

Where Does it Say That . . . ?

ECCHO®

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Check Legal Framework

Uniform Commercial Code (UCC)

- State law
 - May vary from state to state
- Articles 3 & 4
 - Define negotiable instruments, banks' relationship to their customers, and their relationship to each other

Regulation CC

- Federal Regulation
 - Defines check and electronic check, assigns warranties and indemnities, governs funds availability (with the CFPB) and substitute checks



UCC 3-417, 4-208 PRESENTMENT WARRANTIES.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized;

(4) with respect to any remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.



Regulation CC 229.34 Warranties and Indemnities

(a) Electronic Check Warranties

- (i) accurately represents the original check
- (ii) no one will be asked to pay the same check twice

(b) Remotely Created Checks are authorized

(c) Warranty of settlement, encoding and offset

(d) Return Check Warranties

(f) RDC and (g) ECI Indemnities



What is a warranty breach?

Party that made a warranty did not fulfill its obligation

- Warranty is *not* conditional to warrantor's ability to recover its loss

Some warranty breach claims cannot be handled through the adjustment process

- Must “deal direct”
 - Warranted party must work with warrantor to resolve

Some Indemnity claims can be made via adjustment platform*

- WIC (warranty indemnity claim) RDC, ECI, RCC, Ck21
- Submission deadlines apply; must “deal direct” outside of deadline
- *consult adjustment platform rules/agreements for specifics



That Late Return Excuse

I returned a check that posted last month because ...

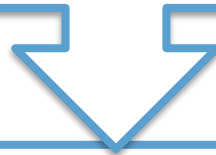
It was Counterfeit/Forged/Altered

Indorsement was forged and Payee
claimed no receipt of funds

My big customer asked me to return it
after they reviewed their statement



I got a late return adjustment and I disclaimed it for those same
reasons



So there!



Regulation CC Return Check Warranties 229.34(d)

Paying/Returning Bank warrants:

It returned the check within UCC 4-301 midnight deadline:

- the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline

Or within the Reg CC 229.31 Expeditious Return requirement

- a returning bank shall return a returned check in an expeditious manner such that the check would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank.
- These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank



Late Return Disclaim

ECCHO and Fed Exchange Late Return Disclaim Form

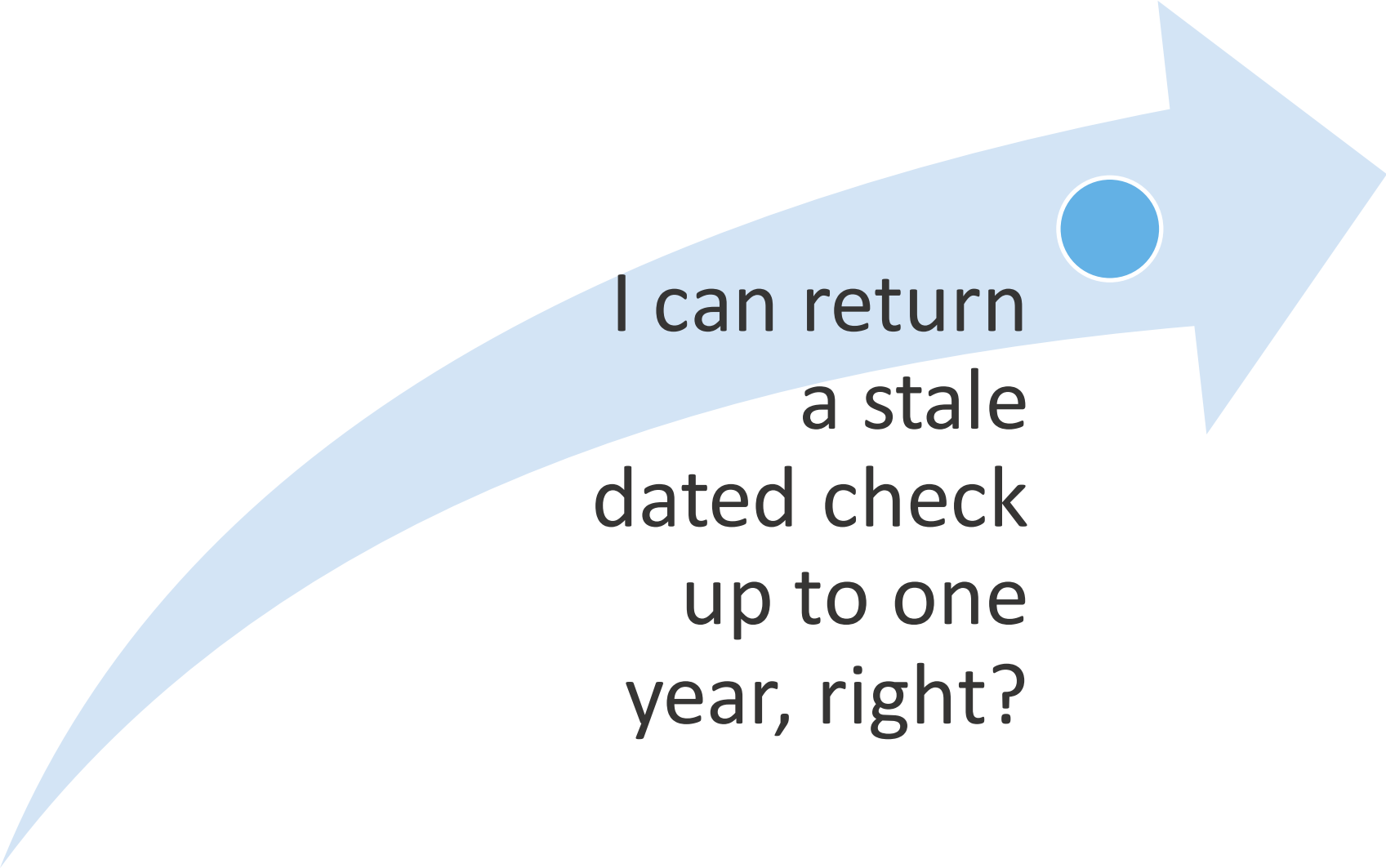
- To be used **only** when the check was returned timely
 - **Not** to be used when return was late due to a warranty breach
 - Paying Bank may have a claim, but it can't be made through the returns process
 - May need to deal direct

