides a transition between the defined terms appearing in such exchange agreement, business practices agreement or clearinghouse rules and the defined terms in the current ECCHO Rules.

Comment: With the Federal Reserve Board’s adoption of Regulation CC amendments, effective July 1, 2018, Regulation CC has established, as a matter of law for purposes of Regulation CC, the defined terms “Electronic Check” and “Electronic Returned Check.” ECCHO has determined to amend the ECCHO Rules to use these Regulation CC defined terms in the same manner. Given that there may be pre-existing exchange agreements, business practices agreements or clearinghouse rules between Members that use terms that were defined in the ECCHO Rules in effect prior to the July 1, 2018 amendments, this Section II(A)(2) provides a transition provision between the two sets of defined terms. It is intended that this Section will assist ECCHO Members in determining whether it is necessary to amend any of their pre-existing exchange agreements, business practices agreements or clearinghouse rules to address these changes in the defined terms. ECCHO Members also remain responsible for determining if any amendments are necessary to their exchange agreements, business practices agreements or clearinghouse rules in light of these ECCHO Rules changes or the Regulation CC amendments (effective July 1, 2018) more generally (that is, other than the changes in the defined terms). This Section does not apply to an exchange or other agreement that does not reference or incorporate the ECCHO Rules to govern the electronic check exchange, such as a Member’s exchange agreement with a depository institution which is not an ECCHO Member or subject to a license to use the ECCHO Rules.
II. RULES (CONTINUED)

B. Nature of Rules. These Rules are clearing house rules as contemplated by Section 4-103 of the Code and Section 229.37 of Regulation CC, are intended to supplement and vary the effect of provisions of the Code and Regulation CC, and shall bind each person interested in an item exchanged pursuant to these Rules whether or not that person has specifically assented to these Rules. Each Member agrees to be bound by these Rules for those exchanges of Electronic Checks or Electronic Returned Checks that it designates as subject to these Rules.
II(B). COMMENTARY

Rule: The Rules are Clearing House rules under Section 4-103 of the Uniform Commercial Code ("UCC") and, as such, bind each party with an interest in an item that is exchanged under the Rules. The Rules also are clearing house rules under Section 229.37 of Federal Reserve Regulation CC and, as such, bind each party that has expressly agreed to the clearing house rules.

Comment: Section 4-103 of the UCC generally permits Article 4 of the UCC to be varied by Clearing House rules, and permits such rules to bind not only parties agreeing to the rules, but also others having interests in items exchanged under the rules (e.g., the customers of Sending Banks and Receiving Banks). Section II(B) of the Rules reflects Section 4-103 of the UCC. This Section II(B) thus recognizes that all parties interested in an item exchanged under ECCHO, including customers of the Receiving Banks and Sending Banks, are bound by the Rules, at least as they vary the UCC.

It is important to note that the Federal Reserve's Regulation CC does not provide for a similar effect for Clearing House rules. Under Regulation CC, Clearing House rules bind only those parties that have expressly agreed to the Clearing House rules. As a result, the Rules cannot, and do not, change Regulation CC as to customers of Receiving Banks and Sending Banks, or as to other non-member parties interested in the item. As of July 2018, Regulation CC will apply directly to Electronic Checks and Electronic Returned Checks, and will include certain provisions, such as warranties, that will apply to customers of Receiving Banks and Sending Banks. See for example Regulation CC, Section 229.34(a)(2).

Rule: Each ECCHO Member agrees to be bound by the Rules.

Comment: A bank must become a Member of ECCHO or another entity to which ECCHO has licensed the right to use the Rules before it can exchange under the Rules items directly with other participating banks. Section II(D) of the Rules sets forth the qualifications for membership in ECCHO.

Under ECCHO's Rules, an applicant for ECCHO membership is required to execute a membership agreement under which it agrees to be bound by the Rules.

Because the definition of the term Rules in Section I includes future amendments to the Rules, participating banks agree not only to the Rules as they exist at the time the bank determines to join ECCHO, but also to all future amendments of the Rules. Under Section XIII of the Rules, amendments to the Rules can be adopted by the ECCHO Business Committee pursuant to the ECCHO Charter. In the event that a participating bank does not wish to agree to a Rules amendment adopted subsequent to its joining ECCHO, it can terminate exchanging items through ECCHO and/or terminate its membership in ECCHO. Procedures for the termination of ECCHO membership are set forth in Section II(J) (Additional Membership Terms) of the Rules.

A participating bank may bring an action under the Rules for as long as permitted by applicable law. For example, if a Receiving Bank were to bring an action against a Sending Bank under the warranty and indemnification provisions of the Rules, the Receiving Bank must bring that action within the time period permitted by the applicable state law statute of limitations.
OPERATING RULES

II. RULES (CONTINUED)

C. Participation. No Member shall be deemed to agree to exchange items pursuant to these Rules with any other Member by virtue of its membership in the Organization, or be required to agree to such an exchange with any other Member. Two or more Members may establish the commencement date(s) for exchange of items among such Members pursuant to these Rules. A Member seeking to discontinue the exchange of items pursuant to these Rules with any other Member shall give such other Member(s) not less than ten days’ written notice prior to the effective date of such discontinuance. The Member may also give a copy of the notice of commencement or discontinuation to the Organization. In the case of a discontinuance, the ten-day notice requirement may be waived by the Business Committee or the Director of the Organization if either determines that an emergency exists. A Member shall discontinue the exchange of items pursuant to these Rules upon the termination of its membership in the Organization by resignation or otherwise, or its suspension from participation in the exchange of items pursuant to these Rules, in accordance with the Section II(J) and the ECCHO Charter. The Organization may provide notice to Members, Sponsoring Organizations and other persons participating in or supporting exchanges under the ECCHO Rules regarding the current membership and exchange participation status of other current and former Members.
II(C). COMMENTARY

**Rule:** Membership in ECCHO does not itself constitute agreement to exchange items under the Rules or require entry into such an agreement. Two or more Members may establish their own time frames for commencement of exchanges. Subject to prescribed limitations, discontinuance of exchanges under the Rules requires ten days’ prior written notice by a Member to the other exchanging Member.

**Comment:** This subsection contains a provision designed to protect participating banks from the financial difficulties of a bank with which it is exchanging items under ECCHO. Specifically, the ten-day waiting period prior to discontinuing exchanges with a particular bank may be waived by the ECCHO Business Committee or the Director if either determines that an emergency exists, such as an emergency relating to the financial solvency of a participating bank.
D. Membership: General. The Organization shall have a class of Members designated full Members, consisting of founding and non-founding Members, a class of Members designated affiliate Members, a class of Members designated sponsored Members and a class of Members designated participating Members and a class of Members designated associate Members. Each Member shall execute a membership agreement in the form made available by the Organization.
II(D). COMMENTARY

Rule: ECCHO has the following five classes of Members: full Members; affiliate Members; sponsored Members; participating Members; and associate Members. The identity of and qualifications for each of these membership classes are set forth in this Section II.

Comment: Under the ECCHO Rules, only depository institutions (e.g., FDIC-insured banks) are eligible to apply to become Members of ECCHO.
E. Membership: Full Members. The founding Members are those institutions so designated in Section II(J) (Additional Membership Terms) of the Rules. The qualifications for membership as a non-founding full Member are set forth in Section II(J) (Additional Membership Terms) of the Rules. Each full Member shall pay such annual or other fees as shall be established for full Members by TCH.
OPERATING RULES

II. RULES (CONTINUED)

F. Membership: Affiliate Members. A depository institution (as defined in Section 19(b) of the Federal Reserve Act) which is an affiliate (as defined in Section 2(k) of the Bank Holding Company Act and Regulation Y promulgated there under) of a full Member is eligible for membership in the Organization as an affiliate Member upon:

(1.a.) payment of such initial membership fees as may be required by the TCH and
(2.a.) acceptance of its application for membership by the Director of the Organization.

Affiliate Members shall have the same rights and incidents of membership as full Members, except that affiliate Members shall not be entitled to

(1.b.) designate Representatives of the Organization, or
(2.b.) membership on the Operations Committee of the Organization, or
(3.b.) services provided by the Organization, if any.

Each affiliate Member shall pay such annual or other fees as shall be established for affiliate Members by TCH.
II(F). COMMENTARY

Rule: An affiliate Member is an affiliate of a full Member. Affiliate Members are entitled to each of the rights of full Members, except that affiliate Members may not designate ECCHO Representatives and may not be Members of ECCHO's Operations Committee and are not entitled to services provided by the Organization, if any.

Comment: Affiliate Members may pay different membership fees compared to full Members.
OPERATING RULES

II. RULES (CONTINUED)

G. Membership: Sponsored Members. A depository institution (as defined in Section 19(b) of the Federal Reserve Act) is eligible for membership in the Organization as a sponsored Member upon

(1) the execution of a sponsorship agreement between the Organization and a Sponsoring Organization and

(2) the Sponsoring Organization’s acceptance of the sponsored Member’s application for membership in the Organization.

Sponsored Members shall have the same rights and incidents of membership as affiliate Members. Each sponsored Member shall pay such annual or other fees to its Sponsoring Organization as shall be established by the Sponsoring Organization pursuant to its agreement with the Organization.
II(G). COMMENTARY

Rule: A depository institution is eligible for ECCHO membership as a sponsored Member upon the acceptance of its application for membership by its Sponsoring Organization, as provided in its Sponsoring Organization's agreement with ECCHO. Sponsored Members have the same rights as affiliate Members. Sponsored Members pay their annual or other fees to their Sponsoring Organization.

Comment: Sponsored Members are sponsored into ECCHO by a Sponsoring Organization which has entered into a sponsorship agreement with ECCHO. The Sponsoring Organization may or may not be an ECCHO Member. The sponsored Member executes its membership agreement with and pays its membership and other ECCHO-related fees to its Sponsoring Organization. The sponsored Member (1) does not directly designate ECCHO Representatives or otherwise participate in meetings of the ECCHO Representatives, and (2) is not directly a member of the Operations Committee or any other ECCHO committee or otherwise directly participate in such committee meetings, and (3) does not directly receive services provided by the Organization. However, the sponsored Member participates in meetings of the ECCHO Representatives and ECCHO committees, and receives services provided by the Organization indirectly through its Sponsoring Organization, to the extent permitted to the Sponsoring Organization pursuant to its agreement with ECCHO.
II. RULES (CONTINUED)

H. Membership: Participating Members. A depository institution (as defined in Section 19(b) of the Federal Reserve Act) is eligible for membership in the Organization as a Participating Member upon

(1) payment of such initial membership fees as may be required by TCH and

(2) acceptance of its application for membership by the Director of the Organization.

Participating Members shall have the same rights and incidents of membership as full Members, except that participating Members shall not be entitled to designate Representatives of the Organization. Each participating Member shall pay such annual or other fees as shall be established for participating Members by TCH.
II(H). COMMENTARY

**Rule:** Participating Members are entitled to each of the rights of full Members, except that participating Members may not designate ECCHO Representatives.

**Comment:** Participating Members may be Members of the Operations Committee and are entitled to the other services provided by the Organization, if any, on the same basis with full Members. Participating Members may pay different membership fees compared to full Members. Participating Members may not designate a Representative to, or otherwise be represented on, the Business Committee.
II. RULES (CONTINUED)

I. Membership: Associate Members. A depository institution (as defined in Section 19(b) of the Federal Reserve Act) is eligible for membership in the Organization as an Associate Member upon:

(1.a.) payment of such initial membership fees as may be required by TCH and
(2.a.) acceptance of its application for membership by the Director of the Organization.

Associate Members shall have the same rights and incidents of membership as full Members, except that associate Members shall not be entitled to

(1.b.) designate Representatives of the Organization, or
(2.b.) membership on the Operations Committee of the Organization.

Each associate Member shall pay such annual or other fees as shall be established for associate Members by TCH.
II(I). COMMENTARY

Rule: Associate Members are entitled to each of the rights of full Members, except that associate Members may not designate ECCHO Representatives and may not be Members of ECCHO’s Operations Committee.

Comment: Associate Members may pay different initial and annual membership fees compared to full Members and participating Members.
II.  RULES

J.  Additional Membership Terms.

(1) **Designation of Classes of ECCHO Membership.** The Organization shall have a class of Members designated full members, consisting of founding and nonfounding Members, and such other classes of Members as shall be provided from time to time in these Rules. The full and other Members shall have such qualifications, rights and obligations as are provided in the Rules.

(2) **Founding Members.** The following full Members are the founding Members: Bank of America, N.A.; Deutsche Bank; JPMorgan Chase Bank; Citibank, N.A.; Comerica Bank; Key Bank of New York; SunTrust Bank, Atlanta; Union Bank of California, N.A.; and Wells Fargo Bank, N.A.

(3) **Additional Full Members.** Any "depository institution," as defined in Section 19(b) of the Federal Reserve Act, may become a nonfounding full Member upon (a) payment of such initial membership fees and execution of such membership agreement as may be required by TCH, and (b) approval of its application for membership by TCH.

(4) **Limits on Members’ Rights.** Except as otherwise expressly provided in Section II(J)(5), no Member of the Organization shall have any ownership or other property or other rights, claims or interests, including any patent right, trade secret right, or copyright interest, in the Rules, any related commentary, guidance or specifications, the Organization, TCH, TCH’s trademarks or service marks, or in any products, services, solutions, or materials, including any ideas, proposals, information, reports or studies produced by TCH or the Organization, individually or jointly with a Member, whether arising under the Rules, the membership agreement, any law, or any other contract as a result of its status as a Member of the Organization. Members shall have no right to vote on any proposed or final amendment to the Rules or any proposal to, or final action of, the ECCHO Business Committee, including without limitation relating to the governance of the Organization. Certain Members and Sponsoring Organizations (in their role as Sponsoring Organizations) shall have the right to designate Representatives of the ECCHO Business Committee as provided in the ECCHO Business Committee Charter, as amended from time to time.

(5) **License to use Rules.** TCH grants to each Member a limited, non-exclusive, non-transferable, non-sublicensable, fully paid right and license to use the Rules in connection with the Member’s participation in the Organization and its exchange or return of items with other Members pursuant to the Rules. The license granted herein shall continue in effect for so long as the Member is a Member of the Organization and is bound by the Rules, unless such license is expressly terminated by TCH. Upon notice to the Member that TCH has terminated the license, the Member shall cease all use of the Rules.
II. RULES (CONTINUED)

(6) **Merger, Etc., of Members.** In the event of the consolidation or merger of two Members or the purchase by one Member of the business and assets of another Member, the consolidated or merged institution, or the purchasing Member in the case of a purchase, shall continue to be a Member in accordance with the terms of membership applicable to the surviving or purchasing Member. The consolidated Member shall resign its membership within 30 days of the effective date of the consolidation, merger or purchase. Such resignation shall be effective upon receipt of such notice at the principal office of the Organization.

(7) **Resignation of Membership.** A Member may resign from the Organization by written notice to the Director transmitted to the principal office of the Organization.

(8) **Termination of Membership.**
   
   (a) Membership shall terminate upon the occurrence of any one of the following events: (i) The resignation of the Member, (ii) The failure of the Member to pay dues or fees within the times set forth by TCH, or (iii) A determination by the ECCHO Business Committee that the Member has engaged in activity or taken an action that constitutes a material intentional violation of the Rules.
   
   (b) Before a membership is terminated in accordance with Section II(J)(8)(a)(ii) or (iii) above, the following procedures shall be followed:
   
   (i) A notice shall be sent by prepaid first-class or registered mail to the most recent address of the Member as shown on the Organization’s records, setting forth the action to be taken, the reasons for the action, and the date, time, and place of the hearing provided for in subparagraph (ii) below. Such notice shall be sent at least fifteen (15) days before the proposed effective date of termination.
   
   (ii) The Member shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held not fewer than five (5) days before the effective date of the proposed termination. The hearing will be held by a special committee of the ECCHO Business Committee composed of no fewer than (3) Representatives of the ECCHO Business Committee appointed by the Director or the Chairman of the ECCHO Business Committee. If an oral hearing is requested, the special committee may require that the hearing be conducted via teleconference call.

   (iii) Following the hearing, the special committee shall decide whether or not the membership status should be terminated or the Member suspended or sanctioned in some other way. The decision of the special committee shall be final.
(9) **Transfer of Membership.** No Member may transfer its membership, membership agreement or any membership right. The consolidation or merger of a Member into a non-Member entity which is a “depository institution” as defined in Section 19(b) of the Federal Reserve Act, or the purchase by a non-Member entity which is a “depository institution” as defined in Section 19(b) of the Federal Reserve Act of the business and assets of a Member, does not constitute a transfer for purposes of the preceding sentence. Upon consummation of such consolidation, merger or purchase, the non-Member entity shall automatically become a Member and shall assume all of the rights and obligations of the consolidated, merged or purchased Member, including without limitation the obligation to pay any dues or fees whenever due owing by such Member to the Organization.

(10) **Rights and Liabilities of Resigned or Terminated Members.** A resigned or terminated Member shall (i) have no further rights as a Member; (ii) not be entitled to any refund of dues, fees, assessments and other payments made to the Organization and shall remain liable for and shall promptly pay any dues, fees, assessments or obligations for charges incurred or services or benefits actually received, and other charges owed to the Organization prior to the effective date of such Member's resignation or termination; (iii) continue to remain liable, to other Members for obligations arising, whether before or after such termination, from its participation in the transactions which are the subject of the Rules; and (iv) forthwith take such further action as may be required of a resigned or terminated Member under the Rules.

(11) **Rulemaking Authority.** TCH Managing Board has established the ECCHO Business Committee and approved the ECCHO Business Committee Charter to govern the ECCHO Business Committee, which states, in part, that the ECCHO Business Committee’s responsibilities include establishing, amending, repealing, or restating any of the Rules.

(12) **Intellectual Property.** Each Member recognizes TCH’s ownership of all intellectual property in the Rules, any related commentary, guidance or specifications, and TCH’s trademarks and service marks. Each Member agrees to protect these ownership rights in the Rules, any related commentary, guidance or specifications, and TCH’s trademarks and service marks.

(13) **TCH Liability.** In carrying out its responsibilities in connection with the Organization, including the adoption and maintenance of the Rules, TCH shall only be liable to a Member for TCH's gross negligence or intentional misconduct. TCH’s liability in such instances shall be limited to actual damages attributable to its gross negligence or intentional misconduct and shall not include consequential damages, even if such damages were foreseeable. In no event shall TCH’s liability to a Member exceed the total membership fees paid by such Member to the Organization in the preceding calendar year.
II. RULES (CONTINUED)

(14) **DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TCH AND THE ORGANIZATION SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO THE CONDITION, PERFORMANCE, OR COMPLIANCE WITH LAW OF THE RULES AND ANY RELATED WORK PRODUCT OF TCH OR THE ORGANIZATION. TCH AND THE ORGANIZATION EXPRESSLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

(15) **Governing Law.** With respect to any litigation, claim, dispute, arbitration or other matter arising between a Member and TCH with respect to the Organization or the Rules, the Rules shall be governed by and construed in accordance with the laws of the State of New York and each Member and TCH submits to the exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan of the City of New York. This Section shall not apply with respect to any litigation, matter or dispute between or among two or more Members with respect to transactions subject to the Rules or to any litigation, claim, dispute, arbitration or other matter arising between a Member and TCH not involving the Organization or the Rules.

(16) **Relationship between the Parties.** Nothing in the Rules or a membership agreement in the Organization shall be construed to create any agency, partnership, employment, or joint-venture relationship between TCH and a Member. A Member understands that it has no authority to act for or on behalf of, bind, or otherwise obligate TCH and a Member shall not make any representations, written or oral, regarding TCH, in connection with the Member’s participation in the Organization.

(17) **Third-Party Beneficiaries.** The Rules or a membership agreement in the Organization shall not be construed to create any third-party beneficiaries. Except as expressly set forth in the Rules, no rights or benefits shall inure to any third party.
OPERATING RULES

III. ITEMS ELIGIBLE FOR EXCHANGE AND ROUTING INFORMATION; DEADLINES; REPAIRS

A. Eligible Items and Routing Numbers.

(1) Eligible Items. Items eligible for exchange under these Rules are described in Section XIX(C) (for Electronic Checks in forward exchange) and Section XX(C) (for Electronic Returned Checks).

(2) Routing Numbers. Each Member will inform each Member with which it agrees to exchange items pursuant to these Rules of the Routing Number and MICR line data requirements for all items it agrees to receive by providing the lists or exchange information required by Section XIX(G) (for Electronic Checks) or Section XX(F) (for Electronic Returned Checks). A receiving Member either may provide a list of specific Routing Numbers or may inform the sending Member that the receiving Member will accept any regular Routing Numbers that are currently active Routing Numbers as established by the ABA Routing Number Board and its official registrar of routing numbers. The Member receiving items may also provide a copy of such lists to the Organization and/or any Exchange Provider.
III(A). COMMENTARY

Comment: Each receiving Member must inform each sending Member with which it agrees to exchange items of the Routing Numbers and MICR line data requirements for the items it agrees to receive (as Electronic Checks (see Section XIX(G)) and/or as Electronic Returned Checks (see Section XX(F)). Each receiving Member may also provide this information to ECCHO and/or Exchange Providers. To the extent that a sending Member incurs a loss because the receiving Member did not provide or update correct Routing Numbers for a forward exchange or return of an item, the sending Member may have a claim under Section XIX(M) or Section XX(K).
OPERATING RULES

III. ITEMS ELIGIBLE FOR EXCHANGE AND ROUTING INFORMATION; DEADLINES; REPAIRS (CONTINUED)

B. Deadlines. Each Member as a Receiving Bank shall designate two deadlines. The first such deadline is for the receipt of the Electronic Information. The second such deadline is for receipt of the Image associated with the Electronic Information. The second such deadline shall be on the day of the first deadline or on the next succeeding Business Day.
III(B). COMMENTARY

Comment: The Electronic Information deadline and Image receipt deadline can be set at the same time, and the Image and Electronic Information can be sent in the same file. See also Section XIX(G) for requirements on Sending Bank to comply with deadlines.
C. Repair of Item.

(1) Prior to sending the Electronic Check for exchange under these Rules, a Sending Bank may repair the Routing Number and amount field information of:
   (a) a paper check prior to imaging it,
   (b) an Image, and/or
   (c) the MICR line information contained in the Electronic Information.

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 make repair other than as provided in Section III(C)(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 Image, and/or (iii) the MICR line information contained in the Electronic Information; 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 Check (plus interest compensation and expenses), provided that the Sending Bank exercised ordinary care when conducting the repair.

(3) The Sending Bank and the Receiving Bank may agree to repairs of an item other than as provided for Sections III(C)(1) or Section III(C)(2), and in such situation the Sending 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 Check for exchange under these Rules, a Sending Bank may repair the Routing Number and amount field information of (a) a paper check prior to imaging it, (b) an Image, and/or (c) the MICR line information contained in the Electronic Information. 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.

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 the Electronic Information) 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 Electronic Check (typically the amount of the Electronic Check), 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 (see discussion below for liability arising under law generally). 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(C)(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 Image, and/or (iii) the MICR line information contained in the Electronic Information; 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 Check (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 Image (or related Electronic Information). However, a Sending Bank may not be able to collect the item under the ECCHO Rules if the Image (or related Electronic Information) 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 affect a repair under this section. Repair can be made to the paper check before imaging, the MICR line reflected on the Image itself, or the MICR line information from the item that is contained in the Electronic Information associated with the Image.

In order to encourage the Sending Bank to repair items and collect such items by means of Electronic Check 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.

This Rule should be read in conjunction with Section XIX(C), 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.
III(C). COMMENTARY (continued)

Comment: The following is further Commentary on the relationship of the repair rule to other legal requirements. A Sending Bank that undertakes repair of an Image, a Related Physical Check or the Electronic Information will have liability under both these Rules and applicable check law to subsequent Receiving Banks to the extent that a loss arises to the subsequent Receiving Bank because of such repair. ECCHO members are subject to the requirements and obligations of Regulation CC and the Uniform Commercial Code with respect to their handling and exchanging of Electronic Checks, including the requirements relating to encoding. See Section XIX(F) of the Rules for status of an Electronic Check under the Code and the Regulation CC. In this regard, the Sending Bank would be responsible for the encoding warranties under these Rules and under both Regulation CC (Section 229.34(c)) and the UCC (Section 4-209) for an item that the Sending Bank repaired.

Under the UCC, the Sending Bank is liable for losses suffered as a result of incorrect MICR line encoding (including Routing Number and amount fields encoding) plus expenses and interest incurred. (UCC 4-209(c)). Losses under this UCC encoding warranty can include damages incurred by the Receiving Bank beyond its direct expenses, such as consequential damages arising from the breach of the encoding warranty. Under Regulation CC, the sending bank making repair is liable for losses up to the amount of consideration received for the item, plus interest and expense.

Under the warranty for repair of Routing Number and amount fields set forth in Section III(C)(1) of the ECCHO Rules, the repairing Sending Bank warrants that it has correctly repaired these fields and is responsible for losses up to the consideration received and interest/expenses. The Sending Bank is not responsible under this ECCHO warranty for consequential or indirect damages arising from a breach of the ECCHO warranty. However, this warranty in Section III(C)(1) for Sending Bank repair of the Routing Number and amount fields of the MICR information does not waive or reduce liability that may arise to a Sending Bank under the UCC encoding warranty (as discussed above) when making such a repair.

The protection provided to the Sending Bank under the indemnification in Section III(C)(2) for Sending Bank repair of MICR information other than the Routing Number and amount is only for losses that are in excess of the consideration received by the Sending Bank and interest and expenses of the Receiving Bank. That is, the indemnification protects the Sending Bank against the potential for consequential type damages (such as lost profits or fees incurred by customers, etc.), but does not protect against liability for direct losses and expenses.

Given that the indemnification provided to the Sending Bank undertaking a repair by the Receiving Bank under Section III(C)(2) will not provide protection against all losses/expenses from an incorrect repair of MICR information, a repairing Sending Bank should consider the potential risks associated with repair of Electronic Checks when making the decision to undertake such a repair. The Sending Bank should also consider the countervailing risks and costs from not repairing an item (such as the risk/cost that the Sending Bank cannot collect the item via an Electronic Check exchange or the risk that the Sending Bank will breach a warranty relating to completeness of the MICR line on an Electronic Check or substitute check.

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Under the UCC, the Sending Bank is liable for losses suffered as a result of incorrect MICR line encoding (including Routing Number and amount fields encoding) plus expenses and interest incurred. (UCC 4-209(c)). Losses under this UCC encoding warranty can include damages incurred by the Receiving Bank beyond its direct expenses, such as consequential damages arising from the breach of the encoding warranty. Under Regulation CC, the sending bank making repair is liable for losses up to the amount of consideration received for the item, plus interest and expense.

Under the warranty for repair of Routing Number and amount fields set forth in Section III(C)(1) of the ECCHO Rules, the repairing Sending Bank warrants that it has correctly repaired these fields and is responsible for losses up to the consideration received and interest/expenses. The Sending Bank is not responsible under this ECCHO warranty for consequential or indirect damages arising from a breach of the ECCHO warranty. However, this warranty in Section III(C)(1) for Sending Bank repair of the Routing Number and amount fields of the MICR information does not waive or reduce liability that may arise to a Sending Bank under the UCC encoding warranty (as discussed above) when making such a repair.

The protection provided to the Sending Bank under the indemnification in Section III(C)(2) for Sending Bank repair of MICR information other than the Routing Number and amount is only for losses that are in excess of the consideration received by the Sending Bank and interest and expenses of the Receiving Bank. That is, the indemnification protects the Sending Bank against the potential for consequential type damages (such as lost profits or fees incurred by customers, etc.), but does not protect against liability for direct losses and expenses.

Given that the indemnification provided to the Sending Bank undertaking a repair by the Receiving Bank under Section III(C)(2) will not provide protection against all losses/expenses from an incorrect repair of MICR information, a repairing Sending Bank should consider the potential risks associated with repair of Electronic Checks when making the decision to undertake such a repair. The Sending Bank should also consider the countervailing risks and costs from not repairing an item (such as the risk/cost that the Sending Bank cannot collect the item via an Electronic Check exchange or the risk that the Sending Bank will breach a warranty relating to completeness of the MICR line on an Electronic Check or substitute check.)
OPERATING RULES

IV. THIRD PARTY AGENT

A. Third Party Agent. A Member may utilize one or more Third Party Agents to perform any of its functions provided for in these Rules. A Member utilizing a Third Party Agent remains responsible for all of that Member’s obligations prescribed in these Rules. Each act or omission of the Third Party Agent shall for purposes of the Rules be deemed to be an act or omission of the Member on whose behalf the Third Party Agent was acting.
IV. COMMENTARY

Rule: A Member may use one or more third parties to perform any of that Member’s functions with regard to items that have been imaged pursuant to these Rules.

Comment: This Rule is designed to provide the Member maximum flexibility with respect to its use of third parties in connection with Electronic Check exchange. This third party could be either another ECCHO member, a bank that is not an ECCHO member or a nonbank. The Member could use more than one third party to perform the same function, or different third parties to perform different functions. For example, a Sending Bank could use one or more third parties to prepare and transmit Electronic Checks to Receiving Banks (please see Section XIX(D)), or to process and send Electronic Returned Checks (see Section XX(F)).

In some cases, the Third Party Agent may be acting as the agent of the Sending Bank or a Returning Member for certain functions and the agent of the Receiving Bank or Returnee Member for other functions. For example, an Archive may act as the Third Party Agent of the Sending Bank in making available Images to the Receiving Bank, and then may act as the Third Party Agent of the Receiving Bank in connection with the later retrieval of the Images. In this case, the agreement(s) between the Sending Bank, Receiving Bank and the Third Party Agent Archive should be clear about precisely when the Archive is acting as agent for each bank.

Rule: A Member utilizing a Third Party Agent remains responsible for the Member’s obligations established in these Rules. The Member also is fully responsible for each act or omission of the Third Party Agent.

Comment: A Receiving Bank that deals with a Third Party Agent utilized by the Sending Bank is considered for purposes of Section XIX to have dealt with the Sending Bank. Thus, if the Third Party Agent breaches a warranty of the Sending Bank (please see Section XIX(L)), for purposes of the Rules, the Sending Bank (not the Third Party Agent) is deemed to have breached that warranty, and it will be the Sending Bank (not the Third Party Agent) that will have any resultant liability to the Receiving Bank. Similarly, a Returnee Member that deals with a Third Party Agent utilized by the Returning Member is considered for purposes of Section XX to have dealt with the Returning Member. Thus, if the Third Party Agent breaches a warranty of the Returning Member (please see Section XX(J)), for purposes of the Rules, the Returning Member (not the Third Party Agent) is deemed to have breached that warranty, and it will be the Returning Member (not the Third Party Agent) that will have any resultant liability to the Returnee Member. Accordingly, a Member that utilizes a Third Party Agent should have an appropriate agreement with that Third Party Agent.

The Member should consider including in that agreement the precise responsibilities of the Third Party Agent, which should correspond to the bank’s responsibilities under Section XIX or Section XX. The Member also should consider including in that agreement provisions that pass back to the Third Party Agent any liability the Member may incur under Section XIX or Section XX for actions or omissions of the Third Party Agent. Consideration also should be given to the Third-Party Agent’s financial capacity to satisfy these contractual obligations, particularly in view of the nature of the indemnification provided under Section XIX (please see Sections XIX(L) and XIX(M)). Consideration also should be given to the Third Party Agent’s disaster recovery and other contingency plans.
OPERATING RULES

V. ELECTRONIC CHECK FORMATS

A. Industry Standards. Members shall use applicable industry standards and specifications for their exchanges of Electronic Checks and Electronic Returned Checks including standards applicable to Image file formats and edits. A Member may agree with another Member to comply with additional standards and specifications for exchanges among such Members as a supplement or modification to otherwise applicable industry standards and specifications.
V(A). COMMENTARY

Rule: Members shall use applicable industry standards and specifications for their exchanges of Electronic Checks and Electronic Returned Checks, including standards applicable to Image file formats and edits. A Member may agree with another Member to comply with additional standards and specifications for exchanges among such Members as a supplement or modification to otherwise applicable industry standards and specifications.

Comment: The applicable industry standard may be a current version of the X9 American National Standard for Financial Services, Specifications for Electronic Exchange of Check and Image Data. Under Regulation CC, an Electronic Check and Electronic Returned Check must conform with ANS X9.100–187, unless otherwise varied by the agreement of the Members. Two or more Members may agree among themselves that additional standards and specifications for electronic check exchanges will supplement or modify otherwise applicable industry standards. For example, two or more members may agree to comply with a common document of requirements and specifications to work in conjunction with the X9 standard. Such documents are commonly referred to as “companion documents” and many financial institutions and exchanges have agreed to a common companion document for their exchanges.

Comment: Section XIX(G) permits a Receiving Bank to reject an image cash letter file that is not processable by the Receiving Bank. The applicable industry standard in conjunction with a companion document sets forth different technical and operational reasons upon which a Receiving Bank may reject (a) a non-processable image within a larger image cash letter file, or (b) an entire image cash letter file which is not processable. A Receiving Bank is not in compliance with the applicable industry standards when the Receiving Bank seeks to return an entire image cash letter file using the rejection reasons identified in the applicable industry standards for rejection of an individual item (as opposed to the entire image cash letter file). See discussion in Commentary to Section XIX(G) regarding processing of image cash letters that have processing errors or issues at the individual item level, as opposed to the file level.
OPERATING RULES

V. ELECTRONIC CHECK FORMATS (CONTINUED)

B. TIFF. If the TIFF tags associated with an Image, received by a Receiving Bank under these Rules, are non-compliant with the TIFF standard for image exchange, 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:

(1) the reformatted TIFF tags do not comply with TIFF standard for image exchange,

(2) the Image was materially altered by the reformatting, and

(3) such alteration of the Image resulted in the loss or damage.
V(B). COMMENTARY

Comment: The purpose of this rule is to permit the Receiving Bank to reformat the TIFF tags of an 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. 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 Image with non-conforming TIFF tags to a Receiving Bank.
OPERATING RULES

VI. SETTLEMENT

A. Settlement. Settlement for items sent in accordance with Sections XIX or XX shall be made by appropriate crediting of the due to account maintained by the Sending Bank with the Receiving Bank, debiting of the due to account maintained by the Receiving Bank with the Sending Bank, or by Fedwire transfer from the Receiving Bank to the Sending Bank at the time, and upon such other terms and conditions as may be agreed upon by those banks. In addition, settlement for eligible items may be governed by:

(1) the rules of a Licensed Entity or other clearing house to the extent that the exchanging Members have so agreed, or

(2) an applicable agreement of the Receiving Bank and Sending Bank.
VI. COMMENTARY

Rule: Settlement for Electronic Checks or Electronic Returned Checks sent in accordance with the Rules is to be made by crediting of the Sending Bank’s settlement account with the Receiving Bank or debiting of the Receiving Bank’s settlement account with the Sending Bank in the manner agreed upon by the Receiving Bank and Sending Bank, or by Fedwire transfer from the Receiving Bank to the Sending Bank, or in such other manner as agreed by the Receiving Bank and Sending Bank. Settlement also may be governed by the rules of an entity to which ECCHO has licensed the right to use the Rules, or the rules of another clearing house.

Comment: The Rules leave settlement matters to the agreements between the participating banks. The Rules do not fix a settlement time or specify other terms applicable in the absence of such participating bank agreement.

Comment: In the event that an item or an Electronic Check is exchanged between participating banks in a process not governed by these Rules, settlement would be made in accordance with applicable law and any agreement between the participating banks that addresses that particular (non-ECCHO) exchange. For example, if a member bank takes an Electronic Returned Check and creates a paper substitute check for re-presentation to the Paying Bank, the settlement of that paper check exchange would be governed by applicable law (such as the UCC) and any paper check clearing house rules applicable to the exchange of the paper substitute check between the two banks.
VII.  COMPENSATION RULE

A.  Compensation Rule.  If a member makes a compensation claim in accordance with this Section VII, that Member and each other Member that is subject to that compensation claim shall comply with the Compensation Rules set forth in Exhibit VI.
OPERATING RULES

VIII. RESERVED

Reserved. This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.
IX. **DATA SECURITY ELECTRONIC CHECK INFORMATION**

A. **Data Security Generally.** Each Sending Bank that sends Transmitted Customer Data, either for collection or for return, in an exchange under these Rules, warrants to such Receiving Bank that the Sending Bank has established and implemented appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of the Transmitted Customer Data, or copies thereof, during:

1. *processing at the Sending Bank’s locations in preparation for transmission to the Receiving Bank, or*

2. *transmission to the Receiving Bank’s facilities.*
IX(A).  COMMENTARY

Rule: The data security warranty is made by a Sending Bank that sends to a Receiving Bank Transmitted Customer Data either for collection or for return, in an exchange under the ECCHO Rules.

Comment: The Rule is intended to apply broadly to all types of electronic data (defined in Section I(KKK) as "Transmitted Customer Data") sent by a Sending Bank to a Receiving Bank in a transaction subject to the ECCHO Rules. For example, Transmitted Customer Data includes information contained on or with Electronic Checks exchanged under Section XIX. This Rule does not apply to other data at a Sending Bank, such as customer DDA records, that may reflect check transactions (such as postings of check deposits to the DDA), but which is not transmitted to the Receiving Bank in an exchange subject to the ECCHO Rules.

The Rule does not impose an obligation on a Sending Bank with respect to storage or use of electronic data arising from exchanges under the ECCHO Rules that is stored or used outside of the bank's activities relating to processing and transmission for such an exchange. For example, the Rule would not impose obligations on a Sending Bank with respect to storage of check images in its archives after the Sending Bank has processed and collected the Electronic Checks. The reason for this limitation on the scope of the Rule is that the ECCHO Rules generally address Electronic Check exchanges and related processing requirements, and do not seek to govern the many different ways in which a bank may store or use electronic check data in the bank’s other operations (such as customer deposit reporting). It is expected that a Sending Bank would subject electronic data relating to check exchanges that is stored or used in the bank’s other operations to an appropriate data security protection program.

Rule: The Sending Bank warrants that it has established and implemented appropriate administrative, technical and physical safeguards to protect the security, confidentiality and integrity of the Transmitted Customer Data.

Comment: The requirements of the Rule on a Sending Bank relating to safeguards to protect the security, confidentiality and integrity of customer data are intended to be consistent with the obligation on a financial institution under the Gramm Leach Bliley Act ("GLB Act") to maintain a data security program for personal information of its own customers. (See Section 501(b) of the GLB Act and regulations adopted thereunder.) It is the intention of this Rule that the Sending Bank would satisfy the requirements of the Rule if it were to apply its data security program it uses for its own customers’ data to Transmitted Customer Data of a Receiving Bank while such data is processed or transmitted by the Sending Bank.

Rule: The Sending Bank warranty applies to Transmitted Customer Data during (1) processing at the Sending Bank’s locations in preparation for transmission to the Receiving Bank, or (2) transmission to the Receiving Bank’s facilities.

Comment: The warranty in the Rule addresses customer data within the “four-walls” of the facilities of the Sending Bank and its processors. The warranty does not apply to customer data that is (1) processed at a Sending Bank’s customer location (such as a merchant back-office facility), (2) processed at a correspondent bank of the Sending Bank, or (3) processed at the Receiving Bank’s facilities or the facilities of an agent/service provider of the Receiving Bank.

The requirements of Section IX apply to both a Sending Bank and third-party processors or other agents used by the Sending Bank to process or transmit Transmitted Customer Data of a Receiving Bank. Accordingly, if the Sending Bank is using a third party processor or other agent to process or transmit Transmitted Customer Data, the Sending Bank should consider addressing data security issues in its agreement with this third party processor or other agent. For example, if the Sending Bank is using a check processing facility operated by a third party, the Sending Bank should consider having an agreement in place with that third party that requires the third party to protect the security of the customer data during processing. If a Sending Bank and a Receiving Bank agree (for example in a business practices agreement or other bilateral exchange agreement) to a common third party data transmission facility, the two Members should consider designating when the data transmission facility is acting for one Member as opposed to the other Member, and/or whether the data security provided by the third party data transmission facility is acceptable to both Members and satisfies the warranty requirements under Section IX(A).
IX(A). COMMENTARY (continued)

The requirements of Section IX do not apply to exchanges of Transmitted Customer Data by a Member and a correspondent bank or a collecting bank that is not otherwise a Member. For example, Bank A and Bank B are both Members, and Bank A sends Transmitted Customer Data to Bank B. That exchange is subject to the requirements of this Section IX. However, if Bank B subsequently sends the same Transmitted Customer Data to another bank (such as a collecting bank or a Paying Bank) that is not a Member, the requirements of this Section IX do not apply to Bank B and the Collecting Bank/Paying Bank or the information exchanged between them.
IX. DATA SECURITY ELECTRONIC CHECK INFORMATION (CONTINUED)

B. Data Security Breach Notification. If there is a breach or other failure of the security safeguards of a Sending Bank’s facilities in connection with the data processing in preparation for transmission to the Receiving Bank or transmission to the Receiving Bank’s facilities that results in a third party gaining unauthorized access to the Transmitted Customer Data of a Receiving Bank, and the Sending Bank determines that misuse of such Transmitted Customer Data occurred or is reasonably possible, the Sending Bank shall notify the Receiving Bank of such unauthorized access.
IX(B). COMMENTARY

Rule: If there is a breach or other failure of the security safeguards of a Sending Bank’s facilities in connection with the data processing in preparation for transmission to the Receiving Bank or transmission to the Receiving Bank’s facilities that results in a third party gaining unauthorized access to the Transmitted Customer Data of a Receiving Bank, and the Sending Bank determines that misuse of such Transmitted Customer Data occurred or is reasonably possible, the Sending Bank shall notify the Receiving Bank of such unauthorized access.

Comment: There must be both a breach of security and a determination that a misuse of customer data occurred or is reasonably possible to occur before notification is required under this Rule. Breach of the Sending Bank’s data security alone does not trigger the notification requirement.

The Rule does not impose a notice obligation on a Sending Bank with respect to the breach of security of electronic information from check image information that is stored at the Sending Bank in areas that do not relate to the processing and transmission activities for exchanges under the ECCHO Rules. See Commentary to Section IX(A) for additional discussion.

The requirement under this Rule for a Sending Bank to notify a Receiving Bank of unauthorized access to Transmitted Customer Data is intended to be consistent with the standards set forth in the federal banking agencies’ guidance to regulated financial institutions on when a financial institution has to provide notice to its own customers of unauthorized access and misuse of customer information. See “Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice” (Printed in 70 Federal Register 15736 (March 29, 2005)). While the standard for evaluating data breaches is similar under the Rule and the federal banking agencies’ guidance, this Section IX(B) would impose a new requirement for a Sending Bank to notify the Receiving Bank of unauthorized access to transmitted customer information relating to the Receiving Bank (as opposed to the customer information of the Sending Bank).

Without a determination that a misuse of customer data occurred or is reasonably possible to occur, the Sending Bank is not required under the ECCHO Rules to notify a Receiving Bank of a data security breach, even if the Sending Bank has determined that it must otherwise notify its primary Federal regulator of such a breach.

This notice obligation under the ECCHO Rule may be different than a notice obligation that a service provider has under its contract with a serviced bank. Typically, in a service provider context, if the service provider’s data security is breached, the service provider is required under the contract to notify the client bank of the data security breach of the bank’s data, regardless of whether there is a determination that misuse of the bank’s data is likely to occur. In the ECCHO Rules context, a Presenting Bank or Sending Bank that is processing Electronic Checks for sending to another ECCHO Member is not a service provider for the Receiving Bank with respect to the Electronic Checks that are being exchanged.

In addition, a number of states have adopted statutes that require companies to notify their customers in certain circumstances in the event of a breach of data security. For example, these states include California (Cal. Civ. Code § 1798.82), New York (N.Y. Gen. Bus. Law § 899-aa), Ohio (Ohio Code § 1349.19), and Texas (Tex. Bus. & Com. Code Ann. § 48.103).

Depending on the applicable state and/or federal requirement and the facts of a particular situation, a Receiving Bank may be able to determine that, if the data security of the MICR data alone is compromised, a notice to its customers is not required. This is because MICR data only contains account numbers, and not customers’ names, addresses, access codes or social security numbers. A Member should consult with its legal counsel to determine the potential applicability of any state and/or federal data breach notification requirement to a particular situation.

A situation may arise where a Sending Bank sends Transmitted Customer Data (of either the Sending Bank or another Member) to an incorrect or mis-identified Receiving Bank. In such a case, the Sending Bank may determine that a third party (other than another Member) has not gained unauthorized access to that Transmitted Customer Data such that misuse of the data would occur. For example, the Sending Bank
IX(B). COMMENTARY (continued)

may determine that the Receiving Bank typically applies administrative, technical and physical safeguards to protect the security, confidentiality and integrity of all Transmitted Customer Data that the Receiving Bank receives. As a result, the Sending Bank may conclude that Transmitted Customer Data, while mis-directed, is not subject to misuse.

The Rule does not set forth a specific timeframe for the Sending Bank to provide notice to the Receiving Bank of a data breach, once the determination of breach has been made. It is expected that the Sending Bank would notify the Receiving Bank as soon as possible, in light of the relevant circumstances and subject to any restrictions imposed by a law enforcement authority. Providing notice as soon as possible is consistent with the requirements under the federal Interagency Guidance for a bank to provide notice of a data breach to its own customers.
IX. DATA SECURITY ELECTRONIC CHECK INFORMATION (CONTINUED)

C. Scope of Sending Bank Liability. If the Receiving Bank determines in its reasonable discretion that the Receiving Bank is required under any applicable law, regulation or supervisory guidance to notify one or more of its customers of the unauthorized access to the Transmitted Customer Data, the Sending Bank shall indemnify the Receiving Bank for the direct costs resulting from the Receiving Bank providing such required notice to the Receiving Bank’s customers.
IX(C). COMMENTARY

Rule: If the Receiving Bank determines in its reasonable discretion that the Receiving Bank is required under any applicable law, regulation or supervisory guidance to notify one or more of its customers of the unauthorized access to the Transmitted Customer Data, the Sending Bank shall indemnify the Receiving Bank for the direct costs resulting from the Receiving Bank providing such required notice to the Receiving Bank’s customers.

Comment: The indemnity from the Sending Bank is limited to direct costs resulting from sending a required notice to customers of the Receiving Bank. These costs would include such costs as postage, paper, printing the notices and preparing the notices for mailing. The indemnity does not cover other expenses that a Receiving Bank may incur in resolving a data breach issue with its customers. For example, the indemnity from the Sending Bank would not cover the costs associated with a Receiving Bank making a credit monitoring service available to its customers, or providing follow-up notices to its customers. This indemnity also would not cover any cost of the Receiving Bank in connection with incurring a financial liability to its customers as a result of the data security breach, such as losses relating to identity theft.

A Sending Bank is responsible for the direct costs associated with the Receiving Bank’s notice obligation, regardless of the underlying cause (such as a third party hacker or negligence of an employee/agent) of the data security breach. A Receiving Bank is not required, as a precondition to recovery under Section IX(C), to show negligence, misconduct or other fault on the part of the Sending Bank in relation to the data security breach.
IX. **DATA SECURITY ELECTRONIC CHECK INFORMATION (CONTINUED)**

D. **Relation to Other Rules.** The liability and obligations of the Sending Bank as set forth in this Section IX are the sole remedy of a Receiving Bank against a Sending Bank under these Rules with respect to unauthorized access to the Transmitted Customer Data. The failure of a Sending Bank to comply with Section IX shall not constitute a breach of any other warranty or provision of the Rules, including any warranty under Sections XIX(L), XIX(M) and XX(J) or otherwise subject the Sending Bank to liability to a Receiving Bank under these Rules. Nothing in this Section IX shall limit the ability of a Receiving Bank to take other action that may be authorized under the Rules, including a decision to terminate exchanges of Electronic Checks or Electronic Returned Checks under the Rules with a Sending Bank, as the result of the security breach.
IX(D). COMMENTARY

**Rule:** The liability and obligations of the Sending Bank as set forth in this Section IX are the sole remedy of a Receiving Bank against a Sending Bank under these Rules with respect to unauthorized access to the Transmitted Customer Data. The failure of a Sending Bank to comply with Section IX shall not constitute a breach of any other warranty or provision of the Rules, including any warranty under Sections XIX(L), XIX(M) and XX(J) or otherwise subject the Sending Bank to liability to a Receiving Bank under these Rules.

**Comment:** This Rule only addresses the costs of a Receiving Bank resulting from notifying its customers of a data breach, as required by applicable law, regulation or supervisory guidance. Given the limited scope of this Rule, this Rule does not permit a Receiving Bank to make a claim against a Sending Bank that has violated this Rule under the general warranty and indemnification provisions of the ECCHO Rules that typically apply when a Member violates the ECCHO Rules or breaches a general warranty under the ECCHO Rules.

**Rule:** Nothing in this Section IX shall limit the ability of a Receiving Bank to take other action that may be authorized under the Rules, including a decision to terminate exchanges of Electronic Checks or Electronic Returned Checks under the Rules with a Sending Bank, as the result of the security breach.

