This paper is not a legal analysis or a recommendation regarding best or preferred practices for banks when handling checks/check images or adjustments/returns of checks/check images. Banks should consult their own legal counsel and operations teams when developing their internal program for handling returns and adjustments of duplicate payments of check/check images.

This paper is not part of the ECCHO Rules or its Commentary. The processes described herein are not mandated for ECCHO Members and do not represent a statement of best or preferred practices by ECCHO to any bank. This paper does not modify any rules or laws applicable to duplicates of checks/check images (e.g., Reg CC, Reg J, OC3, ECCHO Rules).

Each bank is solely responsible for making its own decision on how to handle check adjustments of duplicate payments in a manner that complies with ECCHO Rules and applicable law and is appropriate in light of the particular facts and circumstances.
The purpose of this paper is to explore various duplicate scenarios and discuss how members might handle the resolution of adjustments of duplicate check payments.

The Decision To Return or To Adjust A Duplicate Payment

This paper addresses scenarios where the Paying Bank has already made a determination to adjust a check image arising from a duplicate payment, as opposed to handling the duplicate as a returned item back to the bank that presented the item.

This paper does not make a recommendation to a Paying Bank as to whether or not to adjust or return a particular duplicate check payment.

For more information on the decision to return or adjust a duplicate, see Resolving Duplicates as Adjustments versus Returns—available at www.checkimagecentral.org.

Duplicate Resolution — Increased Complexity

Bank customers’ check deposit process has transitioned from only paper documents to a combination of paper payments and images of paper payments. In this environment, there is the potential for multiple deposits of the same check/check image and subsequent duplicate payment by the Paying Bank. Where there are multiple BOFDs for the same check/check image, the adjustment process for duplicate warranty claims is more complicated, creating the potential for delays and related risks.

The Duplicates can result from a number of different scenarios:

- Duplicate printing of Substitute Checks
- Duplicates arising from bank system issues with files, cash letters or bundle(s)
- Multiple customer deposits of the same check image via Remote Deposit Capture (RDC) Sources:
  - Fraudulent intent
  - Theft
  - Error/Mistake by Customer
RDC sources are any service that enables users to capture paper checks and transmit image or other electronic payment data for deposit to its bank. A key aspect of RDC, that has the potential to produce duplicates, is that the original paper check is not in the possession of the bank, but rather is held by the customer who may, either unintentionally or intentionally, cause the check to be deposited more than once. RDC sources can take many forms including:

- Corporate or merchant capture through scanner
- Lockbox capture through scanner
- On-site scan by customer who then utilizes ICL (Image Cash Letter) product
- Consumer/customer image capture by
  - Scanner
  - Mobile/cell phone

The adjustment scenarios described in this paper are primarily focused on consumer/customer check image capture where there is increased potential for the paper item to be held by a person other than the payee. In these situations, there is the potential for a Holder In Due Course (HIDC) to obtain possession of the original paper check and to make a demand on the drawer for payment based on that status.

**Duplicate Warranty | from ECCHO Rules Section XIX(L)**

There is actually no warranty in the ECCHO Rules that refers to “duplicates.” What the industry colloquially refers to as duplicates are covered under the no double debit warranty contained in ECCHO Section XIX(L) which reads:

> “each Sending Bank warrants to the Receiving Bank with respect to each Electronic Image sent to the Receiving Bank that:…”

> (7) “…the Receiving Bank and any other person will not receive a transfer, presentment or return of, or otherwise be charged for, the Electronic Image, the Related Physical Check of that Electronic Image, or a paper or electronic representation of the Related Physical Check such that the person will be asked to make a payment based on an item that it already has paid.”

Excerpts

In other words the sending bank warrants to the receiving bank that it will not be asked to pay an item that it has already paid, regardless of the format. There are similar warranties in Regulation CC (for IRD coverage) and Regulation J (for use in OC3/item processing through the Fed).
The below scenarios for handling adjustments were developed in conjunction with ECCHO members based on their experience in handling adjustments of duplicate payments. These scenarios were developed with the goal of resolving duplicate payments in a manner which:

- Seeks to reduce the impact to parties with an interest in the check transaction that did not cause the duplication or are not able to prevent duplication.
- Efficiently resolve claims in accordance with applicable rules and laws.
- Minimize the number of adjustments and steps to achieve final resolution of the matter.