Fed Exchange Late Return Disclaim Form

- Knowingly making false statements to influence the action of a Federal Reserve Bank may subject the signing party to criminal penalties under federal and/or state law.



Where does it say *that*?



I can return
a stale
dated check
up to one
year, right?



A Word About Stale Dated and Future Dated Checks

UCC 4-404. Bank Not Obligated to Pay a Check More Than Six Months Old

- A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

UCC 4-401. When Bank May Charge Customer's Account

- (c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty.




Unauthorized Check



UCC 4-401: When bank may charge customer's account

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty.



*An item is **properly payable** if it is authorized by the customer and is in accordance with any agreement between the customer and bank.*



Can I reverse the credit if I don't get the funds back from the BOFD?



Notice of non-payment

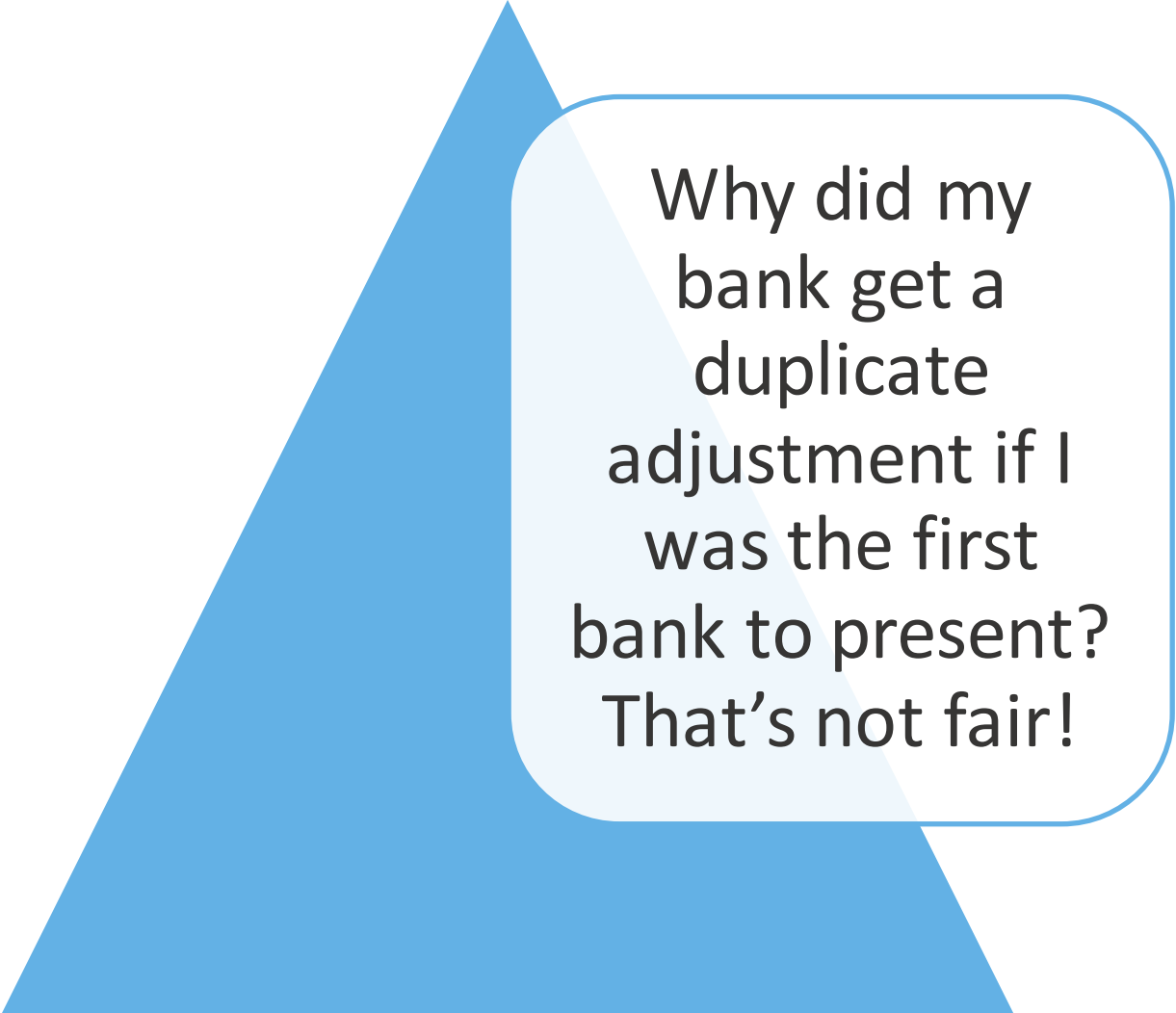


Reg CC 229.31 (c) *Notice of nonpayment.*

