

December 17, 2008

John A. Sebert
Executive Director
National Conference of Commissioners on Uniform State Laws
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602

Frederick H. Miller
The University of Oklahoma College of Law
300 Timberdell Road
Norman, Oklahoma 73019

Dear Messrs. Miller and Sebert:

The undersigned financial services organizations, representing virtually every financial institution in the United States, are writing to the Uniform Law Commission (“ULC”) to express our views on the draft Position Paper: Payment System Reform of the Study Committee on Regulation of Financial Institutions and Payment Systems (the “Study Committee Report”) as well as the supporting Memorandum from the Reporter of the Study Committee. We strongly disagree with various statements and opinions set forth in the Study Committee Report concerning the current state of payments law in the United States, and we are united in our opposition to any effort by the ULC to undertake a substantial revision or unification of the current U.S. payments laws either at the state or federal level.*

Specifically, we disagree with the Study Committee Report conclusion that:

“Given the lack of consistent, comprehensive rules that apply to payment systems and the consumer and systemic risk created, some conclusions that might be drawn are: ...It is time for a cooperative state and federal effort to provide a uniform and coherent statutory structure for all types and methods of payment.”

We disagree with the Study Committee Report’s conclusion that there is a lack of comprehensive rules that apply to payment systems. Each of the payment systems identified in the Study Committee Report—automated clearing house (“ACH”), debit/ATM cards, credit cards and prepaid cards, wire payments and check transactions – is governed by comprehensive and detailed system rules, addressing

* Certain of the undersigned organizations have submitted or may in the future submit additional comments addressing the Study Committee Report as it relates to one or more specific payment systems. Certain financial institution members of one or more of the undersigned organizations also may submit comments to the Study Committee and/or the ULC.

virtually every issue arising in connection with that system. These rules, developed over many years through deliberative processes involving system experts from a variety of stakeholders, are continually refined to address new technologies, operational enhancements or other issues as they arise.

While we agree with the Study Committee Report that these rules are not necessarily uniform (that is, the same) across all of the payment systems addressed in the Study Committee Report, we disagree with the implicit assumption in the Study Committee Report that such uniformity is desirable. The differences in these rules across payment systems reflect real variations in the operating environments and features of each payment type and system. Moreover, these variations in payment system rules support unique features and characteristics of the underlying payments that are useful and desirable to the users of the different payments. System rules, as opposed to a uniform statute, also enable payments systems to evolve; as evidenced by the unprecedented payments system innovation that has occurred during the past four decades. The rigidity and reductive effect inherent in a uniform “one size fits all” payments statute would substantially undermine the ability and incentive of financial institutions and payments systems to innovate new payments products and improve on existing systems. Similarly, the success or failure of emerging payment systems in creating new models for retail payments should be driven by market adoption rather than the ability to conform to requirements for unrelated systems.

In support of its conclusion regarding the need for a uniform payments law, the Study Committee Report relies inappropriately on statements in the Treasury Department’s Blueprint for a Modernized Financial Regulatory Structure, released March 31, 2008 (the “Treasury Blueprint”). The Treasury Blueprint does not call for a uniform payment law for U.S. retail payments. Rather, the Treasury Blueprint noted that there is not a uniform regulatory system for the U.S. payment and settlement systems, and the Treasury Blueprint recommended legislation to create such a uniform regulator. Regulation of the payment and settlement systems for safety and soundness purposes is not the same as establishing a uniform law for the underlying retail payments.

We also disagree with the Study Committee Report’s conclusions about consumer risk. Comprehensive consumer protection is provided for consumers utilizing the payment systems discussed in the Study Committee Report through federal and state law and regulation; specifically the Electronic Fund Transfer Act/Federal Reserve Board Regulation E (for debit card, ACH and other electronic fund transfers), the Truth in Lending Act/Federal Reserve Board Regulation Z (for credit card and other credit transactions), and the Expedited Funds Availability Act/Federal Reserve Board Regulation CC and Articles 3 and 4 of the Uniform Commercial Code (for check transactions). While the consumer protections provided in these federal and state laws and regulations vary across payment systems, like the

payment system rules discussed above, these differences in consumer protections reflect differences in the uses for and manner in which these various systems authorize, clear and settle their payments. We are not aware of any evidence of consumer harm from these differences in consumer protections for the different payments. Moreover, payment system rules often extend or expand these consumer protections. If in the future there is a demonstrated need for revisions to these consumer protections, these revisions can be made by the Federal Reserve Board under its existing rule making authority and/or by legislative amendment to the existing consumer protection laws.

We further disagree with the Study Committee Report's conclusion that a uniform payments law is needed to address systemic risk. The Federal Reserve Board already comprehensively regulates systemic risk raised by payments systems. The regulation of this systemic risk is properly addressed by the Federal Reserve, not by the statutory structure recommended in the Study Committee Report. Indeed, as recognized in the Federal Reserve's Policy Statement On Payment System Risk, the ability of each payment system to address payment system risk in the context of its unique settlement and other risk factors helps to lower overall system risk. In fact, the payments systems referenced in the Study Committee Report have weathered the recent and unprecedented stress in the financial services industry in a secure and orderly manner. At no time has the ability of these payment systems to settle their payments been a material cause for concern. In contrast, a uniform payments law that locks in place "one size fits all" settlement and other interbank rules would actually increase risk to payment system participants. Such a statutory approach would restrict or eliminate the flexibility of payment systems to develop and adjust their systemic risk-related rules over time as new payment features are added and/or new risks are identified.

In sum, there is no compelling reason to undertake the "cooperative state and federal effort to provide a uniform and coherent statutory structure for all types and methods of payment" as recommended in the Study Committee Report. Indeed, even the initiation by the ULC of such an effort would be counterproductive. It would impede the development of new and emerging payment innovations, as innovators await the results of the ULC effort. It also would distract payments systems from other priorities, and their financial institution participants from the many challenges they are facing in today's financial environment. We appreciate the work of the Study Committee to identify developing legal and risk issues for various payments. To the extent any material problems are identified, we recommend that these issues be addressed within the framework of the current payment system rules, and if not effectively addressed by payment system rules, through the current statutory and regulatory frameworks governing these payments.

For the foregoing reasons, the undersigned organizations urge the ULC not to accept the Study Committee Report's recommendation to pursue an initiative to develop a uniform statutory structure for all types and methods of payment.

Sincerely,

American Bankers Association

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Nessa Feddis, Senior Vice President and Senior Counsel

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