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
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 Depository Bank) exchanges an Electronic Image with an intermediary Receiving Bank (such as a collecting bank), and that collecting bank then exchanges the Electronic Image with the Receiving Bank that is also the Paying Bank, the Section XIX(O)(2) warranty would apply to that Electronic Image.

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

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

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

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

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

Comment: The first condition under the Section XIX(O) warranty for liability of the Depositary Bank is
the 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
and therefore a warranty claim is appropriate.

Rule: A Section XIX(O)(2) warranty claim is made for an Electronic Image by the Paying Bank by delivering
(i) the Electronic Image, (ii) a paper copy of the front and bank of such Electronic Image, or (iii) a substitute
check created from such Electronic Image to the Depositary Bank with a notation of “Breach of Warranty”
and/or “Do Not Redeem 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 Image, a paper copy of such Image 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 Image or paper reproduction) is being sent as a warranty claim.

Rule: The available amount on deposit in the account of the customer of the 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
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 Image (or a substitute
check created from such Electronic Image) 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 Image 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 of 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 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 Depositary Bank and its
customer.
XIX(O). COMMENTARY (continued)

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 Images 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 image) and to be delivered to the Depositary Bank through a specific paper-check clearing house. 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 Image to which the warranty claim relates. If the Paying Bank seeks to use a return process of a paper-check clearing house to deliver the Section XIX(O)(2) warranty claim, the Paying Bank should confirm that the clearing house allows a Section XIX(O)(2) warranty claim to be delivered through such clearing house. A Paying Bank also can deliver the warranty claim in paper form (substitute check or paper copy of the image) by mailing a letter containing the substitute check or paper copy of the image 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 VIII 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 Images from the Depositary Bank in the normal course of paper check collection.

Comment: The delivery of the Disclaimer Form, and the attached warranty claim, to the Paying Bank does not constitute the presentment or forward exchange for purposes of these Rules or other applicable check law of the substitute check or Electronic Image to which the attached warranty claim relates. Rather, the delivery of the Disclaimer Form (and attached warranty claim) acts only as a disclaimer of the Section XIX(O)(2) warranty claim. A 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 Image or the forward presentment of such item. Rather, the delivery is a method of processing the warranty claim and the resulting disclaimer of the warranty claim. However, it is contemplated that Members may use the same settlement processes that they use for settling funds arising from the exchange of Electronic Images in order to settle funds payable as a result of the warranty claim and the disclaimer of such warranty claim. Members that are settling funds through a clearing house settlement process should confirm that the clearing house permits settlement of Section XIX(O)(2) warranty claims.

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

**Rule:** If the Paying Bank receives the Electronic Image from a Receiving Bank that is not the 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 Image 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 Image 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 Image as a Sending Bank in the forward collection of the Electronic Image may reject the warranty claim that is incorrectly sent to it by a Paying Bank. Since the intermediary Sending Bank does not have the relationship with the depositing customer, this bank is not in a position to evaluate or resolve a Section XIX(O) warranty claim.

**Rule:** Subject to the conditions and limitations on liability in subsections 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 Image (and the Section XIX(O) warranty) under the rules of a Licensed Entity. As explained in the commentary above to Section XIX(O)(2), a paying bank under the rules of a Licensed Entity is an expressed third party beneficiary of the Section XIX(O) warranty made by the 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 Image 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 Image under the rules of the Licensed Entity. Accordingly, for a check image that is first exchanged under the rules of a Licensed Entity, this rule states that a Paying Bank under the ECCHO Rules must make a warranty claim back to the Depositary Bank that first exchange the electronic image under the rules of a Licensed Entity. The Paying Bank should not make the warranty claim to the Sending Bank (acting as a collecting bank) that presented the Electronic Image to the Paying Bank.