(1) If a paying bank determines not to pay a check in the amount of \$5,000 or more, it shall provide notice of nonpayment such that the notice would normally be received by the depository bank not later than 2 p.m. (local time of the depository bank) on the second business day following the banking day on which the check was presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depository bank, receipt of notice not later than 2 p.m. (local time of the depository bank) on the depository bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), or telephone



Duplicate Checks



Why did my
bank get a
duplicate
adjustment if I
was the first
bank to present?
That's not fair!



Regulation CC Reg CC 229.34(a)(ii)

No “Double Debit” Warranty

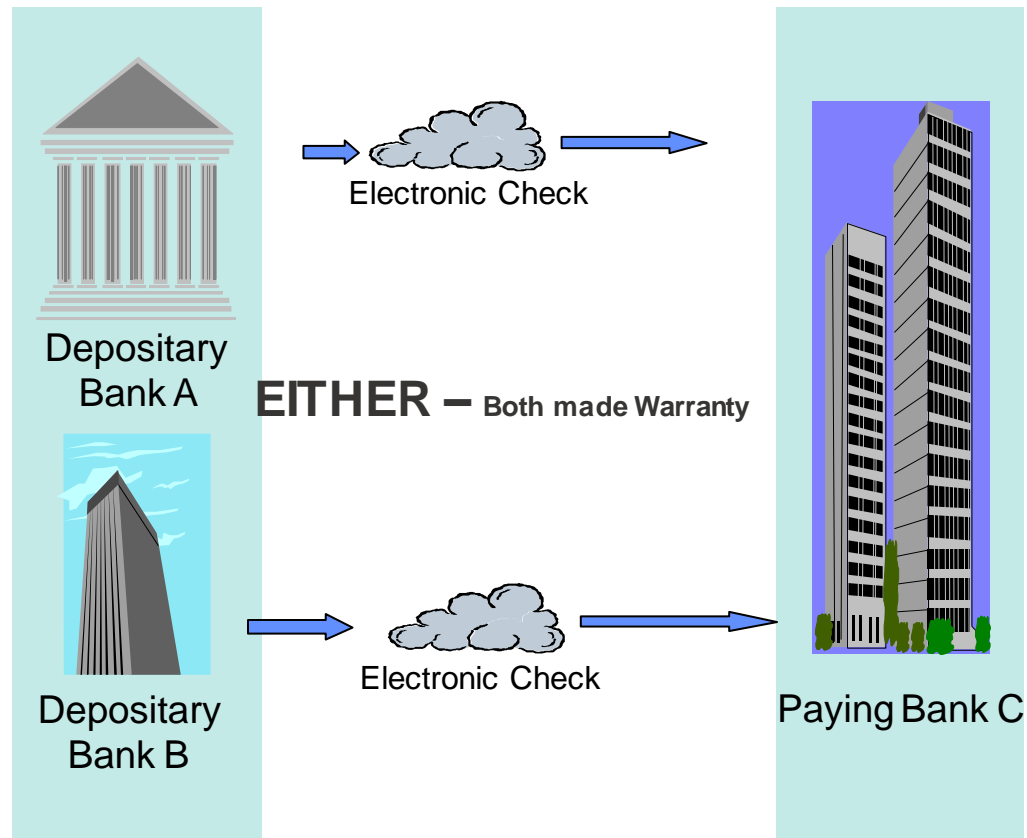
(a) Warranties with respect to electronic checks and electronic returned checks. (1) Each bank that transfers or presents an electronic check or electronic returned check and receives a settlement or other consideration for it warrants that—