Initial Considerations For Scenarios and Decision Trees

The below scenarios and decision trees are based on the following initial considerations by the paying bank:

**Consideration 1**

Paying Bank received duplicate check/check images from two different BOFDs, and Paying Bank has determined that it will use the adjustment process to resolve the duplicate payment warranty breach claim. (Paying Bank has determined not to return the suspected duplicate in the return process.); and

**Consideration 2**

Paying Bank has determined that it wants to obtain reimbursement for the duplicate item in a manner to reduce risk of a possible subsequent Holder In Due Course (HIDC) claim to its drawer customer (see below for description of HIDC); and

**Consideration 3**

Paying Bank has determined (where possible) to make the duplicate payment warranty claim to the BOFD that offered RDC to its customer. The rationale is that this BOFD’s RDC service first introduced the risk of multiple deposits and the RDC BOFD receives the benefit of its customer’s use of RDC service. Therefore, it could internalize any risk of subsequent duplicate payments. The RDC BOFD may also be in a better position to protect itself from these risks through its contract with its depositing customer. The responsibility of the RDC Bank for subsequent deposits at other BOFDs is consistent with the Truncating Bank Indemnity in the Federal Reserve’s 2013 proposed revisions to Regulation CC (not adopted as final rule or otherwise binding on banks).
This paper acknowledges that a Paying Bank may disagree with the above initial considerations on which the below scenarios and decision trees are based, and that a Paying Bank may determine to handle an adjustment or return of a duplicate check/check image in a manner different than as described in the below scenarios and decision trees.

**Scenario One: Duplicate Deposited at Two BOFDs**

The customer deposits a check through RDC at BOFD A and the item is cleared as an image to the Paying Bank. The original check is deposited, or cashed and deposited into BOFD B and is cleared as an image to the Paying Bank. (Sequence numbers represent flow)

1. **Depositing Customer**
2. **BOFD B**
3. **Paying Bank**

**Option for Resolution**

*Make the adjustment claim to the RDC bank.*

The Paying Bank makes the warranty adjustment claim to BOFD A, which is the RDC bank.
**Scenario Two: BOFD B’s Customer is Holder in Due Course**

The customer deposits a check through RDC at BOFD A and it is cleared as an image to the Paying Bank. The original check is cashed at a Check Casher, then deposited into BOFD B via image, and cleared as an image to the Paying Bank. The item is then posted to the customer’s statement. (Sequence numbers represent flow)

Because BOFD B informs the Paying Bank that BOFD B’s customer is HIDC, Paying Bank determines to make the warranty adjustment claim to BOFD A.

The Paying Bank initially chose to make the duplicate warranty claim to BOFD B which it has a right to do. BOFD B’s customer is a Holder in Due Course (HIDC) and would likely make a claim to the drawer (customer of the Paying Bank).

BOFD B informs the Paying Bank of a potential HIDC claim and requests the Paying Bank take the claim back (“reject claim”) and make it to BOFD A (there is no adjustment reject reason for this under the ECCHO Rules). BOFD B has made a duplicate payment warranty to the Paying Bank and the Paying Bank has a right to pursue the claim against BOFD B. The Paying Bank does not have to take the claim back. If at its discretion it does accept the rejected claim from BOFD B it can make a duplicate warranty claim to BOFD A. If a HIDC claim is subsequently made, then BOFD A will likely, eventually receive the warranty claim from the Paying Bank.

This option speeds the process and avoids potentially involving the drawer customer—who might receive a demand letter from the Check Casher, if BOFD B charges the warranty claim back to its customer’s account.
Scenario Three: BOFD B Requests Resolution from BOFD A

The customer deposits a check through RDC at BOFD A and it is cleared as an image to the Paying Bank. The original check is cashed at a Check Casher, then deposited into BOFD B via image, and cleared as an image to the Paying Bank. The item is then posted to the customer’s account. (Sequence numbers represent flow)

The Paying Bank chose to make the duplicate warranty claim to BOFD B, which it has a right to do. BOFD B is a Holder in Due Course (HIDC) and would likely make a claim to the drawer (customer of the Paying Bank). BOFD B contacts and seeks resolution from BOFD A. There is no legal claim between BOFD B and BOFD A under the ECCHO Rules or the UCC. But if a HIDC claim is made to the drawer, then BOFD A will likely, eventually get the claim from the Paying Bank. Therefore, BOFD A may, at its option, choose to accept the claim from BOFD B to speed the resolution of the matter.
These decision trees are designed to assist banks in handling adjustments for the duplicate item in a manner consistent with the above three scenarios. As noted above, banks are not obligated to adjust items as set forth below.

1. Receives Duplicate? No → End
   Yes → 2

2. Reasonably Determine which BOFD Is RDC? No → Adjusts to BOFD that first Presented item
   Yes → 3

3. Adjusts to RDC BOFD
Paying | Drawee Bank

BOFD Charged with Adjustment Claim and is Disputing it back to Paying/Drawee Bank

4. BOFD Sent Claim back to Paying Bank?
   - No → End
   - Yes → Was BOFD Bank previously determined to be RDC Bank (in step 2)?

5. Was BOFD Bank previously determined to be RDC Bank (in step 2)?
   - Yes → Research To confirm determination if BOFD is RDC Bank?
   - No → BOFD states it or customer has original check and will make HIDC Claim?

