XIX(O). COMMENTARY

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

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

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

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

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

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

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

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

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

Comment: As a general matter, a Member’s election to have its exchanges not subject to Section XIX(O) is applicable to all of its exchanges of Electronic Images with all other Members. The exception to this general rule is when a Member is required to make the election, or not make the election as the case may be, under a clearing house rule (other than these Rules), or agreement with other Members. In that case, the Member’s election is limited to the subset of Images exchanges subject to the agreement or clearing house Rule.
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 Image if the Related Physical Check or an image of the Related Physical Check was first deposited into, or received by, a foreign office of a non-U.S. bank or a foreign office of a U.S. bank.

Comment: The warranty in Section XIX(O)(2) does not apply to an Electronic Image if the Related Physical Check or an image of the Related Physical Check was first deposited into, or received by, a foreign office of a non-U.S. bank or a foreign office of a U.S. bank. This excludes from the warranty items received at a foreign office of a bank and transferred to a correspondent Sending Bank in the United States for collection. This express exception to the Rule is necessary in order to treat correspondent items received from a bank outside the United States the same as correspondent items received from banks in the United States. Correspondent items that are first deposited in a bank in the United States are excluded from the warranty in Section XIX(O)(2) because the warranty only applies to a Sending Bank that is also the 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 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 Image in a subsequent image exchange governed under the ECCHO Rules that, with respect to an Electronic Image that is exchanged under these Rules: (a) the signature of the purported drawer of the Related Physical Check is not forged or otherwise unauthorized, and (b) the Related Physical Check is not counterfeit.

Comment: This warranty has the effect of making 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 Image 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 Image from the Sending Bank that is the Depositary Bank, and (b) any subsequent Receiving Bank that subsequently receives the Electronic Image in an exchange governed under the ECCHO Rules. If a Receiving Bank receives an Electronic Image from a Sending Bank, and then converts that Electronic Image to a substitute check for delivery to another bank, the warranty provided under Section XIX(O)(2) does not apply to either exchange, since the Paying Bank was not a Receiving Bank under these Rules. However, if the Sending Bank (which is also the Depositary Bank) exchanges an Electronic Image with an intermediary Receiving Bank (such as a collecting bank), and that collecting bank then exchanges the Electronic Image with the Receiving Bank that is also the Paying Bank, the Section XIX(O)(2) warranty would apply to that Electronic Image.

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