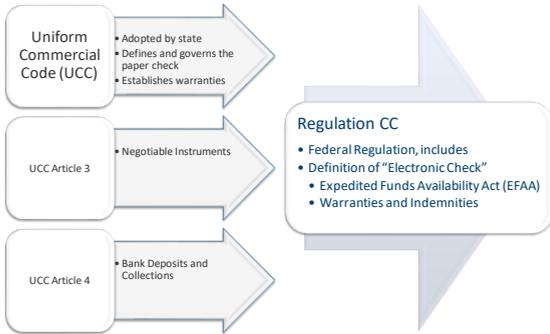


Legal Framework



4

BOFD Warranties

UCC warranties 3-417, 4-208

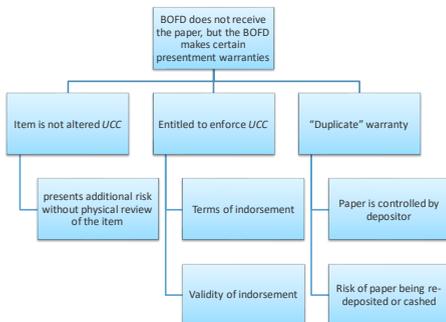
- “entitled to enforce”
- The draft has not been altered
- No knowledge that the signature of the drawer is unauthorized

Regulation CC §229.34(a)(1)(ii): no “double debit” warranty

- *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.*

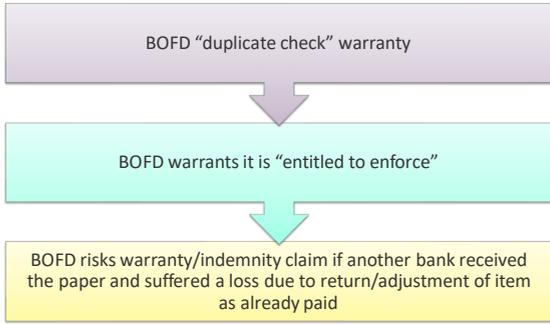
5

RDC BOFD Risk



6

BOFD Warranty Risks



7

RDC Indemnity (229.34(f))

Purpose of Indemnity:	Addresses Risk:
<ul style="list-style-type: none"> To protect subsequent depository bank that received deposit of paper check from loss when check is returned unpaid due to duplicate RDC item To encourage RDC banks to implement good RDC deposit practices 	<p>Customer retains original check and may intentionally or mistakenly deposit paper check in another bank</p> <p>RDC bank's potential liability rises when it permits customer to truncate check and deposit image</p>

8

RDC Indemnity Rule Text (229.34(f))

(1) The indemnity described in paragraph (f)(2) of this section is provided by a depository bank that—

(i) Is a truncating bank under § 229.2(eee)(2) because it accepts deposit of an electronic image or other electronic information related to an original check;

(ii) Does not receive the original check;

(iii) Receives settlement or other consideration for an electronic check or substitute check related to the original check; and

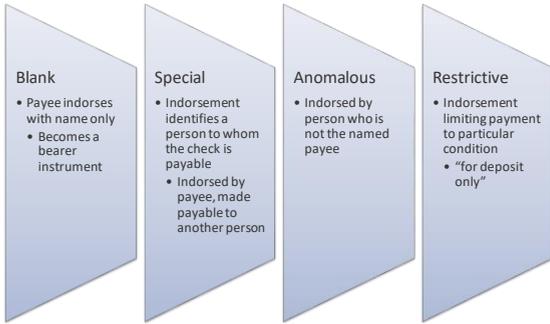
(iv) Does not receive a return of the check unpaid.

(2) A bank described in paragraph (f)(1) of this section shall indemnify, as set forth in §229.34(i), a depository bank that accepts the original check for deposit **for losses incurred by that depository bank** if the loss is due to the check having already been paid.

(3) A depository bank may not make an indemnity claim under paragraph (f)(2) of this section if the original check it accepted for deposit bore a restrictive indorsement **inconsistent with the means of deposit.**

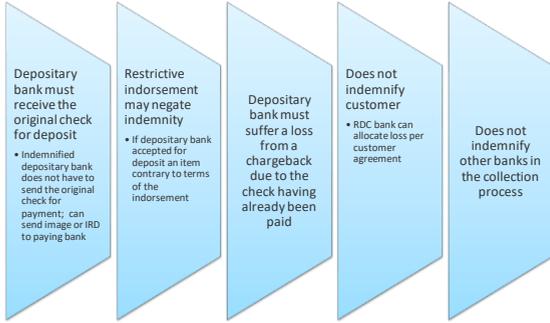
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Indorsements UCC 3-205, 206



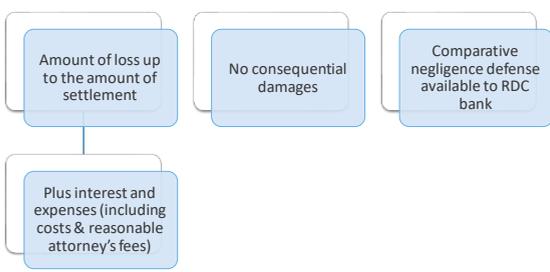
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RDC Indemnity: BOFD Terms to Receive the Indemnity



11

RDC Indemnity: Amount of Liability



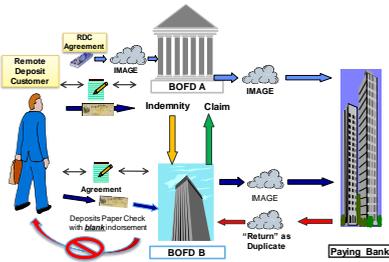
12

How do I determine who the RDC BOFD is?