(i) The electronic image accurately represents all 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, and

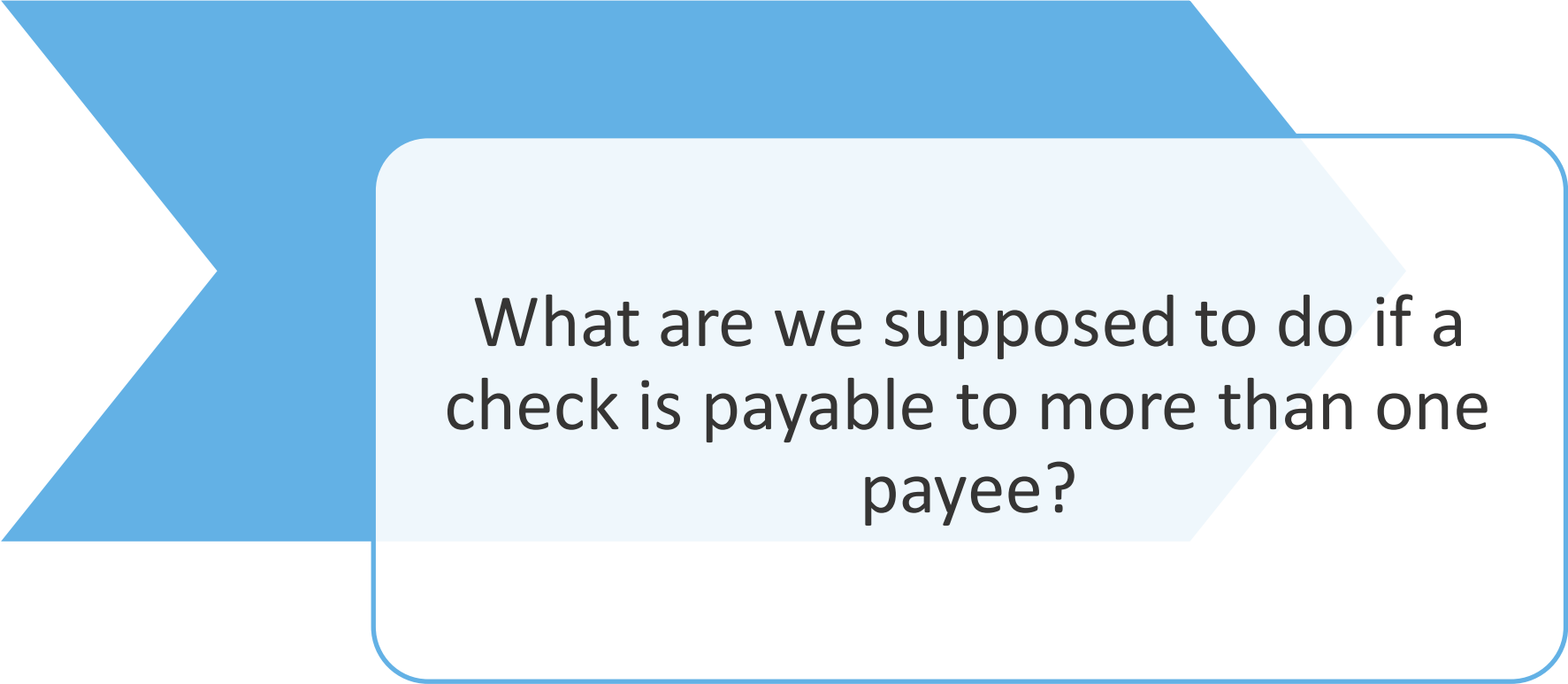
(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.



