



**COMMUNITY BANKERS**

B A N K

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# CB Solutions

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## ECCHO AND THE NEED FOR RULES

**Q:** Did you know that rules or specific agreements are needed for two financial institutions to send and receive check images either directly, through a private network or through the Federal Reserve?

**A:** There is no law to govern the exchange of electronic check images. Without specific rules in place the institutions exchanging images assume an indeterminate amount of risk. The Check 21 Act, effective in October 2004, authorizes the unilateral truncation of a paper check when it is replaced with a substitute check. But Check 21 does not validate the exchange of electronic check payments.

Check image exchange must be preceded by agreements between the parties to accept the images. To make these exchanges outside of an agreement is to do so without the support of the statutory, regulatory or case law and includes an indeterminately large amount of risk. Why? Since the law does not cover electronic check exchange, if a dispute should arise it is unclear to whom the courts might assign liability and in what amounts. There is also the potential for “proximately caused damages” or consequential damages related to such a dispute.

The solution to mitigate this risk is to have agreements between the exchanging parties. Agreement options can include: (i) two-party agreements that bind only the two parties, (ii) multi-party agreements such as through a provider of image services, and (iii) clearinghouse agreements. In the U.S. today, the rapidly growing preference is to have agreements through a common set of clearinghouse rules.

ECCHO, the Electronic Check Clearing House Organization, provides the only set of comprehensive clearinghouse rules that have broad national recognition and industry support. ECCHO’s rules provide a common legal framework for exchange among the members. Alternatively, if the check images are sent through a Federal Reserve Bank for collection, those exchanges are covered by Federal Reserve operating circular OC3 and Regulation J which outline the liabilities and responsibilities of the institution that is either sending the images to or receiving the images from a Federal Reserve Bank.

Community Bankers’ Bank is both a sponsor and a member of ECCHO. For additional information regarding this topic, please contact Kathleen Mojica at 804-794-5885, ext 126 or you may contact ECCHO at 214-273-3200 or visit their website at [www.eccho.org](http://www.eccho.org).