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Judge Harriet Lansing
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Dear Commissioners:

The following are comments of the American Bankers Association on the 10/6/09 Memorandum of the Study Committee on Payment Issues, the 12/4/09 Report of the Study Committee to the NCCUSL Scope and Program Committee, and the 12/16/09 Supplemental Report of the Study Committee. For several reasons, the American Bankers Association is opposed to the contemplated drafting project to amend the UCC. We also strongly believe that a stakeholders meeting in spring 2010 as suggested would be premature.

By way of background, the American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Our members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.5 trillion in assets and employ over 2 million men and women.

In order to properly evaluate the above-referenced memorandum, ABA sought input from our members in several ways. For example, the ABA Task Force on Payments Law reviewed the memorandum and held a conference meeting on December 15, 2009. Representatives of the Study Committee joined our group on the conference call and made a presentation regarding plans and objectives and answered questions. We appreciate the time that Professor Fred Miller, Professor Linda Rusch, and

Connie Ring spent with us. To discuss issues in more detail, the Task Force held a follow-up call on December 22, 2009.

The ABA Task Force was established some time ago when NCCUSL created the Study Committee on the Law of Payment Systems (as it was then designated). It is composed of bank payments lawyers, financial institution operations officers, and state bankers association professionals who lobby state legislatures on behalf of their members. ABA is grateful for the countless hours that members of our Task Force have devoted to analyzing the multiple papers produced by the Study Committee.

At its 12/22/09 conference meeting, the Task Force noted that several issues contained in the 10/6/09 memorandum had been included in earlier memoranda produced by the Study Committee. Our group has dutifully reviewed these materials (this being the third memorandum), as well as the Study Committee's initial position paper, to determine the impact of proposed amendments on the banking industry. Two ABA comment letters have been submitted, each one opposing the drafting project then being considered.

Again we must report the same conclusion: there is no support for this project. We note that there is an additional revised discussion memo being contemplated. Members of the Task Force are highly experienced professionals who are beset by many critical issues facing the banking industry at present. They are understandably frustrated by the prospects of evaluating yet another paper when they have already made their views known.

ABA is not alone in its opposition. For example, both ECCHO and NACHA have repeatedly voiced their lack of support for this project. Their most recent letters (each one dated 12/15/09) outline their objections. We share their concerns. Additionally, state bankers associations and individual financial institutions have made their views known.

We urge the NCCUSL Scope and Program Committee to consider the history of multiple NCCUSL projects that have failed or encountered significant problems when industry voiced repeated opposition – the 2003 Amendments to UCC Articles 2 and 2A, the inclusion of controversial choice-of-law provisions in the 2001 Revision of UCC Article 1, and the misguided attempt to incorporate portions of federal Regulation CC into the UCC as part of the last drafting project to amend Articles 3 and 4. There are others.

On the other hand, NCCUSL has enjoyed success when it has had industry support. For example, UCC Article 4A (Funds Transfers) was drafted and adopted by the states with relative speed. Article 4A was far from a modest drafting exercise and dealt with a number of important policy issues, but it was highly successful because there was a clear consensus around the need for the law governing funds transfers both from a policy perspective and a certainty perspective. Moreover, the body of law that Article 4A addressed was a relatively mature payment system and not one in a state of rapid evolution.

The present case, however, is entirely different. As noted in other comments, check image exchange is still in relatively early stages of development, at which innovation should not be stifled by statutes. Indeed, a premature codification might actually impede further developments in this important area and in other payment systems as well.

Please also be aware that opposition expressed by state bankers associations continues. As an earlier Study Committee memorandum correctly notes, the 2002 Amendments to UCC Articles 3 and 4 have been slow to be adopted. One reason for this is because over forty state bankers associations signed a Statement of Opposition to them. In the present case, it is significant that all state bankers associations represented on our 12/22/09 call were outspoken in their opposition to the drafting project being contemplated.

In order to inform ABA's broad membership of the Study Committee's possible agenda, the 10/6/09 memorandum was highlighted and made available in the October issue of *ABA UCC/Uniform Law News*, a periodic e-mail bulletin provided to employees of ABA member institutions. We have likewise publicized the Committee's earlier memoranda. Throughout this entire process, it is revealing that we have not received a response from any banker supporting initiation of the contemplated drafting project. As one ABA Task Force member has noted, "Now is the time for patience."

We reiterate that there is no compelling need for a stakeholders meeting in spring 2010. Given the widespread opposition in the industry to the drafting project, such meeting would be premature. The ABA Task Force on Payments Law will continue to monitor case law and technological developments in this area. Should our members come to a different conclusion based on changing needs or circumstances, we will advise NCCUSL.

Thank you for the opportunity to comment. We would appreciate your consideration of our views. Please share this letter with members of the Scope and Program Committee, the Executive Committee, and Study Committee. Feel free to contact me if you would like to discuss this matter further.

Sincerely,



L.H. Wilson

cc: Fred H. Miller, Study Committee Chair
Linda J. Rusch, Study Committee Reporter
Carlyle C. Ring, Study Committee member
John A. Sebert, NCCUSL Executive Director