To Which Depository Bank can a Paying Bank make a Duplicate Warranty Breach Claim?



Multiple Payees




What are we supposed to do if a check is payable to more than one payee?



UCC 3-110 Multiple Payees


(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument.

For example: *Payable to George, Paul OR Ringo*



If an instrument is payable to two or more persons *not* alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them.

For example: *Payable to John and Paul and George*



If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

For example: *Payable to George, Paul, John*



Absence of the word or symbol “and” implies “OR”



I get checks returned for “Irregular Indorsement”
Is that a thing?

UCC 3-205

- (d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.



BOFD Indorsement Risks: Anomalous Indorsement

Indorse items as drawn

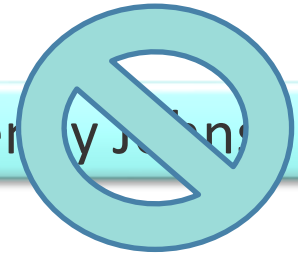
**Payable to
Jenny's Jools**



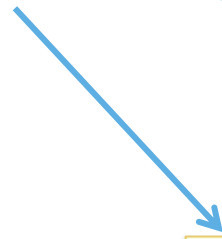
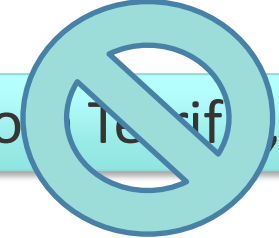
Jenny's Jools



Jenny Johnson, CEO



To Jennifer, CFO



*Jenny Johnson for
Jenny's Jools*



Encoding Errors

I under-encoded a check last month, and sent a ENC debit adjustment to the paying bank

I just got an adjustment claiming damages due to under-encoding

- I fixed the error, why am I being debited?? (it's not *fair!*)



Claim of Damage Adjustment

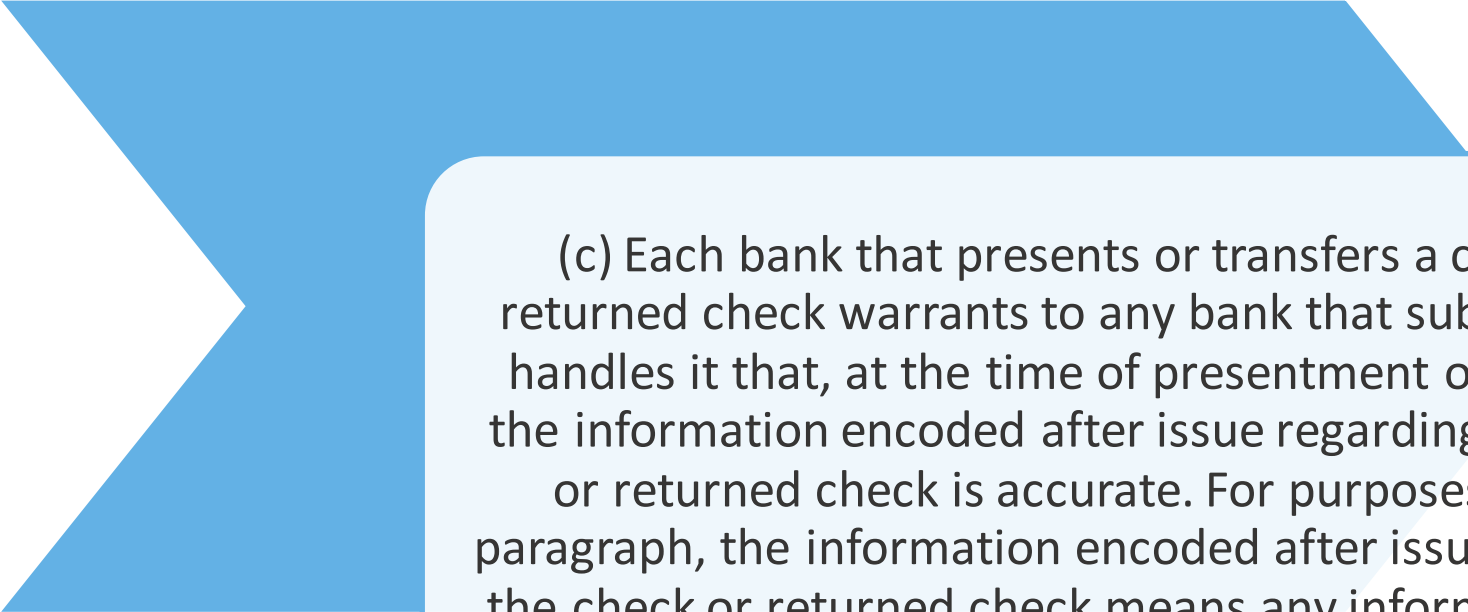
ECCHO: Claim of Damage Due to Under-encoding Adjustment

