



The Uniform Commercial Code and Emerging Technologies



History of the Project

Origins of the project

Summer 2019

October 2019

January 2020

May 2020

Summer 2020



General Themes

- Technology-neutrality
- Development of a package of legislation
- Consistency of terminology and treatment where possible
- Thoughtful decisions regarding statutory language and commentary
- Consumer issues



Electronic Negotiable Instruments

Draft term sheet presented by Reporter Steve Harris

Use of the term “electronic” for consistency with other uniform Acts and E-Sign

Purposeful exclusion of intangible checks.

Concept of “control” as a substitute for “possession,” which the Code does not define.

The goal was to preserve the function of electronic notes, not necessarily to track Article 3 as closely as possible.

Electronic Negotiable Instruments

Question of whether choice of law/choice of forum clauses in electronic instruments defeat negotiability.

Concept of “control” as including the power to transfer control to another, and also as something only one person can have at once.

Question of whether a practical difference exists between bearer and order paper when both are electronic instruments, given the record of transfer for the former as well as the latter.

Need to clearly define electronic instruments consisting of multiple records.

Consensus to move forward with drafting if and when approved by the Executive Committee.

Electronic Negotiable Instruments

Definitions of “electronic negotiable instrument” and “tangible negotiable instrument.”

Updated definition of “sign” to facilitate electronic mediums.

New Section 3-104A, Control of Electronic Instrument

New Section 3-105A, Reissuance in Alternative Medium

New Section 9-314 (d) through (h)



Electronic Chattel Paper

- Tom Buiteweg and Bill Henning
- When the chattel paper consists of more than one record, which should be relevant for the purpose of possession or control.
- Whether the Code should expressly authorize the conversion of chattel paper from tangible to electronic and vice versa.
- How to address hybrid chattel paper consisting of one or more electronic records *and* one or more tangible records.
- Consensus to move forward with drafting if and when approved by Executive Committee.

Money and Virtual Currency

- Rob Isham and Steve Weise
- Digital Dollars/intangible money - allowing government-issued fiat virtual currency to qualify
- Addressing the issue of perfection by possession and the application of “take free” rules
- Digital Medium of Exchange Assets/Virtual Currency – coordinate with “Other Digital Assets” group
- Project will continue in Study Committee.



Other Digital Assets

- Chuck Mooney and Carla Reyes
- Covering assets that are distinguished by access and transfer by cryptography (including digital collectibles and tokenized assets)
- Possible guidance from Uniform Virtual Currency Businesses Act (September 2018)
- Clarification of when other digital assets do – and do not – qualify as uncertificated securities.
- Rules for custody arrangements
- Inter-relationships with other Articles of the Code (negotiability, take-free rules, perfection by control)
- Project will continue in Study Committee.

Moving
forward

Money & Virtual Currency Committee and Other Digital Assets Committee
functioning as a single Subgroup

Non-fiat Virtual Currency as a subset of
Digital Asset

Fiat Virtual Currency as its own category
of asset

Proposed rules for Digital Assets in progress (perhaps to be modified for
non-fiat Virtual Currency)

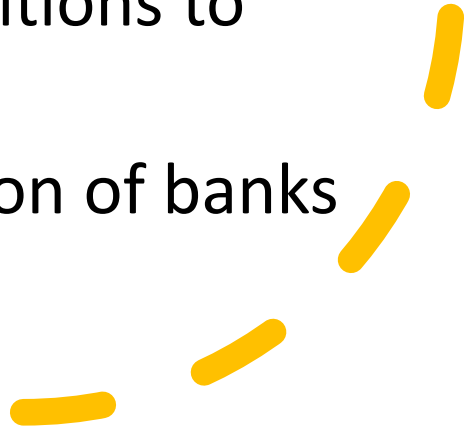
Continued conversations:

Scope of “take free” rules
(including priority rules)

Definition of “control” and
how it should be effected

Updates to UCC for Fiat
Virtual Currency

Payment Systems Other than Checks

- Stephanie Heller and Joe Torregrossa and Stephen Sepinuck
 - PEB Commentary on ISO 20022
 - Article 4A writing requirement
 - Security procedures
 - Treatment of transaction involving fiat virtual currency
 - Smart contracts as creating conditions to payment under 4A
 - Possible expansion of 4A definition of banks
- 

Bundled Hardware, Software & Service Transactions

- Neil Cohen and Leianne Crittenden
- Emerging body of non-goods (support, consulting, cloud services) provided in conjunction with leases of goods or finance leases
 - Chattel Paper
 - Finance Leases and applicability of hell-or-high-water clauses
- Predominant purpose or gravamen of the complaint – or alternatives – for transactions involving both goods and services

Article 9 Filing System, Remedies, Etc.

- Paul Hodnefield and Juliet Moringiello
- Are existing rules technology-neutral enough to allow innovation?
- Inclusion of e-mail addresses on UCC-1
- Automated repossession
- Security interests in and custody provisions for digital assets
- Central filing of fixture filings