**Comment:** A Receiving Bank may seek to temporarily or permanently suspend or terminate exchanges of Electronic Checks or other electronic data transactions with a Sending Bank upon learning that there has been a data breach at the Sending Bank. However, this Rule does not provide authorization for such suspension or termination. The Receiving Bank would have to consult Section II(C) of the ECCHO Rules and any applicable exchange agreement with the Sending Bank to determine its ability to suspend or terminate exchange of Electronic Checks or other transactions with a Sending Bank.
OPERATING RULES

IX. DATA SECURITY ELECTRONIC CHECK INFORMATION (CONTINUED)

E. Relation to Other Laws. The obligations and liabilities of the Sending Bank as set forth in this Section IX are in addition to any warranty, indemnity or other data security requirement or obligation that may be imposed on the Sending Bank under applicable law (other than these Rules) with respect to Transmitted Customer Data that is processed, or transmitted by, or stored, by the Sending Bank.
IX(E). COMMENTARY

Rule: The obligations and liabilities of the Sending Bank as set forth in this Section IX are in addition to any warranty, indemnity or other data security requirement or obligation that may be imposed on the Sending Bank under applicable law (other than these Rules) with respect to Transmitted Customer Data that is processed or transmitted by, or stored at, the Sending Bank.

Comment: This Rule only addresses responsibility for the costs of providing a notice of a data security breach to a customer of the Receiving Bank as required by applicable law, regulation or supervisory guidance. There may be other laws or agreements that impose data security requirements, liability, and/or notification requirements on a Member in the event of a data security breach. Nothing in this Rule is intended to alter the application of such laws or agreements with respect to the relationship of the Sending Bank and the Receiving Bank.

In addition, to the extent that a Sending Bank provides pursuant to the Rules customer information in addition to that which can be obtained from the physical item itself, applicable privacy related requirements (if any) should be considered.
OPERATING RULES

X. DATA CONFIDENTIALITY

A. **Data Confidentiality.** The Member shall not provide, disclose or make available Transmitted Customer Data to any party, other than

(1) in connection with the collection or return of the Related Physical Check, Electronic Check or Electronic Returned Check in accordance with these Rules or other applicable law;

(2) to a Third Party Agent pursuant to these Rules and only when such Third Party Agent is bound by terms of confidentiality no less restrictive than those contained in these Rules;

(3) to a Member or its successor in interest in response to a retrieval request pursuant to these Rules;

(4) an auditor in connection with an audit of the Sending Bank; or

(5) if such disclosure is required by statute, regulation, court order, or governmental subpoena or is otherwise requested by a governmental authority or action.
X. COMMENTARY

Rule: The Member shall not provide, disclose or make available Transmitted Customer Data to any party, other than (1) in connection with the collection or return of the Related Physical Check, Electronic Check or Electronic Returned Check in accordance with these Rules or other applicable law, (2) to a Third Party Agent pursuant to these Rules and only when such Third Party Agent is bound by terms of confidentiality no less restrictive than those contained in these Rules; (3) to a Member or its successor in interest in response to a retrieval request pursuant to these Rules), (4) an auditor in connection with an audit of the Sending Bank; or (5) if such disclosure is required by statute, regulation, court order, or governmental subpoena or is otherwise requested by a governmental authority or action.

Comment: This rule is designed to protect the confidentiality and privacy of information relating to Electronic Checks and Electronic Returned Checks. A Member may have other confidentiality and privacy obligations with respect to Transmitted Customer Data under applicable law.
XI. OBLIGATIONS OF ORGANIZATION; CLEARING HOUSE

A. Obligations of Organization; Clearing House. The Organization shall monitor the operation of the program established by these Rules, coordinate the exchange of information among Members regarding its operation, engage the services of a third party to operate the Clearing House, designate days of operation and deadlines for receipt and transmission by the Clearing House, and make such changes in these Rules as it deems appropriate from time to time. The Organization is not liable for settlement between Members or for any default, error or other act or omission of, or any liability incurred by, any Member arising out of these Rules or their operation.
XI. COMMENTARY

Rule: This Section sets forth the duties of the Organization. The Organization is not responsible for the settlement or other obligations of any participating bank, whether that obligation arises under the Rules or otherwise.

Comment: This provision is made for the possibility of the use of a switch operated by or on behalf of the Organization at some future date.
OPERATING RULES

XII. ADJUSTMENT CLAIMS

A. Application of Adjustment Rules.

(1) A Member may make an Adjustment Claim under this Section XII only if the claim:
(a) is a type of adjustment claim listed on the Adjustment Matrix in Exhibit I,
(b) is made to another Member, and
(c) (i) arises out of the forward exchange of an Electronic Check under Section XIX of the Rules or the return of an Electronic Returned Check under Section XX of the Rules or (ii) arises from the forward exchange or return of an Electronic Check under an exchange not subject to the Rules if the Member to which the Adjustment Claim is made has agreed with the Member making the claim that such items can be adjusted pursuant to this Section XII.

(2) A Member may make an Adjustment Claim to another Member by:
(a) sending the Adjustment Claim directly to the other Member pursuant to the process agreed upon by such other Member for receiving Adjustment Claims, or
(b) sending the Adjustment Claim to an Adjustment Provider which both Members have previously agreed will handle Adjustment Claims between such Members.

(3) If an Adjustment Provider provided transmission, settlement or other services in connection with the forward exchange or return of an item, the Member is not required under this Section XII to use the same Adjustment Provider to handle the Adjustment Claim relating to such item.

(4) This Section XII does not require a Member to submit an Adjustment Claim to another Member in the event the Member has a claim or dispute with respect to an item. Each Member is responsible for determining whether to:
(a) bring an Adjustment Claim under this Section XII,
(b) return a presented Electronic Check to the presenting bank within required return time frames (if applicable),
(c) re-present an Electronic Returned Check (if applicable),
(d) make a claim for adjustment through another adjustment channel, or
(e) make a claim under applicable law or the Rules in another forum or a court of appropriate jurisdiction.

(5) Nothing in this Section XII shall alter a Member’s obligations under the Uniform Commercial Code, Regulation CC or the Rules, including applicable requirements for the timely return of a presented Electronic Check or the making of funds available to its customer.

(6) Nothing in this Section XII shall limit the ability of a Member that sends or receives an Adjustment Claim to bring an action in another forum or a
OPERATING RULES

XII. ADJUSTMENT CLAIMS (CONTINUED)

court of appropriate jurisdiction to resolve the dispute or claim relating to the item that is the subject of the Adjustment Claim.
XII(A). COMMENTARY

Rule: If an Adjustment Provider provided transmission, settlement or other services in connection with the forward exchange or return of an item, the Member is not required under this Section XII to use the same Adjustment Provider to handle the Adjustment Claim relating to such item.

Comment: Nothing in Section XII(A)(3) prohibits an Adjustment Provider from requiring in its processing agreement with two or more banks that, if the forward exchange of the Electronic Check was processed through the Adjustment Provider, then the banks must submit the Adjustment Claim through the same Adjustment Provider. For example, an Adjustment Provider may want to require the Adjustment Claim relating to a forward collection of an Electronic Check to come back through the same Adjustment Provider because the Adjustment Provider may have access to information that would assist in the resolution of the Adjustment Claim.

Rule: Nothing in this Section XII shall alter a Member’s obligations under the Uniform Commercial Code, Regulation CC or the ECCHO Rules, including applicable requirements for the timely return of a presented Electronic Check or the making of funds available to its customer.

Comment: Section XII and the related Adjustment Matrix do not alter a Member’s obligations under the UCC, Regulation CC or the ECCHO Rules. In particular, the time periods for making adjustment claims, and the ability of a Paying Bank to make an adjustment claim to a Presenting Bank, do not in any manner extend or delay the minimum time periods (such as the mid-night deadline) under the UCC and Regulation CC for a paying bank to dispatch a returned Electronic Check to the BOFD or a returning bank.
OPERATING RULES

XII. ADJUSTMENT CLAIMS (CONTINUED)

B. Time Periods and Processing Requirements for Adjustment Claims.

(1) Members shall comply with the requirements set forth in the Adjustment Matrix for making an Adjustment Claim, including the time periods and dollar amount limitations applicable to the Adjustment Claim. A Member shall not submit to another Member or an Adjustment Provider an Adjustment Claim that does not comply with the time period or other requirements for that adjustment type set forth in the Adjustment Matrix.

(2) Except for Group Adjustment Claims, each Adjustment Claim shall relate to only a single Electronic Check or Electronic Returned Check. Group Adjustment Claims can contain more than one item for adjustment.

(3) For purposes of calculating the number of days for the applicable time periods prescribed in the Adjustment Matrix for a timely Adjustment Claim, the first day of the time period is:
   (a) the calendar day/Business Day after the day of presentment or receipt of the item (for an Adjustment Claim relating to the forward exchange of an Electronic Check);
   (b) the calendar day/Business Day after the day of receipt of a returned item by the collecting bank/BOFD (for an Adjustment Claim relating to the return of an Electronic Returned Check); or
   (c) the calendar day/Business Day after the day of receipt of the first Adjustment Claim (for an Adjustment Claim that is the reversal or correction of a prior Adjustment Claim).

If the applicable time period ends on a day that is not a Banking Day for either Member subject to the Adjustment Claim, the time period shall be extended to the next day that is a Banking Day for both Members.
XII(B). COMMENTARY

**Rule:** Members shall comply with the requirements set forth in the Adjustment Matrix for making an Adjustment Claim, including the time periods and dollar amount limitations applicable to the Adjustment Claim.

**Comment:** Application of Matrix Time Periods to Correspondent Banks Receiving Adjustment Claims. The time period set forth in the Adjustment Matrix for a Member to initiate a particular Adjustment Claim only applies to the Member that is initiating the Adjustment Claim (such as the Paying Bank or the Depositary Bank, as the case may be). These matrix time periods do not impose a time limit on the correspondent bank Member that receives an Adjustment Claim from another Member and then seeks to make a subsequent Adjustment Claim to its respondent bank Member. In addition, the time periods under the Matrix or the Adjustment Rules for a Member to reject or respond to an Adjustment Claim start from the date the original Adjustment Claim is made, and not from the date that the correspondent bank Member forwards the Adjustment Claim on to the respondent bank Member.

There are no specific time periods under the ECCHO Rules or the Adjustment Matrix applicable to the relationship between the correspondent bank Member and its respondent bank Member. When handling an adjustment to a respondent bank Member, the correspondent bank Member should act with the same standard of care it follows when handling adjustments in general. The correspondent bank Member should follow its standard policies and procedures for handling Adjustment Claims, including where appropriate, forwarding the Adjustment Claim to the respondent bank Member. In addition, if the correspondent bank Member has an agreement or procedure with its respondent bank Member for the handling of Adjustment Claims, such specific agreements/procedures will exclusively govern the correspondent bank’s relationship with the respondent.
C. **Documentation for Adjustment Claim.**

(1) A Member making an Adjustment Claim shall include the documentation for the particular type of Adjustment Claim as set forth on the Adjustment Matrix. Documentation may be provided via:
   (a) email with PDF or similar image file attachment,
   (b) facsimile transmission,
   (c) U.S. mail, or
   (d) the adjustment system of the Adjustment Provider.

(2) If the Adjustment Claim documentation (as listed on the Adjustment Matrix) requires a version of the Electronic Check or Electronic Returned Check that gave rise to the Adjustment Claim, the Member can satisfy this requirement by including with the Adjustment Claim:
   (a) the Electronic Check or Electronic Returned as received (as applicable),
   (b) a substitute check created from such item, or
   (c) a print-out, photocopy or other physical representation of such item.
OPERATING RULES

XII. ADJUSTMENT CLAIMS (CONTINUED)

D. Notification of Receipt of Adjustment Claim.

(1) A Member that receives an Adjustment Claim from another Member shall make a reasonable effort to provide notice of receipt to the sending Member by the end of the next Banking Day following the Banking Day of receipt of the Adjustment Claim. If the Adjustment Provider provides notice of receipt to the sender of the Adjustment Claim, the notice obligation of the receiving Member under this Section is satisfied. The receipt notice shall be in the format and manner as previously agreed by the Members or as established by the Adjustment Provider. The receipt notice may be in the form of a report of all Adjustment Claims received that day from the sending Member.

(2) Notice of receipt does not constitute agreement by the Member sending the notice to agree to the Adjustment Claim or to make final settlement on the Adjustment Claim.
E. Settlement and Rejection of Adjustment Claims.

(1) Members shall agree to a process for financial settlement of their Adjustment Claims. If a Member sends the Adjustment Claim through an Adjustment Provider, the settlement process of the Adjustment Provider shall be used, unless both Members have expressly agreed to an alternative settlement process.

(2) The requirements for the timing of settlement set forth in Subsections XII(E)(3) and XII(E)(4) shall apply unless the Members otherwise have agreed to different settlement timing requirements.

(3) For an Adjustment Claim that is listed as a “with entry” type of Adjustment Claim on the Adjustment Matrix, the Member receiving the Adjustment Claim shall settle by the close of the Banking Day following the Banking Day on which the Adjustment Claim was received. The receiving Member may either reject the request for settlement for the Adjustment Claim or initiate a second timely Adjustment Claim to reverse the settlement on the first Adjustment Claim in the following circumstances:
   (a) the Member sending the first Adjustment Claim did not comply with this Section XII or the requirements of the Adjustment Matrix;
   (b) the first Adjustment Claim does not relate to an item handled by the receiving Member;
   (c) the first Adjustment Claim was a duplicate of another Adjustment Claim for which the receiving Member previously settled or is currently pending resolution at the receiving Member;
   (d) the receiving Member had itself previously initiated an Adjustment Claim relating to the same matter; or
   (e) the receiving Member has reasonable basis for concluding that the sending Member has not established the factual basis for the claim, except as provided below for an Adjustment Claim relating to an RCC warranty.

For an Adjustment Claim relating to a RCC warranty, a receiving Member shall not, pursuant to subsection (E)(3)(e), reject a request for settlement for the Adjustment Claim or initiate a second timely Adjustment Claim to reverse the settlement on the first Adjustment Claim on any basis relating to the effectiveness or validity of the payor customer’s authorization for the creation of the Remotely Created Check, including without limitation on the basis that the receiving Member (or its depositing customer) has evidence of the payor customer’s authorization for the Remotely Created Check.

(4) For an Adjustment Claim that is listed as a “without entry” type of Adjustment Claim on the Adjustment Matrix, the Members shall settle for the Adjustment Claim only upon:
   (a) agreement of the Members as to the resolution of the Adjustment Claim, or
   (b) the time period for settlement of the Adjustment Claim as established by the Adjustment Provider, if applicable.
OPERATING RULES

XII. ADJUSTMENT CLAIMS (CONTINUED)

The receiving Member may reject a request for settlement of the Adjustment Claim for the reasons set forth in Section XII(E)(3) for rejection of with entry claims.

(5) For an Adjustment Claim that is listed as an informational Adjustment Claim in the Adjustment Matrix, the Member shall respond to the Adjustment Claim within the number of calendar/Business days from the date of the request set forth in the Adjustment Matrix. This Section only addresses the time period for a response, and does not impose an obligation on a Member relating to the content of the response to an informational Adjustment Claim.

(6) Settlement of an Adjustment Claim does not limit the ability of a Member receiving an Adjustment Claim:
   (a) to subsequently reject the Adjustment Claim in accordance with Section XII(E)(3) and the Adjustment Matrix, or
   (b) to otherwise bring an action against the Member making the Adjustment Claim, as described in Section XII(A)(6).
XII(E). COMMENTARY

**Rule:** For an Adjustment Claim that is listed as a “with entry” type of Adjustment Claim on the Adjustment Matrix, the Member receiving the Adjustment Claim shall settle by the close of the Banking Day following the Banking Day on which the Adjustment Claim was received. The receiving Member may either reject the request for settlement for the Adjustment Claim or initiate a second timely Adjustment Claim to reverse the settlement on the first Adjustment Claim only as permitted in Section XII(E)(3).

**Comment:** Some Adjustment Providers may allow the receiving Member to reject settlement of an adjustment claim, whereas other Adjustment Providers permit the receiving Member to initiate a second Adjustment Claim to reject/reverse settlement of the first Adjustment Claim. There is no requirement under these Rules for an Adjustment Provider to offer its participant banks both options for handling the rejection or reversal of the settlement of an Adjustment Claim.

**Rule:** For an Adjustment Claim relating to a RCC warranty, a receiving Member shall not, pursuant to subsection (E)(3)(e), reject a request for settlement for the Adjustment Claim or initiate a second timely Adjustment Claim to reverse the settlement on the first Adjustment Claim on any basis relating to the effectiveness or validity of the payor customer’s authorization for the creation of the Remotely Created Check, including without limitation on the basis that the receiving Member (or its depositing customer) has evidence of the payor customer’s authorization for the Remotely Created Check.

**Comment:** In the event of a factual or other dispute involving the payor customer’s authorization of a Remotely Created Check, this Rule places the ultimate liability for the Adjustment Claim on the Depositary Bank. Under this Rule, the Depositary Bank that accepts a Remotely Created Check for deposit, or a collecting bank that subsequently transfers the Remotely Created Check, shall not reject an Adjustment Claim for a RCC warranty from another Member on the basis that the bank believes, or has evidence, that Remotely Created Check was properly authorized by the payor customer. If there are collecting banks involved in the forward exchange of the Remotely Created Check, the Adjustment Claim for the RCC warranty should work its way back through the collecting banks to ultimately rest with the Depositary Bank. The Depositary Bank may have chargeback rights for the RCC warranty claim under its deposit agreement to its customer that deposited the Remotely Created Check. The Depositary Bank or its depositing customer also should have a direct relationship with the payor customer, and can seek to resolve any dispute regarding payment with the payor customer outside of the ECCHO Rules and the check payment system.
XII. ADJUSTMENT CLAIMS (CONTINUED)

F. Compensation Claims. A Member is not entitled to make a claim for interest or other compensation in connection with Adjustment Claim under this Section XII beyond the amount of the item(s) that is(are) the subject of the Adjustment Claim. Notwithstanding the foregoing limitation, a Member may make a compensation claim in accordance with Section VII or, if the rules or agreement of the Adjustment Provider allow for such compensation, the Member may make a claim for such compensation in connection with an Adjustment Claim sent to such Adjustment Provider. At its option, a Member may seek to bring a claim under Section VII or applicable law or other rules for interest or other compensation arising from the same facts and circumstances that gave rise to the Adjustment Claim.
G. Notification of Rejection and Contact Requirement.

(1) Notification of Rejection of Adjustment Claim. If a Member rejects an Adjustment Claim or initiates a second timely Adjustment Claim to reverse the settlement on the first Adjustment Claim, the Member shall provide a notification of the reason(s) for the rejection of the Adjustment Claim to the Member or the Adjustment Provider, as applicable, that sent the Adjustment Claim. If there was a prior settlement associated with an Adjustment Claim, the Member that receives a rejected Adjustment Claim shall provide financial settlement to the other Member. The Member rejecting the Adjustment Claim shall provide such notice by the close of the Banking Day following the Banking Day on which the Adjustment Claim was rejected, and the notice may be provided via:

(a) email,
(b) facsimile transmission,
(c) telephone call/voicemail, or
(d) the adjustment system of the Adjustment Provider.

(2) Contact Requirement At Time of Third Adjustment.

(a) This Section XII(G)(2) applies when the same item has been subject to multiple Adjustment Claims between two Members. Prior to or at the time of initiating a third Adjustment Claim for the same item, the Member that made the first Adjustment Claim with respect to an item must take reasonable steps to contact the other Member in a manner outside of the Adjustment Claim process to discuss the item and seek resolution of the matter/claim. This contact must be in a manner other than the Adjustment Claim process set forth in the ECCHO rules, and may be made by telephone, email or facsimile transmission. The contact may be through a contact process established by an Adjustment Provider, to a contact person on an industry-maintained institutional contact list, or through any other reasonable contact method for reaching an appropriate staff at the other Member that handles item related claims.

(b) To determine the number of times an item has been subject to an Adjustment Claim, the Member should not count Adjustment Claims that have been denied or returned because of the failure of the Adjustment Claim to contain complete information.

(c) If there is no reasonably available manner to identify or contact the appropriate staff of the other Member, the Member is not required to contact the other Member under this Section XII(G)(2).

(d) When contact is made between the two Members, the Members shall discuss the matter to determine if a resolution of the matter is possible and in accordance with applicable laws and rules. This Section XII(G)(2) does not obligate the Members to resolve the matter during such discussion.

(e) A Member may, at its option, delay in filing an additional Adjustment Claim for the same item pending contact with the other Member to discuss the item related claim. The time periods for filing Adjustment Claims under the Adjustment Matrix are not extended.
or suspended during the Member discussion contemplated under this Section XII(G)(2).
XII. ADJUSTMENT CLAIMS (CONTINUED)

H. Liability For Adjustment Claim; Limitation On Damages.

(1) This Section XII does not establish the liability of two or more Members with respect to an Adjustment Claim or the related item. The liability of two or more Members with respect to an Adjustment Claim or the related item shall be determined by applicable law and the Rules (other than this Section XII).

(2) Failure to comply with this Section XII shall not constitute a breach of any ECCHO warranty under Sections XIX(L) or XIX(M) or Sections XX(J) or XX(K). Any obligation or liability of one Member to another Member for failure to comply with this Section XII shall be determined by applicable law.
XII(H). COMMENTARY

Rule: Failure to comply with this Section XII shall not constitute a breach of any ECCHO warranty under Sections XIX(L) or XIX(M) or Sections XX(J) or XX(K). Any obligation or liability of one Member to another Member for failure to comply with this Section XII shall be determined by applicable law.

Comment: Section XII does not itself establish warranties with respect to an item or the rights and obligations of parties with respect to items exchanged under the ECCHO Rules. Rather, this Section XII establishes a process and procedure for Members to exchange information regarding underlying claims relating to items and, in certain circumstances, settle for such claims among themselves. This Section XII does not establish the burden of proof or elements of fact that are necessary for a claimant to establish a legitimate claim or a receiving Member to reject a claim. These issues relating to the underlying claim are addressed under applicable law or other ECCHO Rules, such as the warranty provisions of the ECCHO Rules in Sections XIX(L), XIX(M) and XX(J) or the transfer and presentment warranties of the UCC and Regulation CC.
OPERATING RULES

XII. ADJUSTMENT CLAIMS (CONTINUED)

I. Adjustment Provider Relationships.

(1) Nothing under this Section XII shall impose any liability or responsibility on an Adjustment Provider.

(2) Members may enter into one or more agreements (including clearinghouse rules) with Adjustment Providers that address operational and process details and requirements for the handling of Adjustment Claims, such as requirements relating to the processing of financial settlement for Adjustment Claims and the communications between the Members of information and documentation relating to the Adjustment Claims. An Adjustment Provider may establish an effective date for the application of this Section XII and the Adjustment Matrix to its participants’ Adjustment Claims. An Adjustment Provider may map the adjustment types set forth in the Adjustment Matrix to different adjustment types for those Adjustment Claims processed by the Adjustment Provider.

(3) Except for operational and process variations described above in Section XII(I)(2), in the event of an inconsistency between this Section XII and an agreement between the Adjustment Provider and a Member, the terms of this Section XII shall govern with respect to the resolution and handling of Adjustment Claims between the Members.
OPERATING RULES

XIII. AMENDMENTS

Amendments. These Rules may be amended by the Business Committee of the Organization in accordance with the ECCHO Charter.
XIII. COMMENTARY

Rule: The Rules may be amended by the Business Committee of ECCHO in accordance with the ECCHO Charter.

Comment: The ECCHO Charter sets forth the process for the Business Committee to vote on all matters, including changes to the ECCHO Rules.
OPERATING RULES

XIV. DISPUTE RESOLUTION PROCEDURES

A. Any Member suffering loss (a "complainant") because of violation of the Rules by one (or more) other Member may file a letter of complaint (a "complaint") with the Organization, provided the complainant has complied with the requirements of Section XIV(B) of these Rules and the amount of the claim is $50,000 or greater.

B. Prior to filing a complaint, the complainant shall make a good faith attempt to resolve the matter in dispute with the other Member(s) involved.

C. The complaint shall contain the following information:

1. the name(s) of the Member(s) causing the complainant's loss (collectively, the "respondent");

2. a statement of the facts involved in the dispute and the section(s) of the Rules violated. The statement must include information permitting identification of the particular transaction(s), the sequence of events involved, and the precise nature of the violation;

3. a statement of the damages suffered by the complainant and an explanation of how such damages were caused by the violation; and

4. a summary of complainant's efforts to resolve the dispute.

The complaint shall be accompanied by copies of all documents available to the complainant, which are necessary in order to resolve the dispute, and of any written communications between complainant and the respondents relating to the violation asserted.

D. The complaint shall be signed by an officer of complainant and be submitted to the Organization within 120 days of the date of the violation asserted.

E. Upon receipt of a complaint and accompanying documents complying with the requirements set forth above, the Organization shall furnish the respondent with a copy of the complaint and such documents. There shall be a panel of three arbitrators for each dispute between two Members. The Director of the Organization shall select a single arbitrator, and each Member that is a party to the dispute to the arbitration shall select a single arbitrator. In all cases, arbitrators shall be either:

1. a current or former Member of the Business Committee or the Operations Committee of the Organization or

2. such other person with appropriate experience with the Rules, check clearing operations and/or check law to arbitrate the matter, as determined in the reasonable discretion of the person selecting such arbitrator.

The arbitrator(s) selected shall not be employed by any party to the dispute or any affiliate of such party. The decision of any two of them on any issues shall be the decision of the arbitrators. In the event that three or more Members are parties to
XIV. DISPUTE RESOLUTION PROCEDURES (CONTINUED)

the dispute, the dispute shall be submitted for arbitration to the American Arbitration Association for resolution in accordance with its commercial arbitration rules.

F. Any party to the dispute shall have a reasonable opportunity to submit to the Organization in writing for consideration in such dispute any matter it deems appropriate, and the Organization shall submit copies of such materials to other parties. All parties to the dispute shall cooperate fully in providing any documentation or other information relevant to the dispute to the arbitrator(s), except such documentation or information as is legally privileged or the furnishing of which would violate any applicable law or regulation. In the event the respondent, in the judgment of arbitrator(s), fails to cooperate in the investigation within 30 days of request for documentation or information by or information by the arbitrator(s), the facts as stated in the complaint shall be assumed to be true for purposes of the proceeding.

G. No hearing shall be held, witnesses called or subpoenas issued in connection with any complaint without the approval of the arbitrator(s), which may be given or withheld in their discretion, and the arbitrator(s) may follow such procedures, not inconsistent with these Rules, as they, in their discretion, may deem appropriate. The decision of the arbitrator(s) shall be based on these Rules to the extent applicable.

H. Promptly upon notice thereof from the arbitrator(s), the Organization shall communicate the decision of the arbitrator(s) with respect to the matter in dispute to all parties involved. That decision may include an award of damages for any expense or loss (not exceeding the amount of the claim set forth in the complaint) plus reasonable costs and attorneys’ fees relative to the claim. Any award shall be paid by the losing party to the prevailing party within ten days of receipt of the decision unless appealed to the courts. That decision shall be subject to appeal to the courts.

I. Member is not obligated to bring a dispute to the Organization for arbitration pursuant to this Section XIV. If a Member does bring a dispute to the Organization under this Section, the other Members to the dispute shall comply with this Section and participate in the arbitration, subject to the appeal to the courts as described under Section XIV(H). These Rules apply to claims for up to $500,000. Provided both complainant and respondent consent thereto in writing, these Rules shall also apply to claims in excess of that amount.

J. All decisions and hearings of the arbitrators and communications between the Members to the dispute and the arbitrators and/or the Organization shall be treated as confidential information, and shall not be disclosed by the Organization, the Members to the dispute, or the arbitrators, unless such disclosure is necessary to undertake or complete the arbitration contemplated by this Section XIV or to pursue a Member’s claim in a court of law or otherwise required as a matter of law. The Organization may, in its discretion, use the results of the arbitration to make revisions to the Rules or to provide a general interpretation of the Rules to other Members, provided the Members that were parties to the dispute are not identified to other Members.
XIV. COMMENTARY

**Rule:** The Rules provide for optional arbitration of disputes between Members based on violations of the Rules. For any claim of at least $50,000 and not more than $500,000, the aggrieved party may, but is not required to, seek a remedy by arbitration; with the consent of both complainant and respondent, disputes of more than $500,000 may also be resolved by arbitration.

This Section provides for procedures for such arbitration, including a requirement that an arbitration complaint be filed within 120 days of the violation on which it is based.

The arbitrators hearing a dispute may award damages for any expense or loss not exceeding the amount of the claim and, in addition, may include reasonable costs and attorneys’ fees. Arbitrators' decisions may be appealed to the courts. Any award not so appealed, however, must be paid by the losing party within ten days of its receipt of notice of the award.

Based on the results of an arbitration, the Organization may in its discretion provide a general interpretation of the Rules to other Members or revise the Rules, if necessary, provided the Organization does not disclose the identity of the Members that were parties to the dispute.

**Comment:** Arbitration under Section XIV may offer two significant advantages over more traditional court litigation: first, arbitration may be substantially cheaper for the parties; and second, the arbitrators likely will be more expert than a judge and/or jury in the technicalities of the check collection and return system generally and the ECCHO system specifically. In certain cases, an arbitration may identify issues or Rules' interpretations that the Organization may determine would be informative for other Members or that necessitate a revision to the Rules.
OPERATING RULES

XV.  IMAGE EXCHANGE AND RETURN OF IMPERFECT IMAGE ITEMS

A.  Permissible Imperfect Image Items for Forward Exchange and Return.  Subject to
the requirements of this Section XV, a Sending Bank may send to a Receiving
Bank an Imperfect Image Item for forward exchange and presentment under
Section XIX as an Electronic Check, notwithstanding that the Imperfect Image Item
does not meet either the requirement for eligibility under Sections XIX(C)(1)(a.i.)
and XIX(C)(1)(b.i.) or the requirement of an “Image” under Section I(FF) of the
Rules because it is an Imperfect Image Item.

Subject to the requirements of this Section XV, a Returning Member may send to
a Returnee Member an Imperfect Image Item for return under Section XX as an
Electronic Returned Check notwithstanding that the Imperfect Image Item does not
meet either the requirement for eligibility under Sections XX(C)(1)(a.i.) and
XX(C)(1)(b.i.) or the requirement of an “Electronic Returned Check” under Section
I(Z) of the Rules because the item is an Imperfect Image Item.
OPERATING RULES

XV. IMAGE EXCHANGE AND RETURN OF IMPERFECT IMAGE ITEMS (CONTINUED)

B. Rules Variations for Imperfect Image Items. With respect to the exchange or return of an Imperfect Image Item, a Member is not obligated to comply with, but shall use reasonable efforts to comply with, the following provisions of the Rules:

(1.a.) Section V(A) - Industry Standards

(2.a.) Section V(B) – TIFF

(3.a.) Section XIX(E) – Indorsement

(4.a.) Section XX(D)(2), and XX(D)(8) – Electronic Returned Checks / (Accuracy of image and other return requirements)

With respect to the exchange or return of an Imperfect Image Item, the following provisions of the Rules shall not be applicable:

(1.b.) Section XIX(C) – Items Eligible for Imaging

(2.b.) Section XIX(Q) – Recourse to Prior Collecting Bank or Returning Bank

(3.b.) Section XX(L) – Recourse to Returning Member

With respect to the exchange or return of an Imperfect Image Item, the following provision of Regulation CC shall not be applicable:

(1.c.) Section 229.34(a)(1)(i) -- Warranties with respect to electronic checks and electronic returned checks.

For purposes of those Rules that do apply to the exchange or return of an Imperfect Image Item, an Imperfect Image Item and the related electronic file of MICR line information shall be deemed to be an “Image” and “Electronic Information”, respectively, and together an “Electronic Check,” under Section XIX of the Rules and together an “Electronic Returned Check” under Section XX of the Rules.
XV(B). COMMENTARY

Rule: With respect to the exchange or return of an Imperfect Image Item, the warranties for Electronic Checks and Electronic Returned Checks under Regulation CC Section 229.34(a)(1)(i) shall not be applicable.

Comment: While the warranty for Electronic Checks and Electronic Returned Checks under Section 229.34(a)(1)(i) of Regulation CC is not applicable to an Imperfect Image Item, the warranty in Section XIX(L) and Section XX(J) relating to compliance with the Rules, and the warranty under Section 229.34(a)(1)(ii) of Regulation CC relating to duplication of items, are applicable.
OPERATING RULES

XV. IMAGE EXCHANGE AND RETURN OF Imperfect Image Items (CONTINUED)

C. MICR Line Information. For forward exchange under Section XIX, the Sending Bank shall include in the Electronic Information the As-Read MICR Information from the Related Physical Check that is contained in and readable from the Imperfect Image Item or the Related Physical Check (as the case may be).

For return exchange under Section XX, the Returning Member shall include in the Electronic Information related to the Electronic Returned Check, the As-Read MICR Information of the Related Physical Check that is contained in and readable from the Imperfect Image Item or the Related Physical Check (as the case may be).
D. Flagging of Items or Files. The Member shall flag each Imperfect Image Item, or each electronic file containing Imperfect Image Items, using the flagging procedure established by the Receiving Bank or Returnee Member or any applicable exchange network or by means of applicable industry standards. A Member may flag an Imperfect Image Item even if the Member was not the cause of the facts or circumstances that resulted in the item being deemed an Imperfect Image Item, and a Member’s flagging of an item as an Imperfect Image Item is not an admission to any person that such Member is responsible for such item being deemed an Imperfect Image Item. This flagging procedure for an Imperfect Image Item may involve the use of an identifier or code in the Electronic Information. An “Imperfect Image Item” that contains a Photocopy meeting the requirements of Section I(HH) is deemed to satisfy the flagging requirement of this Section, regardless of whether it otherwise contains a separate electronic flag.

If a Member receives from another Member an Imperfect Image Item containing the appropriate flag identifier, the Member shall maintain the flag or other code identifying the Imperfect Image Item pursuant to Section XV(D) in any subsequent exchange, return or re-presentation of the item.
XV(D). COMMENTARY

Rule: The Member shall flag each Imperfect Image Item, or each electronic file containing Imperfect Image Items, using the flagging procedure established by the Receiving Bank or Returnee Member or any applicable exchange network or by means of applicable industry standards.

Comment: For purposes of establishing the flagging procedure for Imperfect Image Items by means of applicable industry standards for check image exchange, Members may rely upon implementing guidelines issued for such standards to establish the flagging procedure. An Imperfect Image Item that contains a Photocopy is not required to have an electronic flag, because the printed legend on the Photocopy itself, required to meet the definition in Section I(QQ), serves as the flag for the item and brings it under this Section.

Rule: A Member may flag an Imperfect Image Item even if the Member was not the cause of the facts or circumstances that resulted in the item being deemed an Imperfect Image Item, and a Member’s flagging of an item as an Imperfect Image Item is not an admission to any person that such Member is responsible for such item being deemed an Imperfect Image Item.

Comment: Section XV(D) requires the Sending Bank that identifies an item as an Imperfect Image Item, and seeks to exchange it under this Rule, to flag the item as an Imperfect Image Item in accordance with an agreed upon flagging procedure. Flagging the item is not an admission by the Sending Bank that it was the cause of the problem or issue that resulted in the item being an Imperfect Image Item. Moreover, the Sending Bank that flags the item may have a claim, under ECCHO Rules, a deposit agreement or other applicable law/contract, against another person (such as a depositing customer or a prior bank in the check collection chain) for causing the item to be an Imperfect Image Item.
OPERATING RULES

XV. IMAGE EXCHANGE AND RETURN OF IMPERFECT IMAGE ITEMS (CONTINUED)

E. Presentment of Imperfect Image Item. The timing and other requirements of presentment under Section XIX(H) shall apply to the forward exchange of the Imperfect Image Item. Presentment of an Imperfect Image Item is not dependent upon the Receiving Bank’s ability to view, read or process the Imperfect Image Item.
XV(E). COMMENTARY

Rule: The timing and other requirements of presentment under Section XIX(H) shall apply to the forward exchange of the Imperfect Image Item. Presentment of an Imperfect Image Item is not dependent upon the Receiving Bank’s ability to view, read or process the Imperfect Image Item.

Comment: Under Section XV(E), the timing and other requirements of presentment under Section XIX(H) shall apply to the forward exchange of the Imperfect Image Item. Accordingly, presentment occurs with respect to an Imperfect Image Item when the Image and the related Electronic Information are both received or made available by the Paying Bank. In some, but not all cases, an Image that is an Imperfect Image Item may not be readable or otherwise meet technical/quality requirements for an Image. However, for exchanges subject to this Section XV, the presentment of the Imperfect Image Item is not dependent upon the Paying Bank’s ability to view, read or process the Imperfect Image Item. The same approach is taken under Section XV(G) for the timing of receipt of a return of an Imperfect Image Item.
F. Return and Adjustment Requirements Generally. Regardless of whether or not the Imperfect Image Item is an “item” or a “check” for purposes of Regulation CC and the Code, a Receiving Bank that is the Paying Bank shall comply with the requirements for timely return of the Imperfect Image Item under the Code and Regulation CC as if the Imperfect Image Item were an “item” or a “check” for purposes of Regulation CC and the Code. A Receiving Bank that subsequently returns an Imperfect Image Item for any reason shall return the Imperfect Image Item in accordance with the return hierarchy set forth in Section XX(D)(5) and Section XX(D)(6) and Section XX(D)(7). Nothing in this Section XV limits the ability of a Paying Bank to return for any reason within applicable timeframes an Imperfect Image Item that is presented to it.

A Member Bank that has received an Imperfect Image Item as either an Electronic Check or an Electronic Returned Check from another Member may make a warranty or other claim with respect to the Imperfect Image Item to a Member in accordance with the adjustment procedures or rules generally applicable between the two Members under the Rules or any applicable agreement or general business practice as to adjustments.

If a Member is a bank of first deposit with respect to an Imperfect Image Item, it may not re-present a returned Imperfect Image Item if it was returned by a Paying Bank for any reason related to the Electronic Check being an Imperfect Image Item.


**OPERATING RULES**

**XV. IMAGE EXCHANGE AND RETURN OF IMPERFECT IMAGE ITEMS (CONTINUED)**

G. *Return of Imperfect Image Item under Section XX of The Rules.* For returns governed under Section XX of the Rules, the receipt requirements of a return under Section XX(F) shall apply to the return of an Imperfect Image Item. The receipt of a return of an Imperfect Image Item as an Electronic Returned Check by a Returnee Member is not dependent upon the Returnee Member’s ability to view, read or process the Imperfect Image Item.
OPERATING RULES

XV. IMAGE EXCHANGE AND RETURN OF IMPERFECT IMAGE ITEMS (CONTINUED)

H. Substitute Check Creation. Notwithstanding Section XV(I), a Member that receives an Imperfect Image Item, and creates a substitute check from the Imperfect Image Item is solely responsible for any loss that arises to that Member under applicable law or the Rules because the substitute check does not meet the requirements of a “substitute check” under the Check 21 Act or applicable industry standards.
OPERATING RULES

XV. IMAGE EXCHANGE AND RETURN OF IMPERFECT IMAGE ITEMS (CONTINUED)

I. Warranty and Indemnification for Imperfect Image Items. In addition to any warranty provided under any other provision of the Rules, with respect to an Imperfect Image Item that a sending Member transmits, provides, makes available or returns to another receiving Member in a forward exchange or return governed under these Rules, the sending Member warrants to the receiving Member that:

(1) the sending Member has complied with this Section XV, and

(2) the receiving Member and/or its customer will not incur a loss arising from payment, return or receipt of the Imperfect Image Item as opposed to an Electronic Check or Electronic Returned Check (as applicable) that otherwise conformed in all respects with the Rules.

A breach of this warranty shall be treated as a breach of a warranty under Section XIX(L) (for forward collection) or Section XX(J) (for returned items) and shall be subject to the indemnification in such Sections.
XV(I). COMMENTARY

**Rule:** The sending Member warrants to the receiving Member that (1) the sending Member has complied with this Section XV, and (2) the receiving Member and/or its customer will not incur a loss arising from payment, return or receipt of the Imperfect Image Item as opposed to an Electronic Check or Electronic Returned Check (as applicable) that otherwise conformed in all respects with the ECCHO Rules.

**Comment:** Under Section XV(I), a sending Member that sends an Imperfect Image Item in a forward exchange or return governed under these Rules warrants to the receiving Member that the receiving Member and/or its customer will not incur a loss arising from payment, return or receipt of the Imperfect Image Item as opposed to an Electronic Check or Electronic Returned Check (as applicable) that otherwise conformed in all respects with the ECCHO Rules. This is a broad warranty, and resulting indemnification in the event of breach of the warranty, that is intended to protect the receiving Member when processing and/or posting the Imperfect Image Item. This warranty/indemnity is appropriate because the receiving Member may not be able to view all or portions of the Imperfect Image Item when making the decision to pay the Imperfect Image Item. For example, the Paying Bank is protected under this warranty/indemnity if the Paying Bank pays an Imperfect Image Item which does not meet the requirements under the UCC or its customer agreement for a properly payable item, and the Paying Bank subsequently incurs liability to its customer for such payment. In a second example, the Paying Bank is protected under this warranty/indemnity if the Paying Bank fails to meet the applicable return timeframes for the Imperfect Image Item because the Paying Bank is delayed in processing the item because of the nature of the item (such as difficulty in determining drawer account number or the bank of first deposit.)
A. **Exchange Arrangements.** Two Members that participate in different image exchange networks, archives or electronic switches (each a “Network”) may exchange Electronic Checks and Electronic Returned Check in transactions that pass through multiple Networks before delivery to a Member, provided that the Networks have agreed to process these transactions. To address technical and operational issues that are allocated to Members’ agreement under the Rules, the Members may:

1. enter into an image exchange agreement or business practice terms that expressly addresses these issues in the context of an exchange through multiple Networks;

2. rely on the agreement of the Networks to address these issues on behalf of the Members, or

3. rely upon the rule set forth in Section XVI(B).
XVI(A). COMMENTARY

Rule: Two Members that participate in different image exchange networks, archives or electronic switches (each a “Network”) may exchange Electronic Checks and Electronic Returned Checks in transactions that pass through multiple Networks before delivery to a Member, provided that the Networks have agreed to process these transactions.

Comment: Two image exchange networks may enter into an arrangement to send and receive Electronic Checks between the two exchange networks. This technological and communications arrangement allows ECCHO Members that participate in one exchange network (“Network A”) to send Electronic Checks to ECCHO Members that participate in the second exchange (“Network B”). In these arrangements, the ECCHO Members of Network A do not become participants in the Network B, or vice versa. Rather, the Sending Bank delivers the Electronic Check to Network A, which delivers the Electronic Check to Network B, and Network B delivers the Electronic Check to the designated ECCHO Member. Returns of Electronic Returned Checks would work in reverse, with the return flowing from the Receiving Bank (aka the “Returning Member” under Section XX) through Network B to Network A, and then to the ECCHO Member that presented the original Electronic Check (aka the “Returnee Member” under Section XX).

For these multiple Network exchanges, it is important for ECCHO Members to determine the exchange agreement or business practices terms applicable to the Electronic Check and return exchanges, including the applicable business practice terms that will govern such issues as receipt cut-off times, permissible items for imaging, and receipt/presentment locations for Electronic Checks to the Member that is the Paying Bank.

Rule: To address technical and operational issues that are allocated to Members’ agreement under the ECCHO Rules, the Members may

1. enter into an image exchange agreement or business practice terms that expressly addresses these issues in the context of an exchange through multiple Networks;
2. rely on the agreement of the Networks to address these issues on behalf of the Members, or
3. rely upon the rule set forth in Section XVI(B).

Comment: The agreement requirement under the ECCHO Rules for exchanges and or returns between ECCHO Members in the multi-Network arrangement can be satisfied in at least three different ways:

1. the ECCHO Members in the different Networks could have a stand-alone or other agreement outside of the two Networks that expressly addresses the delivery of Electronic Checks and returns through the two Networks.
2. Network A and Network B could expressly designate the applicable business practices terms for different types of image transactions between the two Networks and the related ECCHO Members.
3. if no governing business practices arrangement is expressly specified by the Networks or the Members, the default rule set forth in Section XVI(B) states that the image agreement/business practices terms of the Network that is receiving the Electronic Check (or Electronic Returned Check) for its participating ECCHO Member is the governing agreement. This third approach assumes that the participants in each of the Networks have designated the ECCHO Rules as the applicable rules for Networks and there is a separate business practices agreement for each Network.
OPERATING RULES

XVI. EXCHANGE ARRANGEMENTS (CONTINUED)

B. Exchange Arrangements. Except as provided in Section XVI(A), for issues allocated to the agreement of the Members under the Rules, the image exchange agreement or business practices terms that is applicable to a Member when acting as a Receiving Bank or a Returnee Member for Electronic Checks and/or Electronic Returned Checks received through the Network in which the Member directly participates shall govern that Member’s receipt of Electronic Checks and/or Electronic Returned Checks.
XVI(B). COMMENTARY

Rule: Except as provided in Section XVI(A), for issues allocated to the agreement of the Members under the ECCHO Rules, the image exchange agreement or business practices terms that is applicable to a Member when acting as a Receiving Bank or a Returnee Member for Electronic Checks and/or Electronic Returned Checks received through the Network in which the Member directly participates shall govern that Member’s receipt of Electronic Checks and/or Electronic Returned Checks.

Comment: The following are three examples of the third approach to the agreement requirement:

(1) The Receiving Bank has established a cut-off time of 2:00 pm for receipt of Electronic Checks as part of the Network B’s business practices terms. When the Sending Bank sends an Electronic Check (drawn on the Receiving Bank) through Network A and into Network B to which the Receiving Bank is a participant, the Sending Bank has agreed to the terms that the Receiving Bank has established for cut-off times in Network B’s business practices arrangement.

(2) Network B has business practices terms that define (for its participants) the electronic location for receipt as delivery of Electronic Checks as a particular electronic mailbox or file location. Under the rule in Section XVI(B), this receipt definition of Network B will apply to Electronic Checks sent by the Sending Bank to Network A, and then by Network B for delivery to the Receiving Bank. The time periods for return of the Electronic Returned Check will be determined by this receipt of the Electronic Returned Check by the Receiving Bank, and not the definition of “receipt” of Electronic Checks under the Network A’s business practices terms.

(3) Network A states in its business practices terms that receipt (including for purposes of presentment) of an Electronic Check occurs when the Electronic Check is made available at an electronic location for pick-up by the Paying Bank (regardless of when the Electronic Check is actually picked-up). Network B’s business practices terms uses a different approach, and states that receipt (and therefore presentment) occurs when the Network delivers the Electronic Check to the Paying Bank. (See ECCHO Rules XIX(G) and XIX(H) for a discussion of receipt and presentment options). Under the rule in Section XVI(B), Network B’s business practices terms will govern when receipt of the Electronic Check occurs by the Paying Bank that is a participant in Network B, even though the Electronic Check first passes through Network A.
OPERATING RULES

XVII. TRANSMISSION OF IMAGES OF SAVINGS BONDS FOR REDEMPTION BY U.S. TREASURY DEPARTMENT

A. General Provisions.

(1) Application of Rule. Subject to the exclusion in Section XVII(A)(2), this Section XVII shall constitute an agreement between two Members to transmit images of Savings Bonds between the two Members for subsequent transmission by the Receiving Bank to either another Receiving Bank under this Section XVII or to a Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department) for redemption and payment. This Section XVII may be supplemented with additional terms by means of an agreement between two Members relating to the transmission and payment of savings bonds.

Subject to the exclusion in Section XVII(A)(2), in the event that two Members transmit an image of a Savings Bond between them, then this Section XVII shall apply to the transmission of the image of the Savings Bond by the Sending Bank to the Receiving Bank and the Receiving Bank’s receipt and handling of the image of the Savings Bond. A Receiving Bank that receives an image of a Savings Bond may transmit the image of the Savings Bond to a second Receiving Bank under this Section XVII or to a Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department).

(2) Exclusions to the Applicability of this Section XVII. This Section XVII and the Rules in general do not apply to a transmission of an image of a Savings Bond between two Members:

(a) if the Receiving Bank has not made a regular practice of clearing images of Savings Bonds for the Sending Bank and the Receiving Bank does not further send the image to another Receiving Bank or to a Federal Reserve Bank for purposes of clearing the image of the Savings Bond;

(b) that have entered into a separate written agreement that expressly governs the transmission of images of Savings Bonds between such Members exclusively in accordance with the terms of such agreement; or

(c) that have entered into a separate written agreement that otherwise excludes such transmission of images of Savings Bonds from coverage under the Rules.