Fed: ERR Claim of Damage Due to Under-encoding Adjustment

- Sending Bank warrants the encoding after issue under Reg CC warranties
 - Paying Bank can disclaim item that was under-encoded by the BOFD to protect themselves from a loss
 - Federal Reserve minimum \$ amount
- Timing: ECCHO and Fed exchange
 - 20 business days with entry
 - Up to one year without entry



Reg CC 229.35(c) Settlement amount, encoding and offset warranties

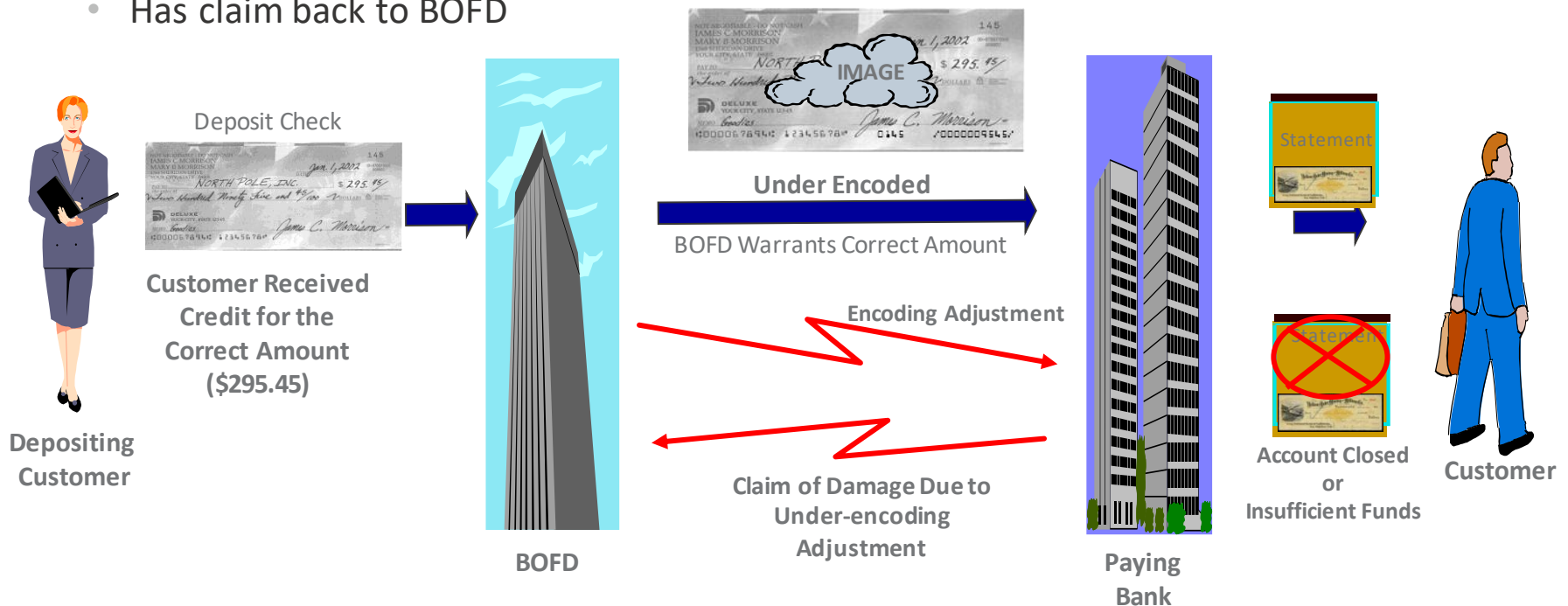


(c) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentment or transfer, the information encoded after issue regarding the check or returned check is accurate. For purposes of this paragraph, the information encoded after issue regarding the check or returned check means any information that could be encoded in the MICR line of a paper check.

