

## OPERATING RULES

### XIX. ELECTRONIC IMAGE (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 Images that are exchanged by a Sending Bank with a Receiving Bank if a Member in that exchange has previously notified the Organization of its election to have its Electronic Image exchanges not subject to this Section XIX(O). The Organization shall maintain and publish to other Members a list of Members that have elected to not have this Section XIX(O) apply to Electronic Images that Member sends to or receives from another Member. A Member that has elected that its exchanges are not subject to this Section XIX(O), may cancel that election at any time by notifying the Organization. A Member that has canceled its election may not make the election again under Section XIX(O) for a period of six months. Except as provided in Section XIX(O)(a), the Member's election is effective with respect to all of its Electronic Image exchanges with any other Member under these Rules, as of and after the effective date of the election. The effective date of a Member's election or cancellation of election shall be determined by the Organization, based on the reasonable amount of time it takes the Organization to notify all other Members of the election.*
- (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 Image 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 Image if the Related Physical Check or an image of the Related Physical Check was first deposited into, or received by, a foreign office of a non-U.S. bank or a foreign office of U.S. bank.*
- (2) *In addition to the warranties set forth in Section XIX(L), a Sending Bank that is also the Depository Bank and any subsequent Sending Bank warrant to the Receiving Bank and any other Receiving Bank that subsequently receives the Electronic Image in a subsequent image exchange governed under the ECCHO Rules that, with respect to an Electronic Image that is exchanged under these Rules:*

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- (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.*

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

- (3) *A Depository Bank is liable to the Paying Bank under the warranty prescribed in Section XIX(O)(2) only if all of the following exist:*
  - (a) *within 60 calendar days after the account statement which first reflects the paid Electronic Image subject to the warranty prescribed in Section XIX(O)(2) (or substitute check created from such Electronic Image) has been made available to the Paying Bank's customer, the customer completes, signs and delivers a written statement under penalty of perjury (the "Customer's written statement") for each such Electronic Image or substitute check, specifying in reasonable detail, that (A) the signature of the purported drawer of the Related Physical Check is forged or otherwise unauthorized and/or (B) the Related Physical Check is counterfeit, and, if applicable returns such substitute check to the Paying Bank;*
  - (b) *a warranty claim is made for each Electronic Image subject to the warranty prescribed in Section XIX(O)(2) by the Paying Bank by delivering (i) the Electronic Image, (ii) a paper copy of the front and back of such Electronic Image or (iii) a substitute check created from such Electronic Image to the Depository Bank in accordance with Section XIX(O)(8) with a notation of "Breach of Warranty" and/or "Do Not Redeposit or Re-Present" or with similar language or reason code, within 15 Business Days after the Paying Bank has received its Customer's written statement; and*
  - (c) *the Available Amount on deposit in the account of the customer of the Depository Bank, in which the Electronic Image or Related Physical Check subject to the warranty prescribed in Section XIX(O)(2) was deposited, is equal to or greater than the amount of the warranty claim on at least one day during the period beginning on the day that the claim is delivered to the Depository Bank and ending on the day which is the earlier of (i) one day before the Depository 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 Depository Bank.*
- (4) *Within 15 Business Days of receipt of a request from the Depository Bank for a copy of the Customer's written statement referenced in Section XIX(O)(3)(a), the Paying Bank shall deliver to the Depository Bank at a place specified in the request a copy of the Paying Bank Customer's written statement referenced in Section XIX(O)(3)(a).*

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- (5) *If the Depository 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 Depository Bank may deliver to the Paying Bank in accordance with Section XIX(O)(9), a Disclaimer Form in the form set forth in Exhibit VIII, signed by a representative of the Depository Bank, attached to the warranty claim, within 15 Business Days of receipt of the claim. In the event the Depository Bank requests a copy of the Paying Bank's Customer's written statement pursuant to Section XIX(O)(4) within the 15 Business Day period prescribed in the preceding sentence, such 15 Business Day period may be extended until the expiration of 5 Business Days after it receives the requested copy, or if the requested copy is not received, until the expiration of 5 Business Days after the day on which the Paying Bank is required to have provided such copy under Section XIX(O)(4). A Depository Bank that fails to deliver a Disclaimer Form within the time period and in accordance with the requirements prescribed in this Section XIX(O)(5) thereafter waives any right to refuse the warranty claim.*
- (6) *A Paying Bank that receives a Disclaimer Form may not return the Electronic Image (or a substitute check created from such Electronic Image) or otherwise resubmit the warranty claim to the Depository Bank under Section XIX(O)(3) of these Rules. The Paying Bank may pursue its warranty claim provided for in Section XIX(O)(2) directly with the Depository Bank outside of the process specified in Section XIX(O)(3).*
- (7) *A Depository Bank's authority to debit the account of its customer in which the Electronic Image or Related Physical Check subject to the warranty under Section XIX(O)(2) was deposited for some or all of such warranty claim is governed by applicable law, including the agreement of the Depository Bank and its customer.*
- (8) *Unless a specific delivery location is agreed to by the Depository Bank, the Paying Bank shall deliver a Section XIX(O)(2) warranty claim to any location of the Depository Bank at which the Depository Bank receives returns of checks or Electronic Images from the Paying Bank in the normal course of check collection.*
- (9) *Unless a specific delivery location is agreed to by the Paying Bank, the Depository Bank shall deliver a Section XIX(O)(5) disclaimer of a warranty claim to any location of the Paying Bank at which the Paying Bank receives checks or Electronic Images from the Depository Bank in the normal course of paper check collection.*
- (10) *Depository Bank shall pay the amount of the warranty claim under Section XIX(O)(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 Depository Bank disclaims the warranty claim in accordance with Section XIX(O)(5), the Paying Bank shall pay the amount of the disclaimed warranty claim to the Depository Bank no later than the second Business*

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*Day after receiving the disclaimed warranty claim from the Depository Bank. In the event that the Paying Bank makes the warranty claim to the Depository Bank in a manner that is not subject to automated or electronic 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 Depository Bank breaches the warranty set forth in Section XIX(O)(2), the amount of the warranty claim by the Paying Bank shall not exceed the amount of the Electronic Image. If the Depository Bank's breach of warranty results in whole or in part from the Paying Bank's failure to exercise ordinary care or act in good faith, the Depository Bank's liability shall be reduced in proportion to the amount of negligence or bad faith attributable to the Paying Bank.*
- (12) *Processing of Warranty Claims Involving Multiple Receiving Banks and Licensed Entities.*

  - (a) *If the Paying Bank receives the Electronic Image from a Receiving Bank that is not the Depository Bank, the Paying Bank may only bring a warranty claim under this Section XIX(O)(2) by delivering the warranty claim directly to the Sending Bank that is also the Depository Bank. A Receiving Bank that is not the Depository Bank shall reject any warranty claim that is delivered to it by a Paying Bank.*
  - (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 Depository Bank shall be obligated for losses arising from the breach of the Section XIX(O)(2) warranty (i) to a Paying Bank under these Rules, or (ii) to a Paying Bank under the rules of a Licensed Entity.*
  - (c) *If the initial exchange of the Electronic Image by the Depository Bank was under the rules of a Licensed Entity, the Paying Bank must bring the Section XIX(O)(2) warranty claim under the rules of the Licensed Entity and subject to the conditions of the warranty claim process set forth in the rules of the Licensed Entity.*