(3) Compliance with Law. The redemption and payment of Savings Bonds by a Paying Agent and the creation and transmission of images of Savings Bonds are subject to the regulations and operating guidelines of the U.S. Treasury Department. Members transmitting or receiving an image of a Savings Bond under this Section XVII agree to cooperate with each other in the event of an audit or a request for information by the U.S. Treasury Department or the Federal Reserve (as fiscal agent to the U.S. Treasury Department) relating to such Savings Bond. Nothing in this Section XVII shall alter or waive the obligation of a Member to comply with the regulations and operating guidelines of the U.S. Treasury Department or other applicable law.
OPERATING RULES

XVII. TRANSMISSION OF IMAGES OF SAVINGS BONDS FOR REDEMPTION BY U.S. TREASURY DEPARTMENT (CONTINUED)

(4) Status of Receiving Bank. For all purposes and activities contemplated under this Section XVII, the Receiving Bank handles the image of a Savings Bond as the correspondent bank and limited agent of the Sending Bank in order to seek payment of the Savings Bond from the U.S. Treasury Department. The Receiving Bank shall, at all times, act in accordance with a standard of ordinary care for similarly situated correspondent banks. The Receiving Bank is not a “collecting bank” or “paying bank” under Regulation CC or the Code with respect to the image of the Savings Bond received from a Sending Bank, and the Receiving Bank is not accepting or receiving the image of the Savings Bond as principal.
XVII(A). COMMENTARY

Rule: Section XVII shall constitute an agreement between two Members to transmit images of Savings Bonds between the two Members for subsequent transmission by the Receiving Bank to either another Receiving Bank under this Section XVII or to a Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department) for redemption and payment.

Comment: The regulations of the Bureau of the Fiscal Service permit a Paying Agent bank (that accepts a Savings Bond from its customer) to enter into an arrangement with another bank to submit the images of Savings Bonds on behalf of the Paying Agent to the Federal Reserve Bank. (See definition of “Federal Reserve Processing Site” in the Bureau’s Regulation, 31 CFR 321.1.) This Section XVII of the Rules establishes such an arrangement among ECCHO Member banks. This Section XVII applies to all ECCHO Members when sending or receiving images of Savings Bonds, except as provided in the exclusions set forth in Section XVII(A)(2). A Sending Bank is encouraged to communicate with the intended Receiving Bank prior to sending images of Savings Bonds to it in order to confirm that the Receiving Bank will handle the images of Savings Bonds.

Rule: Section XVII and the Rules in general do not apply to a transmission of an image of a Savings Bond between two Members: (a) if the Receiving Bank has not made a regular practice of clearing images of Savings Bonds for the Sending Bank and the Receiving Bank does not further send the image to another Receiving Bank or to a Federal Reserve Bank for purposes of clearing the image of the Savings Bond.

Comment: Section XVII(A)(2) provides that this Section XVII does not apply to a Receiving Bank if the Sending Bank inadvertently transmits an image of a Savings Bond to a Receiving Bank, and there is no regular course of business between the two banks for the handling of images of Savings Bonds. In these cases, the Receiving Bank is not subject to this Rule and may return, reject or adjust the image back to the Sending Bank in the normal course of business.

Rule: The redemption and payment of Savings Bonds by a Paying Agent and the creation and transmission of images of Savings Bonds are subject to the regulations and operating guidelines of the U.S. Treasury Department.

Comment: This Section XVII does not alter any obligation of a Member that may arise under federal law and regulation, including the regulations of the Treasury Department’s Bureau of the Fiscal Service, that govern the acceptance and payment of U.S Savings Bonds. A Paying Agent, that accepts a Savings Bond from its customer, is subject to the Bureau’s regulation that imposes various requirements on a Paying Agent including the requirement for the Paying Agent to cancel the Savings Bond by stamping the face of the Savings Bond with the Paying Agent stamp and the requirement for the Paying Agent to retain the original Savings Bond for at least 30 calendar days following submission of the image of the redeemed bond to the Federal Reserve Bank. The Bureau’s Regulation expressly prohibits the Paying Agent from accepting an image, or other copy or reproduction of the Savings Bond. Therefore, the non-bank customer cannot use remote deposit capture to send the Savings Bond image to the Paying Agent. A Paying Agent that takes a Savings Bond from its customer should note that the retention period under the Bureau’s Regulation starts from the date of submission of the image of the redeemed Savings Bond to the Federal Reserve Bank, and not the date on which the Savings Bond is accepted from the customer and not the date that the bond is transmitted by a Sending Bank to a Receiving Bank under these Rules. See the Bureau’s Regulation at 31 CFR Section 321.25. Paying Agents can set longer retention periods at their discretion.

Rule: The Receiving Bank handles the image of a Savings Bond as the correspondent bank and limited agent of the Sending Bank in order to seek payment of the Savings Bond from the U.S. Treasury Department. The Receiving Bank shall, at all times, act in accordance with a standard of ordinary care for similarly situated correspondent banks.

Comment: Savings Bonds are not “items” or “checks” under Uniform Commercial Code Articles 3 and 4 and Regulation CC. As a result, the standard of care under UCC Article 4 that is normally applied to a collecting bank when handling a check item in forward collection is not applicable to a Receiving Bank handling the submission of Savings Bonds to the Federal Reserve on behalf of a Sending Bank. Section XVII(A)(4) establishes a general standard of care applicable to a Receiving Bank when handling an image
XVII(A). COMMENTARY (continued)

of a Saving Bond for a Sending Bank. This standard of care is intended to match the general standard of care that is applicable to a typical correspondent bank arrangement between two banks.
OPERATING RULES

XVII. TRANSMISSION OF IMAGES OF SAVINGS BONDS FOR REDEMPTION BY U.S. TREASURY DEPARTMENT (CONTINUED)

B. Images of Savings Bonds That Are Permissible For Transmission under The Rules.

(1) Application of Rules to Forward Transmission of Images. A Sending Bank may transmit to a Receiving Bank an image of a Savings Bond pursuant to this Section XVII, notwithstanding that the Savings Bond does not meet either the requirement for eligibility under Section XIX(C)(1)(a.i.) or the requirement of an “Electronic Check” under Section I(W) of the Rules because it is an image of a Savings Bond.

(2) Application of Rules to Return Of Images in a Situation Involving an Image Exchange Provider. If permitted by an Exchange Provider utilized by two Members, the Receiving Bank may reject an image of a Savings Bond, prior to transmission to the Federal Reserve, by means of an image return for Administrative Reason through such Exchange Provider. In the event of such a return, the return of the image of the Savings Bond is permitted under Section XX as an Electronic Returned Check, notwithstanding that the Savings Bond does not meet either the requirement for eligibility under Section XX(C)(1)(a.i.) or the requirement of an “Electronic Returned Check” under Section I(Z) of the Rules because it is an image of a Savings Bond.
XVII(B). COMMENTARY

Rule: If permitted by an Exchange Provider utilized by two Members, the Receiving Bank may reject an image of a Savings Bond, prior to transmission to the Federal Reserve, by means of an image return for Administrative Reason through such Exchange Provider.

Comment: The Section XX Electronic Returned Check rules of the ECCHO Rules only apply if the image of a Savings Bond is transmitted through an Exchange Provider that allows for Administrative Reason return of an Electronic Check generally. For example, if the Exchange Provider permits an Administrative Reason return of an image in the context of a non-conforming image. For all other Exchange Providers, the image of a Savings Bond is not eligible for return as an Electronic Returned Check subject to Section XX of the Rules. Rather, a Receiving Bank that seeks to reject or return an image of a Savings Bond must deliver the image of the Savings Bond back to the Sending Member by means of an adjustment process. See Section XVII(F)(4) of the Rules which requires the Receiving Bank to use the adjustment process to reject, return or adjust an image of a Savings Bond back to the Sending Bank.
C. Rules Variations for Images of Savings Bonds. In addition to any other modifications provided in this Section XVII, with respect to the transmission of an image of a Savings Bond, the following provisions of the Rules shall not be applicable:

(1) Section V -- Electronic Check Formats
(2) Section XV – Image Exchange and Return of Imperfect Image Items
(3) Section XIX(C) – Items Eligible for Imaging
(4) Section XIX(E) – Indorsement
(5) Section XIX(F) – Status of Electronic Checks and Electronic Returned Checks
(6) Section XIX(H) – Presentment
(7) Section XIX(K) – Storage and Retrieval of Related Physical Checks and Images
(8) Section XIX(L) – Sending Bank Warranties and Indemnification
(9) Section XIX(M) – Receiving Bank Warranties and Indemnification
(10) Section XIX(N) – Remotely Created Check Warranty
(11) Section XIX(O) – Forged and Counterfeit Check Warranties
(12) Section XIX(Q) – Recourse to Prior Collecting or Returning Bank
(13) Section XX(D) – Electronic Returned Checks
(14) Section XX(E) – Status of Electronic Returned Check
(15) Section XX(J) – Returning Member Warranties and Indemnification
(16) Section XX(K) – Returnee Member Warranties and Indemnification
(17) Section XX(L) – Recourse to Returning Member

For purposes of the Rules that apply to the transmission of an image of a Savings Bond, and the related electronic information file, such image and file shall be deemed to be an “Image” and “Electronic Information”, respectively, and an “Electronic Check” under Section XIX of the Rules, and an “Electronic Returned Check” under Section XX of the Rules.
OPERATING RULES

XVII. TRANSMISSION OF IMAGES OF SAVINGS BONDS FOR REDEMPTION BY U.S. TREASURY DEPARTMENT (CONTINUED)

D. Commingling of Images of Savings Bonds and Checks. A Sending Bank may include in a single file of images transmitted or made available to a Receiving Bank Images of Savings Bonds and checks and other items eligible for exchange under these Rules.
E. **Industry Formats and Standards/Contents of Data File Associated with Image.** This Section XVII constitutes a modification to applicable industry standards that govern the creation of Images and related Electronic Information for Electronic Checks. The Sending Bank is responsible for including in the Electronic Information associated with the image of the Savings Bond the item record information that meets the specifications set forth in the Fed Quick Reference Guide, including its electronic indorsement. In addition, a Sending Bank that transmits an image of a Savings Bond through an Exchange Provider shall comply with any rules or guidelines established by that Exchange Provider with respect to the transmission of such image.
OPERATING RULES

XVII. TRANSMISSION OF IMAGES OF SAVINGS BONDS FOR REDEMPTION BY U.S. TREASURY DEPARTMENT (CONTINUED)

F. Rejection, Return and Correction Or Adjustment Of Images of Savings Bonds.

(1) Return or Reject Prior To Payment By U.S. Treasury Department. The Receiving Bank may reject or return to the Sending Bank an image of a Savings Bond for any reason prior to payment of the image of the Savings Bond by a Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department). The Sending Bank is responsible to the Receiving Bank for the full amount of the rejected or returned image. For avoidance of doubt, a Receiving Bank is not subject to any time limitation on return that is established for items or checks under the Code or Regulation CC with respect to rejection or return of an image of a Savings Bond.

(2) Examples of Reasons for Return or Rejection. Without limiting the provisions of Section XVII(F)(1), examples of when a Receiving Bank may reject or return an image of a Savings Bond include:

(a) the image is a duplicate of a previously paid Savings Bond (paper or image),
(b) the image is non-conforming,
(c) the image, or the related electronic data file, fails to comply with the data standards for payment by the Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department), or
(d) the image or the related electronic data file fails one or more edits at the Receiving Bank or the Federal Reserve Bank.

(3) Adjustment Arising From Action of U.S. Treasury Department. Any credit or payment provided to a Sending Bank by a Receiving Bank for an image of a Savings Bond is subject to correction and adjustment from the U.S. Treasury Department or a Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department) before or after redemption and payment of the image of the Savings Bond. In the event that the Receiving Bank receives such correction or adjustment from the U.S. Treasury Department or a Federal Reserve Bank (as fiscal agent to the U.S. Treasury Department) for any reason and at any time before or after redemption and payment of the image of the Savings Bond, the Receiving Bank may correct or adjust the image back to the Sending Bank, and the Sending Bank is responsible to the Receiving Bank for the full amount of the correction or adjustment.

(4) Required Use of Adjustment Process. Except for an image return for Administrative Reason through Exchange Provider under Section XVII(B)(2), all rejections, returns or adjustments of an image of a Savings Bond shall be transmitted by the Receiving Bank to the Sending Bank (that originally sent the image to the Receiving Bank) as an adjustment with financial entry. The Receiving Bank may make an adjustment claim to the Sending Bank (that originally sent the image to the Receiving Bank) in accordance with the adjustment procedures or rules generally applicable between two Members under the Rules or by means of an adjustment process generally utilized between the two Members. The Sending Bank shall honor the adjustment and the financial entry.
XVII(F). COMMENTARY

Rule: Except for an image return for Administrative Reason through Exchange Provider under Section XVII(B)(2), all rejections, returns or adjustments of an image of a Savings Bond shall be transmitted by the Receiving Bank to the Sending Bank (that originally sent the image to the Receiving Bank) as an adjustment with financial entry.

Comment: Savings Bonds are not subject to return time frames established under UCC and Regulation CC. In the event that the Treasury Department, or the Federal Reserve Bank acting on its behalf, adjusts an image of a Savings Bond back to the Receiving Bank, the Sending Bank is responsible to the Receiving Bank for the amount of the adjustment. Absent a loss caused by a failure of the Receiving Bank to meet its standard of care in the handling of a Savings Bond, the Sending Bank is liable for the full amount of the adjustment from the Treasury Department/Federal Reserve Bank.
OPERATING RULES

XVII. TRANSMISSION OF IMAGES OF SAVINGS BONDS FOR REDEMPTION BY U.S. TREASURY DEPARTMENT (CONTINUED)

G. Warranty and Indemnification for Images of Savings Bonds. With respect to an image of a Savings Bond that a Sending Bank transmits to a Receiving Bank as governed under this Section XVII, the Sending Bank warrants to the Receiving Bank that:

(1) the Sending Bank has complied with each of the requirements of this Section XVII and those other Rules applicable to the Sending Bank, excluding those Rules listed above in Section XVII(C).

A breach of this warranty by a Sending Bank shall be treated as a breach of a warranty under Section XIX(L).
OPERATING RULES

XVIII. EXCHANGE OF IMAGES OF CANADIAN ITEMS

A. General Provisions.

Application of Rules. This Section XVIII governs the exchange of Images of Canadian Items between two Members for subsequent exchange by the Receiving Bank to either another Receiving Bank under this Section XVIII or to a Canadian Correspondent Bank for payment. This Section XVIII also governs the return of the Image of Canadian Items, either as an Electronic Returned Check or as a Canadian Paper Return Item. This Section XVIII, and the other applicable Rules, may be supplemented or varied with additional terms by means of an agreement between the two Members.

This Section XVIII shall be effective if (i) the two Members enter into a separate written agreement that expressly states that the Rules will apply to the exchange and/or return of Images of Canadian Items between the two Members, or (ii) the two Members exchange an Image of a Canadian Item between the two Members and the receiving Member handles the Image of Canadian Item in forward exchange, collection, presentment, return or adjustment.

B. Application of Law to Canadian Items and this Section XVIII.

(1) Law Applicable to Payment of Canadian Item and Persons Interested in the Canadian Item. Members acknowledge that the payment and return of an Image of a Canadian Item by the Canadian Paying Bank or Canadian Correspondent Bank is subject to Canadian Law. Nothing in these Rules shall alter or amend the rights and obligations of the bank or other persons having an interest in the Canadian Item or an Image of the Canadian Item as established under Canadian Law. Members specifically acknowledge that Canadian Law and the Gateway Receiving Bank’s agreement with the Canadian Correspondent Bank govern the creation of an official image of a Canadian Item.

(2) Law Applicable to Obligations Established Under this Section XVIII and The Rules. The exchange or return of an Image of a Canadian Item between two Members, and any rights or obligations arising between the Members as a result of that exchange or return, is governed under this Section XVIII, the Code as made applicable under Section XVIII(F), the Rules and the applicable U.S. state and federal law under which these Rules may be enforced between two Members.

C. Depositing Customer Agreement. A Sending Bank that is also the Depositary Bank is responsible for having a customer agreement with its depositing customer that allows for the collection of the Canadian Item as an Image. At a minimum, this customer agreement shall address the following (i) a remote deposit capture customer shall destroy the original Canadian Item within 120 calendar days of the creation of the Image, (ii) the type of item that customer will receive in the event of a return of the Canadian Item, and (iii) a prohibition on the deposit or re-deposit of the Canadian Item or an Image of the Canadian Item at any other depositary bank without the permission of the Sending Bank.
OPERATING RULES

XVIII. EXCHANGE OF IMAGES OF CANADIAN ITEMS (CONTINUED)

D. Eligible Items for Exchange under this Section. An Image of a Canadian Item is eligible for exchange under this Section XVIII if the item is eligible for exchange as an Image under Canadian Law. Items that are not eligible for exchange as an Image under this Section XVIII include, among other items:

1. a Canadian dollar item in excess of $25,000,000 (Canadian),
2. items that are created based on a telephone or oral authorization of the customer,
3. Canadian savings bonds,
4. postdated items or stale dated items,
5. items stamped with dishonored return reason, and
6. returned items in carrier envelopes.

E. Destruction of Canadian Item. A Sending Bank that is holding the original paper Canadian Item must destroy the item within 120 calendar days from the date of creation of the Image or within a shorter period as instructed by the Receiving Bank. If Sending Bank received the Image of a Canadian Item from a bank that is not an ECCHO Member Bank or from a customer, the Sending Bank shall instruct that bank or its customer to ensure destruction of the original paper Canadian Item within 120 calendar days from the date of creation of the Image.

F. Status of an Image of a Canadian Item and Role of Member Banks.

1. Section XIX(F) (Status of Electronic Check) and Section XX(E) (Status of Electronic Returned Check) of the Rules apply to the forward exchange or return of an Image or of a Canadian Item between two Members,
2. An Image of a Canadian Item shall not be subject to Regulation CC as a check, an Electronic Check or an Electronic Returned Check, notwithstanding the limited treatment of the Image of a Canadian Item as an Electronic Check or Electronic Returned Check under the Rules.
3. Without limiting the generality of Section XVIII(F)(1), for all activities contemplated under this Section XVIII, a Member Bank shall handle the Electronic Check, Electronic Returned Check or Canadian Paper Return Item of a Canadian Item as a collecting bank in accordance with the standard of care established under Article 4 (Bank Deposits and Collections) of the Code and in accordance with this Section XVIII and the Rules. In the event of a conflict between this Section XVIII and the Code, this Section XVIII shall constitute an agreement of the Member Banks to vary the Code and Regulation CC for the exchange of items contemplated under this Section and the Rules.
G. Exchange of Images of Canadian Items under The Rules.

(1) Application of Rules to Forward Exchange of Images. A Sending Bank may transmit or otherwise provide or make available to a Receiving Bank an Electronic Check derived from a Canadian Item pursuant to this Section XVIII and the other provisions of the Rules, notwithstanding that the Canadian Item does not meet either the requirement for eligibility under Section XIX(C)(1)(a.i.) or the requirement of an “Electronic Check” under Section I(W) of the Rules because it is an Image of a Canadian Item.

(2) Application of Rules to Return of Images. A Returning Member may transmit or otherwise provide or make available to a Returnee Member an Electronic Returned Check derived from a Canadian Item pursuant to this Section XVIII and the other provisions of the Rules, notwithstanding that the Canadian Item does not meet the requirement for eligibility under Section XX(C)(1)(a.i.) or the requirement of an “Electronic Returned Check” under Section I(Z) because it is an Image of a Canadian Item.

(3) For purposes of the Rules that apply to the transmission or providing or making available an Image of a Canadian Item and the related electronic information file such Image and file shall be deemed to be an “Image” and “Electronic Information”, respectively, and an “Electronic Check” under Section XIX of the Rules, and an “Electronic Returned Check” under Section XX of the Rules.

(4) Section Variations for Images of Canadian Items. In addition to any other modifications to the Rules provided in this Section XVIII, with respect to the forward exchange or return of an Image of a Canadian Item, the following provisions of the Rules shall not be applicable:

(a) Section V - Electronic Check Formats
(b) Section XV - Image Exchange and Return of Imperfect Image Items
(c) Section XIX(C) - Items Eligible for Imaging
(d) Section XIX(H) - Presentment
(e) Section XIX(K) - Storage and Retrieval of Related Physical Checks and Images
(f) Section XIX(N) - Remotely Created Check Warranty
(g) Section XIX(O) - Forged and Counterfeit Check Warranties

H. Separate Electronic Files of Different Currency Items. A Sending Bank shall include only Images of Canadian Items denominated in the same currency (U.S. Dollar or Canadian Dollar) in an electronic cash letter file that is exchanged under this Section. Sending Bank shall not include Images drawn on a U.S. depository institution (including U.S. branches of Canadian Banks) in the same electronic file. Sending Bank shall include an indicator of the currency of the items.

I. Industry Formats and Standards/Contents of Data File Associated with Image. Unless otherwise agreed by the Members or specified by the Gateway Receiving Bank under Section XVIII(J):
OPERATING RULES

XVIII. EXCHANGE OF IMAGES OF CANADIAN ITEMS (CONTINUED)

(1) Members shall comply with applicable U.S. industry standards for the creation and formatting of check images and related electronic data files when exchanging Electronic Checks or returning Electronic Returned Checks derived from a Canadian Item, with such modifications as are necessary to address Canadian formats for MICR line information.

(2) The Gateway Receiving Bank that sends the Image of a Canadian Item to the Canadian Correspondent Bank is responsible for formatting the Image and/or related electronic data files into formats appropriate for exchange of check images under Canadian Law and in conformance with format and other operational requirements established by the Canadian Correspondent Bank.

J. Authority of Gateway Receiving Bank to Impose Additional Requirements on Image Creation. A Gateway Receiving Bank may establish in writing from time to time additional operational or formatting requirements for Images of Canadian Items, including requirements that are set forth in the Gateway Receiving Bank’s agreement with the Canadian Correspondent Bank. Each Sending Bank which has a direct image exchange relationship with the Gateway Receiving Bank for exchanges governed under this Section shall comply with such additional requirements of the Gateway Receiving Bank. The Sending Bank also shall inform each depositary institution or customer that sends Images of Canadian Items to the Sending Bank of such additional requirements.

K. Legal Equivalence. Each Member agrees that an Electronic Check or Electronic Returned Check derived from a Canadian Item that is created in conformance with this Section XVIII may be dealt with and used for all purposes as though it were the Canadian Item.

L. Rejection, Return and Correction or Adjustment of Images of Canadian Items.

(1) Members Return or Reject Prior to Sending Item to a Canadian Correspondent Bank. The Receiving Bank may reject or return back to the Sending Bank an Image of a Canadian Item for any reason prior to sending the Image to another Receiving Bank or the Canadian Correspondent Bank. If there was financial settlement for the Image, the Sending Bank is responsible to the Receiving Bank for the full amount of the rejected or returned Image.

(2) Return or Rejection by Canadian Bank. The Members acknowledge and agree that the Canadian Correspondent Bank may reject or return, and the Canadian Paying Bank may return, an Image of a Canadian Item to the Gateway Receiving Bank for any reason permitted under Canadian Law or the Gateway Receiving Bank’s agreement with the Canadian Correspondent Bank. In the event that the Receiving Bank receives a return or rejection of the Image of the Canadian Item or a Canadian Paper Return Item from the Canadian Correspondent Bank, the Gateway Receiving Bank or another Member, the Receiving Bank may return or adjust the Image of the Canadian Image or a Canadian Paper Return Item...
OPERATING RULES
XVIII. EXCHANGE OF IMAGES OF CANADIAN ITEMS (CONTINUED)

(as applicable) back to the Sending Bank, and the Sending bank is responsible to the Receiving Bank for the full amount of the returned, rejected or adjusted Image or Canadian Paper Return Item.

(3) **Time Periods for Return.** Nothing in this Section shall constitute an agreement of the Members to any time limitation on return for checks generally that is set forth under Regulation CC. The provisions of the Code relating to finality of settlement of an item and the paying bank’s responsibility for late return of an item (including Sections 4-215, 4-301 and 4-302 of the Code) shall not apply to an Image of a Canadian Item, as the Image of the Canadian Item is settled in Canada subject to Canadian Law.

(4) **Type of Return of an Image of a Canadian Item.** A Member may return an Image of a Canadian Item as an Electronic Returned Check under Section XX. A Member also may return a Canadian Paper Return Item to the Member that previously sent the Image of the Canadian Item to the Member. For all forms of the return of a Canadian Item, a Member shall maintain the return reason code indicated by the Canadian Paying Bank on or with the Image of the Canadian Item or the Canadian Paper Return Item.

(5) **Path for Return or Rejected Items.** When handling a returned or rejected Canadian Item in any form (Electronic Returned Check or Canadian Paper Return Item), a Member making the return or rejection shall send the item to either (i) the Member that originally transmitted or otherwise provided or made available the Electronic Check to the Member making the return or rejection or (ii) to another Member that otherwise agrees to receive the returned or rejected Canadian Item.

(6) **Returns of Canadian Paper Return Item.** If the Gateway Receiving Bank returns a Canadian Paper Return Item to a Member, any Member subsequently handling the Canadian Paper Return Item shall maintain the Canadian Paper Return Item in its paper form during the return process.

(7) **Subsequent Exchanges of Returned Items.** If a Member receives the return of a Canadian Item in any form (Electronic Returned Check or Canadian Paper Return Item), the Member may only send the Image of the Canadian Item for forward exchange a subsequent time if:
   (a) the Receiving Bank specifically instructs the Sending Bank to send the Image to the Receiving Bank, or
   (b) Member determines that the Image of the Canadian Item is eligible for exchange and presentment to the Canadian Paying Bank under Canadian Law.

(8) **Request for an Official Image.** If a Member requests an official image of a returned Image of a Canadian Item, the Member may request the Receiving Bank to which the Member previously sent the Image of the Canadian Item to obtain such official image. The Gateway Receiving Bank shall use reasonable efforts to obtain such official image from the Canadian
OPERATING RULES

XVIII. EXCHANGE OF IMAGES OF CANADIAN ITEMS (CONTINUED)

Correspondent Bank and provide the official image to the Member which requested it.

M. Adjustment Rules for Canadian Items. In the event a Member seeks to adjust an Electronic Check, an Electronic Returned Check or Canadian Paper Return Item to another Member, the two Members shall comply with those ECCHO Adjustment Rules that expressly apply to adjustments of Images of Canadian Items. In addition, the two Members shall use reasonable efforts to resolve the adjustment request or informational request relating to such item.

N. Substitute Check Creation. A Member shall not create a substitute check from an Electronic Check or Electronic Returned Check of a Canadian Item for any purpose.

O. Preservation of Warranties and Indemnities Under Other Rules Sections. The warranties and indemnities under Section XIX(L), Section XIX(M), Section XX(J) and Section XX(K) of the Rules and Section 229.34(a) of Regulation CC shall apply to the forward exchange and return of Electronic Checks derived from Canadian Items between Members under this Section. When returning a Canadian Paper Return Item, each Returning Member makes the warranties under subsection XX(J) (1) of these Rules and Section 229.34(a) of Regulation CC with respect to the Canadian Paper Return Item, as if Canadian Paper Return Item were an “Electronic Returned Check”.

P. Additional Indemnity for Images of Canadian Items. A Sending Bank that transmits or otherwise provides or makes available an Electronic Check derived from a Canadian Item to a Receiving Bank shall indemnify the Receiving Bank and hold such Receiving Bank harmless from and against any damage, expense or loss, including attorneys’ fees, suffered by the Receiving Bank arising from the collection, exchange, presentment or return of the Image of the Canadian Item, except to the extent that such damage, expense or loss, results from the Receiving Bank’s failure to exercise ordinary care or act in good faith.

Q. Returning Member Additional Warranty for Return of Canadian Items. This subsection sets forth an additional warranty to the warranties under Section XX(J), with respect to an Electronic Returned Check derived from a Canadian Item or a Canadian Paper Return Item that a Returning Member sends to a Returnee Member. This subsection shall only apply if, and to the extent that a Gateway Receiving Bank receives, as a matter of law or contract, a warranty or representation from the Canadian Bank returning the Image of the Canadian Item or the Canadian Paper Return Item to the Gateway Receiving Bank that such return is in compliance with applicable Canadian Law. A Gateway Receiving Bank, and any subsequent Returning Member that returns the Image of the Canadian Item or a Canadian Paper Return Item to a Returnee Member shall be deemed under this Section XVIII(Q) to make the same warranty or representation to the Returnee Member that the Gateway Receiving Bank received. The Returnee Member may recover from the Returning Member for any losses incurred by the Returnee Member as a result of the breach of such warranty or representation, but only to the extent that the Gateway Receiving Bank may recover such loss from
the Canadian Bank under the warranty or representation made by the Canadian Bank. A breach of this warranty by a Returning Member shall be treated as a breach of a warranty under Section XX(J).
XVIII. COMMENTARY

This commentary provides a discussion of certain key elements of the ECCHO Rules governing the exchange of Images of Canadian Items.

Overview of Coverage: Section XVIII of the ECCHO Rules is intended to support the exchange between two ECCHO Members in the United States of Images of Canadian Items, which are eligible for exchange as images to Canadian Paying Banks under Canadian Law. These rules do not address the cross-border exchange of Images of Canadian Items between a U.S. bank and a Canadian bank. The cross-border exchange of the Images of Canadian Items will be handled by the Gateway Receiving Bank under an exchange agreement between the Gateway Receiving Bank and the Canadian Correspondent Bank. Section XVIII of the Rules is not applicable to items drawn on a U.S. Paying Bank and imaged in Canada for presentment to the U.S. Paying Bank.

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

Payment of Checks and Check Images under Canadian Law: Members that exchange Images of Canadian Items are responsible for understanding the risks and obligations generally arising under U.S. and Canadian law when accepting Canadian Items for deposit and sending Canadian Items as images for exchange and payment in Canada. Information regarding Canadian check law and the Payments Canada rules is available on the Payments Canada’s website.

The following is a summary of certain key points of Canadian check law identified during the drafting of this Section XVIII of the ECCHO Rules, and the following is not meant as a complete summary of legal issues associated with Images of Canadian Items.

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

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

In addition to these Rules and Canadian law, a Member exchanging an item should be aware the UCC which is applicable to a particular exchange between two Members may impose additional warranties with respect to the transfer of the Image of the Canadian Item. Under the Rules, the Image of the Canadian Item is treated as an “item” under the UCC. (See Section XVIII(F) of the Rules.) The following summary of U.S. court decisions regarding the application of the UCC to the exchange of Canadian Items is for informational purposes only. Please also note that courts in different states or federal circuits could potentially rule in a
XVIII. COMMENTARY (continued)

different manner on the application of the UCC and Canadian law to a particular item or set of facts. A Member should consult with its legal counsel regarding specific questions of the application of U.S. law and Canadian Law to the exchange of its Canadian Items.

As a general matter, the exchange of a Canadian Item by a U.S. Bank to another U.S. bank or to a Canadian bank will result in the application of the transfer warranties under Article 4 of the UCC and the other obligations and rights of a collecting bank under the UCC. (See Bank of Nova Scotia v. HSBC Bank U.S.A., 2005 U.S. Dist. Lexis 12053 (June 16, 2005). In a matter between a U.S. bank located in New York and a Canadian bank located in Canada, the New York bank’s actions with respect to handling the item is subject to New York UCC and the New York bank makes the warranties to the Canadian Bank under UCC with respect to the Canadian Item exchanged between the two banks. The Court concluded that the U.S. bank was liable to the Canadian Bank for breaching the UCC 4-207 transfer warranty of no alteration of the item. Canadian law governs the relationship between the Canadian Bank and its drawer customer.) In addition, while the exchange of a Canadian Item between two banks may be subject to the UCC, the U.S. courts have generally held that the final payment rule of Article 4 of the UCC does not apply to foreign items. (See Margot J. Garant, Inc. v. Suffolk County Natl. Bank, 2015 NY Slip Op 50119 (Canadian items are not subject to U.S. return deadlines.)) (Please note that the above summary of researched court decisions is as of June 2015.)

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

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

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

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

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

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

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

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

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

A. **Compliance with Other Rules Sections.** In addition to complying with this Section XIX, a Member that is participating in an exchange of an Electronic Check shall comply with Sections I - XVIII applicable to it.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

B. **Reserved. This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.**
XIX. **Electronic Check (continued)**

C. **Items Eligible for Imaging**.

(1) **Images Eligible for Exchange.** An Electronic Check is eligible for exchange under this Section XIX if the Image is an image of an item and:

(a.i.) the item is a paper “check” as defined under Section 229.2(k) of Regulation CC;

(b.i.) the item is a Fully Qualified Item; and

(c.i.) the Sending Bank and the Receiving Bank have entered into an agreement and the item is eligible for imaging under that agreement.

The Sending Bank:

(a.ii.) shall include in the Electronic Information all MICR line information from the Fully Qualified item,

(b.ii.) shall use acceptable industry practices to interrogate all fields of the MICR line of the Related Physical Check or the Image, and

(c.ii.) shall not include in the Electronic Information any other character (numeric or otherwise) not contained in the MICR line of the Related Physical Check.

If any character 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, the item shall not be considered Fully Qualified for purposes of Section XIX(C)(1)(b.i.). A Sending Bank and a Receiving Bank may under their image exchange agreement permit the exchange of Electronic Checks without complete MICR line information as set forth in Sections XIX(C)(3) and XIX(C)(4).

(2) **Reserved.** This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.

(3) **Agreement for Exchange of non-Fully Qualified items or As-Read MICR Information.** If a Sending Bank and Receiving Bank enter into an agreement to exchange Electronic Checks that contain MICR line from non-Fully Qualified Items or As-Read MICR Information in the related Electronic Information, the following provisions shall apply:

(a) The Sending Bank shall comply with Section XIX(C)(1)(b.ii.) and Section XIX(C)(1)(c.ii.), except that asterisks (*) may be used for unreadable or unrecognizable MICR line characters as provided in subparagraph Section XIX(C)(3)(e).

(b) The Sending Bank shall include As-Read MICR Information in the Electronic Information; provided that all information from the Routing Number and dollar amount fields of the MICR line from the Related Physical Check or the Image of the Related Physical Check shall be included in the Electronic Information of the related Electronic Check.

(c) The Sending Bank shall make a reasonable attempt to read all such other fields of the MICR line.

(d) For fields other than Routing Number and dollar amount fields, the Electronic Information of an Electronic Check shall include all
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

characters in these other fields that the Sending Bank was able to read.

(e) For fields other than Routing Number and dollar amount fields, if
the MICR line of the Related Physical Check or the Image has an
identified but unreadable character, an asterisk character (*) shall
be placed in the location of the unreadable character in the
applicable field in the Electronic Information of the related Electronic
Check.

(4) Agreement for Exchange of RNA Partial MICR Information. If a Sending
Bank and Receiving Bank enter into an agreement to exchange Electronic
Checks that contain only RNA Partial MICR Information in the related
Electronic Information, the following provisions shall apply:

(a) The Sending Bank shall include in the Electronic Information all
information from the Routing Number and dollar amount fields of
the MICR line from the Related Physical Check or the Image of the
Related Physical Check.

(b) The Sending Bank shall not include in the MICR line information in
the related Electronic Information any other character (numeric or
otherwise) not contained in the MICR line of the Related Physical
Check.

(5) Requirement on Truncating Entity. If the Sending Bank receives the
Electronic Check from the truncating entity and the truncating entity is not
another ECCHO Member subject to this Rule, the Sending Bank shall
impose the requirements in Section XIX(C)(3) and Section XIX(C)(4) on
the truncating entity, and the failure of a truncating entity to satisfy any of
the requirements in Section XIX(C)(3) and Section XIX(C)(4) shall be
treated as a failure of the Sending Bank to comply with Section XIX(C)(3)
and Section XIX(C)(4).

(6) Carrier Items. An Electronic Check derived from an item in a carrier is eligible
for exchange under these Rules if the item otherwise meets the requirements
of this Section XIX(C)(1), the front and back of the item is visible through the
carrier, and carrier qualifies for handling by automated check processing
equipment. If the carrier is encoded, the carrier, and not the item, must be
encoded in compliance with the Rules.

(7) Blank or Replacement Image of Related Physical Items. This paragraph
applies in the situation that a Sending Bank sends an Electronic Check to a
Receiving Bank which contains an Image which is either a blank image or
an image of a document that is not a “check” under Section 229.2(k) of
Regulation CC (for example, a “sorry document” that replaces the image of
the Related Physical Check). In this situation, the Electronic Check sent by
the Sending Bank shall be deemed to be an Electronic Check for purposes
of the following Rules: Section XIX(H) (Presentment), Section XIX(L)
(Sending Bank Warranties and Indemnification), Section XIX(N) (Remotely
Created Check Warranty), Section XIX(O) (Forged and Counterfeit Check
XIX. **Electronic Check (continued)**

Warranties), Section XIX(Q) (Recourse To Prior Collecting Or Returning Bank), and Section XIX(F) (Status of Electronic Check and Electronic Returned Check) to the extent necessary to impose on Members the obligation of timely return of the Electronic Check. This paragraph is intended to clarify the rights and obligations of the Members in a situation involving an Electronic Check containing a missing or replacement Image. This paragraph does not authorize a Sending Bank to send an Electronic Check created or derived from an item that is not a “check” under Section 229.2(k) of Regulation CC, that is missing an Image of the Related Physical Check, or that contains an Image of a document that purports to replace the Related Physical Check.
XIX(C). COMMENTARY

Rule: To be eligible for exchange under Section XIX as an Electronic Check, the Image must be of an item that meets the following conditions: it must be a paper check defined 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)(1), Electronic Checks of such items are eligible for exchange under Section XIX:

1. a negotiable demand draft drawn on an office of a bank;
2. a negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;
3. a negotiable demand draft drawn on the Treasury of the United States;
4. a demand draft drawn on a state or local government that is not payable through or at a bank;
5. a United States Postal Service money order;
6. a traveler’s check drawn on or payable through or at a bank; and
7. 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. Accordingly, images of such items are not eligible for exchange as Electronic Checks under Section XIX:

(a) an item with an attached passbook, certificate, or other document;
(b) an item accompanied by special instructions, such as a request for special advice of payment or dishonor;
(c) an item consisting of more than a single thickness of paper, except an item that qualifies for handling by automated check processing equipment, and
(d) an item that has not been pre-printed or post-encoded in magnetic ink with the Routing Number of the Paying Bank.

With respect to the Fully Qualified Item requirement in Section XIX(C)(1)(b.i.), 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 Number, and when encoded, amount field, on-us field, auxiliary on-us field and EPC 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 an Electronic Check of such item to be eligible for image exchange under the Rules. In this regard, temporary account or counter checks that do not have account numbers on them when issued by the bank are considered “fully qualified,” and therefore Electronic Checks of such items meet the requirements for image exchange under Section XIX(C)(1). These types of items are not considered to have RNA Partial MICR Information.

Under Regulation CC, a “noncash item” includes an item that has not been pre-printed or post-encoded in magnetic ink with the Routing Number of the Paying Bank. Accordingly, the paper item from which the Electronic Check was derived should have the Routing Number of the Paying Bank encoded with magnetic ink, in order for an Electronic Check of such item to be eligible for image exchange under the ECCHO Rules. To the extent that an image of a non-magnetic ink item is exchanged under these Rules, the image of the item is subject to the ECCHO Rules and is an Electronic Check. A Sending Bank sending such an Electronic Check to a Receiving Bank may be liable under the warranties in Section XIX(L) for a breach of the warranty to comply with the requirements of the ECCHO Rules. However, the Sending Bank would only be liable to the extent that the loss at the Receiving Bank was “suffered as a result of the breach” of the warranty. That is, the Receiving Bank would have to establish that the lack of magnetic ink on the paper item was the cause of the loss at the Receiving Bank. See Section XIX(L).

Comment. See the commentary to the definition of Electronically Created Item in Section I for a discussion of how ECIs are not eligible for exchange under the ECCHO Rules.

Rule: With respect to the requirement in Section XIX(C)(1)(c.i.), a Sending Bank and a Receiving Bank may under their image exchange agreement permit the exchange of Electronic Checks derived from items
that are not fully qualified or otherwise include only As-Read MICR or RNA Partial MICR information in the related Electronic Information.

Comment: Section XIX(C)(1)(b.i.) establishes a default rule that requires an item to be a “fully qualified item” in order to be eligible for image exchange under Section XIX. 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 or otherwise include only As-Read MICR or RNA Partial MICR information in the related Electronic Information.

For example, if a Receiving Bank determines that it will not under any circumstances need to produce a substitute check from an Electronic Check exchanged with the Sending Bank, the Receiving Bank may decide that it is willing to accept an Electronic Check of the item that is not fully qualified or accept only As-Read MICR or RNA Partial MICR information in the related Electronic Information. 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 Electronic Check transmissions up until a specific deadline, after which only Electronic Checks derived from 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)(3) and Section XIX(C)(4) and Section XIX(C)(5) shall apply, depending upon the particular type of exchange (such as As-Read MICR or RNA Partial MICR).

Rule: All information from the Routing Number and dollar amount fields of the MICR line from the Related Physical Check or the Image of the Related Physical Check shall be included in the Electronic Information of the Electronic Check.

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 Electronic Information) 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: Under Section XIX(C)(6), an item in a carrier is eligible for imaging under these Rules if the item otherwise meets the requirements of Section XIX(C)(1), the front and back of the item is visible through the carrier, and carrier qualifies for handling by automated check processing equipment. If the carrier is encoded, the carrier, and not the item, must be encoded in compliance with the ECCHO Rules.

Comment: Under Regulation CC, items in a carrier that qualify for handling by automated check processing equipment are not considered non-cash items, and as a result such items in a carrier are not excluded from coverage for exchange as Electronic Checks under the ECCHO Rules. The ECCHO Rules do require that the item in the carrier otherwise meets the requirements for image exchange, and the front and back of the item are fully visible in the carrier. By contrast, for example, if the item in the carrier is mutilated, it is not eligible for exchange as an Electronic Check, however it may qualify for exchange under the rules applicable to exchange of Imperfect Images. See Section XV. While Regulation CC requires that the item in the carrier “qualify” for handling by automated check processing equipment, the item in the carrier does not actually have to be processed in a high-speed or fully automated processing environment in order to be eligible under the Rules for exchange. In the image exchange environment, items in carriers may be processed on remote deposit capture devices or branch capture devices that do not use high-speed pass or a fully automated process to capture the image. If the Sending Bank encodes the carrier, the encoding of the carrier (and not the necessarily the item inside the carrier) must meet the requirements for encoding under the Rules.

Rule: The Sending Bank shall use acceptable industry practices to interrogate all fields (other than Routing Number and dollar amount fields) of the MICR line of the Related Physical Check or the Image.
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: The Sending Bank shall not include in the electronic MICR line information in the related Electronic Information any other character (numeric or otherwise) not contained in the MICR line of the Related Physical Check.

Comment: If the Sending Bank cannot read all of the MICR line information from the Related Physical Check, or the Related Physical Check is not fully qualified, the Sending Bank shall not include asterisks or other non-numeric characters in the related Electronic Information. Rather, such an item does not qualify for image exchange under the ECCHO Rules, unless the Receiving Bank has agreed to exchange Electronic Checks with Electronic Information that contain only As-Read MICR or RNA Partial MICR.

Comment: Section XIX(C)(7) does not authorize Members to exchange images that are not otherwise eligible for exchange as Electronic Checks under these Rules. Rather, it clarifies the coverage of the Rules when a Sending Bank sends an Electronic Check that contains no image or an image of a document that purports to replace the Related Physical Check (also referred to as a “sorry document”). Coverage of these items under the Rules provides certain protections to a Receiving Bank that receives such an image. If a Sending Bank sends an image that is not eligible for exchange as an Electronic Check, such as an image that was not created from a paper check, to another Member as part of an exchange of Electronic Checks subject to these Rules, certain of the ECCHO Rules will apply to that image. For example, Bank A and Bank B have agreed to exchange Electronic Checks between themselves and they have agreed to apply the ECCHO Rules to such an exchange. Bank A, either inadvertently or intentionally, includes an image that is not eligible for exchange as an Electronic Check in a file that it sends to Bank B under this exchange arrangement, (such as an electronic image of a “sorry document”). Under this Rule, Bank B would have the benefit of the ECCHO warranties and indemnifications with respect to that image, and Bank A’s failure to comply with the ECCHO Rules governing items eligible for image exchange would constitute a breach of such a warranty.

Section XIX(C)(7) applies Section XIX(H) (Presentment) and Section XIX(F) (Status of the Electronic Check and Electronic Returned Check) to an image that is not eligible for exchange as an Electronic Check/Electronic Returned Check in order to provide certainty as to when the Paying Bank has received the image for purposes of processing the image and the application of the time periods for return under the UCC and Regulation CC for that image.

Rule: Under Section XIX(C)(3), a Sending Bank and Receiving Bank may enter into an agreement to exchange Electronic Checks with related Electronic Information that contain only As-Read MICR Information. Under Section XIX(C)(4), a Sending Bank and Receiving Bank may enter into an agreement to exchange Electronic Checks with related Electronic Information that contain only RNA Partial MICR Information.

Comment: Two or more Members may agree to exchange Electronic Checks with related Electronic Information that contain only As-Read MICR Information or RNA Partial MICR Information. Members are not required to enter into these type of exchange agreements. Absent such agreements, the requirements of Section XIX(C)(1) apply, and the Sending Bank must send the full MICR line information in the Electronic Information associated with the Electronic Check. If the Members do agree to the exchange of partial MICR information in the Electronic Information, the requirements of Section XIX(C)(3) or Section XIX(C)(4) shall apply to the Members’ agreement and the resulting exchanges of Electronic Checks, unless the agreement of the Members expressly disclaims the applicability of these two subsections of the Rule.

In the context of As-Read MICR, for those characters that the Sending Bank reads, the Sending Bank shall follow applicable industry standards for permissible MICR characters when populating the MICR line information in the Electronic Information of an Electronic Check. For example, this means that the Sending Bank must not include impermissible characters, such as a dash, in the Routing Number field of the MICR line data in the Electronic Information.
XIX(C). COMMENTARY (continued)

Rule: If the Sending Bank receives the Electronic Check from the truncating entity and the truncating entity is not another ECCHO Member subject to this Rule, the Sending Bank shall impose the requirements in Sections XIX(C)(3) and XIX(C)(4) on the truncating entity, and the failure of a truncating entity to satisfy any of such requirements shall be treated as a failure of the Sending Bank to comply with Sections XIX(C)(3) and XIX(C)(4).

Comment: This provision of Section XIX(C)(5) recognizes that in many cases the Sending Bank obtains the Electronic Check 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 in Sections XIX(C)(3) and XIX(C)(4). 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 Sections XIX(C)(3) and XIX(C)(4).

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 exchanges of Electronic Checks, 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 location(s) for the transmission or other delivery of Electronic Checks (please see Section XIX(C)(1)) and the Receiving Bank’s Image Ledger Cutoff Time (please see Section XIX(H)). 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)). 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.

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 comprehensive 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 Checks under the ECCHO Rules.

For an ECCHO Member that uses a third party processor to handle its forward presentment and return of Electronic Checks 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.

2. 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.

3. 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
XIX(C). COMMENTARY (continued)

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.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

D. Provision of Electronic Check of Eligible Item.

(1) The Sending Bank may, but is not required to, transmit or otherwise provide or make available an Image of a Related Physical Check that meets the eligibility requirements of Section XIX(C) to the Receiving Bank in accordance with the requirements of this Section XIX, unless the Sending Bank has otherwise agreed to do so.

(2) A Sending Bank transmitting, otherwise providing or making available an Image pursuant to Section XIX(D)(1) also shall transmit, otherwise provide or make available the Electronic Information to the Receiving Bank describing the Related Physical Check in accordance with the Rules. The Electronic Information shall be received by the Receiving Bank by the applicable deadline designated by the Receiving Bank. The Sending Bank must transmit or otherwise provide or make available the Image to the Receiving Bank no later than the applicable deadline designated by the Receiving Bank. This deadline for receipt of this Image shall be on the Receiving Bank’s Business Day on which it received that related Electronic Information, or on the Receiving Bank’s Banking Day next following the Business Day on which it received such Electronic Information. The obligations to transmit or otherwise provide or make available the Image or the Electronic Information set forth in this Section XIX(D)(2) shall not apply to the extent the failure to transmit or otherwise provide or make available the Image or Electronic Information resulted from circumstances beyond the Sending Bank’s control, provided it exercised such diligence as the circumstances require.

For purposes of this Section XIX(D)(2), a Sending Bank fails to transmit or otherwise provide or make available an Image if there are no bytes in any of the fields reserved for the Image in that which is transmitted or otherwise provided or made available to the Receiving Bank pursuant to this Section XIX(D)(2).
XIX(D). COMMENTARY

**Rule:** The Sending Bank may, but is not required to, image an item eligible for imaging (please see Section XIX(C) and related Commentary for a description of items eligible for imaging), unless the Sending Bank has otherwise agreed that it will image the item.

**Comment:** Participation of the Sending Bank in an imaging program is voluntary. The Sending Bank may in its sole discretion determine to image under Section XIX all items it receives that are eligible for imaging or only certain eligible items that are drawn on all or certain Paying Banks. However, in the event the Sending Bank otherwise has agreed to image certain or all eligible items, such as in a bilateral agreement with the Receiving Bank or by agreeing to participate in a program requiring the imaging of certain or all eligible items, the Sending Bank will be bound by that agreement.

**Rule:** The Sending Bank sends an Image of an eligible item by transmitting or otherwise providing or making available an Image to the Receiving Bank.

**Comment:** Where the Image is made available rather than transmitted to the Receiving Bank, the Receiving Bank will necessarily be a party to an agreement addressing among other things the manner by which the Receiving Bank will be able to access the Image. For purposes of this Section XIX, "making available" or "made available" means that the Image has become accessible to the Receiving Bank pursuant to the terms of such agreement. The Image must include the information required by, in the format required by, applicable industry standards for the Image. The Sending Bank and the Receiving Bank may agree that the Sending Bank will transmit or otherwise provide or make available the Image at the same time (e.g. in the same transmission) as the related Electronic Information.