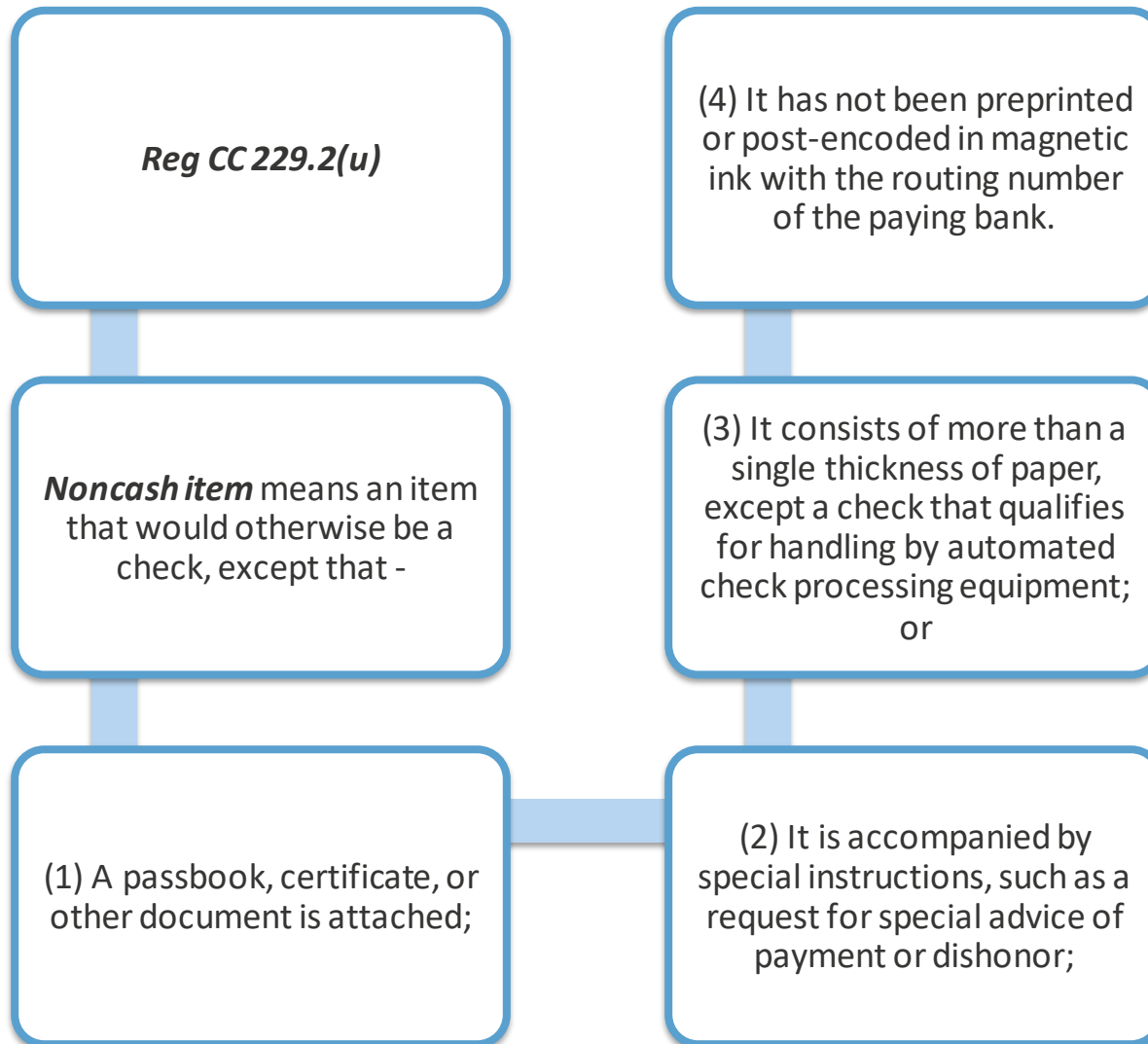


Claim of Damage Due to Under-encoding

- Check for \$295.45 – Encoded as \$95.45 (under-encoded for \$200)
 - Paying Bank unable to collect the additional \$200
 - Has claim back to BOFD



Does a check *need* to be printed in MICR?



Non-cash items

Fed OC 3.1

- A sender should not send to us any item if:
- (d) The item has not been preprinted or post-encoded in accordance with the currently effective version of the American National Standard Specifications for Placement and Location of MICR Printing, X9.100-160-2004, before we receive it with: (i) the routing number of the paying bank (or nonbank payor), and (ii) the dollar amount of the item

ECCHO Rules XIX(C) Commentary

- 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:
- (d) an item that has not been pre-printed or post-encoded in magnetic ink with the Routing Number of the Paying Bank.