6. BOFD states it or customer has original check and will make HIDC Claim?
   - No → Send claim back to BOFD*
   - Yes → Adjusts claim to other BOFD

7. Adjusts claim to other BOFD

* May not be valid Reason to Reject adjustment claim under ECCHO rules

Drawer Received HIDC Claim from BOFD or Depositing Customer

8. Drawer customer received HIDC Claim?
   - No → End
   - Yes → Reimburse customer and make warranty claim to other BOFD
BOFD Receives Duplicate Claim from Paying Bank

10

Received Duplicate Claim?

Yes → Charge depositing customer (assuming Bank has authority under account agreement)

No → End

11

Is Depositing customer account open and has funds?

Yes → Go to 16

No → No

12

Was deposit made through RDC?

Yes → Accept claim absorb loss

No → Bank has original check and will make HIDC claim?

Yes → Contact RDC BOFD And seek resolution On item **

No → Accept claim absorb loss

13

Bank has original check and will make HIDC claim?

Yes → Reasonably ID RDC BOFD?

Yes → Contact RDC BOFD And seek resolution On item **

No → Accept claim absorb loss

No → Contact Paying bank to inform Paying Bank that BOFD or its customer has paper original. Paying Bank may consider claim to other BOFD*

14

Reasonably ID RDC BOFD?

Yes → End

No → End

* May not be valid Reason to Reject under ECCHO rules

** No warranty or liability for this action under current law
Exceptions Generally:

Each duplicate warranty claim or adjustment situation should be evaluated based on its merits and particular facts. Exceptions to the above scenarios can and will occur, and a few of these exceptions are discussed below. If a Paying Bank had determined that the above scenarios or decision trees do not apply to it or a particular warranty claim/duplicate payment, the Paying Bank should use its reasonable judgment in determining to which BOFD it will make the adjustment claim. In doing so, the Paying Bank may take into consideration the following:

- Date of the check(s)
- Potential alteration of the check
- If the check has previously been dishonored
- All other information Paying Bank has regarding the check
- Any information provided by the BOFDs regarding the check

Specific Exceptions:

The below listed exceptions may have an impact on whether a party is, or is not, a HIDC and therefore potentially could have a claim against the Drawer customer. This may impact the Paying Bank’s decision on how to handle the adjustment. There may be other exceptions which are not listed below. While ECCHO acknowledges that a Paying Bank may have a claim against either BOFD (BOFD A or BOFD B), ECCHO encourages the duplicate warranty claim be made against BOFD A.
Overdue Checks

Under the UCC, an overdue check is over three months old from the date of the check. A recipient of an overdue check cannot be a Holder in Due Course (HIDC) under the UCC. If the Paying Bank can determine lack of HIDC status by the depositor and its BOFD, this may impact the Paying Bank’s decision on whether to make the adjustment claim to BOFD A (as discussed in the above scenarios) or to send the adjustment claim to the entity (typically BOFD B) who took the overdue item.

Altered Checks

For a check that has been altered between initial deposit and second deposit, the Paying Bank should consider making the adjustment claim for the alteration to the entity that sent the altered item.

Multiple RDC Banks

Situations where there are multiple (more than 2) RDC image deposits of the same check are complex. Therefore, it is difficult to establish a general approach or scenario for adjusting these items. Banks should cooperate to resolve these issues when they arise, and seek input from their legal counsel.

Re-presented Items

An item that has been returned and then re-presented and paid typically is not a duplicate item subject to a warranty claim, since the paying bank is not being asked to pay an item it already paid. The BOFD should handle re-presented items in a manner that avoids the possible mistaken identification by the Paying Bank of the re-presentment item as a duplicate. While beyond the scope of this document, the proper handling of re-presented items by the BOFD, at a high level, are:

- **Electronic Re-Presentment** | The return reason code should have been populated by the Paying Bank in Return Addendum D (Type 35) Record. When the item is re-presented that return reason code will appear in the “flipped” Check Detail Addendum C (Type 28) Record.


- **Physical Check Re-Presentment** | The original check that was previously truncated should not be re-presented, rather a return Substitute Check (IRD) should be re-presented.
Brief Explanation of Holder In Due Course

For a complete explanation of Holder in Due Course (HIDC), see White Paper2: Additional Issues Regarding Duplicate Payment of Check involving Third Party Holder Claims at link.

- HIDC is a concept under the UCC (Article 3-302)
- HIDC has taken the check for value, in good faith and without notice that the check is overdue or has been dishonored
  - No notice that the check contains an unauthorized signature or has been altered or that the payment of the check is subject to certain defenses or claims
  - Check does not bear apparent evidence of forgery or alteration or is incomplete
- Not all holders of checks are HIDC
  - Depends on facts and circumstances
- HIDC may make claim directly to the drawer regardless of certain defenses that the drawer may have
  - This claim is outside bank adjustment processes, typically through a demand letter or as part of litigation
- The Paying Bank may choose to reimburse its drawer customer, if so the Paying Bank has paid the item twice and can make a duplicate warranty claim to BOFD A (see graphic below – sequence numbers represent flow)
Useful Links

See these links for more information about legal and operational issues regarding duplicates. Most of the concepts in these papers are not being repeated here:

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