Please note that the ECCHO repair rules (see Section III(C)) apply to a Sending Bank repairing an item prior to transmitting or otherwise providing or making available an Image under Section XIX and the related Electronic Information.

It should also be noted that, if the Sending Bank does not repair an item that is not fully qualified, the unrepaired item may not be eligible for exchange under Section XIX. Unless the Sending Bank and the Receiving Bank otherwise agree, Section XIX(C) requires that the item be "fully qualified" (that is, that the item has full MICR encoding). Accordingly, if the Sending Bank’s capture system discerns the presence of a MICR line character but cannot interpret it, that item may not be eligible for imaging under Section XIX. The Paying Bank either will repair and post the item from the image, or return the item (please see Section XX(F) and related Commentary).

**Rule:** The Sending Bank transmitting, otherwise providing or making available an Image under Section XIX must transmit, otherwise provide or make available the related Electronic Information to the Receiving Bank describing the Related Physical Check. The Sending Bank must transmit or otherwise provide or make available the Image to the Receiving Bank no later than the applicable deadline designated by the Receiving Bank. This deadline for receipt of this Image shall be on the Receiving Bank's Business Day on which it received the related Electronic Information, or on the Receiving Bank's Banking Day next following the Business Day on which it received such Electronic Information.

**Comment:** To apply this rule, the Banking Day on which the Receiving Bank is deemed to have Received the Image and the Business Day on which it received the related Electronic Information must be determined. A Banking Day is any Business Day on which the Receiving Bank is open to the public during any part of the day for carrying on substantially all of its banking functions (please see definitions in Section I). An Image received by or made available to the Receiving Bank after its Image Ledger Cutoff Time or on a day that is not a Banking Day for the Receiving Bank is deemed to be received by or made available to the Receiving Bank at the opening of its next Banking Day. For example, if an Image is received by the Receiving Bank after its Image Ledger Cutoff Time on Friday, it is deemed to have been received by the Receiving Bank at the opening of the following Monday (assuming the following Monday is a Banking Day for the Receiving Bank). Please note that under these Rules, the Receiving Bank may establish an Image Ledger Cutoff Time before 2:00 p.m. (Receiving Bank local time).

The Receiving Bank's Business Days are calendar days, other than Saturday, Sunday or a legal holiday on which the bank is closed (please see Section XIX(A)(3)). A legal holiday on which the bank is closed
could be either a federal holiday or a so-called non-standard holiday on which the bank is required by law to close. A day on which the bank voluntarily closes is not a legal holiday for this purpose. A day that is not a Business Day also is not a Banking Day. However, unlike with Banking Days, a Business Day has no cutoff time. For example, for the Electronic Information received by the Receiving Bank after its Image Ledger Cutoff Time on Friday, the Business Day on which the Receiving Bank received the Electronic Information is that Friday.

Assume the Receiving Bank has established an Image Ledger Cutoff Time of 2:00 p.m. (Receiving Bank local time) for the Image, and a deadline for receipt of an Image of the Banking Day immediately following the Receiving Bank’s Business Day on which it received the related Electronic Information from the Sending Bank. Under Section XIX(D), a Sending Bank that has provided the Electronic Information to the Receiving Bank at any time on Monday (the Business Day being the entire day of Monday) must provide the related Image described in the Electronic Information by 2:00 p.m. (Receiving Bank local time) Tuesday. (This example assumes that Monday and Tuesday are both Business Days and Banking Days for the Receiving Bank).

The Receiving Bank can establish a deadline for the receipt of the Image that is prior to the receipt of the related Electronic Information. Where the Electronic Information is provided after the Image, presentment will not occur with respect to the Electronic Check until receipt of both the Electronic Information and the Image in accordance with Section XIX(H).

If the Business Day of receipt of the Electronic Information is subsequent to the Banking Day of receipt of the Image or if the Electronic Information is never received by the Paying Bank, presentment of the Electronic Check to the Sending Bank. If the Electronic Information is received after the applicable deadline, but the Paying Bank determines not to post the items identified in the Electronic Information, the Paying Bank could refuse to retain the Images beyond midnight of the Banking Day of presentment of the Electronic Check, as determined by Section XIX(H) when both the Image and Electronic Information are received.

**Rule:** The Sending Bank must transmit, otherwise provide or make available the Image to the Receiving Bank by the applicable deadline designated by the Receiving Bank.

**Comment:** This deadline for receipt of Images is not necessarily the same as the Receiving Bank’s Image Ledger Cutoff Time. In determining its deadline for the receipt of Images, the Receiving Bank should take into account its products (such as potentially positive pay products) that involve review of the Images by the drawer, as well as the Receiving Bank’s needs to review the Images (such as in connection with its determination whether to return the item).

**Rule:** The Sending Bank is excused from its obligation to transmit or otherwise provide or make available an Image or the Electronic Information to the Receiving Bank by its applicable designated deadline if the Sending Bank’s failure to do so resulted from circumstances beyond the Sending Bank’s control, provided it exercised such diligence as the circumstances require.

**Comment:** The exception for failure to transmit or otherwise provide or make available an Image or the Electronic Information resulting from circumstances beyond the Sending Bank’s control and the limitation on that exception are derived from the UCC (Section 4-108(s) of the 1978 Official Text and Section 4-109(b) of the 1990 Official Text). Examples of circumstances beyond the Sending Bank’s control which have generally been found to excuse delay under the UCC include interruption of communication facilities, war, hurricanes and other “Acts of God”.

**Rule:** For purposes of this rule, where there are no bytes in any of the fields reserved for the Image in that which is transmitted or otherwise provided or made available to the Receiving Bank pursuant to Section XIX(D)(2), the Receiving Bank has received no Image.

**Comment:** The Receiving Bank will not have received an Image from the Sending Bank where there are no bytes in any of the fields reserved for the Image. If any bytes exist in any of these fields, an Image has been transmitted, otherwise provided or made available to the Receiving Bank. If such an Image does not
XIX(D). COMMENTARY (continued)

conform to the applicable industry standards or does not accurately reflect the information from the front
and back of the paper check, the Sending Bank will have breached one or more of the warranties prescribed
in Section XIX(L) or Regulation CC Section 229.34(a) as applicable (please see Section XIX(L)).
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

E. Indorsement.

(1) Indorsement of Electronic Check. The Sending Bank shall indorse the Electronic Check in accordance with the requirements of Section 229.35 of Regulation CC. An Electronic Indorsement is the legal equivalent of a written indorsement on a physical check, and the Electronic Indorsement shall be an “indorsement” for all purposes, including for purposes of the Code and Regulation CC.

(2) Reserved. This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.

(3) Responsibility For Electronic Indorsement of the Depository Bank. If the Sending Bank is the Depository Bank, it shall include in its Electronic Indorsement the Routing Number of the Depository Bank for the return of the Electronic Check, in the event of a return of the Electronic Check under Section XX or as a substitute check. The Sending Bank may identify in its Electronic Indorsement a different bank as the Depository Bank, provided that the bank identified in such Electronic Indorsement is the bank to which the returned item (under Section XX or as a substitute check) is to be routed, in the event of a return of the Electronic Check. If the Sending Bank identifies a different bank as the Depository Bank in an Electronic Indorsement, the Sending Bank also shall include its own Electronic Indorsement for the Electronic Check indicating that it is a Collecting Bank.

(4) Maintenance of Prior Indorsements During Exchange. If a Sending Bank receives from another bank an Electronic Check which contains the Electronic Indorsement(s) of one or more banks, the Sending Bank shall include such other Electronic Indorsement(s) in the Electronic Check when transmitting or otherwise providing or making available the Electronic Check to the Receiving Bank.
XIX(E). COMMENTARY

Rule: Prior to transmitting or otherwise providing or making available the Electronic Check to the Receiving Bank, the Sending Bank must indorse the Electronic Check in accordance with the requirements of Regulation CC Section 229.35

Comment: A Sending Bank's indorsement of an item can be of importance to the Receiving Bank and other parties interested in the item for tracing and return purposes, and for establishing a right of recourse by these other parties against the Sending Bank if the item is dishonored. Although the rights and liabilities of a Sending Bank with respect to an item it presents without an indorsement are under the Code the same as if it had indorsed the item, the Sending Bank is required under Regulation CC Section 229.35 to indorse all Electronic Checks it handles in accordance with the ANS Standard X9.100-187.

The Sending Bank's indorsement may not disclaim any liability the Sending Bank may have under applicable law by reason of transfer or presentment of the item (please see Section 3-415(a) (1990 Official Text) and Section 3-414(1) (1978 Official Text) of the Code; Section 4-208 (1990 Official Text) and Section 4-207 (1978 Official Text) of the Code). The Sending Bank indorses the item in its capacity as the Depositary Bank or a collecting bank, as applicable. The indorsement on the Electronic Check and the indorsement on the Related Physical Check must each comply with applicable legal requirements. There is no requirement in the Rules that an electronic indorsement be placed on the Image itself, provided the indorsement is otherwise transmitted with the Electronic Check. The Receiving Bank should determine under what circumstances it will display the Electronic Indorsement when viewing the Image.

Rule: An Electronic Indorsement is the legal equivalent of a written indorsement on a physical check, and the Electronic Indorsement shall be an “indorsement” for all purposes, including for purposes of the Code and Regulation CC.

Comment: This Rule provides that the use of Electronic Indorsements by Sending Banks has the same legal effect under check law as the use of written indorsements by Presenting Banks and collecting banks on paper checks.

Comment: In order for the hierarchy of returns in Section XX(D)(5) to work effectively and for Paying Banks and other banks in the return process to handle returns on a more automated basis, Sending Banks must provide the appropriate Electronic Indorsement with the Electronic Checks they handle for forward presentment.

If the Sending Bank provides an inaccurate Electronic Indorsement with an Electronic Check, the Sending Bank could incur liability for breaching its warranty to the Receiving Bank to comply with the requirements of the Rules. For example, if as a result of an inaccurate Electronic Indorsement on or with an Electronic Check or a missing Electronic Indorsement, the Receiving Bank or Paying Bank fails to meet applicable return time frames under applicable law with respect to an Electronic Returned Check, and therefore incurs a loss, the Sending Bank may be responsible to the Receiving Bank for such loss.

Rule: The Sending Bank may identify in its Electronic Indorsement a different bank as the Depositary Bank, provided that the bank identified in such Electronic Indorsement is the bank to which the returned item (under Section XX or as a substitute check) is to be routed, in the event of a return of the Electronic Check.

Comment: This Rule recognizes that some Depositary Banks (or customers of such banks) may arrange for another bank, or a different location of the same Depositary Bank, to receive any returns of items. See Regulation CC, Section 229.35(d), relating to placement of a second Depositary Bank indorsement on a check. The ECCHO Rules do not authorize a Sending Bank to place the Electronic Indorsement of a different bank on or with an Electronic Check. Rather, the Sending Bank must determine that it has the appropriate authority (for example, under a correspondent agreement or under a centralized return agreement) to place the Electronic Indorsement of another bank on or with the Electronic Check.

Rule: If the Sending Bank identifies a different bank as the Depositary Bank in an Electronic Indorsement, the Sending Bank also shall include its own Electronic Indorsement for the Electronic Check indicating that it is a Collecting Bank.
XIX(E). COMMENTARY (continued)

Comment: This rule clarifies that a Sending Bank must always place its own Electronic Indorsement on or with the Electronic Check, as required in Section XIX(E)(1), even when the Sending Bank includes the Electronic Indorsement of a different Depositary Bank. The Sending Bank should place its Electronic Indorsement on or with the Electronic Check in a manner that indicates that it is a Collecting Bank, in accordance with Regulation CC Section 229.35. (See Commentary to definition of “Electronic Indorsement.”) This Sending Bank Electronic Indorsement will ensure that there is an appropriate audit trail for the transfer of the Electronic Check, and may assist returning banks in the appropriate return handling of the Electronic Returned Check.

Rule: If a Sending Bank receives from another bank an Electronic Check which contains the Electronic Indorsement(s) of one or more banks, the Sending Bank shall include such other Electronic Indorsement(s) in the related Electronic Information when transmitting or otherwise providing or making available the Electronic Check to the Receiving Bank.

Comment: This rule requires the Sending Bank to send along to the Receiving Bank all Electronic Indorsements that the Sending Bank receives from prior banks (such as the BOFD or prior collecting banks). The purpose of this rule is to ensure that the complete indorsement chain is included in subsequent exchanges, and to assist Members in the proper return routing of the item in the event of a return. This rule does not itself establish a document retention requirement for Sending Banks with respect to Electronic Checks. Document retention requirements (if any) for Electronic Checks or Indorsement information would be established under applicable law or internal bank policy. Similarly, since this rule applies to the Sending Bank in a forward exchange of the Electronic Check, this rule does not impose requirements on a Paying Bank to maintain internal records of Electronic Indorsement information.
F. **Status of Electronic Check.** Regardless of its status in the absence of this Section XIX(F), an Electronic Check shall be deemed to be: (1) an “item” for purposes of the Code; and (2) an “item” for purposes of the Rules. An Electronic Check under these Rules is also an “Electronic Check” for purposes of Regulation CC.

This Section XIX also shall constitute an agreement for the electronic presentment of items as provided for in Section 4-110 of the Code, an agreement under which a Receiving Bank will accept presentment of Electronic Checks under Regulation CC Section 229.36(a), and an agreement under Regulation CC Section 229.37 for variation of Regulation CC. In the event of any conflict or inconsistency between the Code or Regulation CC and this Section XIX, the provisions of this Section XIX shall govern to the extent permitted under applicable law. In the event of any conflict or inconsistency between this Section XIX and any other Section of the Rules, the provisions of this Section XIX shall govern.
XIX(F). COMMENTARY

Rule: An Electronic Check is an “item” for purposes of the Code and an “item” for purposes of the Rules. An Electronic Check under these Rules is also an “Electronic Check” under Regulation CC.

Comment: Section XIX(F) confirms that an Electronic Check is subject to and governed by the Code, Regulation CC and the Rules. The Code (Sections 4-110 and 4-406(b) (1990 Official Text)) expressly recognizes electronic presentment, and authorize agreements to specify the details of such an electronic presentment arrangement. Electronic Checks are expressly recognized under Regulation CC, and it is the intent of the Rules that the term “Electronic Check” under the Rules have the same meaning as the term “Electronic Check” under Regulation CC. Section XIX(F) confirms that Section XIX constitutes such an agreement to exchange Electronic Checks for purposes of the Code and Regulation CC.

Rule: This Section XIX also shall constitute an agreement for the electronic presentment of items as provided for in Section 4-110 of the Code, an agreement under which a Receiving Bank will accept presentment of Electronic Checks under Regulation CC Section 229.36(a), and an agreement under Regulation CC Section 229.37 to vary Regulation CC.

Commentary: Regulation CC Section 229.37 permits banks to vary terms of Regulation CC by agreement, and the commentary to Section 229.37 states that a permissible variation includes variation to support presentment of an item by means of the electronic transmission of information. See Commentary §229.37(C)-9. In addition, Regulation CC Section 229.36(a) states that banks may establish by agreement the terms under which presentment of Electronic Checks occurs. The ECCHO Rules form part of this agreement of the banks for how presentment of an Electronic Check occurs for purposes of Regulation CC Section 229.36(a). The exchanging Members also would need to have a separate agreement, such as bilateral agreement, a business practices agreement or a clearinghouse rule, which specified that the ECCHO Rules are to apply to the exchange of Electronic Checks between the two Members. (See Section XIX(C) of the Rules).

Rule: In the event of an inconsistency between Section XIX and a provision of the Code or Regulation CC, Section XIX governs, unless the provision of the Code or Regulation CC cannot be varied by clearing house rule or agreement.

Comment: Examples of Code or Regulation CC provisions that cannot be varied by clearing house rule or agreement include: under the Code, a bank cannot disclaim its obligation to act with ordinary care and in good faith or limit the measure of damages if it fails to do so (Section 4-103 (1990 and 1978 Official Texts)); under Regulation CC, an electronic presentment agreement may not extend return times or otherwise vary the requirements of Regulation CC with respect to parties interested in the item that are not parties to the electronic presentment agreement (Regulation CC, Section 229.37). Section XIX(F) does not purport to vary these Code or Regulation CC provisions. Indeed, absent these Regulation CC constraints, it is intended that the image programs not extend return times (please see Commentary to Sections XIX(H) and XX(F)).

Rule: In the event of an inconsistency between Section XIX and any other Section of the Rules, Section XIX shall govern.

Comment: As an item, an Electronic Check is subject to the Rules, other than those rules specified in Section XIX(I) as inapplicable to Electronic Checks (please see Section XIX(I) and related Commentary). In the event of an inconsistency between a non-Section XIX provision of the Rules and a Section XIX provision, the Section XIX provision governs.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

G. Transmission and Acknowledgement of Electronic Check.

(1) Delivery of Electronic Check. An Image and the associated Electronic Information for an Electronic Check shall be transmitted or otherwise provided to or made available at the location(s) designated by the Receiving Bank
(a) by the Sending Bank directly or
(b) if so agreed by the Sending Bank and the Receiving Bank, by another entity or through the transmission facility of a Clearing House.

Images and the associated Electronic Information shall be provided or made available on a media agreed to by the Receiving Bank and the Sending Bank. Except as otherwise provided in this Section XIX(G)(1), the Receiving Bank shall have no responsibility for transmission or other transport or the making available of the Image to the Receiving Bank. A Receiving Bank that designates that Images and Electronic Information are to be transmitted to it shall be responsible for managing its electronic connection so as to permit the Sending Bank to transmit Images to the Receiving Bank in a timely manner. A Receiving Bank that designates that Images and Electronic Information are to be made available to it shall be responsible for managing its electronic connection so as to permit it to retrieve Images and Electronic Information from the Archive or other location designated pursuant to this Section XIX(G)(1). In the event that a Receiving Bank’s electronic connection is not available for receipt or retrieval of Images or Electronic Information, the Sending Bank shall act reasonably in seeking collection of the Electronic Checks, upon being notified by the Receiving Bank or otherwise learning of the unavailability of the Receiving Bank’s electronic connection, which may include transmitting or otherwise providing the Electronic Checks to the Receiving Bank in another manner as agreed to by the Receiving Bank, or sending the Related Physical Checks (if available) to the Receiving Bank for collection outside of the Rules. An Electronic Check is not received by a Receiving Bank if the Receiving Bank cannot, as a technological or computer systems matter, process the electronic file or other media containing the Electronic Check after such file or media is transmitted to, or made available to, the Receiving Bank.

(2) Sending Bank’s Acknowledgement For Images Made Available To Receiving Bank. In the event the Sending Bank does not transmit or otherwise provide, but makes available, an Image to the Receiving Bank as provided in Section XIX(G)(1), the Sending Bank shall transmit or otherwise provide, a Sending Bank’s Acknowledgement identifying the Images made available to the Receiving Bank, to the location designated by the Receiving Bank
(a) by the Sending Bank directly or
(b) if so agreed by the Receiving Bank and the Sending Bank, by another entity or through the transmission facility of a Clearing House.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

The Sending Bank’s Acknowledgement must contain all of the information required to be included for a Sending Bank’s Acknowledgement in accordance with the requirements of applicable industry standards. Except as otherwise provided in this Section XIX(G)(2), the Receiving Bank shall have no responsibility for transmission or other provision of the Sending Bank’s Acknowledgement to the Receiving Bank. A Receiving Bank shall be responsible for managing its electronic connection so as to permit the Sending Bank to transmit Sending Bank’s Acknowledgements to the Receiving Bank in accordance with this Section.

(3) Receiving Bank’s Acknowledgement For Receipt of Images Sent Directly to Receiving Bank. Upon receipt of an Image as provided in Section XIX(G)(1), the Receiving Bank shall transmit or otherwise provide or make available a Receiving Bank’s Acknowledgement to the location(s) designated by the Sending Bank
(a) by the Receiving Bank directly or
(b) if so agreed by the Receiving Bank and the Sending Bank, by another entity or through the transmission facility of a Clearing House.

The Receiving Bank’s Acknowledgement must contain all of the information required to be included for a Receiving Bank’s Acknowledgement in accordance with the requirements of applicable industry standards. Except as otherwise provided in this Section XIX(G)(3), the Sending Bank shall have no responsibility for transmission or other transport of the Receiving Bank’s Acknowledgement to the Sending Bank. A Sending Bank that designates that Receiving Bank’s Acknowledgements are to be transmitted to it shall be responsible for managing its electronic connection so as to permit the Receiving Bank to transmit Receiving Bank’s Acknowledgements to the Sending Bank in accordance with this Section. A Sending Bank that designates that Receiving Bank’s Acknowledgements are to be made available to it shall be responsible for managing its electronic connection so as to permit it to retrieve Receiving Bank’s Acknowledgements from the Archive or other location designated pursuant to this Section XIX(G)(3) in accordance with this Section. If a Receiving Bank cannot process the electronic file or other media containing the Electronic Check (as set forth in Section XIX(G)(1)), the Receiving Bank shall send a notification of the failure to process to the Sending Bank within one Business Day of the Banking Day on which the Receiving Bank receives the electronic file or other media containing the Electronic Check.

(4) (a) Receiving Bank Request for Resending of File. Provided that the Receiving Bank makes a request to the Sending Bank within four Business Days of the date of settlement of an Electronic Check that was originally transmitted or otherwise provided or made available to the Receiving Bank, a Sending Bank shall transmit or otherwise provide or make available such Electronic Check (the Image and the Electronic Information) to the Receiving Bank a second time upon the request of the Receiving Bank. If the Electronic Check was
originally contained in an electronic file or other media containing multiple Electronic Checks, the Receiving Bank may only request a second transmission, provision or making available of an electronic file or other media containing the same Electronic Checks as the original electronic file or other media. The Sending Bank shall respond to the Receiving Bank’s request by the close of the second Business Day on which the Sending Bank received the request. When acting in conformance with a Receiving Bank’s request to transmit or otherwise provide or make available an Electronic Check (whether or not the request was made timely), a Sending Bank shall not be deemed to have breached any warranty to any Receiving Bank under Section XIX(L) or any applicable law relating to transmission, delivery or exchange of duplicate Electronic Checks. The Sending Bank’s sole liability for failure to comply with this Section XIX(G)(4)(a) shall be limited to the additional costs resulting from the failure to comply incurred by the Receiving Bank in recreating the Electronic Check for collection or payment. The failure of a Sending Bank to comply with Section XIX(G)(4)(a) shall not constitute a breach of any warranty under Section XIX(L) or any applicable law, or otherwise subject the Sending Bank to liability to the Receiving Bank.

(b) Receiving Bank Request for Resending of File – Optional Response

For Sending Bank. A Receiving Bank may request that a Sending Bank transmit or otherwise provide or make available to the Receiving Bank a second file containing all or a portion of the Electronic Checks (Images and Electronic Information) that were in the first file. The Receiving Bank shall specify the range of Electronic Checks that it wants included or excluded from the second file of Electronic Checks. The Sending Bank shall indicate to the Receiving Bank whether the Sending Bank will comply with the request within a reasonable time period of receiving the request. When acting in conformance with a Receiving Bank’s request to transmit or otherwise provide or make available a second file of Electronic Checks, a Sending Bank shall not be deemed to have breached any warranty to any Receiving Bank under Section XIX(L) or any applicable law relating to transmission, delivery or exchange of duplicate Electronic Checks with respect to the Electronic Checks that the Receiving Bank requested be included in the second file. The Sending Bank is not obligated under this Section XIX(G)(4)(b) to provide the second file of Electronic Checks to the Receiving Bank. The Sending Bank shall have no liability to the Receiving Bank for a decision to not provide a second file of Electronic Checks to the Receiving Bank, regardless of the reason for its decision.

(5) Timing Of Receipt at Receiving Bank (other than Paying Bank). For an exchange of an Electronic Check between a Sending Bank and a Receiving Bank that is not the Paying Bank, an Electronic Check is deemed received by a Receiving Bank in accordance with the rule for the timing of presentment, as set forth in Section XIX(H).
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

(6) Receiving Bank Authority to Not Accept an Electronic Check

(a) If a Receiving Bank has not otherwise identified to the Sending Bank a specific Routing Number as acceptable for exchange under Section III(A), the Receiving Bank may in its discretion refuse acceptance of, or return to the Sending Bank, as applicable, an Electronic Check that contains a non-active Routing Number.

(b) Nothing in this paragraph is intended to limit or restrict the ability of a Receiving Bank to refuse acceptance or to return an Electronic Check as otherwise permitted under applicable law, these Rules or applicable Exchange Provider procedures and policies.
XIX(G). COMMENTARY

Rule: The Sending Bank can transmit or otherwise provide or make available the Image to the Receiving Bank directly. Alternatively, if agreed by the Sending Bank and the Receiving Bank, the Image can be transmitted or otherwise provided or made available to the Receiving Bank either by another entity or through a Clearing House facility.

Comment: Reference is made to transmitting, providing or making available an Electronic Check by an entity other than the Sending Bank to allow for the possibility that a Sending Bank may arrange for the Electronic Check to be transmitted or provided or made available to the Receiving Bank by another member or nonmember entity. This alternative is available only with the agreement of the Receiving Bank. As provided in Section IV(A), the Sending Bank is responsible for the warranties provided under Section XIX(L) and the other Sending Bank obligations provided for in Section XIX, even if the Electronic Check is transmitted or provided or made available by another entity. Reference is made to a Clearing House to allow for the possibility that the Sending Bank and Receiving Bank will agree to use a switch to transmit or otherwise provide or make available Electronic Check.

Rule: The Receiving Bank designates the location(s) to which Images and associated Electronic Information must be transmitted or otherwise provided or made available.

Comment: Section XIX(G)(1) permits the Receiving Bank discretion to determine where Images and associated Electronic Information are to be transmitted or otherwise provided or made available. The Receiving Bank, for example, can designate that the Images and Electronic Information are to be transmitted or otherwise provided to a specific location where they subsequently will be “picked up” by the Receiving Bank, or that they be transmitted or otherwise provided to the Receiving Bank’s shop. Alternatively, the Receiving Bank can designate that the Images and Electronic Information are to be made available to it at an Archive. Section XIX(G)(1) also permits a Receiving Bank to designate more than one location for receipt or availability of Images, or to designate one location for one type of Image (e.g., Images drawn on certain accounts), and one or more other locations for other types of Images. Different locations can be designated for Images transmitted or otherwise provided or made available at different times of the day. Section XIX(G)(1) does not provide “backstop” rules in the event the Receiving Bank does not designate a location for receipt or availability of Images. The Receiving Bank is not deemed to have received an Image and/or Electronic Information transmitted to it until the transmission containing the Image and/or Electronic Information is received or available at its designated location (see Commentary to Section XIX(G)(1) for a discussion of when a transmission is deemed to have been received by the Receiving Bank). In addition to physical locations, a Receiving Bank could designate a network address, IP address or other technical address as the location for the delivery of electronic files of Images.

Rule: Images are to be provided or made available on the media agreed to by the Receiving Bank and the Sending Bank.

Comment: If the Receiving Bank and the Sending Bank have agreed to the electronic transmission of Images, then the Sending Bank must electronically transmit the Images to the Receiving Bank. If the Receiving Bank and the Sending Bank have agreed that the Images will be provided or made available to the Receiving Bank on specified media, then the Sending Bank must provide or make available the Images on this media.

Rule: Except as otherwise provided in Section XIX(G)(1), the Sending Bank is responsible for the transmission or other transport or the making available of the Electronic Check to the Receiving Bank.

Comment: For Images and/or Electronic Information transmitted to the Receiving Bank, the entire transmission must be received at the Receiving Bank’s designated location before any part of that transmission is deemed to be received by the Receiving Bank. Accordingly, if only a portion of a transmission containing an Image or Electronic Information is received at that location because, for example, of a failure during the transmission, the transmission is not deemed to have been received with respect to any of the Images/ Electronic Information identified in the transmission (including any Image contained in that portion of the transmission that was received).
XIX(G). COMMENTARY (continued)

Thus, if the Images are delayed (or lost) during that transport, they are not deemed to have been received by the Receiving Bank until (or unless) they are physically received by the Receiving Bank at its designated location. Similarly, in the event the Receiving Bank and the Sending Bank have agreed to make available the Images to the Receiving Bank at an Archive, the Sending Bank is responsible for providing the Images to the Archive in accordance with the agreement between the Receiving Bank, the Sending Bank and the Archive.

The Sending Bank and Receiving Bank can agree to establish additional requirements applicable to their exchange of Images and Electronic Information, including for example identifying in their agreement which transmissions do and/or do not constitute Electronic Information for purposes of these Rules. For example, a bank may require that Electronic Information associated with an Image be contained in the same file with the Image.

Rule: A Receiving Bank that designates that Images are to be transmitted to it is responsible for managing its electronic connection so as to permit the Sending Bank to transmit Images to the Receiving Bank in a timely manner.

Comment: While generally the Sending Bank is responsible for the transmission of Images to the Receiving Bank, the Receiving Bank must manage its electronic connection so that the Sending Bank can complete this transmission within the timeframes specified in Section XIX. For example, if the Receiving Bank and Sending Bank have agreed to the transmission of Images to the Receiving Bank via email to a specified email address of the Receiving Bank, the Receiving Bank would breach Section XIX(G)(1) if it failed to pay its internet service provider and the internet service provider cancelled the Receiving Bank’s specified email address. In the event the Receiving Bank fails to manage its electronic connection as required in Section XIX(G)(1), upon realizing that the transmission to the Receiving Bank had not been successfully completed, the Sending Bank could send the items in question outside of the Rules and recover any resultant damage, expense or loss from the Receiving Bank pursuant to the warranty provisions of Section XIX(M) (see Section XIX(M) and related Commentary).

Rule: A Receiving Bank that designates that Images are to be made available to it is responsible for managing its electronic connection so as to permit it to retrieve Images from the Archive or other location designated by it where the Images are to be made available.

Comment: While generally the Sending Bank is responsible for making available Images to the Receiving Bank, the Receiving Bank must manage its electronic connection so that it can retrieve Images from the Archive or other location designated by it where the Images are to be made available. For example, if the Receiving Bank and Sending Bank have agreed that Images will be made available to the Receiving Bank at an Archive, the Receiving Bank would breach Section XIX(G)(1) if it failed to maintain its connection to the Archive such that it could not retrieve Images from the Archive. In the event the Receiving Bank fails to manage its connection as required in Section XIX(G)(1), upon realizing that the Images have not been available to the Receiving Bank, the Sending Bank could send the items in question outside of the Rules and recover any resultant damage, expense or loss from the Receiving Bank pursuant to the warranty provisions of Section XIX(M) (see Section XIX(M) and related Commentary).

Rule: In the event that a Receiving Bank’s electronic connection is not available for receipt or retrieval of Electronic Checks, the Sending Bank shall act reasonably in seeking collection of the Electronic Checks, upon being notified by the Receiving Bank or otherwise learning of the unavailability of the Receiving Bank’s electronic connection, which may include transmitting or otherwise providing the Electronic Checks to the Receiving Bank in another manner as agreed to by the Receiving Bank, or sending the Related Physical Checks (if available) to the Receiving Bank for collection outside of the Rules.

Comment: A Sending Bank may be unable to send Electronic Checks to a Receiving Bank because the Receiving Bank’s electronic connection is unavailable for one reason or another. In such a case, upon learning of the unavailability of the Receiving Bank’s electronic connection, the Sending Bank shall act reasonably in determining how to collect the Electronic Checks or the Related Physical Checks. In determining reasonable actions in a particular situation, the Sending Bank should only incur collection costs
XIX(G). COMMENTARY (continued)

(such as additional staff time, special couriers, production of substitute checks) that are reasonable in light of the particular situation. For example, if the Sending Bank determines based on information from the Receiving Bank that the electronic connection will be restored within the same day, it may not be reasonable for the Sending Bank to incur costs associated with converting the Electronic Checks to substitute checks and collecting the substitute checks through a paper check collection process.

Alternatively, based on the number and dollar amount of the Electronic Checks it is seeking to collect, and the uncertainty regarding the restoration of the Receiving Bank’s electronic connection, the Sending Bank may determine that it is reasonable to incur additional costs to collect the Electronic Checks or the Related Physical Checks (including substitute checks). The Sending Bank makes the determination of reasonable actions based on the facts and circumstances known to it at the time it learns that the Receiving Bank’s electronic connection is unavailable. If a Sending Bank does not act reasonably, the Sending Bank may not be able to recover all or a portion of the costs that it incurs for the alternative collection of the Electronic Checks.

Rule: An Electronic Check is not received by a Receiving Bank if the Receiving Bank cannot, as a technological or computer systems matter, process the electronic file or other media containing the Electronic Check after such file or media is transmitted to, or made available to, the Receiving Bank.

Comment: A Receiving Bank does not receive an Electronic Check if the Receiving Bank cannot process (including processing for posting or for sending on to another bank) the electronic file that contains the Electronic Check. For example, if a Receiving Bank receives an electronic file, and the Receiving Bank cannot open the file or otherwise process the file through its check collection and image systems, the Receiving Bank has not received the Electronic Checks contained in that file for purposes of this Rule and for purposes of Section XIX(H), if the Receiving Bank is also the Paying Bank. Examples of an unprocessable file may include, among other types,

1. a file that is corrupted,
2. a file that is not in necessary formats required by the exchange network,
3. a file that contains unidentifiable records or fields,
4. a file containing improper formatting, and
5. information in a file that will not parse.

The electronic file or other media has to be unprocessable in the form that it was received from the Sending Bank.

A file would be unprocessable if the applicable editing criteria causes the Receiving Bank’s check processing system to reject the complete file. In contrast, a file is considered processable under this Rule if the file fails an edit at the individual record level, and the individual record can be rejected without rejecting the larger complete file.

A file that is processable upon receipt but subsequently develops a problem at the Receiving Bank which causes the file to be unprocessable, is still received by the Receiving Bank. A Receiving Bank that is unable to process a file or is delayed in processing a file because of problems with its system may be viewed as failing to exercise ordinary care in the handling of items. To the extent that a failure to process a file or delay in the processing of the file by the Receiving Bank causes a loss to other banks in the check collection process, the Sending Bank may seek to bring a claim against the Receiving Bank for losses incurred by the Sending Bank due to the delays caused by the Receiving Bank.

Rule: Where the Sending Bank makes available (but does not transmit or otherwise provide) Images to the Receiving Bank, the Sending Bank also must transmit or otherwise provide to the Receiving Bank a Sending Bank’s Acknowledgement identifying the Images it has made available to the Receiving Bank. The Sending Bank can transmit or provide this directly. Alternatively, if agreed by the Receiving Bank and the Sending Bank, the Sending Bank’s Acknowledgement can be transmitted or otherwise provided to the Receiving Bank either by another entity, such as an Archive, or through a Clearing House facility.

Comment: In the event the Sending Bank does not transmit or otherwise provide Images it has made available to the Receiving Bank, the Sending Bank must provide to the Receiving Bank a Sending Bank’s
Acknowledgement identifying the Images that have been made available in accordance with the requirements of Section XIX(G)(2). This Sending Bank’s Acknowledgement will enable the Receiving Bank to confirm receipt of items identified in a related Electronic Information, which the Receiving Bank may use to post the identified items, without having to retrieve each of the Images made available to it. Reference is made to transmission or provision of the Sending Bank’s Acknowledgement by an entity other than the Sending Bank to allow for the possibility that a Sending Bank may arrange for the Sending Bank’s Acknowledgement to be transmitted or provided to the Receiving Bank by another member or nonmember entity, such as an Archive. This alternative is available only with the agreement of the Receiving Bank. As provided in Section XIX(B), the Sending Bank is responsible for the warranties provided under Section XIX(L) and the other Sending Bank obligations provided for in Section XIX, even if the Sending Bank’s Acknowledgement is transmitted or provided by another entity (please see Section XIX(B) and related Commentary). Reference is made to a Clearing House to allow for the possibility that the Receiving Bank and Sending Bank will agree to use a switch to transmit or otherwise provide Sending Bank’s Acknowledgments.

Rule: The Receiving Bank designates the location(s) to which Sending Bank’s Acknowledgements must be transmitted or otherwise provided.

Comment: Section XIX(G)(2) permits the Receiving Bank discretion to determine where Sending Bank’s Acknowledgements are to be transmitted or otherwise provided. The Receiving Bank, for example, can designate that the Sending Bank’s Acknowledgements are to be transmitted or otherwise provided to the Receiving Bank’s shop. Alternatively, the Receiving Bank can designate that the Sending Bank’s Acknowledgements are to be provided to an Archive or other third party. Section XIX(G)(2) also permits a Receiving Bank to designate more than one location for receipt of Sending Bank’s Acknowledgements, or to designate one location for one type of Sending Bank’s Acknowledgement (e.g., Sending Bank’s Acknowledgement of Images drawn on certain accounts), and one or more other locations for other types of Sending Bank’s Acknowledgements. Different locations can be designated for Sending Bank’s Acknowledgements transmitted or otherwise provided at different times of the day. Section XIX(G)(2) does not provide “backstop” rules in the event the Receiving Bank does not designate a location for receipt of Sending Bank’s Acknowledgements. The Receiving Bank is not deemed to have received a Sending Bank’s Acknowledgement transmitted to it until the transmission containing the Sending Bank’s Acknowledgement is received at its designated location (see Commentary to Section XIX(G)(2) for a discussion of when a transmission is deemed to have been received by the Receiving Bank). The Receiving Bank and Sending Bank may want to establish a time deadline for a Sending Bank’s Acknowledgement, such that the Sending Bank could retransmit the Image (should that be necessary because for example of problems with the first transmission that precluded presentment), in order that presentment can occur on the same day as would have been the case with the initial transmission of the Image, if that is what is desired by the banks.

Rule: The Sending Bank’s Acknowledgement must contain all of the information required to be included for a Sending Bank’s Acknowledgement in accordance with the requirements of applicable industry standards.

Except as otherwise provided in Section XIX(G)(2), the Sending Bank is responsible for the transmission or other transport of the Sending Bank’s Acknowledgement to the Receiving Bank.

Comment: For Sending Bank’s Acknowledgements transmitted to the Receiving Bank, the entire transmission must be received at the Receiving Bank’s designated location before any part of that transmission is deemed to be received by the Receiving Bank. Accordingly, if only a portion of a transmission containing a Sending Bank’s Acknowledgement is received at that location because, for example, of a failure during the transmission, the transmission is not deemed to have been received with respect to any of the Sending Bank’s Acknowledgements identified in the transmission (including any Sending Bank’s Acknowledgement contained in that portion of the transmission that was received). In the event the Sending Bank provides the Sending Bank’s Acknowledgement to the Receiving Bank in a way other than by transmission (such as via fax), the Sending Bank similarly is responsible for the provision of the Sending Bank’s Acknowledgement to the Receiving Bank via this other means.
XIX(G). COMMENTARY (continued)

Rule: A Receiving Bank that designates that Sending Bank’s Acknowledgements are to be transmitted to it is responsible for managing its electronic connection so as to permit the Sending Bank to transmit Sending Bank’s Acknowledgements to the Receiving Bank in accordance with this Section.

Comment: While generally the Sending Bank is responsible for the transmission of Sending Bank’s Acknowledgements to the Receiving Bank, the Receiving Bank must manage its electronic connection so that the Sending Bank can complete this transmission. For example, if the Sending Bank and Receiving Bank have agreed to the transmission of Sending Bank’s Acknowledgements to the Receiving Bank via email to a specified email address of the Receiving Bank, the Receiving Bank would breach Section XIX(G)(2) if it failed to pay its internet service provider and the internet service provider cancelled the Receiving Bank’s specified email address.

Rule: Where the Sending Bank transmits or otherwise provides (rather than makes available) Images to the Receiving Bank, the Receiving Bank must transmit or otherwise provide to the Sending Bank a Receiving Bank’s Acknowledgement identifying the Images it has received from the Sending Bank. The Receiving Bank can transmit or provide this directly. Alternatively, if agreed by the Receiving Bank and the Sending Bank, the Receiving Bank’s Acknowledgement can be transmitted or otherwise provided to the Sending Bank either by another entity, such as an Archive, or through a Clearing House facility.

Comment: In the event the Sending Bank transmits or otherwise provides (rather than makes available) Images to the Receiving Bank, the Receiving Bank must provide to the Sending Bank a Receiving Bank’s Acknowledgement identifying the Images that the Receiving Bank has received in accordance with the requirements of Section XIX(G)(3). The Receiving Bank’s Acknowledgement will enable the Sending Bank to confirm sending of items identified in this Receiving Bank’s Acknowledgement. Reference is made to transmission or provision of the Receiving Bank’s Acknowledgement by an entity other than the Receiving Bank to allow for the possibility that a Receiving Bank may arrange for the Receiving Bank’s Acknowledgement to be transmitted or provided to the Sending Bank by another member or nonmember entity, such as an Archive. This alternative is available only with the agreement of the Sending Bank. As provided in Section IV(A), the Receiving Bank is responsible for the warranties provided under Section XIX(M) and the other Receiving Bank obligations provided for in Section XIX, even if the Receiving Bank’s Acknowledgement is transmitted or provided by another entity (please see Section XIX(B) and related Commentary). Reference is made to a Clearing House to allow for the possibility that the Receiving Bank and Sending Bank will agree to use a switch to transmit or otherwise provide Receiving Bank’s Acknowledgements.

Rule: The Sending Bank designates the location(s) to which the Receiving Bank’s Acknowledgements must be transmitted or otherwise provided.

Comment: Section XIX(G)(3) permits the Sending Bank discretion to determine where Receiving Bank’s Acknowledgements are to be transmitted or otherwise provided. The Sending Bank, for example, can designate that Receiving Bank’s Acknowledgements are to be transmitted or otherwise provided to the Sending Bank’s shop. Alternatively, the Sending Bank can designate that Receiving Bank’s Acknowledgements are to be provided to an Archive or other third party. Section XIX(G)(3) also permits a Sending Bank to designate more than one location for receipt of Receiving Bank’s Acknowledgements, or to designate one location for one type of Receiving Bank’s Acknowledgement (e.g., Receiving Bank’s Acknowledgements of Images drawn on certain accounts), and one or more other locations for other types of Receiving Bank’s Acknowledgements. Different locations can be designated for Receiving Bank’s Acknowledgements transmitted or otherwise provided at different times of the day. Section XIX(G)(3) does not provide “backstop” rules in the event the Sending Bank does not designate a location for receipt of Receiving Bank’s Acknowledgements. The Sending Bank is not deemed to have received a Receiving Bank’s Acknowledgement transmitted to it until the transmission containing the Receiving Bank’s Acknowledgement is received at its designated location (see Commentary to Section XIX(G)(3) for a discussion of when a transmission is deemed to have been received by the Sending Bank). The Receiving Bank and Sending Bank may want to establish a time deadline for the Receiving Bank’s Acknowledgement that will enable the Sending Bank to retransmit the Image (should that be necessary because for example of problems with the first transmission that precluded presentment), in order that presentment can occur on
XIX(G). COMMENTARY (continued)

the same day as would have been the case with the initial transmission of the Image, if that is what is desired by the banks.

Rule: The Receiving Bank’s Acknowledgement must contain all of the information required to be included for a Receiving Bank’s Acknowledgement in accordance with the requirements of applicable industry standards.

Except as otherwise provided in Section XIX(G)(3), the Receiving Bank is responsible for the transmission or other transport of Receiving Bank’s Acknowledgements to the Sending Bank.

Comment: For Receiving Bank’s Acknowledgements transmitted to the Sending Bank, the entire transmission must be received at the Sending Bank’s designated location before any part of that transmission is deemed to be received by the Sending Bank. Accordingly, if only a portion of a transmission containing a Receiving Bank’s Acknowledgement is received at that location because, for example, of a failure during the transmission, the transmission is not deemed to have been received with respect to any of the Receiving Bank’s Acknowledgements identified in the transmission (including any Receiving Bank’s Acknowledgement contained in that portion of the transmission that was received). In the event the Receiving Bank provides the Receiving Bank’s Acknowledgement to the Sending Bank in a way other than by transmission (such as via fax), the Receiving Bank similarly is responsible for the provision of the Receiving Bank’s Acknowledgement to the Sending Bank via this other means.

Rule: A Sending Bank that designates that Receiving Bank’s Acknowledgements are to be transmitted to it is responsible for managing its electronic connection so as to permit the Receiving Bank to transmit Receiving Bank’s Acknowledgements to the Sending Bank in accordance with this Section.

Comment: While generally the Receiving Bank is responsible for the transmission of Receiving Bank’s Acknowledgements to the Sending Bank, the Sending Bank must manage its electronic connection so that the Receiving Bank can complete this transmission. For example, if the Sending Bank and Receiving Bank have agreed to the transmission of Receiving Bank’s Acknowledgements to the Sending Bank via email to a specified email address of the Sending Bank, the Sending Bank would breach Section XIX(G)(3) if it failed to pay its internet service provider and the internet service provider cancelled the Sending Bank’s specified email address.

Rule: If a Receiving Bank cannot process the electronic file or other media containing the Electronic Check (as set forth in Section XIX(G)(1)), the Receiving Bank shall send a notification of the failure to process to the Sending Bank within one Business Day of the Banking Day on which the Receiving Bank receives the electronic file or other media containing the Electronic Check.

Comment: Banks may set forth the operational details for this notice of non-processable files in their exchange agreements as required by Section XIX(C) or in other network access agreements. Failure to send this notification would constitute a violation of the ECCHO Rules and would result in a breach of the Receiving Bank’s warranty under Section XIX(M) to comply with applicable requirements of the ECCHO Rules. To the extent that a Sending Bank incurs a loss that is the result of the Receiving Bank’s warranty breach, such as a loss arising from the Sending Bank’s inability to debit a depository customer’s account in the event of a delayed returned Electronic Check, the Receiving Bank would be liable to the Sending Bank under the indemnification set forth in Section XIX(M).

Rule: Provided that the Receiving Bank makes a request to the Sending Bank within four Business Days of the date of settlement of an Electronic Check that was originally transmitted or otherwise provided or made available to the Receiving Bank, a Sending Bank shall transmit or otherwise provide or make available such Electronic Check to the Receiving Bank a second time upon the request of the Receiving Bank.

Comment: Situations may arise in which an Electronic Check (or a file of Electronic Checks) is lost or is deemed non-processable after receipt at the Receiving Bank. In that situation, the Receiving Bank may seek to request that a Sending Bank resend the same Electronic Check to the Receiving Bank. This rule
XIX(G). COMMENTARY (continued)

sets forth a time period (four Business Days from date of settlement) in which a Receiving Bank may make a request to the Sending Bank to resend the Electronic Check. The Sending Bank has two Business Days from receipt of the request to respond to the request. It is recognized that a Sending Bank may retain copies of Electronic Checks beyond the four Business Day period, and therefore the Sending Bank may (at its option and as a courtesy matter) respond to a request (received outside of the four Business Day period) from the Receiving Bank for a resend of an Electronic Check. For example, a Sending Bank may consider whether or not a longer retention period is appropriate to address a Receiving Bank’s possible request to resend a file in a situation where an Electronic Check file is lost or misplaced at the Receiving Bank. A factor to consider in this regard is how long it should take for a Receiving Bank to determine that a file is lost/misplaced, and then to send a request to the Sending Bank to resend the file.

Rule: If the Electronic Check was originally contained in an electronic file or other media containing multiple Electronic Checks, the Receiving Bank may only request a second transmission, provision or making available of an electronic file or other media containing the same Electronic Checks.

Comment: A Receiving Bank may not use the process set forth in this Rule to request copies of a single Electronic Check that was contained in an electronic file that contained multiple Electronic Checks when it was sent to the Receiving Bank. A Sending Bank does not have to maintain a complete copy of each electronic file it sends to the Receiving Bank. To satisfy the requirements of this Rule, the Sending Bank can either

(1) recreate a new electronic file that contains the same Electronic Checks that were sent in the first electronic file, or

(2) resend a copy of the original electronic file (if the Sending Bank has such a copy).

Nothing in this Rule prevents or prohibits a Receiving Bank from requesting single copies of Electronic Checks from a Sending Bank to address informational, adjustment or other needs. Those types of requests for copies or resending of Electronic Checks are not covered by the ECCHO Rules, and the Sending Bank may respond to such requests in its discretion or in accordance with its regular processing procedures.

The request by the Receiving Bank for the Sending Bank to resend the first file containing Electronic Checks does not re-set or delay the date of presentment for those Electronic Checks, if the requirements for receipt and presentment for such Electronic Checks have been met under the ECCHO Rules. However, if the first file of Electronic Checks was not received at the Receiving Bank because the file was not processable, as provided in Section XIX(G)(1), the Electronic Checks in the first file would not have been presented. Accordingly, the receipt of the second file of Electronic Checks by the Receiving Bank would be the first presentment of the Electronic Checks in that file. This Rule cannot be used to extend the date of presentment or receipt in a situation where the Receiving Bank loses or delays in processing the file containing Electronic Checks. The following are two examples (assume each of these days is a Banking Day for the banks):

(1) The Sending Bank sends the first file containing Electronic Checks on Monday. The Receiving Bank determines that it cannot process the file on Monday, and sends a request to the Sending Bank to resend the file. The Sending Bank resends the file on Tuesday, and this file can be processed at the Receiving Bank. In this situation, the date of presentment for the Electronic Checks in the file is Tuesday.

