

UNIFORM LAW COMMISSION
STUDY COMMITTEE ON VIRTUAL CURRENCY

April 23, 2015 Meeting of Stakeholders

To be held at the offices of the Conference of State Bank Supervisors

9th Floor

1129 19th St., NW, Washington, DC

INITIAL STATEMENT

In December 2014, the Study Committee recommended to the ULC Scope and Program and Executive Committees that a Drafting Committee be convened to draft uniform commercial law provisions to govern the rights and responsibilities of virtual currency market participants who offer wallet and exchange services to merchants who take virtual currencies in payment for goods and services and their customers, whether commercial or consumers. Additionally, the Study Committee expected that the work of the Drafting Committee might involve a uniform law on licensure and prudential regulation of virtual currency market participants closely related to existing state laws regulating “money transmitters” and “money service businesses.” The ULC Executive Committee directed the staff of the ULC and the Study Committee to convene a meeting of stakeholders in the virtual currency market to review the topics that the ULC could assign to a Drafting Committee and to report back on that meeting.

Principles Guiding ULC Drafting Processes: By providing rules for major aspects of new developments, like virtual currency, in a single legal structure, a uniform law may reflect the proper use and sometimes even affect the development of the subject matter. As such, drafting such a law generates unique issues that may, or may not, equally attend current comparable subjects, and care must be taken not to by that law impede further development. The issues also may be compounded in light of the potential number of federal laws or regulations that may be anticipated.

The inherent difficulties of the task however do not lessen the importance of the work, but only emphasize the need for careful consideration. The importance of the work in part resides in the fact that for a jurisdiction to enact and implement such a law – particularly one that reflects its views and responds to its needs – furthers the federal system. This is especially important given that the absence of such a law may cede control, by default, to a federal system with its own perspective about what such a law should look like and how it is best accomplished, as well as involving significant enforcement issues. As such, the ULC, with the advice of participants in the market, is working toward the creation of a state uniform law that will reflect an overall unified structure, but also perhaps supporting alternate and optional provisions, and, by allowing considerable freedom of contract on numerous topics, a law that will allow flexibility.

The terms proposed to be included in a draft will represent an initial step if a drafting project is undertaken. The ULC project will focus on procedural issues as well as efforts to address substantive provisions detailing the value choices that must necessarily be dealt with. Any proposed draft will reflect many principles that have been worked out over the past years within other uniform laws, but it should be remembered that any proposed draft as to new material will be but a first step in formulating any ultimate law, and is designed to invite questions, generate discussion, and drive refinement as we work toward the actual law proposal.

Any proposed draft contemplated will be comprehensive and include provisions that are integrated internally and with other laws. Some of the early provisions ultimately might be deleted, others amended, and perhaps more added. The key will be

to focus a careful eye toward whether and how the context might precipitate additional issues or an alternate view over what the law should include.

Goals for the April 23, 2015 Stakeholders' Meeting: This meeting will present what we call a “commercial” set of rules derived from experience with the Uniform Commercial Code (“UCC”) providing so-called “default rules” to determine participants’ rights and obligations in transactions involving virtual currency market participants. The UCC experience indicates this approach provides certainty and predictability for parties that fosters and maintains acceptance of virtual currency and encourages development while at the same time allowing agreements for specific transactions. Absent such rules, rules from other existing systems may be adapted to govern, with more or less certainty and adequacy (remember the *Evra* case as a prompt for UCC Article 4A). Then, given modern practice, unvariable regulatory provisions providing both certainty and protection against bad practices for all participants will be considered.

The overall goal is to present a framework and through discussion identify assorted issues for consideration and development. An important question is what components are critical to a law on virtual currency? The answer may vary and will highlight the utility of designing rules with the assistance of actual participants.

Order of progress of the Stakeholders' Meeting – Proceeding through Topics Generally Covered in a ULC Drafting Committee's Work: Please consult the proposed agenda for this meeting for the approximate periods allocated to specific topics.

The first topic for discussion will be likely exclusions from the coverage of any ULC project to come out of the Study Committee's recommendations.

The “commercial law” aspects of the project will be then discussed, including the rationale for them and possible provisions, mostly taken from the Uniform Commercial Code, including but not limited to (1) relation of the act to other state and federal law, (2) administration and regulations by a state agency, (3) definitions, (4) freedom of contract and limitations, (5) course of performance or dealing, usage of trade, (6) obligation of good faith, (7) waivers of claims or rights, (8) validity of payment or conversion instructions, (9) duty to report unauthorized instructions, (10) erroneous instructions or executions, (11) misdescription or misdirection in instructions, (12) acceptance or rejection of instructions, (13) cancellation or amendment of instructions, (14) proper execution of instructions, (15) settlement for instructions and discharge of obligations, (16) choice of law, (17) statute of limitations and enforcement of duties and contracts, (18) warranties, (19) insolvency, and (20) delays, system failure. Again, questions will be posed to attendees for their reactions.

The regulatory aspects of the project will then be similarly explored. The discussion will include: (1) licensing requirements, reciprocity, sharing of information, (2) consideration of financial strength and stability, (3) “consumer” protection, (4) cybersecurity provisions beyond those for instructions, (5) anti-money laundering, (6) books and records, and (7) supervision of licensees.

Procedures for the April 23, 2015 Stakeholders’ Meeting: The ULC staff working with the Chair of the Drafting Committee invited individuals and representatives of virtual currency market participants that had either been observers to the Study Committee or to the Conference of State Bank Supervisors Task Force on Virtual Currencies or that otherwise had come to the attention of the Study Committee

through various outreach efforts. Certain others asked to be included after the April 23, 2015 meeting was announced.

Speakers at the April 23rd meeting, other than representatives of the ULC and our host, the CSBS, will be limited to not more than five (5) minutes so that we can proceed through the topics listed above and also allow opportunities for everyone present to speak on at least one topic.

Following the conclusion of the day, the Chair will prepare a report for consideration by the ULC's Scope and Program and Executive Committees. Opportunities for post-meeting written follow-up to issues raised during the discussions at the April 23rd stakeholders' meeting will be limited. The Study Committee recommends that stakeholders wishing to express views on the topics mentioned above in writing do so prior to the close of business on April 20th and that they send any written communications via Ms. Katie Robinson at the ULC offices in Chicago, at katie.robinson@uniformlaws.org. For those who submitted written comments during the course of the Study Committee's work in 2014, there is no reason to resend those comments. Assuming that the ULC Executive Committee authorizes a Drafting Committee, there will be ample opportunity to submit additional comments during the Drafting Committee's work.