<p>Fed exchange: Submit Information Request: ITYP SOR</p> <ul style="list-style-type: none"> • May need to contact identified Paying Bank to discover RDC BOFD who received settlement • Within one year of cash/return letter date 	<p>ECCHO governed exchange: Submit <i>Source of Receipt Item Identification</i> form to Paying Bank</p> <ul style="list-style-type: none"> • Paying Bank identifies the BOFD who received settlement • Within one year of cash/return letter date
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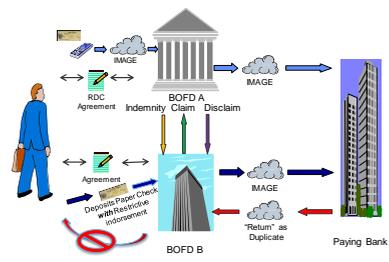
13

RDC Indemnity Claim



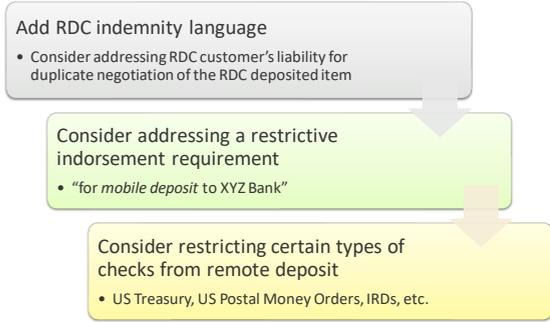
14

RDC Indemnity: Restrictive Indorsement Disclaim



15

RDC Deposit Agreement Considerations



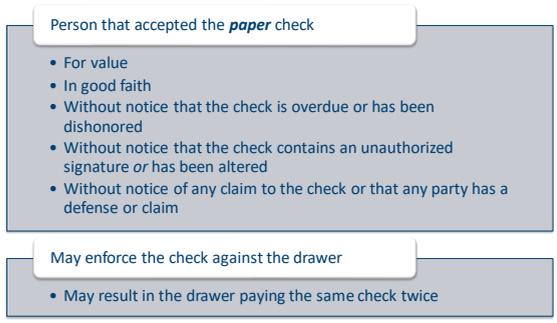
16

RDC Considerations



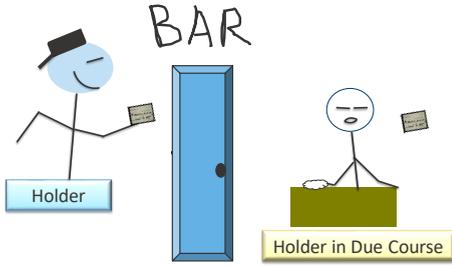
17

Holder in Due Course: UCC 3-302



18

A guy walks into a bar . . .



. . . and cashes a check



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19

Holder

UCC 1-201(21) "**Holder**" means: (A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession

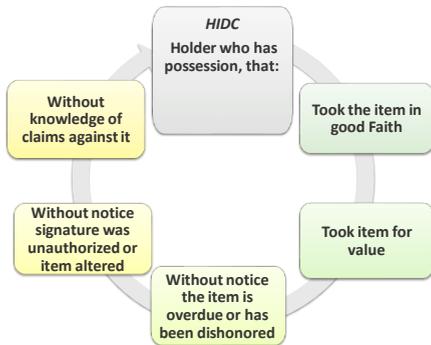


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20

Holder and Holder in Due Course (HIDC): UCC 3-302



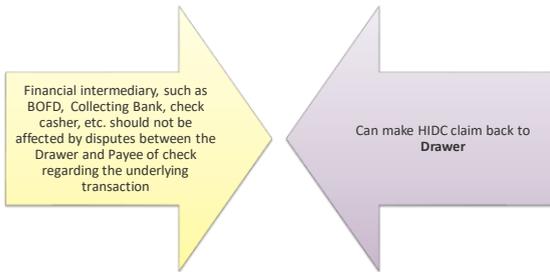


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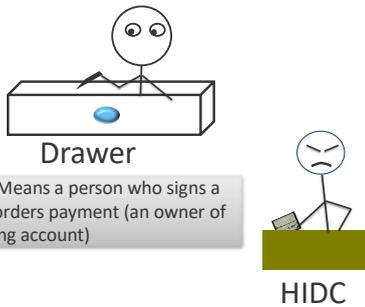
21