(2) The Sending Bank sends the first file containing Electronic Checks on Monday. The Receiving Bank does not process the file at that time, and the file is misplaced or lost at the Receiving Bank’s operations center. On Tuesday the Receiving Bank sends a request to the Sending Bank to resend the file. The Sending Bank resends the file on Wednesday and this file is processed at the Receiving Bank. In this situation, the date of presentment for the Electronic Checks in that file is Monday, the day the first file was sent to the Receiving Bank.

Comment: Members are encouraged to consider the internal processes by which they make and receive requests for resending files to ensure that only employees with the proper authority to make such requests, or to respond to such requests, are involved in the resending process. This will help reduce the chance that incorrect files are sent out in response to the request from the Receiving Bank.
XIX(G). COMMENTARY (continued)

Rule: The Sending Bank’s sole liability for failure to comply with this Section XIX(G)(4)(a) shall be limited to the additional costs resulting from the failure to comply incurred by the Receiving Bank in recreating the Electronic Check for collection or payment. The failure of a Sending Bank to comply with Section XIX(G)(4)(a) shall not constitute a breach of any warranty under Section XIX(L), or otherwise subject the Sending Bank to liability to the Receiving Bank.

Comment: In the event that the Sending Bank is unable to respond to a timely request for a file to be resent to the Receiving Bank, the Sending Bank may have liability to the Receiving Bank for any additional costs incurred by the Receiving Bank in recreating the Electronic Checks for collection or payment. In no event shall the Sending Bank be liable for the dollar amount of the items in an Electronic Check file that the Sending Bank cannot resend in accordance with this Rule. This limitation on liability provision assumes that the file of Electronic Checks otherwise complies with the ECCHO Rules when it was originally sent to the Receiving Bank. Depending on the facts of the situation, a Receiving Bank may have other claims under the ECCHO Rules against a Sending Bank arising from the Sending Bank’s failure to comply with other ECCHO Rules with respect to the original Electronic Check sent to the Receiving Bank.

Rule: A Receiving Bank may request that a Sending Bank transmit or otherwise provide or make available to the Receiving Bank a second file containing all or a portion of the Electronic Checks that were in the first file. The Receiving Bank shall specify the range of Electronic Checks that it wants included or excluded from the second file of Electronic Checks.

Comment: The request by the Receiving Bank for the Sending Bank to resend a portion of the Electronic Checks in the first image cash letter file does not re-set or delay the date of presentment for those Electronic Checks, if the requirements for receipt and presentment for such Electronic Checks have been met under the ECCHO Rules. See additional discussion on this issue in the Commentary to Section XIX(G)(4)(a). While there is no time frame in which a Receiving Bank must make the request to the Sending Bank, a delay in requesting the resending of the file may increase the likelihood that the Sending Bank will not be in a position to respond to the request.

Comment: Members are encouraged to consider the internal processes by which they make and receive requests for resending files to ensure that only employees with the proper authority to make such requests, or to respond to such requests, are involved in the resending process. This will help reduce the chance that incorrect files are sent out in response to the request from the Receiving Bank.

Rule: When acting in conformance with a Receiving Bank’s request to transmit or otherwise provide or make available a second file of Electronic Checks, a Sending Bank shall not be deemed to have breached any warranty to any Receiving Bank under Section XIX(L), Regulation CC or any applicable law relating to transmission, delivery or exchange of duplicate Electronic Checks with respect to the Electronic Checks that the Receiving Bank requested be included in the second file.

Comment: This Rule provides a safe harbor to the Sending Bank against potential liability under the ECCHO warranties and any other applicable law in the event that the Electronic Check file that is resent results in duplicate processing of Electronic Checks at any Receiving Bank, provided that the Sending Bank only resends the requested Electronic Checks. Please note that this protection from liability protects the Sending Bank from claims of any Receiving Bank, even from claims by a Receiving Bank other than the Receiving Bank that made the request for the resending of the Electronic Checks.

Rule: The Sending Bank is not obligated under this Section XIX(G)(4)(b) to provide the second file of Electronic Checks to the Receiving Bank. The Sending Bank shall have no liability to the Receiving Bank for a decision to not provide a second file of Electronic Checks to the Receiving Bank, regardless of the reason for its decision.

Comment: This Rule does not require the Sending Bank to respond to a request from a Receiving Bank for a retransmission of a file of Electronic Checks. Member banks are encouraged to work together to resolve processing and operational errors in the sending and receiving of files of Electronic Checks.
XIX(G). COMMENTARY (continued)

Rule: For an exchange of an Electronic Check between a Sending Bank and a Receiving Bank that is not the Paying Bank, an Electronic Check is deemed received by a Receiving Bank in accordance with the rule for the timing of presentment, as set forth in Section XIX(H).

Comment: This rule clarifies that the same receipt rule for Electronic Checks applies to a Receiving Bank, whether or not the Receiving Bank is the Paying Bank or collecting bank. For example, a Receiving Bank may be acting as a collecting bank with respect to an Electronic Check that it receives from Sending Bank. While an exchange between the Sending Bank and a Receiving Bank (acting as a collecting bank) does not result in the presentment of the Electronic Check, the same rule for timing as set forth in Section XIX(H) will apply to that exchange. As such, the obligations of a Receiving Bank acting as a collecting bank with respect to an Electronic Check would not arise until it has received the Image and the Electronic Information in accordance with this Rule.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

H. Presentment.

(1) An Electronic Check is presented to the Paying Bank when both
    (a) the Electronic Information associated with the Electronic Check is
        received at or made available to a location designated by the
        Paying Bank as provided in Section XIX(D)(2), and
    (b) the Image associated with the Electronic Check is received at or
        made available to a location designated by the Paying Bank as
        provided in Section XIX(G)(1).

An Image or Electronic Information received or made available on a day
that is not a Banking Day for the Paying Bank or after the Paying Bank’s
Image Ledger Cutoff Time on a Banking Day shall be deemed to be
received by or made available to, as applicable, the Paying Bank at the
opening of its next Banking Day.

(2) The Presenting Bank and Paying Bank cannot by agreement extend the
time at which presentment is deemed to occur under this Section XIX(H).
XIX(H). COMMENTARY

**Rule:** Presentment of an Electronic Check occurs when both (1) the Electronic Information associated with the Electronic Check is received at or made available to a location designated by the Paying Bank, and (2) the Image associated with the Electronic Check is received by or made available to the Paying Bank at a designated location. If Electronic Information or the related Image is received or made available on a day that is not a Banking Day for the Paying Bank or after the Image Ledger Cutoff Time, the Electronic Check is deemed to be presented at the opening of the Paying Bank’s next Banking Day.

**Comment:** The Code authorizes the Paying Bank to fix a time of 2:00 p.m. or later (Paying Bank local time) as a cutoff time, and an item received on a Banking Day after that cutoff time may be treated by the Paying Bank as being received at the opening of its next Banking Day (Section 4-108 (1990 Official Text) and Section 4-107 (1978 Official Text)). These Rules vary the 2:00 p.m. or later (Paying Bank local time) Code requirement, and permit a Paying Bank to establish an Image Ledger Cutoff Time before 2:00 p.m. (Paying Bank local time). Pursuant to this authority, it is anticipated that Paying Banks will establish an Image Ledger Cutoff Time.

Presentment is determined on an item by item basis, and presentment of a particular item is based upon, as applicable, when the Paying Bank receives both the Electronic Information and the related Image or when the Electronic Information and the related Image are made available to the Paying Bank. Presentment of an Electronic Check for which the Image is received by the Paying Bank on a day that is a Banking Day for it and on or before the Image Ledger Cutoff Time, occurs upon receipt by the Paying Bank of both the Electronic Information and the Image. Presentment of an Electronic Check for which the Image is made available to the Paying Bank on a day that is a Banking Day for it and on or before the Image Ledger Cutoff Time occurs upon the receipt or the availability to the Paying Bank of the Image and the Electronic Information. If Electronic Information or an Image is received or made available, on a day that is not a Banking Day for the Paying Bank or after the Image Ledger Cutoff Time, presentment of the Electronic Check occurs at the opening of the Paying Bank’s next Banking Day (please see Section XIX(G)(1) and the related Commentary for more guidance as to when an Image is deemed to have been received by or available to the Paying Bank). If the Electronic Information and the related Image are received by the Paying Bank in the same file, presentment occurs based on the receipt by the Paying Bank of that file. The following example illustrates this presentment Rule:

Assume the Paying Bank has established an Image Ledger Cutoff Time of 2:00 p.m. (Paying Bank local time). If both the Electronic Information and the related Image are received by the Paying Bank at its designated location at 11:00 a.m. (Paying Bank local time) on Monday (assuming that Monday is a Banking Day for the Paying Bank), presentment of the Electronic Check would occur at 11:00 a.m. Monday. If either the Electronic Information or the related Image are received by the Paying Bank at its designated location at 10:00 p.m. (Paying Bank local time) on Monday, presentment of that Electronic Check would occur at the Paying Bank’s opening of business on Tuesday (assuming that Tuesday is a Banking Day for the Paying Bank).

Presentment is not conditioned on whether the Image satisfies any applicable industry standards for image quality. Receipt or availability of the Electronic Information and the related Image as provided in Section XIX(H) constitutes presentment of the Electronic Check (consisting of the Image and the Electronic Information), even if the Image does not satisfy any applicable industry standards for image quality. However, the Presenting Bank warrants to the Paying Bank that the Image it presents accurately represents information from the front and back of the original check. (See Regulation CC Section 229.34(a)).

The Paying Bank and the Presenting Bank may wish to agree on a methodology for the Paying Bank to notify the Presenting Bank regarding transmissions that do not for all or certain items satisfy the Image quality standards. This will facilitate the Presenting Bank presenting the effected items through other means, such as a subsequent transmission under Section XIX.

**Comment:** In order for presentment to occur, the Paying Bank must receive both the Electronic Information “associated with” the Electronic Check as well as the Image. For example, Electronic Information is associated with a particular Image if the Electronic Information contains a record number or control number that cross references the Electronic Information to a particular Image, and/or if the image exchange system
or computer recordkeeping system that stores or transmits the Image and the Electronic Information logically correlates the Electronic Information with the Image.

Electronic Information may still be “associated with” a particular Image for purposes of presentment of an Electronic Check under this Rule even if the notice does not contain all or any of the MICR line information that is reflected within the associated Image. For example, it is possible that, during the creation of Electronic Information, MICR line information was placed within the Electronic Information that does not match the MICR line information reflected in the Image. In such a situation, the MICR line information in the Electronic Information may even refer to a different Image. (These situations are sometimes referred to as “mis-matched MICR items”). In this situation, the Sending Bank would likely have breached one of the warranties made to the Paying Bank under Section XIX(L) or applicable law (for example, if there was an encoding error associated with the mis-matched MICR item).

Comment: A Receiving Bank may determine to take action on Electronic Information alone, before receipt of an Image. However, a Receiving Bank is not required under these Rules to take any action with respect to any Electronic Information received. A Paying Bank might, for example, decide to act on (e.g., post) Electronic Information alone only with respect to certain categories of accounts or to exclude particular accounts. A Paying Bank desiring to debit customer accounts on the basis of Electronic Information alone should consider amending its customer agreements to expressly permit posting at that time, in order to address uncertainty which may exist under the UCC or the account agreement as to whether a Paying Bank is otherwise entitled to post items prior to the delivery of the associated Image and presentment of the Electronic Check. A Paying Bank desiring to return items for insufficient funds based solely on an account review performed subsequent to receipt of Electronic Information (but before receipt of the associated Image) should consider amending its customer agreements to expressly permit dishonor based solely on that procedure, in order to address uncertainty which may exist concerning whether a Paying Bank is otherwise authorized to return items based on a single account review made prior to actual presentment of the item.

Rule: The Presenting Bank and Paying Bank cannot by agreement extend the time at which presentment of the Electronic Check is deemed to occur beyond that provided for in Section XIX(H).

Comment: The Paying Bank’s Code and Regulation CC return obligations arise upon presentment (please see Commentary to Section XX(F) for a discussion of these Paying Bank return obligations). As a result, extension of the time at which presentment occurs could result in extension of return times. Given that Regulation CC prohibits an electronic presentment agreement from extending return times with respect to parties such as the payee interested in the item that have not agreed to the electronic presentment agreement (please see Commentary to Section XIX(F)), the Presenting Bank and Paying Bank are prohibited by law from agreeing to extend return times beyond those provided in Section XIX(H)(1), unless all parties interested in the item agree to that extension. Section XIX(H)(2) incorporates this prohibition.
XIX.  **ELECTRONIC CHECK (CONTINUED)**

1.  **Reserved.** This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

J. Electronic Check Return. Receiving Bank may return an Electronic Check in accordance with the requirements of Section XX including the return routing rules of Section XX(D)(5).
XIX(J). COMMENTARY

Rule: The Receiving Bank may return an Electronic Check in accordance with the requirements of Section XX including the return routing rules of Section XX(D)(5).

Comment: Section XX establishes the rules for how a Receiving Bank returns an Electronic Check, as an Electronic Returned Check, that has been exchanged between Members under Section XIX. Section XX also establishes the rules as to when an Electronic Returned Check can be re-presented under these Rules. Section XX(D)(5) establishes rules for the routing of an Electronic Returned Check based on the use of Electronic Indorsements.
XIX. ELECTRONIC CHECK (CONTINUED)

K. Storage and Retrieval of Related Physical Checks and Images.

(1) For those Related Physical Checks in its possession, the Sending Bank shall determine a time period for the retention of Related Physical Checks after the Electronic Checks are sent to the Receiving Bank. Upon the expiration of the Sending Bank’s time period for the retention of the Related Physical Check, the Sending Bank must destroy the Related Physical Check.

(2) The Receiving Bank may submit a retrieval request to the Sending Bank for the Related Physical Check within the time period specified in Section XIX(K)(1) for storage of the Related Physical Check. The Receiving Bank may send the retrieval request to the Sending Bank by voice, facsimile or electronic transmission, in accordance with the instructions provided by the Sending Bank to the Receiving Bank from time to time. The Sending Bank shall at a minimum designate a voice and facsimile machine telephone number or instructions for electronic transmission for the receipt of such retrieval requests and may also designate reasonable timeframes within which such retrieval requests may be made. A retrieval request must contain at a minimum the following information:

(a) the Sending Bank’s Related Physical Check item sequence number;
(b) the business date of the bundle containing the Electronic Check which was derived from the Related Physical Check;
(c) the Routing Number of the bank that created the Electronic Check which was derived from the Related Physical Check or that transmitted, provided or made available the Electronic Check to the Receiving Bank;
(d) the cycle number under which the bundle containing the Electronic Check which was derived from Related Physical Check was created (if available to the Receiving Bank);
(e) the amount of the Related Physical Check;
(f) the On-Us Field of the Related Physical Check; and
(g) an indication that the request is not in connection with the Receiving Bank’s decision whether to pay or return the Electronic Check within the Code midnight deadline or Regulation CC expeditious return timeframes.

A retrieval request transmitted by electronic transmission must conform to the format requirements of applicable industry standards. Notwithstanding a Receiving Bank’s resignation or termination as a Member, the Receiving Bank shall continue to have the right to submit retrieval requests in accordance with this Section XIX(K).

(3) For a retrieval request for the Related Physical Check received pursuant to Section XIX(K) within the time period specified in Section XIX(K)(1) for storage of the Related Physical Check, if the Sending Bank can obtain the Related Physical Check with commercially reasonable effort and expense, the Sending Bank shall send via U.S. mail, first class postage paid to the
address specified by the Receiving Bank, the requested Related Physical Check by the close of business on the Sending Bank’s third Banking Day following the Banking Day on which the Sending Bank received the Receiving Bank’s request. The Sending Bank and Receiving Bank may agree to a means of delivery of the Related Physical Check other than as provided in this Section XIX(K)(3), at a fee agreed to by the banks.

(4) The obligations imposed on the Sending Bank under this Section XIX(K) shall continue for the time period specified in Section XIX(K) for storage of the Related Physical Check, even if the Sending Bank determines to no longer transmit Electronic Checks, ceases for any reason to be a Member or to be subject to the Rules, or otherwise determines to no longer accept Related Physical Checks for storage and retrieval under this Section XIX(K). In the event the Sending Bank becomes insolvent, the receiver shall be released from the Sending Bank’s obligations under this Section XIX(K) if

(a) the receiver delivers at the expense of the estate of the Sending Bank to each Paying Bank (or the Paying Bank’s successor in interest) all Related Physical Checks that have not been destroyed drawn on each respective Paying Bank, in accordance with the delivery instructions of the Paying Bank (or the Paying Bank’s successor in interest);

(b) written certification of such delivery by the receiver is delivered to the Organization; and

(c) the Organization confirms that it has received that certification.

(5) The Paying Bank must maintain the Image, or a copy of the Image, for at least seven (7) years (or such longer period as required under applicable law) from the date on which the Image was presented to the Paying Bank.

(6) If the Paying Bank has agreed to respond in accordance with this Section to a retrieval request from the Presenting Bank, the Presenting Bank may submit a retrieval request to the Paying Bank for an Image within the time period specified in Section XIX(K)(5) for storage of the Image or a copy of the Image. The Presenting Bank may send the retrieval request to the Paying Bank by voice, facsimile or electronic transmission, in accordance with the instructions provided by the Paying Bank to the Presenting Bank from time to time. The Paying Bank shall at a minimum designate a voice and facsimile machine telephone number or instructions for electronic transmission for the receipt of such retrieval requests and may also designate reasonable timeframes within which such retrieval requests may be made. A retrieval request must contain at a minimum the following information:

(a) the Presenting Bank’s Related Physical Check item sequence number;

(b) the business date of the bundle containing the Electronic Check which was derived from the Related Physical Check;
OPERATING RULES

XIX(K). ELECTRONIC CHECK (CONTINUED)

(c) the Routing Number of the bank that created the Electronic Check which was derived from the Related Physical Check or that transmitted, provided or made available the Electronic Check to the Paying Bank;

(d) the cycle number under which the bundle containing the Electronic Check which was derived from the Related Physical Check was created;

(e) the amount of the Related Physical Check;

(f) the On-Us Field of the Related Physical Check.

A retrieval request transmitted by electronic transmission must conform to the format requirements of applicable industry standards. Notwithstanding a Presenting Bank’s resignation or termination as a Member, the Presenting Bank shall continue to have the right to submit retrieval requests in accordance with this Section XIX(K).

(7) For a retrieval request for the Image received pursuant to Section XIX(K)(6) within the time period specified in Section XIX(K)(5) for storage of the Image or a copy of the Image, the Paying Bank must transmit or make available the requested Image, or provide a copy of the requested Image, in the manner and at a fee agreed to by the Presenting Bank and the Paying Bank, by the close of business on the Paying Bank’s Banking Day, specified in the below table, following the Banking Day on which the Paying Bank received the Presenting Bank’s request.

<table>
<thead>
<tr>
<th>Request For Image Presented Within 60 Banking Days Of Request</th>
<th>Request For Electronic Presented 60 Or More Banking Days Before Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request For (agreed upon number) Or Less Images</td>
<td>3rd Banking Day</td>
</tr>
<tr>
<td>Request For More Than (agreed upon number) Images</td>
<td>5th Banking Day</td>
</tr>
</tbody>
</table>

(8) The obligations imposed on the Paying Bank under Section XIX(K)(7) shall continue for the time period specified in Section XIX(K)(5) for storage of the Image or a copy of the Image, even if the Paying Bank determines to no longer receive Images, or ceases for any reason to be a Member or to be subject to the Rules. In the event the Paying Bank becomes insolvent, the receiver shall be released from the Paying Bank’s obligations under Section XIX(K)(7) if:

(a) the receiver delivers at the expense of the estate of the Paying Bank to each Presenting Bank (or the Presenting Bank’s successor in interest) all Images or copies of Images stored pursuant to Section XIX(K)(5) presented by each respective Presenting Bank, in accordance with the delivery instructions of the Presenting Bank (or the Presenting Bank’s successor in interest);
OPERATING RULES

XIX(K).  ELECTRONIC CHECK (CONTINUED)

(b) written certification of such delivery by the receiver is delivered to
    the Organization; and

(c) the Organization confirms that it has received that certification.
XIX(K). COMMENTARY

Rule:  For those Related Physical Checks in its possession, the Sending Bank shall determine a time period for the retention of Related Physical Checks after the Electronic Checks are sent to the Receiving Bank.

Comment:  Section XIX(K) deals with the storage and retrieval of Related Physical Checks. A Sending Bank that receives from the Receiving Bank a retrieval request for the Related Physical Check in accordance with Section XIX(K)(2) should provide the requested Related Physical Check to the Receiving Bank in accordance with the requirements of Section XIX(K)(3), as applicable, rather than destroy the Related Physical Check under Section XIX(K)(1).

Under Section XIX(K)(1), the Sending Bank shall determine a time period for the retention of the Related Physical Check. There is no obligation on the Sending Bank to retain the Related Physical Check for any period, and the Sending Bank may, if it so chooses, destroy the Related Physical Check at the time of truncation.

A Sending Bank may determine to retain the Related Physical Check for a period of time to determine if the Electronic Check is returned for any reason that may require access to the Related Physical Check. For example, if a Presenting Bank transmits the Electronic Information identifying the item in question to the Paying Bank on Monday, and delivers the Image to the Paying Bank on Tuesday, the Presenting Bank may want to maintain the Related Physical Check until at least midnight Wednesday, assuming Wednesday is a Banking Day for the Presenting Bank (please see Section XIX(H) and related Commentary for a discussion of presentment of the Electronic Check).

For an exchange between a Sending Bank and a Receiving Bank that is a collecting bank (and not the Paying Bank), the Sending Bank may want to consider that more than one Banking Day may elapse before the Electronic Check (or possibly a substitute check created from the Electronic Check) is presented to the Paying Bank in a second exchange. More time may elapse before a possible return of that Electronic Check by the Paying Bank through the check collection system to the original Sending Bank. Accordingly, the Sending Bank may determine to establish a retention period for the Related Physical Check sufficiently long to address these types of exchanges.

The Sending Bank may be required to retain the Related Physical Check or copy of the Related Physical Check for a period of time notwithstanding Section XIX(K)(1) if the bank is otherwise legally obligated to do so, such as because it has received a subpoena or other legal process regarding the Related Physical Check or copy or because of legal requirements other than the Rules.

A Sending Bank should consider the appropriate time period for retention of the Related Physical Check, recognizing that a number of Banking Days may go by before the Sending Bank receives a returned Electronic Check, a request for information about the Related Physical Check or a request for a copy of the Related Physical Check. For example, a Sending Bank may determine that it will retain all or certain classes (such as classes by dollar amount) of Related Physical Checks for different retention time periods.

Rule:  Upon the expiration of the Sending Bank’s time period for retention of the Related Physical Check, the Sending Bank must destroy the Related Physical Check.

Comment:  The Sending Bank must destroy the Related Physical Check in accordance with its retention policy and standard bank practices so as to ensure that it cannot thereafter be presented, or reconstructed and presented, to a Receiving Bank. This requirement also is designed to ensure that, after the expiration of the Related Physical Check retention period, Images or other copies will satisfy “best evidence” rules. The destruction need not occur precisely upon the expiration of the period specified in the bank’s policy for the retention of the Related Physical Check, but must occur reasonably promptly thereafter.

A Sending Bank that permits its customers to truncate the Related Physical Check at the customer locations (such as a remote check deposit service) may want to consider what obligations the bank will place on the customer to destroy the Related Physical Check. For example, the Sending Bank may want to require the customer to use commercially reasonable means to secure the Related Physical Check and destroy it in a manner to protect customer information and to prevent the Related Physical Check from entering into the check collection system (which would cause duplicate presentment).
XIX(K). COMMENTARY (continued)

Rule: Even if a Receiving Bank resigns its ECCHO membership or its ECCHO membership is terminated, the Receiving Bank continues to have the right to submit retrieval requests.

Comment: Banks should not be concerned about their ability to continue to retrieve Related Physical Checks pursuant to Section XIX(K) if they are no longer ECCHO members. After resignation or termination of ECCHO membership, the Receiving Bank can still retrieve Related Physical Checks pursuant to Section XIX(K) on the same basis as if the bank’s ECCHO membership was still in effect.

Rule: Upon receipt of a retrieval request under Section XIX(K) for the Related Physical Check within the time period specified in Section XIX(K)(1) for storage of the Related Physical Check, if the Sending Bank can obtain the Related Physical Check with commercially reasonable effort and expense, the Sending Bank is required to send via U.S. mail, first class postage paid, to the address specified by the Receiving Bank, the requested Related Physical Check by the close of business on the Sending Bank’s third Banking Day following the Banking Day on which the Sending Bank received the Receiving Bank’s request. The Sending Bank may for purposes of Section XIX(K) select the time of its close of business, but having done so, must mail the Related Physical Check by that time on the specified Banking Day.

Comment: The Sending Bank is only required under the Rule to respond to a request for a Related Physical Check if the Sending Bank can obtain the Related Physical Check with commercially reasonable effort and expense. For example, it may not be commercially reasonable for a bank to send an employee to a warehouse for an entire day in order to locate a Related Physical Check that is a very small dollar item.

Rule: The Sending Bank and Receiving Bank may agree to a means of delivery of Related Physical Checks, other than U.S. mail, at a fee agreed to by the banks. Similarly, the Sending Bank and the Receiving Bank may agree that another Image will be transmitted or made available, or a paper copy of the Image will be provided, and may agree on the means by which this will be done, at a fee agreed to by the banks.

Comment: Under Section XIX(K), the Receiving Bank is entitled without charge to the Related Physical Check via U.S. mail within the timeframes provided for in Section XIX(K). The Sending Bank may impose fees for other responses to the Receiving Bank’s retrieval request pursuant to Section XIX(K).

Rule: A Sending Bank that determines to no longer transmit Electronic Checks, ceases for any reason to be a Member or to be subject to the Rules, or otherwise determines to no longer accept Related Physical Checks for storage and retrieval under Section XIX(K), continues to be obligated to store Related Physical Checks and respond to Receiving Bank retrieval requests under Section XIX(K) for the time periods specified in Section XIX(K). In the event the Sending Bank becomes insolvent, the receiver of the Sending Bank is released from the Sending Bank’s Section XIX(K) storage and retrieval obligations if: (a) the receiver delivers at the expense of the estate of the Sending Bank to each Paying Bank (or the Paying Bank’s successor in interest) all Related Physical Checks that have not been previously destroyed drawn on each respective Paying Bank, in accordance with the delivery instructions of the Paying Bank (or the Paying Bank’s successor in interest); (b) the receiver certifies in writing to ECCHO that all Related Physical Checks have been delivered to the appropriate Paying Banks (or the Paying Bank’s successor in interest); and (b) ECCHO confirms that it has received that certification.

Comment: Banks need not be concerned about their ability to continue to obtain Related Physical Checks pursuant to Section XIX(K) if the Sending Bank determines to no longer transmit Electronic Checks, ceases for any reason to be a Member or to be subject to the Rules, or otherwise determines to no longer accept Related Physical Checks for storage and retrieval under Section XIX(K). In these instances, the Sending Bank is required to continue to store and respond to Receiving Bank retrieval requests under Section XIX(K) for Related Physical Checks that were imaged under Section XIX prior to the event described in the preceding sentence. The only exception to this continuing Sending Bank obligation provided in Section XIX(K) is for the Sending Bank’s insolvency. This exception would not apply, however, in the event the Sending Bank was acquired (or its liabilities were assumed) by another bank prior to the Sending Bank’s insolvency, in which case the successor bank typically would assume the Sending Bank’s obligations under Section XIX(K).
XIX(K). COMMENTARY (continued)

The question also has been raised about a Receiving Bank’s ability to continue to obtain pursuant to Section XIX(K) Related Physical Checks in the event ECCHO ceases to exist. The ability of a Receiving Bank to obtain Related Physical Checks pursuant to Section XIX(K) should not be affected in this instance in the event another organization assumes the Rules. Even if no other organization assumes the Rules, the Rules should continue to bind the Receiving Bank and Sending Bank in the event they have incorporated the Rules by reference in their bilateral agreement (please see Commentary to Section XIX(C)).

Rule: The Paying Bank must store the Image presented to it, or a copy of that Image, for at least seven (7) years (or such longer period as required under applicable law) from the date on which the Image was presented to the Paying Bank.

Comment: This 7 year period (or such longer period as required under applicable law) conforms to applicable recordkeeping requirements and current bank practices. While not required to do so, the Paying Bank may store Images for a longer period of time than that provided for under Section XIX(K).

The Paying Bank should consider the manner in which it stores and can retrieve Images. For example, to the extent the Paying Bank does not store and retrieve Images in the same format in which they were received (referred to as their “native format”), the Paying Bank may not be able to prove a claim it may have against the Presenting Bank under these Rules or other applicable law. These same considerations also apply to the Presenting Bank’s decision about the time period and the manner in which it stores and can retrieve Images it provided to the Paying Bank; although there is no requirement under these Rules that the Presenting Bank store Images. The Paying Bank also should consider whether it should store and retrieve addendum records and other data associated with the Image and whether such information would be useful to the Paying Bank for audit and other recordkeeping purposes.

In the event the Paying Bank contracts with a Third Party Agent such as an Archive or the Presenting Bank for these storage services, the Paying Bank should ensure in its agreement with the Third Party Agent or the Presenting Bank that the Third Party Agent or Presenting Bank, as applicable, will store the Images or a copy of the Images for at least seven (7) years (or such longer period as required under applicable law) from the date on which the Image was presented to the Paying Bank, and otherwise in compliance with the requirements of Section XIX(K).

Rule: Even if a Presenting Bank resigns its ECCHO membership or its ECCHO membership is terminated, the Presenting Bank continues to have the right to submit retrieval requests.

Comment: Presenting Banks should not be concerned about their ability to continue to retrieve Images, or copies of Images pursuant to Section XIX(K)(6) if they are no longer ECCHO members. After resignation or termination of ECCHO membership, the Presenting Bank can still submit retrieval requests pursuant to Section XIX(K)(6) on the same basis as if the bank’s ECCHO membership was still in effect.

Rule: Upon receipt of a retrieval request under Section XIX(K)(6) within the seven (7) year time period specified in Section XIX(K)(5) for storage of the Image or a copy of the Image, the Paying Bank must transmit or make available the requested Image, or provide a paper copy of the requested Image, in the manner and at a fee agreed to by the Presenting Bank and the Paying Bank by the close of business on the Banking Day of the Paying Bank designated in the matrix prescribed in Section XIX(K)(7) that follows the Banking Day on which the Paying Bank received the Presenting Bank’s request. The Paying Bank may for purposes of Section XIX(K)(7) select the time of its close of business, but having done so, must mail, transmit or make available the requested Image, or provide the paper copy of the requested Image, as the case may be, by that time on the specified Banking Day.

Comment: The time frame for the Paying Bank’s response to the Presenting Bank’s request depends on whether the Presenting Bank is requesting a relatively recently presented image and the number of Images that are the subject of the request. The Paying Bank should refer to the matrix prescribed in Section XIX(K)(7) to determine its deadline for response to the Presenting Bank’s request. For purposes of this matrix, the number of requested Images that defines a “large volume request” subject to the longer Paying
Bank response times is determined by the agreement of the Paying Bank and the Presenting Bank. The number of Images subject to the Presenting Bank’s request is the aggregate number of Images requested by the Presenting Bank on a given Paying Bank’s Business Day. For example, if the Presenting Bank requests 50 Images at 11:00 am and later requests another 50 Images at 2:00 pm on that same Business Day, for purposes of the matrix, the Presenting Bank has requested 100 Images. Under Section XIX(K)(7), the Paying Bank may impose fees for responses to the Presenting Bank’s retrieval request pursuant to Section XIX(K)(6).

Rule: A Paying Bank that determines to no longer receive Images or ceases for any reason to be a Member or to be subject to the Rules, continues to be obligated to store Images under Section XIX(K)(5) and respond to Presenting Bank retrieval requests under Section XIX(K)(7) for the time periods specified in Section XIX(K)(5). In the event the Paying Bank becomes insolvent, the receiver of the Paying Bank is released from the Paying Bank’s Section XIX(K)(5) and Section XIX(K)(7) storage and retrieval obligations if: (a) the receiver delivers at the expense of the estate of the Paying Bank to each Presenting Bank (or the Presenting Bank’s successor in interest) all Images or copies of Images stored pursuant to Section XIX(K)(5) presented by each respective Presenting Bank, in accordance with the delivery instructions of the Presenting Bank (or the Presenting Bank’s successor in interest); (b) the receiver certifies in writing to ECCHO that all Images or copies of Images have been delivered to the appropriate Presenting Bank (or the Presenting Bank’s successor in interest); and (c) ECCHO confirms that it has received that certification.

Comment: Presenting Banks need not be concerned about their ability to continue to obtain Images or paper copies of Images pursuant to Section XIX(K) if the Paying Bank determines to no longer receive Images, or ceases for any reason to be a Member or to be subject to the Rules. In these instances, the Paying Bank is required to continue to store and respond to Presenting Bank retrieval requests under Section XIX(K) for Images that were received under Section XIX prior to the event described in the preceding sentence. The only exception to this continuing Paying Bank obligation provided in Section XIX(K)(7) is for the Paying Bank’s insolvency. This exception would not apply, however, in the event the Paying Bank was acquired (or its liabilities were assumed) by another bank prior to the Paying Bank’s insolvency, in which case the successor bank typically would assume the Paying Bank’s obligations under Section XIX(K).

The question also has been raised about a Presenting Bank’s ability to continue to obtain pursuant to Section XIX(K) Images or paper copies of Images in the event ECCHO ceases to exist. The ability of a Presenting Bank to obtain Images or paper copies of Images pursuant to Section XIX(K) should not be affected in this instance in the event another organization assumes the Rules. Even if no other organization assumes the Rules, the Rules should continue to bind the Paying Bank and Presenting Bank in the event they have incorporated the Rules by reference in their bilateral agreement (please see Commentary to Section XIX(E)).

A Paying Bank is only obligated to respond to a Presenting Bank’s retrieval request if the Presenting Bank and the Paying Bank have entered into a separate agreement that obligates the Paying Bank to respond to a retrieval request sent in compliance with this Section.
XIX. ELECTRONIC CHECKS (CONTINUED)

L. Sending Bank Warranties and Indemnification. In addition to the warranties otherwise provided in the Code, Regulation CC, the Rules or other law, each Sending Bank warrants to the Receiving Bank with respect to each Electronic Check sent to the Receiving Bank that the Sending Bank has complied with each of the requirements of these Rules applicable to it.

If the Sending Bank breaches its warranty set forth in this Section XIX(L), it shall indemnify the Receiving Bank and hold it harmless from and against any damage, expense or loss, including attorneys’ fees, suffered as a result of the breach. If the Sending Bank’s breach of warranty results in whole or in part from the Receiving Bank’s failure to exercise ordinary care or act in good faith, the Sending Bank’s indemnification liability shall be reduced in proportion to the amount of negligence or bad faith attributable to the Receiving Bank.
XIX(L). COMMENTARY

Rule: Each Sending Bank makes the warranty set forth in Section XIX(L) with respect to each Electronic Check it sends to the Receiving Bank.

Comment: The warranty provided for in Section XIX(L) is 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. 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 warranty provided for in Section XIX(L) is 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 Check 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.

In addition, under Regulation CC, any Sending Bank that transfers or presents an Electronic Check warrants to the Receiving Bank that (i) the electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated, (ii) the electronic information includes an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check, and (iii) no person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. (Regulation CC, Section 229.34(a)). The warranty that the electronic information of an Electronic Check includes an “accurate record of all MICR line information required for a substitute check” means that the electronic information portion of an Electronic Check should contain all the information appearing on the MICR line of the original check at the time that the original check was issued and any additional information that was encoded on the original check's MICR line before an image of the original check was captured (that is, truncated). (See the definition of “substitute check” in Section 229.2(aaa) of Regulation CC.) This MICR line information, plus the image that accurately represents all of the information on the front and back of the check at truncation, should provide the Paying Bank with the information necessary to process and post the Electronic Check. If it does not, the Paying Bank may have a claim for breach of the Regulation CC warranty. For example, a Sending Bank would breach this Regulation CC warranty if the MICR line information in the Electronic Information did not match the Related Physical Check that was reflected in the Image portion of the Electronic Check. (Please see Commentary to Regulation CC, Section 229.34(a) for additional discussion of these Electronic Check warranties.)

Damages for breach of any of these Regulation CC warranties for Electronic Checks may not exceed the amount of the item, plus interest compensation and expenses related to the item (Regulation CC, Section 229.34(h)). The Receiving Bank’s recovery may be reduced by its comparative negligence (Regulation CC, Section 229.38(c)).

Comment: The Member who receives an item for deposit is the Depositary Bank and the Member who sends the Electronic Check to a Receiving Bank is the Sending Bank for purposes of the ECCHO Rules.

When the Sending Bank, which is the Depositary Bank, fails to properly identify itself as the Depositary Bank in the indorsement, or includes a different bank in the indorsement reserved for the Depositary Bank, it does not alter the Sending Bank’s obligations under the ECCHO Rules that arise from its status as both the Sending Bank and the Depositary Bank. In this case, the Sending Bank is the Depositary Bank for
purposes of ECCHO Rules obligations and liabilities applicable to a Sending Bank/Depositary Bank. This result is consistent with Regulation CC (See Section §229.34(c)) which imposes warranties on the bank that handles the item, regardless of whether that bank is identified in the check indorsement as the depositary bank.

This Commentary is not intended to prohibit any indorsement or other collection or return arrangement permitted under Regulation CC. Rather, it is to explain the obligations of the Sending Bank under the ECCHO Rules (including the warranty provisions of the ECCHO Rules) in a situation where the indorsement for the Depositary Bank (that is the Sending Bank) is incomplete, empty or identifies a different bank.

Comment. Section XIX(L) and Section XIX(M), along with the Electronic Check warranties in Regulation CC, constitute the enforcement mechanism for Section XIX image-based truncation programs. The Sending Bank warrants that it has complied with the requirements of Section XIX applicable to Sending Banks. Given that substantially all checks are processed as Electronic Checks, 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.

Comment: Under Section 229.34(a)(1)(ii) of Regulation CC, the Sending Bank provides a warranty against duplicate payment by the Receiving Bank of the same Electronic Check and related items. This warranty states that a Sending Bank that transfers or presents an Electronic Check warrants to the Receiving Bank that no person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. (Regulation CC, Section 229.34(a)(1)(ii). This particular Regulation CC warranty is referred to as the “Regulation CC Duplicate Payment Warranty” in the below Commentary discussion.

The Regulation CC Duplicate Payment Warranty applies to Members’ exchanges of Electronic Checks as a matter of law, including exchanges of Electronic Checks under the ECCHO Rules. The Regulation CC Duplicate Payment 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.

The Regulation CC Duplicate Payment Warranty would also cover duplicate Electronic Information for the same Electronic Check(s) that are received by a Receiving Bank from a Sending Bank, even if the related 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 Check 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 Checks 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 Checks 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 Check after a return, which is allowed under the Rules, does not constitute a breach of the Regulation CC Duplicate Payment Warranty. As a general matter, the fact that there are different indorsements reflected on the back of the two Electronic Checks or in the Electronic Indorsement records of the Electronic Check is not in itself determinative of whether or not the two Electronic Checks arose from different paper checks.

A payment to a holder of an item (outside of the check exchange system) may give rise to a warranty claim to the Sending Bank under the Regulation CC Duplicate Payment Warranty. A holder of an item may demand payment on the item directly from the drawer when the item has been returned unpaid by the paying bank. (UCC Article 3-414(b)). An example of a double payment warranty claim by a Receiving Bank (that is a paying bank) would include a situation where a Receiving Bank has reimbursed its drawer
customer because the drawer customer has paid the check/claim to the holder or holder in due course. The Regulation CC Duplicate Payment Warranty from a Sending Bank to the Receiving Bank against double payment covers the situation where a person (which could include either the Receiving Bank or a drawer customer) is “asked to make a payment” twice. The double payment arises in this holder situation because there are two payments by a person relating to the same item: (a) the first payment occurs when the Sending Bank presents the Electronic Check derived from the item to the Receiving Bank and the Receiving Bank pays the item and charges the drawer customer’s account, and (b) the second payment occurs when the drawer customer pays the holder for its claim to the drawer under the UCC based on the original item. As a result, the Receiving Bank can make a warranty claim under Regulation CC Duplicate Payment Warranty to a Sending Bank that previously presented an image of the same item to recover the Receiving Bank’s losses in compensating its drawer customer or paying the holder directly. The application of the warranty against double payment in the context of a payment to a holder of an item is consistent with the underlying policy – as expressed in the warranty provisions of Check 21 and Regulation CC – to protect the paying bank and drawer customer from losses associated with double payment of a check image or substitute check.

The above commentary is not meant to be an exclusive example of double payment scenarios that may give rise to a warranty claim to a Sending Bank by a Receiving Bank under Regulation CC Duplicate Payment Warranty. For example, warranty claim scenarios also could arise where the Receiving Bank is acting as a payable at or a payable through bank of a money order or other draft (as opposed to a paying bank on a check). In this situation, the Receiving Bank may have a warranty claim if it first presented an image of a draft to the draft issuer and then subsequently had to reimburse the draft issuer because the issuer has paid the draft in favor of the holder or holder in due course of the draft.

Comment: The warranty added to Section 229.34(a)(1)(i) of Regulation CC effective July 1, 2018 addresses image quality. It states that each bank that transfers an Electronic Check warrants that: “the electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information includes an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check.” This Regulation CC warranty is referred to as the “Regulation CC Image Quality Warranty” in the below Commentary discussion.

The Regulation CC Official Commentary provides that the electronic check warranties in Section 229.34(a) “correspond to the warranties made by a bank that transfers, presents, or returns a substitute check … (See § 229.52 and commentary thereto).” See Regulation CC, Official Staff Commentary Section 229.34(a)-2. Accordingly, the Regulation CC Section 229.52 substitute check warranties and related Regulation CC Official Staff Commentary to Section 229.52 (in Subpart D of Regulation CC) provides guidance on how to interpret the phrase “information on the front and back of the original check” as used in the Regulation CC Image Quality Warranty.

In Section 229.52(a) of Regulation CC, there is a warranty from the transferring bank that the substitute check meets the requirements for “legal equivalence” under Section 229.51(a)(1) and (a)(2). Section 229.51(a)(1) provides that a substitute check is the legal equivalent of an original check if the substitute check “accurately represents all of the information on the front and back of the original check as of the time the original check was truncated.” The language in this Section 229.51(a)(1) warranty for substitute checks is substantially the same as the language in the Regulation CC Image Quality Warranty. The Regulation CC Official Staff Commentary to Section 229.51(a) states that a substitute check must accurately represent all of the “information on the front and back of the check as of the time the original check was truncated,” and this information must include the payment instructions placed on the check which are the essential elements of a negotiable instrument. The Regulation CC Official Staff Commentary to Section 229.51(a)(1) further states that a substitute check “need not capture other characteristics of the check, such as watermarks, microprinting, or other physical security features that cannot survive the imaging process or decorative images, in order to meet the accuracy requirement.” See Regulation CC, Official Staff Commentary Section 229.51(a)-3.

The above Regulation CC Official Staff Commentary to Section 229.51(a) is consistent with a 2016 federal Appeals Court decision which interpreted an image quality warranty similar to the Regulation CC Image Quality Warranty.
XIX(L). COMMENTARY (continued)

Quality Warranty that is included in Regulation J (Section 210.6(b)(3)(i)(A)) applicable to Reserve Bank exchanges of check images. See First American Bank v. Federal Reserve Bank of Atlanta, Citizens Bank, N.A., And David M. Goodson, 842 F. 3d 487 (Nov. 22, 2016). In the First American decision, the check image did not contain a warning box located on the back of the paper check. This warning box was designed to resist scanning of the paper check to an image, and was considered by the industry to be a security feature. In First American, the Appeals Court held that this warning box was not “information” from the paper check, and the failure of the check image to contain the warning box was not a breach by the Reserve Bank of its Regulation J warranty to the paying bank that the electronic check image “accurately represents all of the information on the front and back of the original check” at the time of truncation. (Note regarding citations: This Reserve Bank warranty was contained in the 2016 version of Regulation J; this Regulation J cite/text may be amended by the Federal Reserve Board to reflect the amendments of Regulation CC effective July 1, 2018.)

In summary, the above Regulation CC Commentary provisions and the First American decision support the view that, for purposes of the Regulation CC Image Quality Warranty, the Image of an Electronic Check does not have to contain all security devices and watermarks that were contained on the paper check.

Rule: A Sending Bank that breaches the warranty provided for in Section XIX(L) is required to indemnify the Receiving Bank against any damage, expense or loss, including attorneys’ fees, suffered as a result of the breach. The Receiving Bank’s recovery may be reduced by its comparative negligence.

Comment: Section XIX(L) provides a broad measure of damages for breach of the warranty provided for in Section XIX(L). This indemnification covers any type of damage, expense or loss suffered by the Receiving Bank as a result of the Sending Bank’s breach of warranty, including but not limited to direct, special, consequential and penalty damages. For example, if the Paying Bank incurs consequential damages to its customer due to a wrongful dishonor resulting from a breach of a Sending Bank warranty (e.g., under UCC Section 4-402 (1990 and 1978 Official Text)), the Sending Bank under Section XIX(L) will be liable to the Paying Bank for such damages. ECCHO determined this broad measure of damages appropriate to incent the Sending Bank to comply with the requirements of Section XIX that are applicable to it (please see Section XIX(M) and related Commentary for the comparable Paying Bank indemnification).

As with the Code and Regulation CC, the Receiving Bank’s recovery may be reduced by its comparative negligence. If for example a court determined that the Sending Bank’s violation of the ECCHO Rules that resulted in a loss was 50% due to the Receiving Bank’s negligent instruction to the Sending Bank, the Receiving Bank’s recovery from the Sending Bank under Section XIX(L) would correspondingly be reduced by 50%. Absent this comparative negligence, the Receiving Bank has no duty to mitigate damages (Section XIX(D)(2)).

This indemnification relates only to the warranty provided in Section XIX(L). That is, this indemnification would not apply in the event of a breach of a warranty otherwise made by the Sending Bank under the Code, Regulation CC or another Section of the Rules. The consequences of a breach of such a warranty would be as provided in the Code, Regulation CC, or the other Section of the Rules, respectively.

The scope of the warranty and the indemnification provided for in Section XIX(L) make it particularly important for the Sending Bank to consider appropriate agreements with Third Party Agents, including Archives (please see Section IV(A) and related Commentary) or other collecting banks from which the Sending Bank receives items that it images under Section XIX. In both situations, it is possible that the Sending Bank would breach a Section XIX(L) warranty as a result of an action or omission of this other party. Sending Banks should consider whether it is appropriate through an agreement with that other party to pass back any liability resulting from such a warranty breach.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

M. Receiving Bank Warranties and Indemnifications. In addition to the warranties otherwise provided in the Code, Regulation CC, the Rules or other law, each Receiving Bank warrants to each Sending Bank with respect to each Electronic Check received or available from the Sending Bank that the Receiving Bank has complied with each of the requirements of this Section XIX applicable to it.

If the Receiving Bank breaches its warranty set forth in this Section XIX(M), it shall indemnify the Sending Bank and hold it harmless from and against any damage, expense or loss, including attorneys’ fees, suffered as a result of the breach. If the Receiving Bank’s breach of warranty results in whole or in part from the Sending Bank’s failure to exercise ordinary care or act in good faith, the Receiving Bank’s indemnification liability shall be reduced in proportion to the amount of negligence or bad faith attributable to the Sending Bank.
XIX(M).  COMMENTARY

Rule:  Each Receiving Bank makes the warranty set forth Section XIX(M) with respect to each Electronic Check received or available from the Sending Bank.

Comment:  The warranty provided for in Section XIX(M) is in addition to the warranties otherwise made generally by the Receiving Bank under Regulation CC.  Under Regulation CC, a Receiving Bank that returns an item makes the following warranties to any bank subsequently handling the returned item, as well as to the payee:  (1) the Receiving Bank returned the item within its deadline under the Code and Regulation CC; (2) the Receiving Bank is authorized to return the item; (3) the item has not been materially altered; (4) any information accompanying returned items accurately indicates the total amount of the items returned; and (5) information, if any, encoded after issuance in magnetic ink on the returned item is correct (Regulation CC, Section 229.34(d)).

Where a notice of nonpayment is given, the Receiving Bank warrants to the other banks and the payee that:  (a) the Receiving Bank returned or will return the item within its deadline under the Code and Regulation CC; (b) the Receiving Bank is authorized to send the notice; and (c) the item has not been materially altered (Regulation CC, Section 229.34(e)).  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(h)).  The recovery of the party to whom these warranties run may be reduced by that party’s comparative negligence (Regulation CC, Section 229.38(c)).

Section XIX(M), along with Section XIX(L), constitute the enforcement mechanism for Section XIX image-based truncation programs.  Under Section XIX(M), the Receiving Bank warrants that it has complied with the requirements of Section XIX applicable to Receiving Banks.  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 Receiving Bank to do so (please see Section XIX(L) for a related Sending Bank warranty).