Altered Check Claim: Paying Bank

My customer told me a check paid where the dollar amount and/or payee was altered

You may have a breach of warranty on the part of the BOFD

- No adjustment process regardless of exchange

How long can a Paying Bank take to make a claim?

- UCC Statute of Limitations is 3 years (UCC 3-118)*
- UCC 4-406: a customer who does not **within one year*** after the statement or items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature on **or any alteration** on the item is precluded from asserting against the bank the unauthorized signature or alteration
 - ****may be varied by agreement***




What does ***your*** Account Agreement Say?



Can a warranty breach claim be disclaimed?

UCC 3-417, 4-208



(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. *Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.*



Does Your Account Agreement Address

Restrictive Legends?

- “Void after 90 days
- “Two signatures required”
- “Not valid over \$XXX”

Bank must ***agree*** to enforce



Does your account agreement address

Stale dated checks?

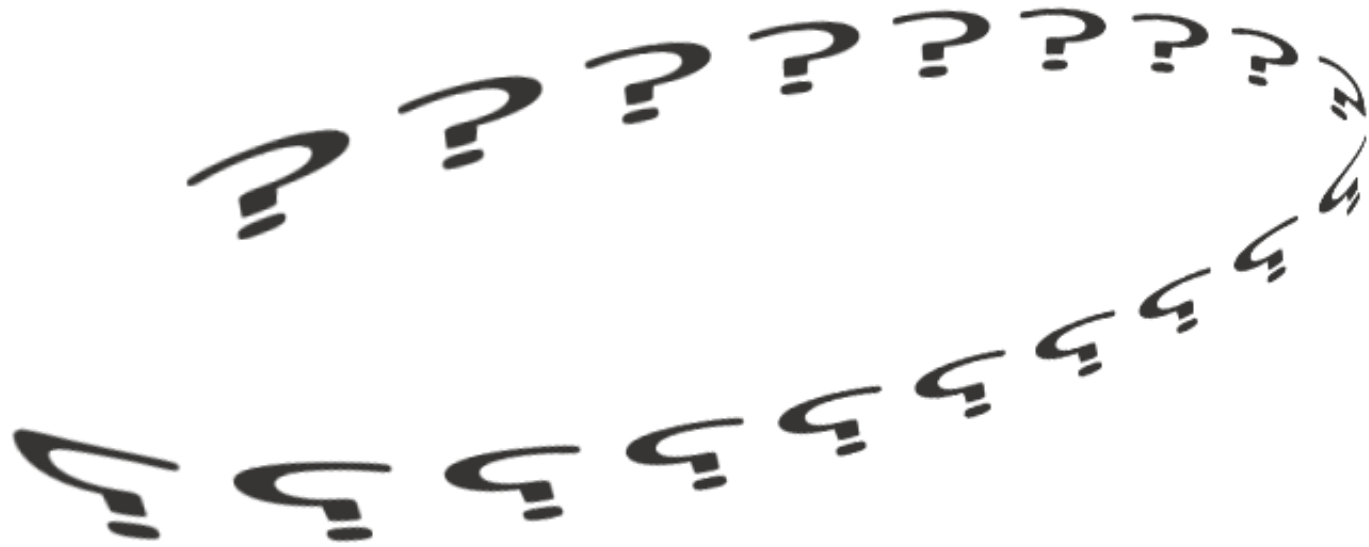
- UCC 4-404
 - Bank may pay, but is not obligated to pay a check more than 6 months after its date

Future dated checks?

- UCC 4-401
 - Bank may pay “properly payable” check
 - Means “authorized by customer and in accordance with any agreement between bank and customer”
 - Even though payment is made before date of check



Questions?



Thanks for your participation today!

ECCHO was established in 1990 as a not-for-profit clearinghouse to foster the electronic exchange of checks and to advocate for a more efficient check payments system. Now, as a service of The Clearing House Payments Company L.L.C., ECCHO has approximately 2,500 members comprised of U.S. depository financial institutions of all sizes. Member services provided by ECCHO include the ECCHO Operating Rules for private-sector image exchange, industry advocacy for the check payment system, payments education and the nationally recognized NCP accreditation program. Visit the ECCHO website for more information:

www.theclearinghouse.org/eccho

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