Holder in Due Course (HIDC): UCC 3-302



22

HIDC Rights



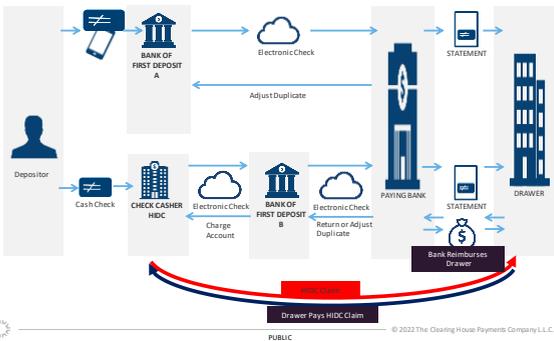
23

So what do I do...?

<p>...when Holder in Due Course demands payment from the Paying Bank</p> <ul style="list-style-type: none"> • If the Paying Bank is <i>not</i> the <u>drawer</u> • It is not subject to HIDC claim 	<p>...when my account holder is getting demands for payment from the HIDC</p> <ul style="list-style-type: none"> • Drawer is subject to HIDC claim • Stopping a check payment does not cancel the <i>obligation</i> of the drawer • Drawer and HIDC must resolve outside of banking channels
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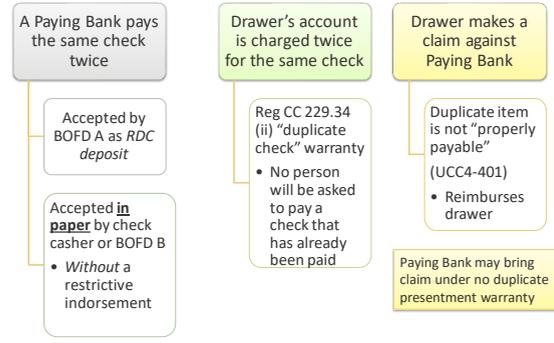
24

HIDC Scenario



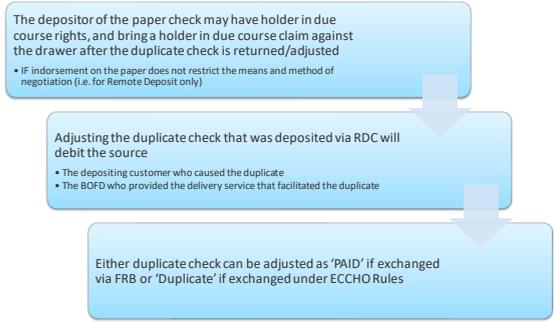
28

HIDC and Remote Deposit Capture



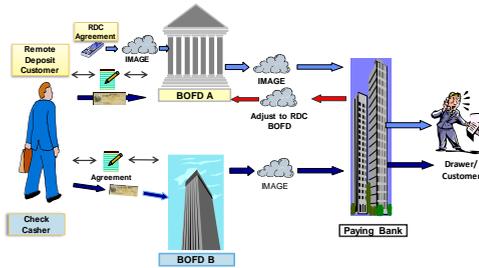
29

So what happens when I adjust?



30

Duplicates: Adjustments



When your customer tells you about a duplicate, what's the best thing to do here?

And don't forget: Regulation CC Return Check Warranties
229.34(d) Paying/Returning Bank warranties:

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

And by the way . . .
§229.30 Paying Bank's Responsibility for return of checks:
Expeditious return

A paying bank returns a check in an expeditious manner if it

- Returns check such that the check would normally be received by the depository bank not later than **2:00 p.m.** (local time of the depository bank)
- By the second business day following the banking day on which the check was presented to the paying bank
- Notice of return for items >\$5,000 must be provided
 - Expeditious return can serve as notice

229.34(d)(2) 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.

Return deadlines and returns warranty

Return deadlines

- **UCC 4-104(10) Midnight deadline**
 - Settle or return by midnight following business day of presentation
- **Reg CC 229.31(b) Expeditious return of checks**
 - Return must be received by BOFD by 2:00 pm 2nd business day after presentation

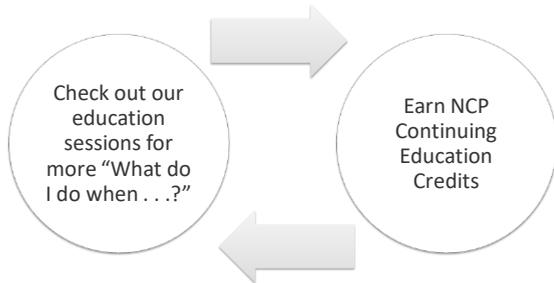
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Reg CC 229.34(d) Return check warranties

- (i) The paying bank returned the check within its UCC and Reg CC deadlines

34

Looking for More Training?



For a complete listing of education events and on-demand sessions, please visit: <https://www.theclearinghouse.org/eccho-education>

35

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 3,000 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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36