Rule:  A Receiving Bank that breaches the warranty provided for in Section XIX(M) is required to indemnify the Sending Bank against any damage, expense or loss, including attorneys' fees, suffered as a result of the breach.  The Sending Bank’s recovery may be reduced by its comparative negligence.

Comment:  Section XIX(M) provides a broad measure of damages for breach of the warranty provided for in Section XIX(M).  This indemnification covers any type of damage, expense or loss suffered by the Sending Bank as a result of the Receiving Bank’s breach of warranty, including but not limited to direct, special, consequential and penalty damages.  ECCHO determined this broad measure of damages appropriate to incent the Receiving Bank to comply with the requirements of Section XIX that are applicable to it (please see Section XIX(L) and related Commentary for the comparable Sending Bank indemnification).

As with Regulation CC, the Sending Bank’s recovery may be reduced by its comparative negligence.  If for example a court determined that the Receiving Bank’s breach of its Section XIX(M) warranty was 75% due to the Sending Bank’s negligent action in handling the Electronic Check, and the Sending Bank’s recovery from the Receiving Bank under Section XIX(M) would correspondingly be reduced by 75%.  Absent this comparative negligence, the Sending Bank has no duty to mitigate damages.

This indemnification relates only to the warranty additionally provided in Section XIX(M).  That is, this indemnification would not apply in the event of a breach of a warranty otherwise made by the Receiving Bank under Regulation CC.  The consequences of a breach of such a warranty would be as provided in Regulation CC.
XIX. **Electronic Check (continued)**

N. **Remotely Created Check Warranty.** (This is generally referred to as Rule 8)

1. This Rule sets forth a process for a Receiving Bank that is the Paying Bank to make a claim to a Sending Bank that is the Depositary Bank for a breach of a warranty provided under Section 229.34(b) of Regulation CC (an “RCC warranty”) for a remotely created check. For the purposes of this Rule, the term “remotely created check” shall have the meaning as defined in Section 229.2(fff) of Regulation CC. This Rule, or a Receiving Bank’s use of the process set forth in this Rule, shall not alter, enlarge or diminish the rights of a Receiving Bank or any other Member with respect to a claim or right arising under the warranty provided under Section 229.34(b) of Regulation CC for a remotely created check.

2. A Paying Bank may make an RCC warranty claim using the process set forth in this Section XIX(N) only if all of the following exist:
   a. The Paying Bank’s customer completes, signs and delivers a written statement under penalty of perjury (the “Customer’s written statement”) for each such Electronic Check or substitute check, specifying in reasonable detail, that the check was not authorized by the customer in the amount, and/or to the payee, stated on such Electronic Check or substitute check, and, if applicable, returns such substitute check to the Paying Bank; and
   b. An RCC warranty claim is made for the Electronic Check by the Paying Bank by delivering (i) the Electronic Check, (ii) a paper copy of the front and bank of such Electronic Check or (iii) a substitute check created from such Electronic Check to the Depositary Bank in accordance with Section XIX(N)(7) with a notation of “Breach of RCC Warranty – Do Not Redeposit or Re-Present” or with similar language or reason code, within ninety (90) calendar days after presentment of the Electronic Check to the Paying Bank.

3. Within 15 Business Days of receipt of a request from the Depositary Bank for a copy of the Customer’s written statement referenced in Section XIX(N)(2)(a), the Paying Bank shall deliver to the Depositary Bank at a place specified in the request a copy of the Paying Bank Customer’s written statement.

4. The Depositary Bank may disclaim the RCC warranty claim if: (a) the Depositary Bank has a defense to the RCC warranty claim under Regulation CC, the UCC or other applicable law, or (b) the Paying Bank has not complied with the time limitations and other requirements under Section XIX(N)(2) or complied with a request for a Customer’s written statement under Section XIX(N)(3). Depositary Bank shall not disclaim an RCC Warranty Claim on any basis relating to the effectiveness or validity of the payor customer’s authorization for the creation of the remotely created check, including without limitation on the basis that the Depositary Bank (or its depositing customer) has evidence of the payor customer’s authorization for the remotely created check. To disclaim the RCC warranty, the Depositary Bank may deliver to the Paying Bank in
accordance with Section XIX(N)(8), a Disclaimer Form in the form set forth in Exhibit V, signed by a representative of the Depositary Bank, attached to the warranty claim, within 15 Business Days of receipt of the claim. In the event the Depositary Bank requests a copy of the Paying Bank’s Customer’s written statement pursuant to Section XIX(N)(2) 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 the Depositary Bank 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(N)(3). A Depositary Bank that fails to deliver a Disclaimer Form within the time period and in accordance with the requirements prescribed in this Section XIX(N)(4) thereafter waives any right to refuse the warranty claim under the process set forth in these Rules. Nothing in this Section XIX(N) precludes a Depositary Bank from disclaiming an RCC warranty claim or otherwise raising a defense to an RCC warranty claim outside of these Rules or the process set forth in this Section XIX(N).

(5) A Paying Bank that receives a Disclaimer Form may not return the Electronic Check (or a substitute check created from such Electronic Check) or otherwise resubmit the RCC warranty claim to the Depositary Bank under Section XIX(N)(2) of these Rules. Nothing in this Section XIX(N) precludes the Paying Bank from pursuing its RCC warranty claim directly with the Depositary Bank outside of these Rules or the process set forth in this Section XIX(N).

(6) A Depositary Bank’s authority to debit the account of its customer in which the Electronic Check or Related Physical Check subject to the RCC warranty was deposited for some or all of such warranty claim is governed by applicable law, including the agreement of the Depositary Bank and its customer.

(7) Unless a specific delivery location is agreed to by the Depositary Bank, the Paying Bank shall deliver an RCC warranty claim to any location of the Depositary Bank at which the Depositary Bank receives returns of checks or Electronic Checks from the Paying Bank in the normal course of check collection.

(8) Unless a specific delivery location is agreed to by the Paying Bank, the Depositary Bank shall deliver a Section XIX(N)(4) disclaimer of a warranty claim to any location of the Paying Bank at which the Paying Bank receives checks or Electronic Checks from the Depositary Bank in the normal course of check collection. A Depositary Bank may not deliver the Section XIX(N)(4) disclaimer of an RCC warranty claim through a Federal Reserve Bank or another clearing house, unless the clearing house permits the disclaimer of a warranty claim to be delivered through the clearing house.
(9) Depositary Bank shall pay the amount of the RCC warranty claim under Section XIX(N)(2) to the Paying Bank no later than the second Business Day after receiving the RCC warranty claim from the Paying Bank. In the event that the Depositary Bank disclaims the RCC warranty claim in accordance with Section XIX(N)(4), the Paying Bank shall pay the amount of the disclaimed RCC warranty claim to the Depositary Bank no later than the second Business Day after receiving the disclaimed RCC warranty claim from the Depositary Bank. Settlement for the RCC 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.
XIX(N). COMMENTARY

Rule: This Rule sets forth a process for a Receiving Bank that is the Paying Bank to make a claim to a Sending Bank that is the Depositary Bank for a breach of a warranty provided under Section 229.34(b) of Regulation CC (an "RCC warranty") for a remotely created check.

Comment: The Rule does not itself create a new warranty between two Members with respect to an Electronic Check. Rather, this Rule sets up a process for a Paying Bank to make a claim to a Sending Bank for a warranty claim that arises under Section 229.34(b) of Regulation CC for a remotely created check. A Member should consult Section 229.34(b) of Regulation CC and related Official Staff Commentary as to the scope and application of the RCC warranty to any particular check or item.

Rule: This Rule does not alter, enlarge or diminish the rights of a Receiving Bank or any other Member with respect to a claim or right arising under the warranty provided under Section 229.34(b) of Regulation CC for a remotely created check.

Comment: The existence of this Rule does not require a Member to use the process set forth in the Rule to make a claim for a warranty that may arise under Section 229.34(b). Use of the process set forth in the rule is optional for a Paying Bank. Banks that elect to use the process for making the warranty claim set forth in the Rule should comply with the requirements under the Rule in that regard.

Comment: This commentary explains the relationship between the RCC warranty claim process established under this Section XIX(N) and the adjustment process for RCC warranty claims established under Section XII. A Paying Bank is not required to use the warranty claim process established under Section XIX(N) of the Rules. If a Paying Bank determines that it has a warranty claim arising as a matter of law under Section 229.34(b) of Regulation CC, the Paying Bank has three potential options. First, if the Paying Bank can satisfy the requirements of Section XIX(N) for making a claim to the Depositary Bank, including the ability of the Paying Bank to deliver the warranty claim to the Depositary Bank in a return channel (see Section XIX(N)(7) of the Rule), the Paying Bank may use the process established under Section XIX(N). Second, the Paying Bank may use the adjustment process for RCC warranty claims set forth under the ECCHO adjustment rules (Section XII of the Rules) and the related adjustment matrix, if the Paying Bank satisfies the requirements under such rules and matrix. Third, the Paying Bank can seek to make a Regulation CC Section 229.34(b) warranty claim outside of the ECCHO Rules’ processes, such as by bringing a court action, making a written demand on the Depositary Bank or other intermediary banks, or by using an adjustment process provided by a clearing house, bank or network.

Rule: The Customer’s written statement should specify in reasonable detail, that the check was not authorized by the customer in the amount, and/or to the payee, stated on such Electronic Check or substitute check, and, if applicable, returns such substitute check to the Paying Bank.

Comment: Under Regulation CC, the RCC warranty is that the RCC is authorized by the customer in the amount, and to the payee, stated on the check. Accordingly, the Customer’s written statement should allege that this warranty has been breached, and therefore a claim is appropriate. Specifically, the statement should include that either the amount is not authorized or the payee is not authorized. A sample Customer’s written statement appears at Exhibit V to the Rules. A Paying Bank may want to consult with its legal division on any modifications to the sample written statement form for use by the Bank with its customers.

Rule: An RCC warranty claim is made for the Electronic Check by the Paying Bank by delivering (i) the Electronic Check, (ii) a paper copy of the front and bank of such Electronic Check or (iii) a substitute check created from such Electronic Check to the Depositary Bank in accordance with Section XIX(N)(7) with a notation of “Breach of RCC Warranty - Do Not Redeposit or Re-Present” or with similar language or reason code.

Comment: The RCC warranty claim is the Electronic Check, the paper copy or substitute check delivered to the Depositary Bank. A Paying Bank may use a return process of a clearinghouse or otherwise to deliver the RCC warranty claim to the Depositary Bank. However, the delivery of the RCC warranty claim is not a return of the underlying check or Electronic Check to which the RCC warranty claim relates. A Paying Bank...
may use a reason code that appropriately reflects that the item (either Electronic Check or paper reproduction) is being sent as a warranty claim.
XIX(N). COMMENTARY (continued)

**Rule:** The Depositary Bank may disclaim the RCC warranty claim if: (a) the Depositary Bank has a defense to the RCC warranty claim under Regulation CC, the UCC or other applicable law, or (b) the Paying Bank has not complied with the time limitations and other requirements under Section XIX(N)(2) or complied with a request for a Customer’s written statement under Section XIX(N)(3). A Depositary Bank may not disclaim an RCC warranty claim on the basis that the Depositary Bank or its customer has evidence of a payor authorization.

**Comment:** The Rule does not establish specific burdens of proof or types of evidence for a Depositary Bank to establish the existence of a defense under Regulation CC or the UCC. The Rule does preclude a Depositary Bank from using any defense to the warranty claim that relates to the existence of an authorization of the payor to create the remotely created check. In a dispute regarding the effectiveness of an RCC authorization, the Depositary Bank cannot disclaim the RCC warranty claim. This approach to prohibiting certain defenses to an RCC warranty claim is consistent with the approach taken under the ECCHO adjustment rules. (See Section XII(E)(3)). Members are encouraged to use good faith and fair dealing in investigating, resolving and processing claims and disclaimers of RCC warranty claims.

**Rule:** A Depositary Bank that fails to deliver a Disclaimer Form in compliance with the process set forth in the Rule waives any right to refuse the warranty claim under the process set forth in the Rule. Nothing in this Section XIX(N) precludes a Depositary Bank from disclaiming an RCC warranty claim or otherwise raising a defense to an RCC warranty claim outside of these Rules or the process set forth in this Section XIX(N).

**Comment:** The Depositary Bank would have to settle for the RCC warranty claim if it fails to deliver the Disclaimer Form in compliance with the Rule, and cannot make a late disclaimer of the RCC warranty claim. However, to the extent permitted by applicable law, nothing in these Rules precludes a Depositary Bank from taking legal or other action outside of the process set forth in the Rules to recover amounts paid to the Paying Bank for the RCC warranty claim.

**Rule:** A Paying Bank that receives a Disclaimer Form may not return the Electronic Check (or a substitute check created from such Electronic Check) or otherwise resubmit the RCC warranty claim to the Depositary Bank under Section XIX(N)(2) of these Rules. Nothing in this Section XIX(N) precludes the Paying Bank from pursuing its RCC warranty claim directly with the Depositary Bank outside of these Rules or the process set forth in this Section XIX(N).

**Comment:** The process for making an RCC warranty claim under this Rule must only be used once by the Paying Bank with respect to a particular Electronic Check received from the Depositary 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 RCC warranty claim, which arises under Regulation CC and not these Rules, against the Depositary Bank.

**Rule:** A Depositary Bank’s authority to debit the account of its customer for some or all of such warranty claim is governed by applicable law, including the agreement of the Depositary Bank and its customer.

**Comment:** Because the Rule does not provide authority to debit the account of a customer, situations may arise where the Depositary Bank has to pay the amount of the RCC warranty claim to the Paying Bank under this Rule, but the Depositary Bank is unable to recover the funds for such claim from its customer that deposited the remotely created check. As a related matter, the RCC warranty under Regulation CC is only an inter-bank warranty, and does not itself provide any authority to a bank to debit its customer’s account, or alter the liability between a customer and a bank. See Regulation CC, Official Staff Commentary No. 1 to Section 229.34(b). The inability to recover from the customer is not a defense of the Depositary Bank to an RCC warranty claim.

**Rule:** Unless a specific delivery location is agreed to by the Depositary Bank, the Paying Bank shall deliver an RCC warranty claim to any location of the Depositary Bank at which the Depositary Bank receives returns of checks or Electronic Checks from the Paying Bank in the normal course of check collection.
XIX(N). COMMENTARY (continued)

Comment: Two Members may agree to a specific delivery location for RCC warranty claims. For example, a Depositary Bank may want all RCC warranty claims to be in paper form (substitute check or paper copy of the Electronic Check) and delivered to the Depositary Bank through a specified return process. As noted above, the delivery of the RCC warranty claim to the Depositary Bank is not a return of the underlying check or Electronic Check to which the RCC warranty claim relates. If the Paying Bank seeks to use a return process of a clearinghouse to deliver the RCC warranty claim, the Paying Bank should confirm that the clearinghouse allows RCC warranty claims to be delivered through such clearinghouse (including RCC warranty claims governed under the ECCHO Rules).

Rule: Unless a specific delivery location is agreed to by the Paying Bank, the Depositary Bank shall deliver a Section XIX(N)(4) disclaimer of a warranty claim to any location of the Paying Bank at which the Paying Bank receives checks or Electronic Checks from the Depositary Bank in the normal course of 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 of the substitute check or Electronic Check to which the attached warranty claim relates. Rather, this is delivery of the disclaimed warranty claim.

Rule: Settlement for the RCC 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 clearinghouse 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 an RCC warranty claim and/or a Disclaimer Form (with the related warranty claim attached) does not constitute the return of the underlying check/Electronic Check 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 process that they use for settling funds arising from the exchanges of Electronic Checks and returned items in order to settle the RCC warranty claims and the disclaimer of such RCC warranty claims. Members that are settling funds through a clearinghouse settlement process should confirm that the clearinghouse permits settlement of RCC warranty claims that are processed under this Rule.
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

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

(1) (a) This Section XIX(O) shall not apply with respect to Electronic Checks 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 Check 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 Checks 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)(a), the Member’s election is effective with respect to all of its Electronic Check 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.

(b) 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 Check exchanges with other Members subject to the same agreement or clearinghouse Rule.

(c) 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 Check 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 warranty set forth in Section XIX(L), a Sending Bank that is also the Depositary Bank and any subsequent Sending Bank warrant to the Receiving Bank and any other Receiving Bank that subsequently receives the Electronic Check in a subsequent image exchange governed under the Rules that, with respect to an Electronic Check 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/or

(b) the Related Physical Check is not counterfeit.
OPERATING RULES

XIX(O). ELECTRONIC CHECK (CONTINUED)

When the Sending Bank that is also the Depositary Bank makes the warranty under Section XIX(O)(2), a Paying Bank that receives the Electronic Check 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 Depositary Bank is liable to the Paying Bank under the warranty prescribed in Section XIX(O)(2) only if all of the following exist:

(a) within 60 calendar days after the account statement which first reflects the paid Electronic Check subject to the warranty prescribed in Section XIX(O)(2) (or substitute check created from such Electronic Check) 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 Check 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;

(b) a warranty claim is made for each Electronic Check subject to the warranty prescribed in Section XIX(O)(2) by the Paying Bank by delivering (i) the Electronic Check, (ii) a paper copy of the front and back of such Electronic Check or (iii) a substitute check created from such Electronic Check to the Depositary 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

(c) the Available Amount on deposit in the account of the customer of the Depositary Bank, in which the Electronic Check 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 Depositary Bank and ending on the day which is the earlier of (i) one day before the Depositary Bank delivers the Disclaimer Form to the Paying Bank pursuant to Section XIX(O)(9) or (ii) up to 15 Business Days following receipt of the warranty claim by the Depositary Bank.

(4) Within 15 Business Days of receipt of a request from the Depositary Bank for a copy of the Customer’s written statement referenced in Section XIX(O)(3)(a), the Paying Bank shall deliver to the Depositary Bank at a place specified in the request a copy of the Paying Bank Customer’s written statement referenced in Section XIX(O)(3)(a).

(5) If the Depositary Bank receiving a warranty claim under Section XIX(O)(2) has a defense under Section XIX(O)(1), Section XIX(O)(2), Section XIX(O)(3) or Section XIX(O)(4), or has a UCC Defense, the Depositary
OPERATING RULES

XIX(O).  ELECTRONIC CHECK (CONTINUED)

Bank may deliver to the Paying Bank in accordance with Section XIX(O)(9), a Disclaimer Form in the form set forth in Exhibit V, signed by a representative of the Depositary Bank, attached to the warranty claim, within 15 Business Days of receipt of the claim. In the event the Depositary 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 Depositary 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 Check (or a substitute check created from such Electronic Check) or otherwise resubmit the warranty claim to the Depositary 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 Depositary Bank outside of the process specified in Section XIX(O)(3).

(7) A Depositary Bank’s authority to debit the account of its customer in which the Electronic Check 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 Depositary Bank and its customer.

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

(10) Depositary Bank shall pay the amount of the warranty claim under Section XIX(O)(3) 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 Depositary 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 Depositary Bank no later than the second Business Day after receiving the disclaimed warranty claim from the Depositary Bank. In the event that the Paying Bank makes the warranty claim to the Depositary Bank in a manner that is not subject to automated or electronic
OPERATING RULES

XIX(O). ELECTRONIC CHECK (CONTINUED)

settlement for returned items between the two banks, the time periods for
payment of a warranty claim or of a disclaimed warranty claim shall be
extended to the fifteenth Business Day. 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 Depositary 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 Check. If the Depositary 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 Depositary 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.

(a) If the Paying Bank receives the Electronic Check from a Receiving
Bank that is not the Depositary 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
Depositary Bank. A Receiving Bank that is not the Depositary Bank
shall reject any warranty claim that is delivered to it by a Paying
Bank.

(b) Subject to the conditions and limitations on liability in subsections
XIX(O)(3) - XIX(O)(11) of Section XIX(O), the Sending Bank that is
also the Depositary 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.

(c) If the initial exchange of the Electronic Check by the Depositary
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 Checks 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 Check 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 Checks unless either Member to that exchange has opted-out of this warranty. Except as
provided in Section XIX(O)(1)(b), 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)(b), a Member's opt-out is effective with respect to all Electronic Checks 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)(b), the Member's election is effective with respect to all of
its Electronic Check 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 Checks 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 Electronic Check
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 Electronic Checks through a particular electronic network may agree that all Members must be
subject to the warranty in Section XIX(O) in order to exchange Electronic Checks 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 Check 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 Checks 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
XIX(O). COMMENTARY (continued)

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 Check 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 Check 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 Depositary Bank. A Sending Bank that receives an item from another bank in the United States 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(O) 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 Depositary Bank and any subsequent Sending Bank warrants to a Receiving Bank and any other Receiving Bank that subsequently receives the Electronic Check in a subsequent image exchange governed under the ECCHO Rules that, with respect to an Electronic Check 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 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 Depositary Bank.

Comment: In all cases, the warranty under this Section XIX(O) only applies if the first Sending Bank is also the Depositary Bank with respect to the item. Assuming the Sending Bank is also the Depositary Bank, the warranty under Section XIX(O)(2) is made by each ECCHO Member Bank in a forward exchange of an Electronic Check up to a Paying Bank that is also an ECCHO Member Bank. The Section XIX(O)(2) warranty is provided by (i) a Sending Bank that is also the Depositary Bank and (ii) any subsequent Sending Bank. The warranty is made to (a) the first Receiving Bank that receives the Electronic Check from the Sending Bank that is the Depositary Bank, and (b) any subsequent Receiving Bank that subsequently receives the Electronic Check in an exchange governed under the ECCHO Rules. If a Receiving Bank receives an Electronic Check from a Sending Bank, and then converts that Electronic Check 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 Check with an intermediary Receiving Bank (such as a collecting bank), and that collecting bank then exchanges the Electronic Check with the Receiving Bank that is also the Paying Bank, the Section XIX(O)(2) warranty would apply to that Electronic Check.

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 Check originally exchanged under the Rules.
XIX(O). COMMENTARY (continued)

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

Rule: When the Sending Bank that is also the Depositary Bank makes the warranty under Section XIX(O)(2), a paying bank that receives the Electronic Check 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 Electronic Check in an exchange governed under the rules of the Licensed Entity, to make a claim directly back to the Depositary Bank that exchanged the Electronic Check 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 Check 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 Check 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 Depositary 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 Depositary 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 Check by the Paying Bank by delivering (i) the Electronic Check, (ii) a paper copy of the front and back of such Electronic Check, or (iii) a substitute check created from such Electronic Check to the Depositary 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 Depositary Bank is the Paying Bank’s delivery of the warranty claim to the Depositary Bank. The Section XIX(O)(2) warranty claim is made by delivery of the Electronic Check, a paper copy of such Electronic Check or a substitute check to the Depositary 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 Depositary 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 Check or paper reproduction) is being sent as a warranty claim.

Rule: The available amount on deposit in the account of the customer of the Depositary 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 Depositary Bank and ending on the day which is the earlier of (i) one day before the Depositary Bank delivers the Disclaimer Form to the Paying Bank or (ii) up to 15 Business Days following receipt of the warranty claim by the Depositary Bank.

Comment: The third condition under the Section XIX(O) warranty for liability of the Depositary Bank relates to the available amount of funds on deposit in the account of the customer. The Depositary 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 Depositary Bank is liable to the
XIX(O). COMMENTARY (continued)

Paying Bank for a warranty claim even if the Depositary Bank chooses not to charge the amount of the warranty claim to the customer’s account, or if the Depositary Bank is unable for any legal reason to charge the customer’s account for the warranty claim. For purposes of determining the Available Amount on deposit in the customer account under Section XIX(O)(3)(c), the Depositary Bank is only required to review the funds balance in its depositing customer’s account once during the 15 day period. The Depositary Bank is not required to review the account balance each day during the 15 Business Days following the receipt of the warranty claim. The Depositary Bank can make this single balance inquiry at any time during the 15 Business Day period after the warranty claim is received. After making the balance inquiry to determine the Available Amount, the Depositary Bank is not obligated to determine if additional funds subsequently are deposited into the customer’s account.

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

Comment: A Depositary 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 Depositary Bank may determine whether to pay or disclaim a warranty claim based on information in its own records.

Rule: If the Depositary Bank has a defense under Section XIX(O)(1), XIX(O)(2), XIX(O)(3) or XIX(O)(4), or has a UCC Defense, the Depositary 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 Depositary 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 Depositary Bank may disclaim this warranty claim. The Rule does not establish specific burdens of proof or types of evidence that a Depositary Bank must have in order to establish a defense under this Rule or the UCC. The Depositary 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 Depositary 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 Depositary Bank would have to settle funds for the warranty claim, if the Depositary Bank fails to deliver the Disclaimer Form in compliance with the Rule: The Depositary Bank cannot make a late disclaimer of the warranty claim. A Depositary 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 Check (or a substitute check created from such Electronic Check) or otherwise resubmit the warranty claim to the Depositary Bank. The Paying Bank may pursue its warranty claim directly with the Depositary 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 Check received from the Depositary 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 Depositary 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 Depositary Bank were satisfied at the time the first warranty claim was processed under this Rule.

Rule: A Depositary Bank’s authority to debit the account of its customer in which the Electronic Check 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 Depositary 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 Depositary Bank has to pay the amount of the warranty claim to the Paying Bank under this Rule, but the Depositary 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 Depositary Bank to a warranty claim.

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

Comment: The Paying Bank and the Depositary Bank may agree to a specific delivery location and format for processing Section XIX(O)(2) warranty claims. For example, a Depositary Bank may want all warranty claims to be in paper form (substitute check or paper copy of the Electronic Check) and to be delivered to the Depositary Bank through a specific paper return process. As noted above, the delivery of the Section XIX(O)(2) warranty claim to the Depositary Bank is not a return of the underlying check or Electronic Check to which the warranty claim relates. If the Paying Bank seeks to use a paper check return process 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. A Paying Bank also can deliver the warranty claim in paper form (substitute check or paper copy of the Electronic Check) by mailing a letter containing the substitute check or paper copy of the Electronic Check to the Depositary Bank’s location for receipt of returns. When making a warranty claim by letter, the Paying Bank should confirm that the Depositary Bank receives returns of checks at that location. A sample warranty claim letter is included in Exhibit V to these Rules.

Rule: Unless a specific delivery location is agreed to by the Paying Bank, the Depositary 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 Checks from the Depositary Bank in the normal course of 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 Check 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 Depositary 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 Depositary 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 Check 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 Checks 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.
XIX(O). COMMENTARY (continued)

Rule: If the Depositary 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 Check. If the Depositary 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 Depositary 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 Depositary Bank for breach of the Section XIX(O)(2) warranty is limited to the amount of the Electronic Check to which the warranty claim relates. This Rule includes a comparative negligence provision that is similar to the comparative negligence provision established for warranty provided by a Sending Bank to a Receiving Bank under Section XIX(L) of the Rules when exchanging Electronic Checks. (See Section XIX(L) and related Commentary).

Rule: If the Paying Bank receives the Electronic Check from a Receiving Bank that is not the Depositary 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 Depositary Bank. A Receiving Bank that is not the Depositary 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 Check was presented to it by a bank other than the Depositary Bank. That is, there is at least one collecting bank in the forward exchange collection of the Electronic Check to the Paying Bank. The Paying Bank is required to go directly to the Depositary Bank to make the warranty claim under Section XIX(O). An intermediary collecting bank that handled the Electronic Check as a Sending Bank in the forward collection of the Electronic Check 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 XIX(O)(3)- XIX(O)(11) of Section XIX(O), the Sending Bank that is also the Depositary 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 Depositary 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 Depositary Bank is liable to a Paying Bank that is also an ECCHO Member. Second, assuming the requirements of the warranty claim are met, the Depositary Bank is liable to a paying bank that receives the Electronic Check (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 Depositary 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 Depositary Bank should honor valid warranty claims from both types of paying banks.

Rule: If the initial exchange of the Electronic Check by the Depositary 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 Depositary 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 Depositary Bank that exchanged the Electronic Check 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 Depositary Bank that first exchanged the check 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 Check to the Paying Bank.
XIX. **Electronic Check (continued)**

P. *Reserved. This Section Has Been Intentionally Reserved for Future Use in the Operating Rules Document.*
OPERATING RULES

XIX. ELECTRONIC CHECK (CONTINUED)

Q. Recourse To Prior Collecting Or Returning Bank.

(1) In the event a check or Electronic Check exchanged under these Rules by a Member or other bank that has agreed to the Rules is subsequently converted by a Reconverting Bank into a substitute check and the Reconverting Bank incurs liability under the Check 21 Act or the provisions of Subpart D of Regulation CC as a result of an act or omission of such Member or other bank that has agreed to the Rules, the Reconverting Bank shall have recourse to such Member or other bank to the extent the Reconverting Bank’s liability under the Check 21 Act or the provisions of Subpart D of Regulation CC resulted from such act or omission of such Member or other bank.

(2) Expedited Recredit Claim By Reconverting Bank

(a) A Reconverting Bank that has a claim under Section XIX(Q)(1) may make an expedited recredit claim under this Section XIX(Q)(2). The provisions of paragraphs (a), (b), (c) and (e) of Section 229.55 of Regulation CC are incorporated into this Section XIX(Q)(2) and shall govern the process for making such expedited recredit claim. For the limited purpose of this Section XIX(Q)(2), the Reconverting Bank shall be deemed to be a “claimant bank” and the bank against which the claim is asserted shall be deemed the “indemnifying bank” as such terms are used in Section 229.55 of Regulation CC.

(b) Providing an expedited recredit to a Reconverting Bank under this Section XIX(Q)(2) does not absolve the bank against which the claim is asserted from liability for claims brought under any other law or from additional damages under Section XIX(Q)(1).

(3) If the liability of the Reconverting Bank described in Section XIX(Q)(1) results in whole or in part from the negligence or failure to act in good faith on the part of the Reconverting Bank, then the liability of the Member or other bank that has agreed to the Rules to which the Reconverting Bank has recourse under this Section XIX(Q) shall be reduced in proportion to the amount of negligence or bad faith attributable to the Reconverting Bank.
**XIX(Q).COMMENTARY**

*Rule:* In the event a check or Electronic Check exchanged under these Rules by a Member or other bank that has agreed to the Rules is subsequently converted by a Reconverting Bank into a substitute check under the Check 21 Act and Subpart D of Regulation CC and the Reconverting Bank incurs liability under such Act and Regulation as a result of an act or omission of the prior bank, then the Reconverting Bank has recourse to that prior bank to the extent the Reconverting Bank's liability resulted from the act or omission of the prior bank.

*Comment:* This Section allows the Reconverting Bank to pass back liability it incurs under the Check 21 Act and Sections 229.53 and 229.56 of Regulation CC where such liability resulted from an act or omission of a prior bank that transferred a check or an Electronic Check under these Rules. For example, assume the Reconverting Bank breached its warranty under the Check 21 Act that its substitute check meets the requirements for legal equivalence because the Electronic Check that it was provided by a Member under the Rules did not accurately represent all of the information on the front and back of the original check as of the time the original check was truncated. Under Section XIX(Q), the Reconverting Bank would be able to recover its liability under this Section for this warranty breach from that Member.

*Rule:* A Reconverting Bank that has a claim under Section XIX(Q)(1) may make an expedited recredit claim under this Section XIX(Q)(2). The Reconverting Bank shall make the claim in the same manner and subject to the same rules as a claimant bank makes an expedited recredit claim under the Check 21 Act and Subpart D of Regulation CC. In the event the Reconverting Bank receives a recredit, the bank against which the claim was asserted is not absolved from liability for claims brought under any other law or from additional damages under Section XIX(Q)(1).

*Comment:* In the event a Reconverting Bank incurs liability to a claimant bank under the Check 21 Act expedited recredit process, this Rule provides a parallel process for that Reconverting Bank to seek expedited recredit from a bank that provided the Reconverting Bank with the Electronic Check that was used to create the substitute check. The Rule incorporates by reference the expedited recredit process set forth in Subpart D of Regulation CC that is used by claimant banks and indemnifying banks, and extends that process to the Reconverting Bank and banks against which that Reconverting Bank has a claim under Section XIX(Q)(1).

*Rule:* If the liability of the Reconverting Bank described in Section XIX(Q)(1) results in whole or in part from the negligence or failure to act in good faith on the part of the Reconverting Bank, then the liability of the prior bank to which the Reconverting Bank has recourse under this Section XIX(Q) is reduced in proportion to the amount of negligence or bad faith attributable to the Reconverting Bank.

*Comment:* This provision is intended to allocate liability in a fashion similar to the comparative negligence provisions of Regulation CC Section 229.38(c).

*Comment:* The rules in this Section do not vary the process by which a Claimant Bank makes a claim against the Reconverting Bank under the Check 21 Act. However, in a case where there are banks other than the Reconverting Bank that have transferred or handled a substitute check before the substitute check was presented to the Claimant Bank, the Claimant Bank is encouraged to consider making an expedited recredit claim directly to the Reconverting Bank, as opposed to bringing the claim first against the bank that presented or transferred the substitute check to the Claimant Bank. Making the claim directly to the Reconverting Bank may accelerate the final resolution of the claim against the party that is ultimately liable for the claim.
OPERATING RULES

XX. ELECTRONIC RETURNED CHECKS

A. Compliance with Other Rules Sections. In addition to complying with this Section XX, a Member that is returning an Electronic Returned Check shall comply with Sections I - XIX applicable to it.
XX.  **Electronic Returned Checks (continued)**

B.  **Reserved. This Section Has Been Reserved for Future Use In the Operating Rules Document.**
OPERATING RULES

XX. ELECTRONIC RETURNED CHECKS (CONTINUED)

C. Eligibility for Electronic Returned Check.

(1) An Electronic Returned Check is eligible for return under this Section XX if the Electronic Returned Check is derived from an Originally Received Item and:

(a.i.) the Originally Received Item, or the item to which the Originally Received Item relates, is a paper "check" as defined under Section 229.2(k) of Regulation CC;

(b.i.) the Originally Received Item, if it was presented as a paper check and is being returned as an Electronic Returned Check, is a “Fully Qualified Item” under the Rules; and

(c.i.) the Returning Member and the Returnee Member have entered into an agreement permitting Electronic Returned Checks, and the return of the Originally Received Item via Electronic Returned Check is permitted under that agreement.

If any character in the MICR line of an item is unreadable, i.e., the bank’s capture system discerns the presence of a character but cannot interpret it, the item shall not be considered Fully Qualified for purposes of Section XX(C)(1)(b.i.).

If two Members have entered into an agreement to permit the return of Electronic Returned Checks 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.

For purposes of meeting the requirement in Section XX(C)(1) that the item be a Fully Qualified Item for return under these Rules, the Returning Member may, at its option,

(a.ii.) return an Electronic Returned Check with the associated MICR line information in the Electronic Information that has been modified by the Returning Member to correct a read error or omission in one or more fields of the MICR line information from the Related Physical Check, or

(b.ii.) return an Electronic Returned Check with the same electronic MICR line information format and content as the MICR line information in the item or Electronic Information of the Electronic Check received from the Sending Bank in the forward exchange of the related Originally Received Item.

(2) The agreement referenced in Section XX(C)(1)(c.i.) shall address whether or not the Returnee Member will accept an Electronic Returned Check of an Originally Received Item from the Returning Member. Unless the Returnee Member has agreed expressly with the Returning Member in the agreement under Section XX(C)(1)(c.i.) to receive an Electronic Returned Check, nothing in Section XX shall require a Returnee Member to accept an Electronic Returned Check, regardless of whether the Originally Received Item is otherwise eligible for return as an Electronic Returned
XX. **Electronic Returned Checks (continued)**

Check under Section XX(C)(1).

(3) **Blank or Replacement Image of the Originally Received Item.** This paragraph applies in the situation that a Returning Member sends an image to a Returnee Member which is either a blank image or an image of a document that is not a “check” under Section 229.2(k) of Regulation CC (for example, a “sorry document” that replaces the Image of the Related Physical Check or the Originally Received Item). In this situation, the Electronic Returned Check containing such Image sent by the Returning Member shall be deemed to be an Electronic Returned Check for purposes of only the following Rules: Section XX(J) (Returning Member Warranties and Indemnification), Section XX(L) (Recourse To Returning Member), and Section XX(E) (Status of Electronic Returned Check) to the extent necessary to impose on Members the obligation of timely return. This paragraph is intended to clarify the rights and obligations of the Members in a situation involving a missing or replacement Image, and nothing in this paragraph authorizes a Returning Member to send an Electronic Returned Check created from an ineligible item, that is missing an Image of the Related Physical Check or the Originally Received Item, or that contains an Image of a document that purports to replace the Related Physical Check or Originally Received Item.

(4) **Carrier Item.** An Electronic Returned Check derived from an Originally Received Item that is in a carrier is eligible for return under these Rules if the item otherwise meets the requirements of Section XX(C)(1), the full front and full back of the item are visible through the carrier, and carrier qualifies for handling by automated check processing equipment. If the carrier is encoded, the carrier, and not the item, must be encoded in compliance with the Rules.
XX(C). COMMENTARY

Rule: To be eligible as an Electronic Returned Check under Section XX, the Originally Received Item (where the Related Physical Check is sent to the Paying Bank) or the item to which the Originally Received Item relates (where an Electronic Check is sent to the Paying Bank) must be one of the type of items defined as a check under Section 229.2(k) of Regulation CC.

Comment: The definition of eligible item in Section XX(C) closely tracks the definition of eligible item under Section XIX(C) of the Rules. Accordingly, the Commentary to Section XIX(C) should be considered as guidance when reviewing Section XX(C). For example, the Commentary to Section XIX(C) includes further discussion of the treatment of eligible and non-eligible items under the Rules generally.

Rule: With respect to the requirement in Section XX(C)(1)(b.i.), a Returnee Member and a Returning Member may under their image exchange agreement permit the return of Electronic Returned Checks of items that are not fully qualified.

Comment: Section XX(C)(b.i.) establishes a default rule that requires that, if an item was presented as a paper check, the item must be a “fully qualified item” in order to be eligible for return as an Electronic Returned Check. This Rule also provides that a Returnee Member and a Returning Member may alter this default rule by separate agreement, and thereby exchange Electronic Returned Checks derived from 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 Returned Check received from a Returning Member, the Returnee Member may decide that it is willing to accept an Electronic Returned Check of the item that is not fully qualified. If a Paying Bank has an agreement with the Presenting Bank to accept Electronic Checks in forward presentment that are not fully qualified, but the Paying Bank does not have an agreement with the BOFD to deliver returned items with partial MICR information, the Paying Bank (as the Returning Member) must return an Electronic Returned Check to the Returnee Member (as the BOFD) that is fully qualified.

Rule: For purposes of meeting the requirement in Section XX(C)(1) that the item be a Fully Qualified Item for return under these Rules, the Returning Member may, at its option, (1) return an Electronic Returned Check with the associated MICR line information in the Electronic Information that has been modified by the Returning Member to correct a read error or omission in one or more fields of the MICR line information from the Related Physical Check, or (2) return an Electronic Returned Check with the same electronic MICR line information format and content as the MICR line information in the item or Electronic Information of the Electronic Check received from the Sending Bank in the forward exchange of the related Electronic Check or item.

Comment: A Returning Member may decide that it needs to modify the electronic MICR line associated with an Electronic Returned Check from the information that the Returning Member originally received in a forward exchange from another bank in order to correct an error or omission in such data. For example, there may be an error in the account number of the customer that was read from the Related Physical Check by the truncating bank. If the Returning Member subsequently decides to return the item, the Returning Member can either (a) return the Electronic Returned Check containing the corrected electronic MICR line in the Electronic Information, or (b) return the Electronic Returned Check with the same electronic MICR line associated with the item as was received by the Returning Member in the Electronic Information of the Electronic Check in the forward exchange. As a result of this rule, a Returning Bank that has modified the MICR line associated with an Electronic Check for reasons other than a correction of a read error or omission shall not return the Electronic Returned Check with that modified MICR line in the Electronic Information.

A Returning Member that is modifying the MICR line in the Electronic Information associated with an Electronic Returned Check may not modify the MICR line information to put characters in fields that are not used in the normal course for posting items at the Returning Bank (such as all "1"s or "9"s in a particular field). Please note that the MICR line modification permitted under this rule represents a variation from the industry standards for check image exchange that require the returning bank to return an item with MICR line that is identical to the in the forward item.
XX(C). COMMENTARY (continued)

Rule: The Returning Member and the Returnee Member must have entered into an agreement permitting Electronic Returned Checks and the return of the Originally Received Item via an Electronic Returned Check must be permitted under that agreement.

Comment: The Returning Member and the Returnee Member must enter into an agreement (in addition to the Rules) addressing Electronic Returned Checks under Section XX. This agreement could take the form of clearing house rules, or a bilateral agreement between the Returning Member and the Returnee Member. For a more extensive discussion of the types and forms of agreements that Member banks may use for their image exchange programs, please see Commentary to Section XIX(C). It is anticipated that the banks would in this agreement specify, for example, whether the transmission of the Electronic Returned Check is to be encrypted and/or authenticated, and the location(s) for the transmission or other delivery of Electronic Returned Checks (please see Section XX(F)).

The Electronic Returned Check in question must be permitted under this agreement. For example, this agreement may provide that the Returning Member may transmit an Electronic Returned Check to the Returnee Member only after a specified future date, in order to provide the Returnee Member time to prepare for receipt of the Electronic Returned Check. The agreement may permit Electronic Returned Checks for certain types of Originally Received Items (e.g., where an Electronic Check rather than the Related Physical Check is sent to the Receiving Bank), or for Originally Received Items above or below an agreed to dollar amount.

Rule: An Originally Received Item that is in a carrier is eligible for return under these Rules if the item otherwise meets the requirements of Section XX(C)(1), the full front and full back of the item are visible through the carrier, and carrier qualifies for handling by automated check processing equipment. If the carrier is encoded, the carrier, and not the item, must be encoded in compliance with the ECCHO Rules.

Comment: Under Regulation CC, items in a carrier that qualify for handling by automated check processing equipment are not considered non-cash items, and as a result such items in a carrier are not excluded from coverage for exchange under the ECCHO Rules. The ECCHO Rules do require that the item in the carrier otherwise meets the requirements for Electronic Check exchange and return, and the front and back of the item are fully visible in the carrier. By contrast, for example, if the item in the carrier is mutilated, it is not eligible as an Electronic Check or an Electronic Returned Check, however it may qualify for exchange or return under the rules applicable to exchange of Imperfect Images. See Section XV. While Regulation CC requires that the item in the carrier “qualify” for handling by automated check processing equipment, the item in the carrier does not actually have to be processed in a high-speed or fully automated processing environment in order to be eligible under the Rules for return as an Electronic Returned Check. If the Returnee Member encodes the carrier, the encoding of the carrier (and not the necessarily the item inside the carrier) must meet the requirements for encoding under the Rules.

Rule: This Rule requires a Returnee Member and a Returning Member to address in their agreement whether or not the Returnee Member will accept an Electronic Returned Check of an Originally Received Item from the Returning Member. This agreement to accept returns shall be part of the agreement under Section XX(C)(1)(c.i.). Nothing in Section XX requires a Returnee Member to accept an Electronic Returned Check, regardless of whether the Originally Received Item is otherwise eligible for return as an Electronic Returned Check under Section XX(C)(1).

Comment: Under this Section XX(C), a Returnee Member is not required to agree to accept Electronic Returned Checks, and a Returning Member is not required to return an Electronic Returned Check, even though the Returnee Member has indicated its willingness to accept Electronic Returned Checks. Unless a Returnee Member has agreed expressly in its agreement with a Returning Member that the Returnee Member will accept an Electronic Returned Check of a forward item (referred to as an Originally Received Item under this Section XX), the Returning Member may not send an Electronic Returned Check to the Returnee Member.

The purpose of this Rule is to establish that the Returnee Member and the Returning Member must agree whether or not the Returnee Member will accept Electronic Returned Checks under these Rules. This
agreement to accept Electronic Returned Checks / must be contained in the agreement contemplated under Section XX(C)(1)(c.i.). A Returnee Member and a Returning Member may agree that all forward items may be returned by means of an Electronic Returned Check under these Rules, or that none of the forward items may be returned as Electronic Returned Checks under these Rules. It is also possible for the Returnee Member and Returning Member to agree that certain classes (such as large dollar items) of forward items may be returned as Electronic Returned Checks under these Rules.

If the Returnee Member has not agreed to accept Electronic Returned Checks, or has indicated in the forward transfer of the item that it will not accept an Electronic Returned Check, the Returning Member is not permitted to send an Electronic Returned Check to the Returnee Member. If, in such a circumstance, the Returning Member sends an Electronic Returned Check to the Returnee Member, the returned item is still subject to these Rules as an Electronic Returned Check, the Returning Member has violated these Rules and the Returning Member potentially gives rise to a claim for damages by the Returnee Member.

Comment: If a Returning Member sends an Electronic Returned Check arising from an ineligible item to another Member as part of an exchange of Electronic Returned Checks subject to these Rules, certain of the ECCHO Rules will apply to that returned item. This rule is intended to ensure that the Returnee Member is protected in the event that a Returning Member sends an Electronic Returned Check of an item that is not otherwise eligible for electronic return under either these Rules or the agreement of the returning banks. See Commentary to Section XIX(C)(2) for additional discussion. If a Sending Bank sends an item to the paying bank in a forward exchange that is itself ineligible for forward or return image exchange (for example, the Sending Bank sent a “sorry” replacement document in the image), the paying bank receives protection from the Sending Bank under the Section XIX(L) warranty that is made expressly applicable by Section XIX(C)(2) in the forward exchange of the ineligible item.
XX. **Electronic Returned Checks (continued)**

D. **Electronic Returned Checks.**

1. **Electronic Returned Checks Generally.** An Electronic Returned Check must clearly indicate that it is a return and the reason for return. A Returning Member shall indorse the Electronic Returned Check in accordance with applicable law. The return reason and Returning Member’s indorsement shall be included in the Electronic Information associated with the Electronic Returned Check in accordance with Regulation CC and applicable industry standards. A Returning Member is not required to place a reason for return on the front of the Image of the Electronic Returned Check.

   A Returnee Member that handles or receives an Electronic Returned Check may rely on a return reason and/or Returning Member’s indorsement contained in the Electronic Information without review of any return reason and/or indorsement that may be contained on or within the Image of the Electronic Returned Check.

2. **Reserved.** This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.

3. **Reserved.** This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.

4. **Return Reasons.** A Returning Member is not required to indicate all applicable return reasons under Section XX(D)(1) that the Electronic Returned Check is not subject to posting at that time or may not post upon re-presentation of the Electronic Check or Related Physical Check to the Returning Member under the Rules or otherwise. If the Electronic Check or Related Physical Check (to which the Electronic Returned Check relates) is re-presented to the Returning Member under these Rules or otherwise, the Returning Member may return that Electronic Check 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 a Returning Member is returning an Electronic Check solely on the basis of an Administrative Reason, or a Collecting Bank is handling an Electronic Check prior to presentment of the Electronic Check. In the event that a Returning Member returns an Electronic Check, either as an Electronic Returned Check 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 Depositary Bank is identified in the Electronic Indorsement, the Returning Member shall return the item to the Depositary Bank. If there is more than one Depositary Bank indicated by an Electronic Indorsement, the Returning Member shall return to the Depositary
XX(D). **Electronic Returned Checks (continued)**

Bank in accordance with the newest (last appearing) Electronic Indorsement.

(b) If the Depositary Bank is not identified in the Electronic Indorsement, the Returning Member shall return the item to the Depositary Bank that is identified in the Depositary Bank’s indorsement that is visible on the back of the Electronic Check.

(c) If the Depositary Bank is not identified in the Electronic Indorsement and the Depositary Bank is not identified in an indorsement visible on the back of the Electronic Check or such 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 Check cannot be returned in accordance with subsections XX(D)(5)(a) through XX(D)(5)(c), the Returning Member shall return the item to the Returnee Member that originally sent the Electronic Check 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 229.31 and 229.32.

(7) A Returning Member may handle the return of an Electronic Check based on an Electronic Indorsement in conformance with Section XX(D)(5), notwithstanding the existence of a different indorsement of a Depositary Bank or Collecting Bank that is visible on the back of the Electronic Check.

(8) In the event that the Returning Member is returning the Electronic Check in accordance with Section XX(D)(5)(c) or XX(D)(5)(d) either as an Electronic Returned Check 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 Depositary Bank indorsement was illegible, as otherwise required under Regulation CC, Section 229.31(a)(2) or Section 229.32(a)(2).

(9) If a Returnee Member receives an Electronic Returned Check for which the Returnee Member is not the Depositary Bank or for which the Returnee Member has not agreed to act as a returning bank, the Returnee Member shall either:

(a) return the Electronic Returned Check to the Depositary Bank (or a bank agreeing to act as a returning bank) in accordance with the return routing hierarchy established under Section XX(D)(5), or

(b) if, there is insufficient information to route the return in accordance with Section XX(D)(5), send the Electronic Returned Check to the Returning Member pursuant to an applicable adjustment process indicating that the Electronic Returned Check was misdirected to the Returnee Member.

