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Committee on Financial Institutions  
Public Hearing

Chairman Craig and fellow committee members thank you for holding this public hearing today and for allowing me to speak on AB115.

This bill is aimed at fixing a loophole in the law governing fund transfers that was created with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Financial institution remittance fund transfers are regulated by both the federal and state governments. While consumer fund transfers are generally regulated by the federal government through the Electronic Transfer Act (EFTA), and commercial fund transfers are generally regulated by the state through adoption of the Uniform Commercial Code (UCC) Article 4A, there are instances when a transaction can trigger regulation under both sets of laws. In such instances, current law dictates which set of rules will take precedent.

For example, a remittance transfer, which is defined as the electronic transfer of funds to a person in a foreign country, presently is governed by Article 4A if it is not an electronic funds transfer as defined in the EFTA. The amendment included in Dodd-Frank excludes funds transfers that qualify as remittance transfers from the scope of Article 4A even when these transfers are not electronic funds transfers. As a result these types of transfers are unregulated both by Article 4A and EFTA.

AB115 clarifies the relationship between Article 4A and the EFTA by restoring Article 4A's applicability in these types of remittance transfers.



## Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

### **UCC Article 4A Amendments (2012) Summary**

The Dodd-Frank Wall Street Reform and Consumer Protection Act is an amendment to the Federal Electronic Funds Transfer Act (EFTA) that will have an important impact on the scope of Article 4A of the Uniform Commercial Code. Presently Article 4A does not apply to a funds transfer any part of which is governed by EFTA. The implementing regulations for the federal act were published in the Federal Register in November 2011, with a delayed effective date of the rules to February 2013, expressly to permit changes to UCC 4A so it might continue to govern aspects of some remittance transfers. Absent a change to Article 4A, there could be legal uncertainty for a class of remittance transfers currently governed by Article 4A. The Permanent Editorial Board for the Uniform Commercial Code has recommended an amendment to §4A-108 and its comments. Both the ALI and the ULC have approved the amendment.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the EFTA governed only consumer wire transfers. UCC §4A-108 was drafted with that in mind. When the amendment to EFTA goes into effect in 2013, EFTA will govern "remittance transfers", whether or not those remittance transfers are also "electronic fund transfers" as defined in EFTA. Thus, when the amendment and its implementing regulation go into effect, the result of UCC §4A-108 in its present form will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer (not a consumer remittance transfer). Thus a number of important issues in those remittance transfers will be governed neither by Article 4A or the EFTA.

The proposed amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA.

### **Why States Should Adopt the Amendment to UCC Article 4A**

Preemptive federal regulations for remittance transfers will become effective in February 2013. The delayed implementation was given to provide the Uniform Law Commission and/or interested parties time to make changes that would permit some aspects of remittance transfers to continue to be covered by UCC Article 4A. The federal regulation is intended to cover primarily consumer remittance provider disclosure and limited other issues in funds transfers (remittances) that go out of the United States.

The proposed amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act (EFTA). The amendment maintains the coverage of UCC 4A for some aspects of wire transfers, while initial aspects of generated consumer remittance transfers will be covered by the federal rules. Without enactment of the amendment, neither the federal rule nor UCC 4A will apply to some aspects of remittance transfers. The result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries and other issues beyond the initial sending of the transfer.

TESTIMONY IN SUPPORT OF ASSEMBLY BILL 115 PRESENTED BY COMMISSIONER JOANNE HUELSMAN  
FROM INFORMATION PROVIDED BY THE UNIFORM LAW COMMISSION

Preemptive federal regulations for remittance transfers were to become effective in February 2013. The delayed implementation was given to provide the National Conference of Commissioners on Uniform State Laws time to make changes that would permit wholesale (commercial) remittance transfers to continue to be covered by UCC 4A. The federal regulation is intended to cover primarily consumer overseas remittiturs.

UCC 4A was first promulgated in 1999 and enacted in every state and by most states within two years. The UCC Code is a premier product of the Uniform Law Commission. It is important to maintain its vitality by immediate enactment of the Amendment as soon as possible and in 2013 if practicable.

Among the changes brought about by the Dodd-Frank Wall Street Reform and Consumer Protection Act is an amendment to the federal Electronic Funds Transfer Act (EFTA) that will have an important impact on the scope of Article 4A of the Uniform Commercial Code. The impact could result in legal uncertainty for a class of transactions currently governed by Article 4A unless Section 4A-108 is amended.

UCC 4A was originally drafted to govern transfers between commercial parties; at the time of drafting, the Electronic Funds Transfer Act governed consumer wire transfers. UCC 4A-108 was drafted to read that if any part of a funds transfer was subject to a federal act, that it would not be subject to Article 4A. When the amendment to EFTA goes into effect in 2013, EFTA will govern "remittance transfers", whether or not those remittance transfers are also "electronic fund transfers" as defined in EFTA. Thus, when the amendment and its implementing rules go into effect, the result of UCC Section 4A-108 will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer, so that those remittance transfers will be governed neither by Article 4A or the EFTA.

This Amendment revises UCC 4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA.



**Uniform Law Commission**  
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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April 8, 2013

House Committee on Financial Institutions  
Wisconsin State Legislature

Chair Craig, Vice-Chair Kapenga, and Members:

The Uniform Law Commission writes in support of Assembly Bill 115, an act concerning the Uniform Commercial Code and the Electronic Funds Transfer Act.

Money transfers in the United States are effectuated through electronic transfer networks. The payment of obligations is of vital importance to almost all commercial transactions. It is neither convenient nor prudent to pay large or even modest obligations in actual cash. So, individuals and corporations, big account holders and small, have turned to electronic funds transfers.

Electronic funds transfers are subject to the Electronic Funds Transfer Act (EFTA) (federal legislation) and/or the Uniform Commercial Code (UCC) Article 4A (state legislation). Generally, consumer transactions are controlled by the EFTA and commercial transactions are governed by the UCC. Any transaction that is subject to the EFTA is not subject to UCC Article 4A. This express exclusion places consumer transactions outside the jurisdiction of UCC Article 4A and leaves them to federal law.

Recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the EFTA. When the amendment to the EFTA goes into effect later this year, the EFTA will include the regulation of "remittance transfers."<sup>1</sup> Now some remittance transfers are made by consumers and are properly and unquestionably subject to the EFTA. But other remittance transfers are not made by consumers but are instead made by commercial entities in commercial transactions, and these remittance transfers are not subject to the EFTA, nor are they subject to the UCC under existing law. The result is a gap in the law as it relates to some commercial transfers. The UCC Article 4A Amendments, the legislation presented here today, fill this gap in coverage of the law and restores regulatory certainty and clarity to remittance transfers that are commercial in nature.

The proposed amendment revises UCC §4A-108 to provide that UCC Article 4A does apply to a remittance transfer that is not an electronic funds transfer regulated by the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA.

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<sup>1</sup> A "remittance transfer" is defined in 15 U.S.C. § 1693o-1(g) (2) to mean an "electronic . . . transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a 'remittance transfer provider,'" i.e., any person or financial institution that provides remittance transfers for a consumer in the normal course of business.

It is important that the UCC Article 4A Amendments be enacted before the EFTA amendment goes into effect or as soon as possible thereafter to effectively regulate these transactions. For these reasons, I respectfully request that the members of the House Committee on Financial Institutions vote favorably on AB 115. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Nicole Julal". The signature is written in black ink and is positioned above the printed name.

Nicole Julal

ULC Senior Legislative Counsel