The Returning Member shall indemnify the Returnee Member that acts in accordance with this section and otherwise handles the Electronic Returned Check in accordance with responsibilities of a collecting bank under the Code for any loss that arises to the Returnee Member as a result of handling the misdirected Electronic Returned Check. Nothing in this
subsection shall remove the obligation of the Returning Member to comply with the return routing requirements of Section XX(D)(5). This Section XX(D)(9) does not govern the manner in which a Returnee Member handles an Electronic Returned Check that was returned by the Returning Member because of an administrative return reason related to the Electronic Check received by the Paying Bank in the forward exchange (i.e. the Originally Received Item).
XX(D). COMMENTARY

Rule: An Electronic Returned Check must indicate that it is a return and reason for the return.

Comment: The purpose of this requirement is to alert the Returnee Member and all subsequent banks and non-bank parties interested in the Originally Received Item that the item is a return. A Returning Member can satisfy this requirement by including appropriate return reason codes and information in the Electronic Information sent with the Electronic Returned Check in conformance with applicable industry standards for Electronic Returned Checks.

Rule: A Returning Member is not required to place a reason for return on the front of the Image of an Electronic Returned Check.

Comment: This rule provides clarity that the requirement in Regulation CC Section 229.31(e) that the return reason appear on “the front” of a check does not apply when returning an Electronic Returned Check. A Returning Member shall otherwise comply with the other requirements of Regulation CC Section 229.31(e), including the requirement to include the return reason within the Electronic Returned Check (such as in the Electronic Information) such that the information is retained in any subsequent substitute check.

Rule: An Electronic Returned Check shall include the indorsement of the Returning Member in accordance with applicable law.

Comment: Regulation CC requires the Returning Member (other than the Paying Bank) to include its indorsement on returned checks, including Electronic Returned Checks, in accordance with applicable industry standards (Regulation CC, Section 229.35(a)). The Electronic Returned Check is subject to this requirement under these Rules. The Returning Member must place its indorsement on or with the Electronic Returned Check in accordance with Regulation CC and applicable industry standards. There is a legal risk to a Returning Member that does not include the appropriate electronic indorsement information in an Electronic Returned Check in compliance with applicable industry standards, and the Returnee Member cannot create an effective substitute check in compliance with Check 21 Act and subsequently makes a claim against the Returning Member under Section XX(L) of the ECCHO Rules.

Rule: A Returnee Member that handles or receives an Electronic Returned Check may rely on a return reason and/or Returning Member indorsement contained in the Electronic Information without review of any return reason and/or indorsement that may be contained on or within the Image of the Electronic Returned Check.

Comment: The purpose of this rule is to clarify that returning banks and the Depositary Bank that receive an Electronic Returned Check from a Returning Member may rely on the return reason and Returning Bank indorsement reflected in the Electronic Information associated with the Electronic Returned Check when processing the Electronic Returned Check. Given that Electronic Returned Checks are handled on an automated basis by the banks, banks typically do not visually inspect the Electronic Returned Check to determine if there is a return reason or indorsement placed on the Image itself (such as with an overlay) or written on the paper item prior to the imaging of the item for return. If a Returnee Member does inspect the Image associated with the Electronic Returned Check and as a result determines that there is a variation between the return reason and/or Returning Member indorsement contained in the Electronic Information and the return reason and/or Returning Member indorsement contained on or within the Image, the Returnee Member must determine from the facts and circumstances the appropriate records and information to rely upon when handling the Electronic Returned Check. In certain cases, the Returnee Member has to inspect the Image to determine the actual return reason, such as when a return reason code indicates the Returnee Member should refer to the Image. The Returnee Member should comply with applicable industry standards when determining the location of the electronic return reason and Returning Member indorsement in the Electronic Information.
XX(D). COMMENTARY (continued)

Rule: A Returning Member is not required to indicate all applicable return reasons under Section XX(D)(1) that the Electronic Check is not subject to posting at that time or may not post upon re-presentation of the Electronic Check 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 Returned Check. For example, a Returning Member may return an Electronic Check as an Electronic Returned Check because it is a suspected duplicate. In certain cases, there may be other reasons that the Returning Member could have returned the same Electronic Check, 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 indicate on an Electronic Returned Check.

Rule: If the Electronic Check or Related Physical Check (to which the Electronic Returned Check relates) is re-presented to the Returning Member under these Rules or otherwise, the Returning Member may return that Electronic Check 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 Check (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 Returned Check.

Rule: In the event that a Returning Member determines to return an Electronic Check, either as an Electronic Returned Check 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 Check. Paying Banks and other returning banks will follow the hierarchy when handling the return of an Electronic Check 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 Check. 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 visible on the back of the Electronic Check. The requirements of the hierarchy established by this Rule apply to Paying Banks that are Members of ECCHO as well as other Returning Members in the return process that receive the Electronic Returned Check from a Paying Bank or other Returning Members that are ECCHO Members.

This Rule applies to any return of an Electronic Check 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 Returned Check under Section XX of the ECCHO Rules. The ECCHO Rules do not generally govern the forward exchange or return of paper substitute checks. In this instance, because the original forward exchange of the Electronic Check 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 Check, 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 Checks 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.)
XX(D).  COMMENTARY (continued)

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 Depositary Bank), the Member incurring the loss may have a claim under the ECCHO warranty in Section XX(J) under which each Returning Member warrants that it has complied with the ECCHO Rules.

Rule:  This subsection does not apply in the situation (1) where a Returning Member is returning an Electronic Check solely on the basis of an Administrative Reason, or (2) where a Collecting Bank is handling an Electronic Check prior to presentment of the Electronic Check.

Comment:  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 Check, 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 Returned Check or a substitute check created from an Electronic Check. As a result, this return hierarchy also does not apply to a Collecting Bank when returning an Electronic Check back to a Sending Bank before the Electronic Check is presented to the Paying Bank. In these situations, the Collecting Bank will typically return the Electronic Check to the Sending Bank with a request for the Sending Bank to fix the problem associated with the Electronic Check or file of Electronic Checks and then re-send the file to the Collecting Bank.

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

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 Depositary Bank when handling a return of a previously exchanged Electronic Check. 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 Check. 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 Check, 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 229.31 and 229.32.

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 Check in this manner would not conform to the hierarchy for returns as set forth 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 Check 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 Depositary Bank.

Rule:  In the event that the Returning Member is returning the Electronic Check in accordance with Section XX(D)(5) either as an Electronic Returned Check 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 Depositary Bank indorsement was illegible, as otherwise required under Regulation CC, Section 229.31(a) or Section 229.32(a)(2).

Comment:  This Rule waives the requirement under Section 229.31(a) and Section 229.32(a)(2) of Regulation CC that a bank making a return notify the bank to which the return is made that the Depositary Bank indorsement on the item is illegible. Based on survey of Members, it is standard practice for banks
XX(D). COMMENTARY (continued)

to return an Electronic Returned Check 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.
OPERATING RULES

XX. ELECTRONIC RETURNED CHECKS (CONTINUED)

E. Status of Electronic Returned Check. Regardless of its status in the absence of this Section XX(E), an Electronic Returned Check shall be deemed to be an “item” for purposes of the Code. An Electronic Returned Check under these Rules is also an “Electronic Returned Check” for purposes of Regulation CC.

This Section XX also shall constitute an agreement to the Electronic Returned Check in lieu of the return of the Originally Received Item, even when the Originally Received Item is available for return, as provided for in Section 4-110 of the Code and Regulation CC Section 229.37. This Section XX also shall constitute an agreement under which a Returnee Member will accept return of Electronic Returned Checks under Regulation CC Section 229.33(b). In the event of any conflict or inconsistency between the Code or Regulation CC and this Section XX, the provisions of this Section XX shall govern to the extent permitted under applicable law. In the event of any conflict or inconsistency between this Section XX and any other Section of the Rules, the provisions of this Section XX shall govern.
XX(E). COMMENTARY

Rule: An Electronic Returned Check is an “item” for purposes of the Code. An Electronic Returned Check under these Rules is also an “Electronic Returned Check” for purposes of Regulation CC.

Comment: Section XX(E) confirms that an Electronic Returned Check is subject to and governed by the Code and Regulation CC. The Code (Sections 4-110 and 4-406(b) (1990 Official Text)) expressly recognizes electronic presentment, and authorizes agreements to specify the details of such an electronic presentment arrangement. The Code clarifies that an agreement of this nature may provide for procedures governing retention, dishonor and other matters concerning items subject to the agreement. Regulation CC permits banks to agree to return of the Electronic Returned Checks in lieu of return of the Related Physical Item. Section XX(E) confirms that Section XX constitutes this type of an agreement for purposes of the Code and Regulation CC. Electronic Returned Checks are expressly recognized under Regulation CC, and it is the intent of these rules that the term “Electronic Returned Check” under these Rules have the same meaning as the term “Electronic Returned Check” under Regulation CC.

Rule: This Section XX also shall constitute an agreement under which a Returnee Member will accept return of Electronic Returned Checks under Regulation CC Section 229.33(b).

Comment: Regulation CC Section 229.33(b) states that the depositary bank’s agreement with transferor bank establishes the terms under which it will accept Electronic Returned Checks. The ECCHO Rules form part of this agreement of the banks under Regulation CC Section 229.33(b) for how return of the Electronic Returned Check occurs. The returning Members also would need to have a separate agreement, such as bilateral agreement, a business practices agreement or a clearinghouse rule, which specified that the ECCHO Rules are to apply to the return of Electronic Returned Checks between the two Members.

Rule: In the event of an inconsistency between Section XX and a provision of the Code or Regulation CC, Section XX governs, unless the provision of the Code or Regulation CC cannot be varied by clearing house rule or agreement.

Comment: Examples of Code or Regulation CC provisions that cannot be varied by clearing house rule or agreement include: under the Code, a bank cannot disclaim its obligation to act with ordinary care and in good faith or limit the measure of damages if it fails to do so (Section 4-103 (1990 and 1978 Official Texts)); under Regulation CC, an electronic return agreement may not extend return times or otherwise vary the requirements of Regulation CC with respect to parties interested in the item that are not parties to the electronic return agreement (Regulation CC, Section 229.37). Section XX(E) does not purport to vary these Code or Regulation CC provisions.
OPERATING RULES

XX. E LECTRONIC RETURNED CHECKS (CONTINUED)

F. Return of Electronic Returned Checks.

(1) A Returning Member returns an Originally Received Item under this Section XX by transmitting or otherwise providing or making available to a Returnee Member an Electronic Returned Check in accordance with the requirements of this Section XX and the time limitations and other requirements of applicable law.

(2) An Electronic Returned Check shall be transmitted or otherwise provided or made available to the location(s) designated for the Electronic Returned Check to the Returnee Member to which the Electronic Returned Check is being transmitted or otherwise provided or made available

(a) by that Returnee Member or
(b) if so agreed by the Returnee Member and the Returning Member, by another entity or through the transmission facility of a Clearing House or an Exchange Provider.

The Electronic Returned Check shall be delivered in a manner agreed to by the Returning Member and the Returnee Member. The Electronic Returned Check must contain all information in accordance with the requirements of applicable industry standards.

(3) An Originally Received Item shall be deemed to have been returned by the Returning Member under this Section XX upon the transmission, provision or making available by the Returning Member of an Electronic Returned Check in accordance with the requirements of this Section XX. The Electronic Returned Check shall be deemed to have been received by the Returnee Member upon its receipt at a location designated by it for receipt of the Electronic Returned Check. An Electronic Returned Check received or made available on a day that is not a Banking Day for the Returnee Member or after a deadline for receipt or availability of the Electronic Returned Check designated by the Returnee Member shall be deemed to have been received by or made available to the Returnee Member at the opening of its next Banking Day. Except as otherwise provided in this Section XX(F), the Returnee Member shall have no responsibility for the transmission or other transport of the Electronic Returned Check from the Returning Member. A Returnee Member that designates that Electronic Returned Checks are to be transmitted to it shall be responsible for managing its electronic connection so as to permit the Returning Member to transmit Electronic Returned Checks to the Returnee Member in a timely manner. A Returnee Member that designates that Electronic Returned Checks are to be made available to it shall be responsible for managing its electronic connection so as to permit it to retrieve Electronic Returned Checks from the Archive or other location designated pursuant to this Section XX(F)(3) in a timely manner. In the event that a Returnee Member’s electronic connection is not available for receipt or retrieval of Electronic Returned Checks, the Returning Member shall act reasonably in seeking to return the Electronic Returned Check, upon being notified by the Returnee Member or otherwise learning of the unavailability of the Returnee Member’s electronic connection. In such case, the Returning
OPERATING RULES

XX(F). ELECTRONIC RETURNED CHECKS (CONTINUED)

Member’s actions may include transmitting or otherwise providing the Electronic Returned Checks to the Returnee Member in another manner as agreed to by the Returnee Member, or returning the Related Physical Checks (if available) to the Returnee Member for collection outside of the Rules.

An Electronic Returned Check is not received by a Returnee Member if the Returnee Member cannot, as a technological or computer systems matter, process the electronic file containing the Electronic Returned Check after such file is transmitted to, or made available to, the Returnee Member. If a Returnee Member cannot process the electronic file containing the Electronic Returned Check, the Returnee Member shall send a notification of the failure to process to the Returning Member within one Business Day of the Banking Day on which the Returnee Member receives the electronic file containing the Electronic Returned Checks.

(4) Reserved. This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.

(5) Reserved. This Section Has Been Intentionally Reserved for Future Use In the Operating Rules Document.

(6) A Returnee Member that is the Depositary Bank shall, upon receipt of an Electronic Returned Check, provide such notice or return of the item as required under applicable law.

(7) (a) Provided that the Returnee Member makes a request to the Returning Member within four Business Days of the date of settlement of the Electronic Returned Check that was originally transmitted or otherwise provided or made available to the Returnee Member, a Returning Member shall transmit or otherwise provide or make available such Electronic Returned Check to the Returnee Member a second time upon the request of the Returnee Member. If the Electronic Returned Check was originally contained in an electronic file containing multiple Electronic Returned Checks, the Returnee Member may only request a second transmission, provision or making available of an electronic file containing the same Electronic Returned Checks as the original electronic file.

The Returning Member shall respond to the Returnee Member’s request by the close of the second Business Day after the Business Day on which the Returning Member received the request. When acting in conformance with a Returnee Member’s request to transmit or otherwise provide or make available an Electronic Returned Check (whether or not the request was made timely), a Returning Member shall not be deemed to have breached any warranty to any Returnee Member under Section XX(J) or any applicable law relating to transmission, delivery or exchange of duplicate Electronic Returned Checks. The Returnee Member’s sole liability for failure to comply with this Section XX(F)(7)(a) shall
be limited to the additional costs resulting from the failure to comply incurred by the Returnee Member in recreating the Electronic Returned Check for return purposes. The failure of a Returning Member to comply with Section XX(F)(7)(a) shall not constitute a breach of any warranty under Section XX(J), or otherwise subject the Returning Member to liability to the Returnee Member.

(b) A Returnee Member may request that a Returning Member transmit or otherwise provide or make available to the Returnee Member a second file containing all or a portion of the Electronic Returned Checks that were in the first file. The Returnee Member shall specify the range of Electronic Returned Checks that it wants included or excluded from the second file of Electronic Returned Checks. The Returning Member shall indicate to the Returnee Member whether the Returning Member will comply with the request within a reasonable time period of receiving the request. When acting in conformance with a Returnee Member’s request to transmit or otherwise provide or make available a second file of Electronic Returned Checks, a Returning Member shall not be deemed to have breached any warranty to any Returnee Member under Section XX(J) or any applicable law relating to transmission, delivery or exchange of duplicate Electronic Returned Checks with respect to the Electronic Returned Checks that the Returnee Member requested be included in the second file. The Returning Member is not obligated under this Section XX(F)(7)(b) to provide the second file of Electronic Returned Checks to the Returnee Member. The Returning Member shall have no liability to the Returnee Member for a decision to not provide a second file of Electronic Returned Checks to the Returnee Member, regardless of the reason for its decision.

(8) If a Returnee Member is the Depositary Bank for a Related Physical Check or an Electronic Check of such Related Physical Check that corresponds to an Electronic Returned Check, the Returnee Member may not reject such Electronic Returned Check or otherwise return the Electronic Returned Check to the Returning Member, unless the Electronic Returned Check incorrectly identifies the Returnee Member as the Depositary Bank. If the Returnee Member has a warranty or other claim under the Rules or applicable law relating to the Electronic Returned Check, the Returnee Member shall pursue that warranty or other claim either through an applicable adjustment process to the Returning Member or another Member, or through any other means provided under applicable law. Nothing in this paragraph shall limit the rights or claims of the Returnee Member under applicable law.
XX(F). COMMENTARY

Rule: The Returning Member may return an Originally Received Item by transmitting or otherwise providing or making available to the Returnee Member an Electronic Returned Check in accordance with the requirements of this Section XX and the time limitations and other requirements of applicable law and industry standards. The Returning Member is deemed to return the Originally Received Item upon its transmission or other provision or availability of the Electronic Returned Check to the Returnee Member.

Comment: Under the Code, a Paying Bank is required to return an item by sending the item to a Returnee Member by the Paying Bank’s so-called midnight deadline (i.e., by midnight of the Paying Bank’s Banking Day following the Banking Day on which the item was presented to the Paying Bank) (Section 4-301 (1990 and 1978 Official Texts)) or an earlier time as agreed to by the Returning Member and the Returnee Member. A Returning Member other than the Paying Bank must exercise ordinary care in returning an item to the Returning Member’s transferor after learning that the item is being returned. The Returning Member meets this “ordinary care” responsibility by returning the item before its midnight deadline (i.e., by midnight of the Returning Member’s Banking Day following the Banking Day on which it received the returned item). A return after this midnight deadline also may meet the “ordinary care” standard, but the Returning Member has the burden of establishing that it does so. (Section 4-202 (1990 and 1978 Official Texts).

Paying Bank must return the Originally Received Item in an expeditious manner as required under the Regulation CC. The Returning Member and the Returnee Member could agree to an earlier return time for return in their bilateral agreement (please see Section XX(C) and related Commentary) or by their participation in a check electronification program whose rules require such an earlier return.

The Paying Bank satisfies its Code midnight deadline return requirement by transmitting or otherwise providing or making available an Electronic Returned Check to the Returnee Member by midnight of the Paying Bank’s Banking Day following the day on which the Originally Received Item was presented to the Paying Bank. (The rules applicable to the forward collection and presentment of the Originally Received Item, and not Section XX, would govern the time at which presentment of the Originally Received Item to the Paying Bank occurs). A Returning Member other than the Paying Bank satisfies its Code “ordinary care” responsibilities with respect to the return of the Originally Received Item by transmitting or otherwise providing an Electronic Returned Check to the Returnee Member by midnight of the Returning Member’s Banking Day following the day on which it received the return of the Originally Received Item. A Returning Member (regardless of whether it is the Paying Bank) must also satisfy its Regulation CC expeditious return requirement.

Under the Code, the Returning Member is not restricted as to the reasons it returns an item. Accordingly, the Returning Member can provide an Electronic Returned Check for any reason, provided it satisfies the requirements of this Section XX. For example, the Returning Member can transmit or otherwise provide or make available an Electronic Returned Check because the quality of the Electronic Check is not satisfactory to the Returning Member, regardless of whether the Electronic Check satisfies the image quality test of the Sending Bank that sent the Electronic Check in the first place.

Similarly, receipt of an Electronic Returned Check by the Returnee Member is not conditioned on whether the Image associated with the Electronic Returned Check satisfies any applicable industry standards for image quality. Receipt of the Electronic Returned Check as provided in Section XX(F) constitutes return of the item, even if the Image associated with the Electronic Returned Check does not satisfy any applicable industry standards for image quality.

The Official Staff Commentary to Section 229.31(c) of Regulation CC states that a separate notice of non-payment does not have to be sent if the check will be returned to the Depositary Bank within the time period for sending the Regulation CC required notice of nonpayment. The return of the check is itself the notice. See Regulation CC Commentary 229.31(c)-1(d). This same rationale applies equally in the context of an exchange and return of Electronic Returned Checks. If the Electronic Returned Check will arrive at the Depositary Bank within the same time period that a notice of nonpayment is required to be provided under Regulation CC, a separate notice does not have to be provided. The Electronic Returned Check serves as the notice. In determining whether the Electronic Returned Check will satisfy the notice requirement, the
XX(F). COMMENTARY (continued)

Returning Member may rely on the availability schedules of Returnee Bank and other returning banks as the time that the Electronic Returned Check is expected to be delivered to the Depositary Bank, unless the Returning Member has reason to know the availability schedules are inaccurate.

Rule: The Returning Member can transmit or otherwise provide or make available the Electronic Returned Check to the Returnee Member directly. Alternatively, if agreed by the Returning Member and the Returnee Member, the Electronic Returned Check can be transmitted or otherwise provided or made available to the Returnee Member either by another entity or through a Clearing House facility or an Exchange Provider.

Comment: Reference is made to transmission or provision or making available of an Electronic Returned Check by an entity other than the Returning Member to allow for the possibility that a Returning Member may arrange for the Electronic Returned Check to be transmitted or provided to the Returnee Member by another member or nonmember entity. This alternative is available only with the agreement of the Returnee Member. As provided in Section IV(A), the Returning Member remains responsible for the warranties provided under Section XX(J) and the other Returning Member obligations provided for in Section XX, even if the Electronic Returned Check is transmitted or provided or made available by another entity (please see Section IV(A) and related Commentary). Reference is made to a Clearing House and an Exchange Provider to allow for the possibility that the Returning Member and Returnee Member will agree to use a switch to transmit or otherwise provide Electronic Returned Checks.

Rule: The Returnee Member designates the location(s) to which Electronic Returned Checks must be transmitted or otherwise provided or made available.

Comment: Section XX(F)(2) permits the Returnee Member discretion to determine where Electronic Returned Checks are to be transmitted or otherwise provided or made available. The Returnee Member, for example, can designate that Electronic Returned Checks are to be transmitted or otherwise provided or made available to a specific location where they subsequently will be “picked up” by the Returnee Member, or that they be transmitted or otherwise provided to the Returnee Member’s shop. Section XX(F)(2) also permits a Returnee Member to designate more than one location for receipt of Electronic Returned Checks, or to designate one location for one type of Electronic Returned Checks (e.g., Electronic Returned Checks for which the Returnee Member is not the Depositary Bank), and one or more other locations for other types of Electronic Returned Checks (e.g., Electronic Returned Checks for which the Returnee Member is the Depositary Bank). Different locations can be designated for Electronic Returned Checks transmitted or otherwise provided or made available at different times of the day. Section XX(F) does not provide “backstop” rules in the event the Returnee Member does not designate a location for receipt of Electronic Returned Checks. The Returnee Member is not deemed to have received an Electronic Returned Check transmitted to it until the transmission containing the Electronic Returned Check is received or available at its designated location. In addition to physical locations, a Returnee Member could designate a network address, IP address or other technical address as the location for the delivery of electronic files of Electronic Returned Checks.

In certain cases, a Returnee Member and a Returning Member may have previously entered into an exchange agreement or a business practices agreement that expressly sets forth return instructions for Electronic Checks exchanged by these Members. In the event that a Returnee Member provides inaccurate or incomplete return instructions to the Returning Member in connection with their agreement relating to returns, the Returnee Member may be liable to the Returning Member for losses the Returning Member incurs for relying on such inaccurate or incomplete return instructions.

Rule: Electronic Returned Checks are to be delivered in the manner agreed to by the Returning Member and the Returnee Member.

Comment: If the Returning Member and the Returnee Member have agreed to the electronic transmission of Electronic Returned Checks, then the Returning Member must electronically transmit the Electronic Returned Checks to the Returnee Member. If the Returning Member and the Returnee Member have agreed that the Electronic Returned Checks will be available to the Returnee Member at an Archive, then the Returning Member must arrange for the Electronic Returned Checks to be available from that Archive to the Returnee Member.
XX(F). COMMENTARY (continued)

Rule: An Electronic Returned Check is received by the Returnee Member when it is received or made available at a location designated by it. If the Electronic Returned Check is received or made available on a day that is not a Banking Day for the Returnee Member or after a deadline for receipt of Electronic Returned Checks designated by the Returnee Member, the Electronic Returned Check is considered to have been received or made available by the Returnee Member at the opening of its next Banking Day. Except as otherwise provided in Section XX(F), the Returnee Member has no responsibility for the transmission of the Electronic Returned Check.

Comment: The Electronic Returned Check is deemed received by the Returnee Member only when it is received or made available at a designated location. Except as otherwise provided in Section XX(F), the Returning Member is responsible for the transmission or other transport or availability of the Electronic Returned Check to the Returnee Member. The entire transmission must be received at the Returnee Member’s designated location before any part of that transmission is deemed to be received by the Returnee Member. Accordingly, if only a portion of the transmission containing an Electronic Returned Check is received at that location because, for example, of a failure during the transmission, the transmission is not deemed to have been received with respect to any of the Electronic Returned Checks contained in the transmission (including any Electronic Returned Check contained in that portion of the transmission that was received).

The time at which the Returning Member sends an Electronic Returned Check (which is important for purposes of its Code midnight deadline) will not necessarily be the time at which the Returnee Member is considered to have received the Electronic Returned Check (which as discussed in the Commentary to Section XX(F)(3) is important for the Returning Member’s return obligations). This is analogous to a paper return, which is received by the Returnee Member subsequent to the time at which it is sent by the Returning Member.

Rule: A Returnee Member that designates that Electronic Returned Checks are to be transmitted, provided or made available to it is responsible for managing its electronic connection so as to permit the Returning Member to transmit, provide or make available the Electronic Returned Checks to the Returnee Member in a timely manner.

Comment: While generally the Returning Member is responsible for the transmission or providing or making available of Electronic Returned Checks to the Returnee Member, the Returnee Member must manage its electronic connection so as to permit the Returning Member to complete this transmission or providing or making available of the Electronic Returned Check within the timeframes specified in Section XX. For example, if the Returning Member and Returnee Member have agreed to the transmission of Electronic Returned Checks to the Returnee Member via email to a specified email address of the Returnee Member, the Returnee Member would breach Section XX(F) if it failed to pay its internet service provider and the internet service provider cancelled the Returnee Member’s specified email address. Similarly, in the event the Returnee Member and the Returnee Member have agreed to make available the Electronic Returned Check to the Returnee Member at an Archive, the Returnee Member would breach Section XX(F) if it failed to maintain its connection to the Archive. In the event the Returnee Member fails to manage its electronic connection as required in Section XX(F), the Returning Member and the Returnee Member could agree to another method to effect the return, and/or the Returning Member also could recover any resultant damage, expense or loss from the Returnee Member pursuant to the warranty provisions of Section XX(K) (see Section XX(K) and related Commentary).

Rule: In the event that a Returnee Member’s electronic connection is not available for receipt or retrieval of Electronic Returned Checks, the Returning Member shall act reasonably in seeking to return the Electronic Returned Check, upon being notified by the Returnee Member or otherwise learning of the unavailability of the Returnee Member’s electronic connection, which may include transmitting or otherwise providing the Electronic Returned Checks to the Returnee Member in another manner as agreed to by the Returnee Member, or returning the Related Physical Checks (if available) to the Returnee Member for collection outside of the Rules.

Comment: A Returning Member may be unable to deliver an Electronic Returned Check to a Returnee Member because the Returnee Member’s electronic connection is unavailable for one reason or another.
In such a case, upon learning of the unavailability of the Returnee Member’s electronic connection, the Returning Member shall act reasonably in determining how to return the Electronic Returned Checks or the Related Physical Items. In determining reasonable actions in a particular situation, the Returning Member should only incur collection costs (such as additional staff time, special couriers, production of substitute checks) that are reasonable in light of the particular situation. For example, if the Returning Member determines based on information from the Returnee Member that the electronic connection will be restored within the same day, it may not be reasonable for the Returning Member to incur costs associated with converting the Electronic Returned Checks to substitute checks and returning the returned substitute checks through a paper check return process. Alternatively, based on the number and dollar amount of the Electronic Returned Checks it is seeking to return, and the uncertainty regarding the restoration of the Returnee Member’s electronic connection, the Returning Member may determine that it is reasonable to incur additional costs to return the Electronic Returned Checks or the Related Physical Checks (including substitute checks). The Returning Member makes the determination of reasonable actions based on the facts and circumstances known to it at the time it learns that the Returnee Member’s electronic connection is unavailable. If a Returning Member does not act reasonably, the Returning Member may not be able to recover all or a portion of the costs that it incurs for the alternative return method for the Electronic Returned Checks.

**Rule:** An Electronic Returned Check is not received by a Returnee Member if the Returnee Member cannot, as a technological or computer systems matter, process the electronic file containing the Electronic Returned Check after such file is transmitted to, or made available to, the Returnee Member.

**Comment:** A Returnee Member does not receive an Electronic Returned Check if the Returnee Member cannot process (including processing for posting or for sending on to another bank) the electronic file that contains the Electronic Returned Check. For example, if a Returnee Member receives an electronic file of Electronic Returned Checks, and the Returnee Member cannot open the file or otherwise process the file through its check collection/return and image systems, the Returnee Member has not received the Electronic Returned Checks contained in that file for purposes of this Rule. Examples of an unprocessable file may include, among other types, (i) a file that is corrupted, (ii) a file that is not in necessary formats required by the exchange network, (iii) a file that contains unidentifiable records or fields, (iv) a file containing improper formatting, and (v) information in a file that will not parse. The electronic file has to be unprocessable in the form that it was received from the Returning Member. A file would be unprocessable if the applicable editing criteria causes the Returnee Member’s check processing system to reject the complete file. In contrast, a file is considered processable under this Rule if the file fails an edit at the individual record level, and the individual record can be rejected without rejecting the larger complete file.

A file that is processable upon receipt but subsequently develops a problem at the Returnee Member which causes the file to be unprocessable, is still considered received by the Returnee Member. A Returnee Member that is unable to process a file or is delayed in processing a file because of problems with its system may be viewed as failing to exercise ordinary care in the handling of items. To the extent that a failure to process a file or delay in the processing of the file by the Returnee Member causes a loss to other banks in the check collection process, the Returning Member may seek to bring a claim against the Returnee Member for losses incurred by the Returning Member due to the delays caused by the Returnee Member.

**Rule:** If a Returnee Member cannot process the electronic file containing the Electronic Returned Check, the Returnee Member shall send a notification of the failure to process to the Returning Member within one Business Day of the Banking Day on which the Returnee Member receives the electronic file containing the Electronic Returned Check.

**Comment:** Banks may set forth the operational details for this notice of non-processable files in their exchange agreements as required by Section XX(C) or in other network access agreements. Failure to send this notification would constitute a violation of the ECCHO Rules and would result in a breach of the Returnee Member’s warranty under Section XX(K) to comply with applicable requirements of the ECCHO Rules. To the extent that a Returning Member incurs a loss that is the result of the Returnee Member’s warranty breach, the Returnee Member would be liable to the Returning Member under the indemnification set forth in Section XX(K).
Comment: There is no separate commentary for Sections XX(F)(7)(a) and (7)(b). The rules in Section XX(F)(7)(a) and (7)(b) are substantially similar to the rules in Section XIX(G)(4)(a) and (4)(b). Please see the commentary to Sections XIX(G)(4)(a) and (4)(b) for a discussion of issues associated with requesting copies of items in the context of the forward presentment of Electronic Checks.

Rule: If a Returnee Member is the Depositary Bank for a Related Physical Check or an Electronic Check of such Related Physical Check that corresponds to an Electronic Returned Check, the Returnee Member may not reject such Electronic Returned Check or otherwise return the Electronic Returned Check to the Returning Member, unless the Electronic Returned Check incorrectly identifies the Returnee Member as the Depositary Bank. If the Returnee Member has a warranty or other claim under the ECCHO Rules or applicable law relating to the Electronic Returned Check, the Returnee Member shall pursue that warranty or other claim either through an applicable adjustment process to the Returning Member or another Member, or through any other means provided under applicable law. Nothing in this paragraph shall limit the rights or claims of the Returnee Member under applicable law.

Comment: This Section XX(F)(8) is intended to prevent returned items from “looping” in the image return systems. If Depositary Bank “rejects” an Electronic Returned Check of an item that the Bank originally sent for forward exchange, or the Depositary Bank sends the Electronic Returned Check back to the Returning Member, the Returning Member may not understand the reason for the rejection of the item and may possibly treat the rejected item as a forward Electronic Check item or simply return the Electronic Returned Check again. By requiring the Depositary Bank to handle the problem or claim with an Electronic Returned Check through the adjustment process to the Returning Member, the item will be out of the return/forward exchange processes, and therefore it is more likely that the Returning Member will recognize the Depositary Bank’s underlying claim/issue with respect to the item.
OPERATING RULES

XX. ELECTRONIC RETURNED CHECKS (CONTINUED)

G. Reserved. This Section Has Been Reserved for Future Use In the Operating Rules Document.
OPERATING RULES

XX. ELECTRONIC RETURNED CHECKS (CONTINUED)

H. Reserved. This Section Has Been Reserved for Future Use In the Operating Rules Document.
OPERATING RULES

XX. ELECTRONIC RETURNED CHECKS (CONTINUED)

I. Resending of an Item. A Returnee Member that is the Depositary Bank that has received an Electronic Returned Check may re-present or resend to the Paying Bank:

(1) the Related Physical Check,

(2) an Electronic Check or

(3) any other form or manner of the Related Physical Check outside of these Rules,

no more than two times after the return of the Electronic Returned Check. Any other re-presentment or resending of the Originally Received Item or the Related Physical Check, an Electronic Check of such Related Physical Check or any other form or manner outside these Rules as either a check or an electronic funds transfer, is prohibited.

For purposes of this Section XX(I), any other form or manner of a Related Physical Check includes: any substitute check, electronic image or record of the Related Physical Check, an Electronic Check, an ACH entry derived from the Related Physical Check or a photocopy in lieu of the Related Physical Check.
Rule: A Returnee Member that is the Depositary Bank that has received an Electronic Returned Check may re-present or resend to the Paying Bank the Related Physical Check, an Electronic Check or any other form or manner of the Related Physical Check outside of these Rules, no more than two times after the return of the Electronic Returned Check.

Comment: The re-presentment or resending itself will be governed by the rules applicable to the forward collection and presentment of the re-presented item, and any agreement between the banks as to re-presentation or resending upon the Depositary Bank’s receipt of the Electronic Returned Check.

The Returnee Member is not required to re-present the item. Upon receipt of a return of an Electronic Returned Check as provided in Section XX(F), the Returnee Member may determine not to re-present the item at all, or to re-present the Related Physical Check outside of the Rules. However, the Returnee Member may not re-present or resend the Related Physical Check or an Electronic Check derived from the Related Physical Check to the Paying Bank more than two times, regardless of the manner of the re-presentments (such as through a Federal Reserve Bank, other check clearing houses, or ACH check conversion).

Multiple re-presentments may be appropriate in an image exchange to address technical issues with image files. For example, a Returnee Member may re-present an item that was initially returned on the basis of an “administrative return” reason, such as a problem with the quality of the Electronic Check or other technical issue with the Electronic Check, and was returned a second time for another return reason (e.g. NSF).

To preserve the indorsements and return reasons, the Returnee Member (acting as the Sending Bank) would have to re-send either (i) the Electronic Check that was returned to it as defined by applicable industry standards or (ii) a substitute check created from such returned Electronic Check. Note that the definition of “Related Physical Check” can include a substitute check. (See definition in Section I(WW).) A Returnee Member also should consider whether or not there are any requirements under applicable law to retain electronic indorsements and return reason codes, or if the Returnee Member may need such information for subsequent claims or dispute resolution.

Rule: For purposes of this Section XX(I), any other form or manner of a Related Physical Check includes: any substitute check, electronic image or record of the Related Physical Check, an Electronic Check, an ACH entry derived from the Related Physical Check or a photocopy in lieu of the Related Physical Check.

Comment: This Rule clarifies that it does not matter what format or manner the subsequent presentments or clearings of an item may take after the initial return of an Electronic Returned Check. The limitation on the total number of presentments or clearings under this Rule applies to all forms of the item.
XX. ELECTRONIC RETURNED CHECKS (CONTINUED)

J. Returning Member Warranties and Indemnification. In addition to the warranties otherwise provided in the Code, Regulation CC, the Rules or other law, each Returning Member warrants to each Returnee Member with respect to each Electronic Returned Check transmitted or provided by the Returning Member to the Returnee Member that the Returning Member has complied with each of the requirements of this Section XX applicable to it.

If the Returning Member breaches its warranty set forth in this Section XX(J), it shall indemnify the Returnee Member and hold it harmless from and against any damage, expense or loss, including attorneys' fees, suffered as a result of the breach. If the Returning Member's breach of warranty results in whole or in part from the Returnee Member's failure to exercise ordinary care or act in good faith, the Returning Member's indemnification liability shall be reduced in proportion to the amount of negligence or bad faith attributable to the Returnee Member.
XX(J). COMMENTARY

Rule: Each Returning Member makes the warranty set forth in Section XX(J) to each Returnee Member with respect to each Electronic Returned Check transmitted or provided by the Returning Member to the Returnee Member.

Comment: The warranty provided for in Section XX(J) is in addition to the warranties otherwise made generally by the Returning Member under Regulation CC. Under Regulation CC, a Returning Member that returns an item makes the following warranties to any bank subsequently handling the returned item, as well as to the payee: (1) the Returning Member returned the item within its deadline under the Code and Regulation CC; (2) the Returning Member is authorized to return the item; (3) the item has not been materially altered; (4) any information accompanying returned items accurately indicates the total amount of the items returned; and (5) information, if any, encoded after issuance in magnetic ink on the returned item is correct (Regulation CC, Section 229.34(c) and 229.34(d)). Where a notice of nonpayment is given, the Returning Member additionally warrants to the other banks and the payee that: (6) the Returning Member returned or will return the item within its deadline under the Code and Regulation CC; (7) the Returning Member is authorized to send the notice; and (8) the item has not been materially altered (Regulation CC, Section 229.34(e)). 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(h)). The recovery of the party to whom these warranties run may be reduced by that party’s comparative negligence (Regulation CC, Section 229.38(c)).

In addition to this ECCHO Rules warranty in Section XX(J), under Regulation CC a Returning Member that returns an Electronic Returned Check warrants to the Returnee Member that (i) the electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated, (ii) the electronic information includes an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check, and (iii) no person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. (Regulation CC, Section 229.34(a)). Please see additional discussion in the commentary to Section XIX(L) regarding the Regulation CC warranties.

Section XX(J), along with Section XX(K), constitute the enforcement mechanism for Section XX. Under Section XX(J), the Returning Member warrants that it has complied with the requirements of Section XX applicable to Returning Members. ECCHO determined it to be particularly important that each Returning Member fully comply with its Section XX responsibilities, and this warranty is designed to appropriately incent the Returning Member to do so (please see Section XX(K) for a related Returnee Member warranty).

Rule: A Returning Member that breaches the warranty provided for in Section XX(J) is required to indemnify the Returnee Member against any damage, expense or loss, including attorneys’ fees, suffered as a result of the breach. The Returnee Member’s recovery may be reduced by its comparative negligence.

Comment: Section XX(J) provides a broad measure of damages for breach of the warranty provided for in Section XX(J). This indemnification covers any type of damage, expense or loss suffered by the Returnee Member as a result of the Returning Member’s breach of warranty, including but not limited to direct, special, consequential and penalty damages. ECCHO determined this broad measure of damages appropriate to incent the Returning Member to comply with the requirements of Section XX that are applicable to it (please see Section XX(K) and related Commentary for the comparable Returnee Member indemnification). As with Regulation CC, the Returnee Member’s recovery may be reduced by its comparative negligence. If for example a court determined that the Returning Member’s breach of its Section XX(J) warranty was 75% due to the Returnee Member’s negligent action, the Returnee Member’s recovery from the Returning Member under Section XX(J) would correspondingly be reduced by 75%. Absent this comparative negligence, the Returnee Member has no duty to mitigate damages.

This indemnification relates only to the warranty provided in Section XX(J). That is, this indemnification would not apply in the event of a breach of a warranty otherwise made by the Returning Member under Regulation CC.
XX(J). COMMENTARY (continued)

The consequences of a breach of such a warranty would be as provided in Regulation CC.
OPERATING RULES

XX.  ELECTRONIC RETURNED CHECKS (CONTINUED)

K.  Returnee Member Warranties and Indemnification.  In addition to the warranties otherwise provided in the Code, Regulation CC, the Rules or other law, each Returnee Member warrants to the Returning Member with respect to each Electronic Returned Check received by the Returnee Member from the Returning Member that the Returnee Member has complied with each of the requirements of this Section XX applicable to it.

If the Returnee Member breaches its warranty set forth in this Section XX(K), it shall indemnify the Returning Member and hold it harmless from and against any damage, expense or loss, including attorneys' fees, suffered as a result of the breach.  If the Returnee Member’s breach of warranty results in whole or in part from the Returning Member’s failure to exercise ordinary care or act in good faith, the Returnee Member’s indemnification liability shall be reduced in proportion to the amount of negligence or bad faith attributable to the Returning Member.
XX(K). COMMENTARY

**Rule:** Each Returnee Member makes the warranties set forth in Section XX(K) with respect to each Electronic Returned Check it receives from the Returning Member pursuant to Section XX.

**Comment:** The warranty provided for in Section XX(K) is in addition to the warranties otherwise made generally by a Returnee Member under the Code and Regulation CC.

Section XX(K), along with Section XX(J), in essence, constitute the enforcement mechanism for Section XX. Under Section XX(K), the Returnee Member warrants that it has complied with the requirements of Section XX applicable to Returnee Members. ECCHO determined it to be particularly important that each bank fully comply with its Section XX responsibilities, and this warranty is designed to appropriately incent the Returnee Member to do so (please see Section XX(J) for a related Returning Member warranty). A Returnee Member only makes this warranty with respect to those Electronic Returned Checks that the Returnee Member has previously agreed with the Returning Member to accept under Section XX(C). (See Section XX(C)(2) and related Commentary regarding agreement of Returnee Bank to receive Electronic Returned Checks.)

**Rule:** A Returnee Member that breaches the warranty provided for in Section XX(K) is required to indemnify the Returning Member against any damage, expense or loss, including attorneys’ fees, suffered as a result of the breach. The Returning Member’s recovery may be reduced by its comparative negligence.

**Comment:** Section XX(K) provides a broad measure of damages for breach of the warranty provided for in Section XX(K). This indemnification covers any type of damage, expense or loss suffered by the Returning Member as a result of the Returnee Member’s breach of warranty, including but not limited to direct, special, consequential and penalty damages. For example, if the Returning Member incurs consequential damages to its customer due to a wrongful dishonor resulting from a breach of a Returnee Member warranty (e.g., under UCC Section 4-402 (1990 and 1978 Official Text)), the Returnee Member under Section XX(K) will be liable to the Returning Member for such damages.

ECCHO determined this broad measure of damages appropriate to incent the Returnee Member to comply with the requirements of Section XX that are applicable to it (please see Section XX(J) and related Commentary for the comparable Returning Member indemnification). As with the Code and Regulation CC, the Returning Member’s recovery may be reduced by its comparative negligence. If for example a court determined that the Returnee Member’s re-presentment or resending of the Originally Received Item in violation of Section XX(I) was 50% due to the Returning Member’s negligent instructions to the Returnee Member, the Returning Member’s recovery from the Returnee Member under Section XX(K) would correspondingly be reduced by 50%. Absent this comparative negligence, the Returning Member has no duty to mitigate damages.

This indemnification relates only to the warranty additionally provided in Section XX(K). That is, this indemnification would not apply in the event of a breach of a warranty otherwise made by the Returnee Member under the Code, Regulation CC or another Section of the Rules. The consequences of a breach of such a warranty would be as provided in the Code, Regulation CC, or the other Section of the Rules, respectively.
XX. ELECTRONIC RETURNED CHECKS (CONTINUED)

L. Recourse To Returning Member.

(1) In the event that the Related Physical Check was sent to the Returning Member and the Returning Member subsequently returns an Electronic Returned Check to the Returnee Member, and that Electronic Returned Check is subsequently converted by Returnee Member or another Reconverting Bank into a substitute check and the Returnee Member incurs liability under the Check 21 Act or the provisions of Subpart D of Regulation CC as a result of an act or omission of such Returning Member, the Returnee Member shall have recourse to Returning Member to the extent the Returnee Member’s liability under the Check 21 Act or the provisions of Subpart D of Regulation CC resulted from such act or omission of such Returning Member.

(2) Expedited Recredit Claim By Returnee Member
(a) A Returnee Member that has a claim under Section XX(L)(1) may make an expedited recredit claim under this Section XX(L)(2). The provisions of paragraphs (a), (b), (c) and (e) of Section 229.55 of Regulation CC are incorporated into this Section XX(L)(2) and shall govern the process for making such expedited recredit claim. For the limited purpose of this Section XX(L)(2), the Returnee Member shall be deemed to be a “claimant bank” and the bank against which the claim is asserted shall be deemed the “indemnifying bank” as such terms are used in Section 229.55 of Regulation CC.

(b) Providing an expedited recredit to a Returnee Member under this Section XX(L)(2) does not absolve the bank against which the claim is asserted from liability for claims brought under any other law or from additional damages under Section XX(L)(1).

(3) If the liability of the Returning Member described in Section XX(L)(1) results in whole or in part from the negligence or failure to act in good faith on the part of the Returnee Member or another Reconverting Bank, then the liability of the Returning Member to which the Returnee Member has recourse under this Section XX(L) shall be reduced in proportion to the amount of negligence or bad faith attributable to the Returnee Member or other Reconverting Bank.
XX(L).  COMMENTARY

**Rule:** In the event an Electronic Returned Check sent by a Returning Member is subsequently converted by Returnee Member or another Reconverting Bank into a substitute check under the Check 21 Act and Subpart D of Regulation CC and the Returnee Member incurs liability under such Act and Regulation as a result of an act or omission of the Returning Member, then the Returnee Member has recourse to the Returning Member to the extent the Returnee Member’s liability resulted from the act or omission of the Returning Member.

**Comment:** This Section allows the Returnee Member to pass back liability it incurs under the Check 21 Act and Sections 229.53 and 229.56 of Regulation CC where such liability resulted from an act or omission of the Returning Member that returned an Electronic Returned Check under these Rules.

**Rule:** A Returnee Member that has a claim under Section XX(L)(1) may make an expedited recredit claim under this Section XX(L)(2). The Returnee Member shall make the claim in the same manner and subject to the same rules as a claimant bank makes an expedited recredit claim under the Check 21 Act and Subpart D of Regulation CC. In the event the Returnee Member receives a recredit, the bank against which the claim was asserted is not absolved from liability for claims brought under any other law or from additional damages under Section XX(L)(1).

**Comment:** In the event a Returnee Member incurs liability to a claimant bank under the Check 21 Act expedited recredit process, this Rule provides a parallel process for that Returnee Member to seek expedited recredit from a bank that provided the Returnee Member with the Electronic Returned Check that was used to create the substitute check. The Rule incorporates by reference the expedited recredit process set forth in Subpart D of Regulation CC that is used by claimant banks and indemnifying banks, and extends that process to the Returnee Member and banks against which that Returnee Member has a claim under Section XX(L)(1).

**Rule:** If the liability of the Reconverting Bank described in Section XX(L)(1) results in whole or in part from the negligence or failure to act in good faith on the part of the Returnee Member, then the liability of the Returning Member to which the Returnee Member has recourse under this Section XX(L) is reduced in proportion to the amount of negligence or bad faith attributable to the Returnee Member.

**Comment:** This provision is intended to allocate liability in a fashion similar to the comparative negligence provisions of Regulation CC Section 229.38(c).
The explanations of adjustment reasons serve as an informational guide to assist adjustment processing. These explanations do not represent a complete summary of all legal rights or claims that may arise under applicable law or the ECCHO Rules and for which a Member may seek an adjustment under the ECCHO Rules.

- The receiving Member may either reject the request for settlement for an Adjustment Claim or initiate a second timely Adjustment Claim to reverse the settlement on the first Adjustment Claim in the following circumstances:
  a) The sending Member did not comply with Section XII or the requirements of the Adjustment Matrix,
  b) The adjustment claim does not relate to an item handled by the receiving Member,
  c) The Adjustment claim was a duplicate,
  d) The receiving Member had itself previously initiated an adjustment claim relating to the same matter, or
  e) The receiving Member has reasonable basis for concluding that the sending Member has not established the factual basis for the claim, except in situations when the adjustment claim relates to an RCC warranty.

### EXHIBIT I – ADJUSTMENT MATRIX

See ECCHO Adjustments Rules, in Section XII of the ECCHO Rules for the complete provisions for handling Adjustments. Provisions for rejection of adjustment claims are listed in Section XII(E) as follows:

<table>
<thead>
<tr>
<th>Adjustment Reason</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjustment Reversal Note: Can only be used when Party Making Claim has reference number for adjustment to reverse.</td>
<td>90 C</td>
<td>None</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Copy of Item Previous reference # Previous date charged</td>
<td>No</td>
</tr>
<tr>
<td>Adjustment Reversal Note: Can only be used when Party Making Claim has reference number for adjustment to reverse.</td>
<td>91 C – 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Copy of Item Previous reference # Previous date charged</td>
<td>No</td>
</tr>
</tbody>
</table>

**Explanation:** Adjustment of an item that was incorrectly adjusted. Reversal must be for a valid reason.

<table>
<thead>
<tr>
<th>Amount Error – Legal amount</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Encoding Error</td>
<td>180 C</td>
<td>Federal Reserve minimum</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code Line Sequence # Item Date Amt Difference</td>
<td>No</td>
</tr>
<tr>
<td>- Misread</td>
<td>181 C - 1 year</td>
<td>Federal Reserve minimum</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code Line Sequence # Item Date Amt Difference</td>
<td>No</td>
</tr>
</tbody>
</table>

**Explanation:** An item was encoded for an amount different than the legal (written) amount or the written amount differs from the stated amount in the ANSI X9.100-187 image cash/return letter. Only applies to amount encoding errors.

The explanations of adjustment reasons serve as an informational guide to assist adjustment processing. These explanations do not represent a complete summary of all legal rights or claims that may arise under applicable law or the ECCHO Rules and for which a Member may seek an adjustment under the ECCHO Rules.

* For a Group Adjustment Claim, the bank making the Group Adjustment Claim may, at its option, provide the range of sequence numbers (first and last sequence number) of the items subject to the Group Adjustment Claim. All items in the range of sequence numbers must be subject to the Group Adjustment Claim. If the bank is using an Adjustment Provider, the Adjustment Provider must allow for this option.

** Sample optional letters and forms can be found on [www.eccho.org](http://www.eccho.org).
The explanations of adjustment reasons serve as an informational guide to assist adjustment processing. These explanations do not represent a complete summary of all legal rights or claims that may arise under applicable law or the ECCHO Rules and for which a Member may seek an adjustment under the ECCHO Rules.

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** Sample optional letters and forms can be found on [www.eccho.org](http://www.eccho.org).

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### EXHIBIT I – ADJUSTMENT MATRIX

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<thead>
<tr>
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<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim of Damage due to Under-encoding **</td>
<td>20 B</td>
<td>Federal Reserve minimum</td>
<td>W Entry</td>
<td>Cr</td>
<td>Receiving Party</td>
<td>Sending Party or by Agreement</td>
<td>Information from encoding error, MICR Code line, Original Reference #, Item Date, CL date, Entry date</td>
<td>No</td>
</tr>
<tr>
<td>Claim of Damage due to Under-encoding **</td>
<td>21 B – 1 year</td>
<td>Federal Reserve minimum</td>
<td>W/O Entry</td>
<td>Cr</td>
<td>Receiving Party</td>
<td>Sending Party or by Agreement</td>
<td>Information from encoding error, MICR Code line, Original Reference #, Item Date, CL date, Entry date</td>
<td>No</td>
</tr>
</tbody>
</table>

** Explanation: Request for credit for an under-encoded item charged and for which the paying bank is unable to collect the funds.

| Disposition of Item (where the item was sent) Information Adjustment Claim – Receiving Party must respond within 45 calendar days from date of request. See Section XII(E)(5). | 1 year | None | W/O Entry | N/A | Either Party | Either Party | MICR Code line, Sequence #, Item Date, Copy of Item | No |

** Explanation: Request to identify where an item was presented/returned, including the routing number, and the associated cash/return letter information (date, total, bundle and sequence number).

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The explanations of adjustment reasons serve as an informational guide to assist adjustment processing. These explanations do not represent a complete summary of all legal rights or claims that may arise under applicable law or the ECCHO Rules and for which a Member may seek an adjustment under the ECCHO Rules.
**EXHIBIT I – ADJUSTMENT MATRIX**

<table>
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<tr>
<th>Adjustment Reason</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr /Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duplicate Presentment – Item (single or multiple)</td>
<td>180 C</td>
<td>None</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Both items MICR Code Line Sequence # Date of indorsement Cash letter totals Case # (if notified) If originally received from FRB can include only information received from FRB plus FRB reference number or copy of FRB adjustment form or advice.</td>
<td>Yes*</td>
</tr>
<tr>
<td>Duplicate Presentment – Item (single or multiple)</td>
<td>181 C - 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Both items MICR Code Line Sequence # Date of indorsement Cash letter totals Case # (if notified) If originally received from FRB can include only information received from FRB plus FRB reference number or copy of FRB adjustment form or advice.</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

Explanation: An institution received an item which it was asked to pay based on an item that it already had paid. This is for a claim arising under duplicate warranty provision under applicable law and the ECCHO Rules.

<table>
<thead>
<tr>
<th>Adjustment Reason</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr /Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entry in Error Adjusting Errors Settlement</td>
<td>20 B</td>
<td>Federal Reserve minimum</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Previous reference # in error</td>
<td>No</td>
</tr>
<tr>
<td>Entry in Error Adjusting Errors Settlement</td>
<td>21 B - 1 year</td>
<td>Federal Reserve minimum</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Previous reference # in error</td>
<td>No</td>
</tr>
</tbody>
</table>

Explanation: A settlement accounting entry was incorrectly made, either for the wrong amount or to the wrong party.

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* For a Group Adjustment Claim, the bank making the Group Adjustment Claim may, at its option, provide the range of sequence numbers (first and last sequence number) of the items subject to the Group Adjustment Claim. All items in the range of sequence numbers must be subject to the Group Adjustment Claim. If the bank is using an Adjustment Provider, the Adjustment Provider must allow for this option.

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** Sample optional letters and forms can be found on www.eccho.org.

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## EXHIBIT I – ADJUSTMENT MATRIX

<table>
<thead>
<tr>
<th>Adjustment Reason</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mis-matched MICR</td>
<td>90 C</td>
<td>None</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line Sequence # Item Date Copy of Item</td>
<td>Yes*</td>
</tr>
<tr>
<td>Mis-matched MICR</td>
<td>91 C - 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line Sequence # Item Date Copy of Item</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

**Explanation:** Item in which the MICR information associated with the item does not match the MICR information reflected on the image of the item. The traditional example is where the full MICR line of one item has been misaligned with the image of another item rather than a misread of a character or characters on the same item. For an encoding error of amount only use Amount Error adjustment reason.

This reason can be used when the code line in the Check Detail Record (Type 25) does not exactly match the code line on the original check. This reason is used for any encoding errors other than an error in amount.

### Non Conforming Image (NCI)
- **Image Missing**
- **Ineligible item**
- **Invalid RT**

<table>
<thead>
<tr>
<th>Non Conforming Image (NCI)</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Image Missing</td>
<td>20 B</td>
<td>None</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line Sequence # Item Date CL Date Type of NCI</td>
<td>Yes*</td>
</tr>
<tr>
<td>Ineligible item</td>
<td>21 B – 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line Sequence # Item Date CL Date Type of NCI</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

**Explanation:** Item fails to meet image quality standards, image of item is missing, or item contains an invalid or undefined routing number (i.e. routing number not eligible for image exchange) or invalid data for specific file type or the item is ineligible for image clearing.

### Non-negotiable item/Non Cash Item

<table>
<thead>
<tr>
<th>Non-negotiable item/Non Cash Item</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-negotiable item/Non Cash Item</td>
<td>90 C</td>
<td>None</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line Sequence # Item Date</td>
<td>Yes*</td>
</tr>
<tr>
<td>Non-negotiable item/Non Cash Item</td>
<td>91 C - 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line Sequence # Item Date</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

**Explanation:** “Negotiability” is defined in the UCC (see UCC) and “Non-Cash Item” is defined in Reg CC (See Reg CC). Examples of non-cash items include items that enter collection stream in error such as empty carrier, control document, deposit/withdrawal ticket, pay stub or mutilated item, piggy back and item not encoded with magnetic ink.
**EXHIBIT I – ADJUSTMENT MATRIX**

<table>
<thead>
<tr>
<th>Adjustment Reason</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr /Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not our item</td>
<td>20 B</td>
<td>None</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line</td>
<td>Yes*</td>
</tr>
<tr>
<td>Not our item</td>
<td>21 B - 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

**Explanation:** In forward collection process, an item that contains routing transit number that does not belong to the institution that receives item or the institution authorized to process the item.

In return collection process, an item that was not indorsed/handled, either physically or electronically, by the institution that receives the return item.

<table>
<thead>
<tr>
<th>Other</th>
<th>1 year</th>
<th>Federal Reserve minimum</th>
<th>W/O Entry</th>
<th>Dr</th>
<th>Receiving Party</th>
<th>Sending Party</th>
<th>MICR Code line</th>
<th>No</th>
</tr>
</thead>
</table>

**Explanation:** Adjustment reason not specifically identified.

<table>
<thead>
<tr>
<th>Pricing Error Adjustment</th>
<th>N/A**</th>
<th>*Deadline not applicable since ECCHO Member did not receive forward or return item.</th>
<th>Federal Reserve Minimum</th>
<th>W Entry</th>
<th>Dr/Cr</th>
<th>Either Party</th>
<th>Either Party</th>
<th>Same as Federal Reserve</th>
<th>No</th>
</tr>
</thead>
</table>

**Explanation:** Initiated by Federal Reserve at request of Bureau of Fiscal Services (BFS) when it determines bond was redeemed for incorrect amount or was processed for incorrect amount.

<table>
<thead>
<tr>
<th>Request for Information</th>
<th>1 year</th>
<th>Federal Reserve minimum</th>
<th>W/O Entry</th>
<th>Dr</th>
<th>Receiving Party</th>
<th>Sending Party</th>
<th>MICR Code line</th>
<th>No</th>
</tr>
</thead>
</table>

**Explanation:** Request for information regarding a forward, return or adjustment item.

<table>
<thead>
<tr>
<th>Request for Original or Sufficient Copy</th>
<th>1 year</th>
<th>None</th>
<th>W/O Entry</th>
<th>Dr</th>
<th>Receiving Party</th>
<th>Sending Party</th>
<th>MICR Code line</th>
<th>No</th>
</tr>
</thead>
</table>

**Explanation:** Request for information to assist in determining whether a Check 21 claim is valid.

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**EXHIBIT I – ADJUSTMENT MATRIX**

<table>
<thead>
<tr>
<th>Adjustment Reason</th>
<th>Deadline (Ranges)</th>
<th>Min $</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Return Adjustment</td>
<td>60 C</td>
<td>None</td>
<td>W Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Reason for use Item sequence number</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Date of Deposit</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Copy of item that includes (RT, Acct #, Amount, Check #)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Return Adjustment</td>
<td>61 C – 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Reason for use Item sequence number</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Date of Deposit</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Copy of item that includes (RT, Acct #, Amount, Check #)</td>
<td></td>
</tr>
<tr>
<td>Explanation: Institution seeks to adjust a return item that was incorrectly returned.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rule 8 &amp; 9 Claim</td>
<td>Follow Rules in Section XIX(N) &amp; (O)</td>
<td>None</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Explanation: Adjustment of a warranty claim arising under either Rule 8 or Rule 9. See ECCHO Rules Section XIX(N) &amp; (O) for explanation.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rule 8 &amp; 9 - Disclaim Warranty</td>
<td>Follow Rules in Section XIX(N) &amp; (O)</td>
<td>None</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Explanation: Disclaimer of a warranty claim arising under either Rule 8 or Rule 9 See ECCHO Rules Section XIX(N) &amp; (O) for explanation.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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<th>Deadline (Ranges)</th>
<th>Min$</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Source of Receipt Item Information Adjustment Claim</strong></td>
<td>1 year</td>
<td>N/A</td>
<td>W/O Entry</td>
<td>N/A</td>
<td>Either Party</td>
<td>Either Party</td>
<td>MICR Code line Sequence # Item Date Copy of Item</td>
<td>No</td>
</tr>
<tr>
<td>A request to identify from whom an institution received an item—Receiving Party must respond within 20 business days from date of request. See Section XII(E)(5).</td>
<td>1 year</td>
<td>N/A</td>
<td>W/O Entry</td>
<td>N/A</td>
<td>Paper Depositary Bank</td>
<td>Paying Bank</td>
<td>Provide information requested within or complete &amp; attach Sample Source of Item Identification Form</td>
<td>No</td>
</tr>
<tr>
<td>A request from Depositary Bank that accepted the original check (&quot;Paper Depositary Bank&quot;) to Paying Bank to identify the bank that was paid for an item in a duplicate scenario—Paying Bank must respond within 20 business days from date of request. See Section XII(E)(5).</td>
<td>1 year</td>
<td>N/A</td>
<td>W/O Entry</td>
<td>N/A</td>
<td>Paper Depositary Bank</td>
<td>Paying Bank</td>
<td>Provide information requested within or complete &amp; attach Sample Source of Item Identification Form</td>
<td>No</td>
</tr>
</tbody>
</table>

**Explanation:** Information adjustment that can be used for: 1) a request to identify from whom an institution received an item, including the routing number, and the associated cash/return letter information (date, total, bundle and sequence number); or 2) a request from Paper Depositary Bank to Paying Bank to identify which depositary bank was paid for an item in a duplicate scenario (for use in potential RDC indemnity claim).

<table>
<thead>
<tr>
<th>Unauthorized RCC Warranty Claim</th>
<th>90 C</th>
<th>None</th>
<th>W Entry</th>
<th>Dr</th>
<th>Receiving Party</th>
<th>Sending Party</th>
<th>MICR Code line Sequence # Item Date Copy of Item</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unauthorized RCC Warranty Claim</td>
<td>91 C - 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Dr</td>
<td>Receiving Party</td>
<td>Sending Party</td>
<td>MICR Code line Sequence # Item Date Copy of Item Copy of Affidavit (see sample in Exhibit VIII)</td>
<td>No</td>
</tr>
</tbody>
</table>

**Explanation:** Adjustment of remotely created check (RCC) warranty claim arising from an RCC that was not authorized by the Paying Bank’s customer in the amount or to the payee stated on the RCC. Claims for Unauthorized RCCs can be made as an adjustment using this adjustment reason or as a Rule 8 claim using the return mechanism (See ECCHO Rules Section XIX(N)).

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**EXHIBIT I – ADJUSTMENT MATRIX**

<table>
<thead>
<tr>
<th>Adjustment Reason</th>
<th>Deadline (Ranges)</th>
<th>Min$</th>
<th>With/Without Entry</th>
<th>Dr/Cr</th>
<th>Party who can Make Adj</th>
<th>Party to whom Adj Can be made</th>
<th>Information Needed</th>
<th>Group Adjust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warranty Indemnity Claim (WIC)</td>
<td>For Check 21 Warranty Claims</td>
<td>1 year</td>
<td>Federal Reserve minimum</td>
<td>With Entry</td>
<td>Dr/Cr</td>
<td>Either Party</td>
<td>Either Party</td>
<td>Description of Warranty Breach, MICR Code line, Copy of Item</td>
</tr>
<tr>
<td>For Remote Deposit Capture (RDC) Indemnity Claims</td>
<td>1 year</td>
<td>Federal Reserve minimum</td>
<td>With Entry</td>
<td>Dr/Cr</td>
<td>Paper Deposit Bank</td>
<td>RDC Bank</td>
<td>Provide information requested within or complete and attach Sample RDC Indemnity Claim Letter** as appropriate</td>
<td>No</td>
</tr>
</tbody>
</table>

**Explanation:** Adjustment for claim of a Check 21 Breach of Warranty/Indemnity or an RDC indemnity claim.

<table>
<thead>
<tr>
<th>Wrong Payee Credit</th>
<th>180 C</th>
<th>None</th>
<th>W Entry</th>
<th>Cr</th>
<th>N/A</th>
<th>N/A</th>
<th>Copy of check, Maker name, Check number, Account on Check</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wrong Payee Credit</td>
<td>181 C – 1 year</td>
<td>None</td>
<td>W/O Entry</td>
<td>Cr</td>
<td>N/A</td>
<td>N/A</td>
<td>Copy of check, Maker name, Check number, Account on Check</td>
<td>No</td>
</tr>
</tbody>
</table>

**Explanation:** BOFD seeks to pass credit to maker’s account at Paying Bank to correct error in payee processing/credit of the item. An example would be lockbox bank posts check utility payment to entity other than the utility company payee and subsequently identifies the processing error.

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EXHIBIT II – LICENSED ENTITIES

November 1, 1998

The Clearing House Electronic Clearing System Exchange operated by The Small Value Payments Company, L.L.C.

Updated August 2016

The Clearing House Image Exchange Network operated by The Clearing House (TCH).
EXHIBIT III - ELECTRONIC IMAGE QUALITY STANDARDS

Explanatory Note: This exhibit discusses image quality standards. It is provided to Members for their information and compliance with this exhibit is not mandated by the Rules.

Developing and following an objective definition of image quality for an Electronic Check has proven elusive. From a payments perspective, it is not the appearance of the image that is most important but whether the payment instructions can be determined from the image to allow appropriate posting of the Electronic Check to the drawer’s account. Therefore, the ability to use the image is more important than the appearance of the image. The following comments describe image quality (defect metrics) and image usability and encourage industry practices that will minimize the avoidable issues that could delay the payment and/or return of individual check image payments.

Much effort has already been expended by the industry to understand and describe these two aspects of image payments and how they relate to processing requirements. However, additional time and experience are needed to clearly articulate the technical specifications necessary for computers to replicate the consistent determination of what is good quality and what is not. Once articulated, the solution must be cost effective and operationally efficient. Given that there are limitations in technology, for at least the near-term, the primary focus should be on whether the image can be used by the institution for all of its processing requirements.

First a review of some assumptions may be helpful. Industry practices should promote the creation and maintenance of images that can be used by institutions for processing payments. The risk associated with images that are unusable is manageable and tends to be self-regulating for images created by financial institutions since the parties most affected by unusable images are the paying institutions themselves and their customers. Obtaining usable images begins with good quality paper documents. There are industry standards that address the quality of original paper checks and it is the responsibility of each financial institution to promote its customer’s use of quality original paper checks. It is also the responsibility of the financial institution to discourage its customer from buying or printing paper checks that will create processing problems and from “writing” checks with poor quality computer ribbons, cartridges, etc. or using unacceptable instruments, such as gel pens in metallic or neon colors. Next, with proper maintenance of the equipment, the usability of images should be similar to the usability of the original paper item. Finally, financial institutions should take commercially reasonable measures to limit the number of unusable images that are exchanged, and to apply practical and objective reasons to determine whether to process or return an image for suspected poor quality. Institutions that do not provide usable images may be requested to supply a better copy. This could mean that the Sending Bank needs to retain an image in an alternate format (e.g. grayscale), needs to keep a better copy of the image or needs to retain the Related Physical Check.

The concepts of quality and usability of an image address the differences in the medium of the payment and the specifications of the payment. The medium is used to deliver the payment to the appropriate financial institution and subsequently to its customer. The term “usability” is generally understood to mean the presence and legibility of the information in a digital representation of a source document necessary to perform a specific function. The usability of the image addresses the bank’s ability to process the payment which is dependent on the receipt of the key elements of a check; e.g. the identification of the paying institution, identification of the drawer’s account, the amount that is authorized for payment, drawer’s signature, etc. It is possible for many aspects of the image to be incomplete while the information needed for posting or for subsequent processing to be in perfect condition. One example is the picture of the family pet in the background could be mostly illegible and yet the identification of the drawer’s account number might be very clear. This concept is addressed in Regulation CC, Subpart D concerning the creation of substitute checks from images. Reg CC says that it is not necessary to reproduce all background designs and colors to create a substitute check that is the legal equivalent of the original paper check. Another example is that one or more corners could be torn or folded, thus reducing the quality of the image but having no impact on the posting of the payment.

Some characteristics of images can be measured and can predict with a reasonable probability whether the image is likely to be usable. These measurements are the size of the original document imaged and whether the image is too dark or too light. If the size of the original document as represented by the image is, for example, only one inch by one inch, it is not likely that the information on the image will be sufficiently
useful for posting. The quality of the image of that one inch square document may be exceptional but not useful as a payment. Likewise, a solid black image is likely not useable. Rather than the quality of the image overall, what is most important is whether the information fields can be used for the bank’s and the customer’s purposes to effect payment. Typically, posting of the item is from the data on the MICR line and not from the image of the check.

From the FSTC study, images with the following characteristics are potentially unusable images:

Front:
- Image Too Dark – required threshold of >39.0% for exchange environment – Failure is likely to result in an unusable image.
- Image Too Light – required threshold of <2.1%

The FSTC had no recommendations for the back of the image. (One note of caution: application of standard measurements for too light and too dark should be considered separately for the front and back of a check. Frequently the back of the check will be blank on a forward item and therefore will be lighter than its corresponding front; while a returned check image with many endorsements may be darker than its corresponding front.)

In addition to the recommendations in the FSTC report, the following measurements serve as reasonable indicators of usability and should generate relatively few alerts.

<table>
<thead>
<tr>
<th></th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height Dimension</td>
<td>2.2 inches</td>
<td>4.8 inches</td>
</tr>
<tr>
<td>Width Dimension</td>
<td>5.5 inches</td>
<td>9.4 inches</td>
</tr>
<tr>
<td>Height Mismatch</td>
<td>N/A</td>
<td>.6 inches</td>
</tr>
<tr>
<td>Width Mismatch</td>
<td>N/A</td>
<td>.5 inches</td>
</tr>
</tbody>
</table>

For example, images with dimensions smaller than the minimum size in the table are probably not usable and images with dimensions larger than the maximum size in the table are probably not usable. The height, width and mismatch dimensions are based on FSTC data, vendor and bank testing.

Some questions have been raised about whether an image with additional information overlaid on the image is evidence of poor quality? The Check 21 Act and its implementing regulation, Regulation CC, Subpart D, provide for certain information to be placed over the original image. It is permissible to add information to images so long as the overlay does not obscure any of the key elements needed for posting and subsequent processing.

At the beginning of this document, it was stated that developing and following an objective definition of image quality has proven elusive. While the primary focus of this document is on image usability, the industry is continuing to develop and implement standardized image defect metrics tools. Such tools could provide a valuable ability to monitor the health of the industry and of individual participants in their management of the check collection and return systems.
## EXHIBIT III - ELECTRONIC IMAGE QUALITY STANDARDS

### RESOURCES FOR GUIDANCE ON INDUSTRY PRACTICE FOR IMAGE QUALITY AND USABILITY

(Please note that X9 standards are updated periodically)

1. FSTC “Image Quality and Usability Assurance: Phase 1”  
2. FSTC “Image Quality and Usability Assurance: Phase 1 Project – Image Defect Metrics”  
3. FSTC’s final report Phase 2 “Image Quality and Usability Assurance”  
4. ANS X9.100-110 Bank Check Background and Numerical Convenience Amount Field Specification
5. ANS X9.100-10 Paper Specifications for MICR Documents
6. ANS X9.100-20 Print and Test Specifications for Magnetic Ink Printing (MICR)
7. ANS X9.100-40-1 Specifications for Check Image Tests  
   - Part 1 - Definition of Elements and Structures for Check Image Tests
8. ANS X9.100-40-2 Specifications for Check Image Tests  
   - Part 2: Applications and Registration Procedures for Check Image Tests
9. ANS X9.100-111 Specification for Check Endorsements
11. ANS X9.100-151 Check Correction Strip Specification
12. ANS X9.100-160-1 Part 1: Placement and Location of Magnetic Ink Printing (MICR)
14. ANS X9.100-187 Specifications for Electronic Exchange of Check and Image Data
15. X9’s TR 2 Understanding, Designing and Producing Checks
17. X9’s TR 8 Check Security Guideline
18. X9’s TR 33 Check Image Quality Assurance – Standards and Processes
Section XVIII of the Rules governs the exchange of Images of Canadian Items between two Members for subsequent exchange by the Receiving Bank to either another Receiving Bank under Section XVIII or to a Canadian Correspondent Bank for payment. Section XVIII also governs the return of the Image of Canadian Items, either as an Electronic Returned Check or as a Canadian Paper Return Item.

Below are examples of possible flows for forward and return of Images of Canadian Items, which may aid in understanding the appropriate rules coverage for Images of Canadian Items.

**Forward Exchange**

**Return Exchange**

**Note:** Banks must send separate files for U.S. dollar items and Canadian dollar items.
MODEL CUSTOMER WRITTEN STATEMENT FOR WARRANTY CLAIM UNDER SECTION XIX(N)

[NAME OF BANK]

WRITTEN STATEMENT UNDER PENALTY OF PERJURY OF UNAUTHORIZED REMOTELY CREATED CHECK

Customer Name: ____________________________________________
Customer Address: __________________________________________
Account Number: ____________________________________________
SS# or TIN: _________________________________________________
Check Number(s): ____________________________________________
Home Phone Number: ___________________________ Area Code (____) _____________________________
Work Phone Number: ___________________________ Area Code (____) _____________________________

This written statement of an unauthorized remotely created check is submitted by the undersigned Customer to the Bank in support of the undersigned’s claim that the above referenced check(s) of the undersigned drawn on the above referenced Account were improperly paid for the reason indicated below. In submitting this written statement, the undersigned affirms that all representation and statements contained herein are true and agrees that the undersigned render all reasonable assistance required by Bank to locate and prosecute the persons responsible for the above referenced unauthorized check(s).

The undersigned hereby states and affirms the following: (Use additional sheet and attach, if necessary):

1) Please indicate type/reason for this claim:
   
   □ Remotely created check (which contains no Customer signature) was not authorized by the Customer in the amount stated on the check.

   □ Remotely created check (which contains no Customer signature) was not authorized by the Customer to the payee stated on the check.

2) Describe when and how you first became aware of the unauthorized remotely created check. If the matter the matter was disclosed in an account statement(s), please attach photocopies of the same.

1 Note to Bank: This model written statement should only be used to obtain a customer’s statement relating to an unauthorized remotely created check. The written statement, once completed by customer, will be used by the Bank in connection with making a breach of warranty claim under Regulation CC 229.34(d) (RCC warranty) for a remotely created check and under the process as provided under Section XIX(N) of the ECCHO Rules. This model written statement should not be used when a customer is making any other claim relating to check or checking account, such as an altered dollar amount, altered payee, missing endorsement, etc.
3) Indicate whether the person that created the remotely created check is known to you. If so, indicate the relationship and provide any information you may have about this person, include name, address, telephone number and Social Security Number.

4) Indicate whether you received part or all of the proceeds or any other benefit on account of, said check(s). This would include reimbursement by any other bank or any other arrangement you have made to recover funds.

5) Please provide a detailed narrative statement of the circumstances surrounding your claim of an unauthorized remotely created check.

If additional space is needed, use a sheet of paper and attach.

I acknowledge that, in order to complete its investigation, Bank may require further information concerning the matters set forth in the written statement, which I agree to provide.

I further acknowledge that Bank may need to disclose the contents of this written statement to third parties, including other banks in the check collection process and/or the person that created the unauthorized remotely created check, as part of its investigation. I hereby consent to such disclosure.

Finally, I acknowledge that, to the extent my account is credited for the amount of the above listed check(s), Bank will have the right to recover all amounts so paid from the person I have identified as the person that created the unauthorized check(s), and to bring a criminal action against such person, if it so elects. I agree to provide whatever assistance Bank may require in any such civil or criminal lawsuit.

Witness my hand, under penalties of perjury, this _____________________________day of ________________________________, 20____.

__________________________________________
Signature
EXHIBIT V – EXHIBITS RELATED TO RULES IN SECTION XIX(N) AND XIX(O)

DISCLAIMER FORM FOR SECTION XIX(N)

BREACH OF WARRANTY – UNAUTHORIZED REMOTELY CREATED CHECK

I ________________________, a representative of ______________________ hereby disclaim and refuse the
(Please print) ______________________ (Depositary Bank)
“Breach of Warranty – Unauthorized Remotely Created Check” claim made by
______________________________________________________________
(Claimant Paying Bank) ________________________________________ (ABA#) ______________________________________
(Claimant Bank’s R/T number)

Name of Paying Bank: __________________________________________
Name of Paying Bank’s Customer: __________________________________
Paying Bank’s Customer’s Account Number: __________________________ (Account Number of Above Named Account)
Amount Claimed: ________________________________________________

1) Claim was not made timely, as follows
   a) Paying Bank did not deliver warranty claim within 90 calendar days after presentment of the Electronic Check to the Paying Bank
   b) Paying Bank failed to deliver copy of customer written statement within 15 Business Days to Depositary Bank

2) Depositary Bank is not the first bank to which the check was transferred (BOFD)

3) Other defenses as provided by other applicable law
   Specify: ______________________________________________________
   ____________________________________________________________
   ____________________________________________________________

Signature of Representative – Depositary Bank ___________ / ___________ / ______ (_____)___________________________

INSTRUCTIONS TO Sending Bank:
1. This form is to be completed and signed by a representative of the Depositary Bank. A defense MUST be specified.
2. Keep a copy of the completed form and a copy of the check, Electronic Check, a paper copy of the front and back of such Electronic
   Check or substitute check stamped “Breach of Warranty - Do not Redeposit or Re-Present” or with similar language (the claim) for your
   files.
3. Attach the original check, Electronic Check, a paper copy of the front and back of such Electronic Check or substitute check stamped
   “Breach of Warranty - Do not Redeposit or Re-Present” or with similar language to this form and deliver to the Claimant Paying Bank in
   full compliance with Section XIX(N) of the ECCHO Rules

DO NOT SEND THIS FORM THROUGH THE FEDERAL RESERVE BANK –
IT WILL BE REJECTED
EXHIBIT V – EXHIBITS RELATED TO RULES IN SECTION XIX(N) AND XIX(O)

EXPLANATORY CHARTS FOR SECTION XIX(N) PROCESSES

Overview of Events Timing

This chart shows a summary of the Section XIX(N) timeline considerations. Specifically it shows that the Paying Bank has 90 calendar days after presentment of the Electronic Check to file a breach of warranty claim with the Depositary Bank (bank of first deposit or BOFD). After 15 Business Days the Paying Bank cannot make a claim using Section XIX(N). If a warranty claim is filed within the 15 Business Days, the BOFD then has two options; 1) provide a disclaimer notice back to the Paying Bank within 15 Business Days of the receipt of the breach of warranty claim; or 2) request a copy of the paying customer’s written statement within 15 Business Days of the receipt of the breach of warranty claim. Should a copy of the customer written statement be requested, the Paying Bank has 15 Business Days to provide the copy. Should the Paying Bank provide the requested copy within the 15 Business Days, the BOFD has 5 additional Business Days to provide a disclaimer back to the Paying Bank.

*Day of presentment of Electronic Image

2 The examples and other provisions in this Exhibit are for informational and illustrative purposes only and are not meant to expand, limit or alter the provisions of Section XIX(N) in any manner.
EXHIBIT V – EXHIBITS RELATED TO RULES IN SECTION XIX(N) AND XIX(O)

EXPLANATORY CHARTS FOR SECTION XIX(N) PROCESSES
Overview of Decisions

This chart shows a summary of the decision processes associated with Section XIX(N). It begins with the paying customer providing a customer written statement under penalty of perjury to the Paying Bank. The Paying Bank then has 90 calendar days after presentment of the Electronic Check to provide a warranty claim to the Depositary Bank (bank of first deposit or BOFD). After 15 Business Days the Paying Bank cannot make a claim using Section XIX(N). If a warranty claim is filed within the 15 Business Days, BOFD then has three options; A) request a copy of the paying customer’s written statement within 15 Business Days of the receipt of the breach of warranty claim; or B) (discussed on the next page); or C) (also discussed on the next page). After 15 Business Days the Paying Bank cannot make a claim using Section XIX(N). If a copy is requested by the BOFD, then the Paying Bank has 15 Business Days within which to provide the copy or the BOFD can forward a disclaimer to the Paying Bank. If the BOFD decides to not request the copy, then it has two other options, B) or C).
This chart continues the summary of the decision process associated with Section XIX(N) and shows options B and C. Under option B, the BOFD has the option of either debiting or not debiting its customer’s account. In either case, the BOFD must send the funds to the Paying Bank. If it determines to not debit its customer, then the BOFD retains the loss.

Under option C, the BOFD sends a disclaimer notice to the Paying Bank.
EXHIBIT V – EXHIBITS RELATED TO RULES IN SECTION XIX(N) AND XIX(O)

MODEL CUSTOMER WRITTEN STATEMENT FOR WARRANTY CLAIM UNDER SECTION XIX(O)

[NAME OF BANK]
WRITTEN STATEMENT UNDER PENALTY OF PERJURY FOR UNAUTHORIZED OR FORGED SIGNATURE

Customer Name: ____________________________________________

Customer Address: __________________________________________

Account Number: ________________________ SS# or TIN: __________

Check Number(s): __________________________________________

Home Phone Number: Area Code ( ) ______________

Work Phone Number: Area Code ( ) ______________

This written statement of an unauthorized or forged signature is submitted by the undersigned Customer to the Bank in support of the undersigned’s claim that the above referenced check(s) of the undersigned drawn on the above referenced Account were improperly paid for the reason indicated below. In submitting this written statement, the undersigned affirms that all representation and statements contained herein are true and agrees that the undersigned render all reasonable assistance required by Bank to locate and prosecute the persons responsible for the unauthorized or forged signature on the above referenced check(s).

The undersigned hereby states and affirms the following: (Use additional sheet and attach, if necessary.):

1) Please indicate type/reason for this claim:

☐ Check contains a forged or otherwise unauthorized Customer’s signature in the drawer signature line.

☐ Check is counterfeit.

2) Describe when and how you first became aware of the forged or otherwise unauthorized signature on your check. If the matter was disclosed in an account statement(s), please attach photocopies of the same.

_________________________________________________________

_________________________________________________________

3) Indicate whether either the unauthorized signer of the check(s) is known to you. If so, indicate the relationship and provide any information you may have about this person, include name, address, telephone number and Social Security Number.

_________________________________________________________

3 Note to Bank: This model written statement should only be used to obtain a customer’s written statement relating to a forged or otherwise unauthorized check. The written statement, once completed by customer, will be used by the Bank in connection with making a claim for a breach of one of the warranties provided under Section XIX(O) of the ECCHO Rules. This model written statement should not be used when a customer is making any other claim relating to check or checking account, such as an altered dollar amount, altered payee, missing endorsement, etc.
EXHIBIT V – EXHIBITS RELATED TO RULES IN SECTION XIX(N) AND XIX(O)

4) Indicate whether you received part or all of the proceeds or any other benefit on account of, said check(s). This would include reimbursement by any other bank or any other arrangement you have made to recover funds.

5) Please provide a detailed narrative statement of the circumstances surrounding your claim of a forged or otherwise unauthorized signature on the checks.

If additional space is needed, use a sheet of paper and attach.

I acknowledge that, in order to complete its investigation, Bank may require further information concerning the matters set forth in the written statement, which I agree to provide.

I further acknowledge that Bank may need to disclose the contents of this written statement to third parties, including other banks in the check collection process and/or the person that created/signed the unauthorized check, as part of its investigation. I hereby consent to such disclosure.

Finally, I acknowledge that, to the extent my account is credited for the amount of the above listed check(s), Bank will have the right to recover all amounts so paid from the person I have identified as the person that created/signed the unauthorized check(s), and to bring a criminal action against such person, if it so elects. I agree to provide whatever assistance Bank may require in any such civil or criminal lawsuit.

Witness my hand, under penalties of perjury, this ______________ day of _____________________, 20____.

Signature

Street Address

City, State and Zip Code
### DISCLAIMER FORM FOR SECTION XIX(O)

**BREACH OF WARRANTY – FORGED OR UNAUTHORIZED DRAWER SIGNATURE OR COUNTERFEIT CHECK**

I ______________, a representative of ___________ hereby disclaim and refuse the

(Please print) (Depositary Bank)

“Breach of Warranty – Forged or Unauthorized Drawer Signature Or Counterfeit Check” claim made by

_________________________ (Claimant Paying Bank)  ______________ (ABA#)  ______________ (Claimant Bank’s R/T number)

Name of Paying Bank:

Name of Paying Bank’s Customer:

Paying Bank’s Customer’s Account Number:

(Account Number of Above Named Account)

Amount Claimed: __________________________________________

1) Account closed
2) Claim amount exceeds funds in account
3) Claim was not made timely, as follows:
   a) Paying Bank’s customer did not provide customer written statement within 60 calendar days after account statement of check made available
   b) Paying Bank did not deliver warranty claim within 15 Business Days of receipt of customer written statement
   c) Paying Bank failed to deliver copy of customer written statement within 15 Business Days to Depositary Bank
4) Depositary Bank is not the first bank to which the check was transferred (BOFD)
5) Depositary Bank had in place at the time of the Electronic Check exchange an effective election to have its Electronic Check exchanges not subject this Section XIX(O) of the ECCHO Rules
6) Other defenses as provided by other applicable law

Specify: __________________________________________

________________________________________

Signature of Representative – Depositary Bank  /_____/_____  (_____)

Phone

**INSTRUCTIONS TO Sending Bank:**

1. This form is to be completed and signed by a representative of the Depositary Bank. A defense MUST be specified.
2. Keep a copy of the completed form and a copy of the check, Electronic Check, a paper copy of the front and back of such Electronic Check or substitute check stamped “Breach of Warranty - Do not Redeposit or Re-Present” or with similar language (the claim) for your files.
3. Attach the original check, Electronic Check, a paper copy of the front and back of such Electronic Check or substitute check stamped “Breach of Warranty - Do not Redeposit or Re-Present” or with similar language to this form and deliver to the Claimant Paying Bank in full compliance with Section XIX(O) of the ECCHO Rules

DO NOT SEND THIS FORM THROUGH THE FEDERAL RESERVE BANK – IT WILL BE REJECTED
This chart shows a summary of the Section XIX(O) timeline considerations. Specifically it shows that the Paying Bank’s customer has 60 calendar days from the date their statement is available to file a customer’s written statement under penalty of perjury with the Paying Bank. Assuming the customer written statement is filed within the 60 calendar days, the Paying Bank then has 15 Business Days within which to file a breach of warranty claim with the Depositary Bank (bank of first deposit or BOFD). After 15 Business Days the Paying Bank is out of options and accepts the loss. If a warranty claim is filed within the 15 Business Days, the BOFD then has three options; 1) debit the depositing customer within 15 Business Days of receipt of the breach of warranty claim if the money is in the customer’s account during any of those 15 Business Days; or 2) provide a disclaimer notice back to the Paying Bank within 15 Business Days of the receipt of the breach of warranty claim; or 3) request a copy of the paying customer’s written statement with the Paying Bank within 15 Business Days of the receipt of the breach of warranty claim. Should a copy of the customer written statement be requested, the Paying Bank has 15 Business Days to provide the copy or retain the loss. Should the Paying Bank provide the requested copy within the 15 Business Days, the BOFD has 5 additional Business Days to either accept the loss and pay the claim or provide a disclaimer back to the Paying Bank.

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4 The examples and other provisions in this Appendix are for informational and illustrative purposes only and are not meant to expand, limit or alter the provisions of Section XIX(O) in any manner.
This chart shows a summary of the decision processes associated with Section XIX(O). It begins with the paying customer having 60 calendar days from the date of statement availability to provide a customer written statement under penalty of perjury to the Paying Bank. The Paying Bank then has 15 Business Days within which to provide a warranty claim to the Depositary Bank (bank of first deposit or BOFD). After 15 Business Days the Paying Bank is out of options and accepts the loss. If a warranty claim is filed within the 15 Business Days, the BOFD then has three options: A) request a copy of the paying customer’s written statement within 15 Business Days of the receipt of the breach of warranty claim; or B) (discussed on the next page); or C) (also discussed on the next page). If a copy is requested, then the Paying Bank has 15 Business Days within which to provide the copy or retain the loss. If the BOFD decides to not request the copy, then it has two other options, B) or C).

If the BOFD had in place at the time of the Electronic Check exchange an effective opt-out election to have its Electronic Check exchanges not subject this rule, the BOFD can send a disclaimer to the Paying Bank (discussed on next page).
This chart continues the summary of the decision process associated with Section XIX(O) and shows options B and C. Under option B, if the depositing customer’s account balance is at least equal to the amount of the breach of warranty claim, then BOFD must decide whether to debit the account for the amount of the claim. In either case, the BOFD must send the funds to the Paying Bank. If it determines to not debit its customer, then it retains the loss. Under option C, the BOFD has several options to send a disclaimer notice to the Paying Bank: (i) the depositing customer’s account is closed, (ii) the depositing customer does not have sufficient balance equal to the amount of the breach of warranty claim, (iii) the Paying Bank’s customer or the Paying Bank did not provide the customer written statement, the claim, or a requested copy of the customer written statement timely, (iv) the BOFD had in place at the time of the Electronic Check exchange an effective opt-out election to have its Electronic Check exchanges not subject to this Rule.

Under option C, the BOFD sends a disclaimer notice to the Paying Bank that retains the loss.
SAMPLE LETTER FOR SECTION XIX(O)

[NOTE: This letter should be reviewed by Member’s legal counsel prior to use. Do not use this letter for items exchange through the Federal Reserve Banks. Before using this letter to make a claim, you should confirm that the BOFD has not opted out of Rule 9 coverage and that the item was exchanged under the ECCHO Rules by the BOFD.]

Date: __________________

Attention: Incoming Domestic Returns or Collections Department

Re: Breach of Warranty Claim -- Forged Maker or Counterfeit Check (a “Rule 9 Claim”)

Our Reference Number: __________________

Dear Sir/Madam:

This letter constitutes our claim to your institution arising from your institution’s breach of warranty under ECCHO Rule XIX(O) (also known as a “Rule 9” claim) with respect to the enclosed item that was presented to us as an image in an exchange governed by the ECCHO Rules. ECCHO Rules permit us to make this warranty claim to the depository bank by delivering the claim to the location for returns of the depository bank.

We were the paying bank with respect to this item and your bank is the depository bank with regard to this item. ECCHO Rule XIX(O) provides a warranty given by every bank that transfers or presents an item that:

• the signature of the purported drawer of the Related Physical Check is not forged or otherwise unauthorized, and/or
• the Related Physical Check is not counterfeit.

Pursuant to this Rule, we are enclosing with this letter:

(a) a copy of the item, and

[b] a statement of report fraud/unauthorized item from our customer.] [OPTIONAL AT TIME OF CLAIM]

We make demand on your institution for the face amount of the item, in accordance with the procedures and requirements of ECCHO Rule XIX(O). Within 15 days of the date of the receipt of this letter, please provide your institution’s response to this warranty claim, in accordance with Rule XIX(O).

If the warranty claim is accepted, payment for the claim can be made in accordance with the following settlement instructions:

[INSERT SETTLEMENT INSTRUCTIONS HERE]

We reserve any rights that may be available to us with respect to the item under applicable law or rule. Please note that a warranty claim under this Rule is not subject to the defense of a late return under the UCC midnight deadline.

If you have any questions concerning this matter, please contact __________________ at ###-###-####, extension ####, during the hours of ________________ (Monday through Friday).

Any written correspondence relating to this letter or the warranty claim, including a notice of acceptance or rejection of the warranty claim, can be directed to the following contact person:
[INSERT CONTACT INFORMATION HERE]

__________________

__________________

Email address: ___________________________

Sincerely:

Enclosures
EXHIBIT VI – COMPENSATION RULES

Application
A claiming Member may make a Compensation Claim to another Member for interest compensation as provided in this Exhibit VI due to any Original Error. Compensation Claims are permitted only if the exchange, return or adjustment of the Electronic Check between the two Members resulting in the Original Error was subject to the ECCHO Rules.

Certain Defined Terms*
“Average Fed Funds Daily Rate” means the average of the daily Federal funds rate, as published by the Federal Reserve Bank of New York, during the period from the first day on which the claiming Member was not credited for funds to which it was entitled or was debited as a result of the Original Error, as applicable, up to the calendar day before the date on which the other Member provided funds to the claiming Member to correct the Original Error.

“Compensation Claim” means a claim by a Member for lost interest associated with a Compensable Amount under this Exhibit VI.

“Compensable Amount” means the dollar amount of the funds to which the claiming Member was entitled under the ECCHO Rules but not credited or the dollar amount of the funds debited from the claiming Member in violation of the ECCHO Rules, as applicable.

“Days Outstanding” means the number of calendar days (i) starting on the date that the claiming Member was not credited for the funds to which it was entitled as a result of the Original Error or was debited funds as a result of the Original Error, as applicable, and (ii) ending on the date on which the other Member provided funds to the claiming Member to correct the Original Error.

“Original Error” is any mistake or error in the processing or settlement of Electronic Checks, return of Electronic Returned Checks or adjustment of Electronic Checks that results in the failure of the claiming Member to be credited for funds to which it was entitled under the ECCHO Rules or the debiting of funds from the claiming Member in violation of the ECCHO Rules.

Relation to Other ECCHO Rules and Law
Compensation Claims are limited to claims for lost interest associated with the Compensable Amount. Without limiting the generality of the preceding sentence, this Exhibit VI does not apply to claims for the Compensable Amount itself or any other amounts that may be owed between Members associated with the Original Error. A Member’s payment or receipt of compensation under this Exhibit VI shall not otherwise affect any claims, obligations or defenses that a Member may have under other ECCHO Rules and other applicable law.

Explanatory Note: Although Compensation Rules were present in paper check clearing house rules, they were not initially developed for the ECCHO Rules. In the interim, some ECCHO members utilized other compensation rules (e.g., BAFT-IFSA, NCUIC) or direct requests for compensation. Compensation Rules only cover the interest lost for the period of time that the bank did not have use of the funds—not the correction of the original error amount. A Member’s payment or receipt of compensation does not affect claims under other ECCHO Rules and other applicable law. However, these rules are not intended to permit a Member, which receives a payment of compensation under these rules, to recover financial damages for the lost use of funds in any other claim proceeding, such as a lawsuit or another dispute proceeding. It is expected that applicable law would prohibit the Member from a duplicate recovery of the same type of financial damages.

These compensation rules provide agreed upon rules and mechanism for two financial institutions to calculate and resolve compensation claims that arises when one financial institution has had the use of another financial institution’s funds as a result of a mistake or error in prior payment transaction. These ECCHO Compensation Rules provide a uniform method for financial institutions to calculate the compensation and to make the compensation claim. It is expected that this uniform process/calculation for compensation claims will reduce disputes between Members regarding the appropriateness of compensation claims and the related interest calculations.
EXHIBIT VI – COMPENSATION RULES

Content of Compensation Claim
A claiming Member that makes a Compensation Claim shall include the following information in the Compensation Claim sent to the other Member:

- Description of the source/cause of the Original Error that gave rise to the Compensation Claim;
- Any sequence or other transactional numbers identifying the Original Error;
- Aggregate dollar value of the Compensable Amount, as calculated pursuant to this Exhibit;
- Compensation Claim amount, as calculated pursuant to this Exhibit;
- Contact information for the claiming Member; and
- Information regarding how to settle the Compensation Claim amount to the claiming Member.

Minimum Requirements for Making a Claim
A claiming Member may make a Compensation Claim to another Member only if the following two conditions are both met:

(a) *Minimum Compensable Amount*: The aggregate dollar amount of the Compensable Amount is equal to or greater than $2,000,000. To calculate the aggregate dollar amount of the Compensable Amount, multiply the dollar amount of the Compensable Amount by the number of calendar days that the claiming Member has been without such funds.

(b) *Minimum Compensation Claim*: The Compensation Claim is equal to or greater than $300.

Time Period for a Claim
A claiming Member may only bring a Compensation Claim within 90 calendar days from the date of the correction of the Original Error.

Formula for Compensation
Members shall use the below formula for calculating the Compensation Claim amount:

\[
\text{Compensation Claim} = (\text{Compensable Amount}) \times (\text{Days Outstanding}) \times (\text{Average Fed Funds Daily Rate}) / 360
\]

Explanatory Note: Following are examples of compensation claim scenarios.

*Bank A* mis-encoded a $50 check for $500,050 and received settlement from *Bank B* for the mis-encoded amount; the error was determined and corrected 20 days later. The Compensation formula calculation would be $500,000 \times 20 \text{ calendar days} \times 0.30\% / 360 = $83.33 which does not meet the minimum required to file a compensation claim.

*Bank A* failed to settle on a file from *Bank B* in the amount of $3,000,000 for 30 calendar days. Calculation: $3,000,000 \times 30 \text{ calendar days} \times 0.30\% / 360 = $750

The compensation claim could be made for the amount of $750.

Administration Fee
A claiming Member may not include any administrative or other flat dollar fee or charge in connection with a Compensation Claim.

Explanatory Note: In order to limit the use of Compensation Rules to strictly repayment of interest associated with the lost utilization of funds, no administrative or other fees will be added to the compensation claim. The minimum dollar limits on claims under the Rules seek to strike a balance between compensation of the claiming Member and the costs at both Members of investigating and processing the claims. ECCHO will monitor changes to interest rates to evaluate the appropriateness of these dollar limits on compensation claims in the event of a material increase in the interest rates.
EXHIBIT VI – COMPENSATION RULES

Processing and Payment of Claim
A Member that receives a Compensation Claim shall use reasonable efforts to promptly review the claim and determine whether or not to make payment on the Compensation Claim. A claiming Member shall include wire or check payment instructions for the other member as part of the Compensation Claim.

Explanatory Note: The use of Compensation Rules is a Member decision and is not mandatory. Once a compensation claim has been made, the receiving member must evaluate whether or not unjust enrichment actually occurred. This is done by reviewing the facts and circumstances of the particular claim. Members are required to use reasonable efforts to promptly review the claim. The definition of prompt may vary based on the complexity of the particular claim. Complicated claims may require more time to research, therefore adding to the response time. Members are encouraged to act in a mutually reciprocating manner.