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Via E-Mail and Fax

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Gentlemen:

It is our understanding that your Legislative Committee will be meeting soon, and we would appreciate your sharing this letter with the members. During 2004, as in prior years, the American Bankers Association has reviewed uniform law issues with its members and with state bankers associations (SBAs) to solicit their feedback and recommendations. More recently during the annual ABA State Bankers Association Counsel Meeting held in November, a number of completed and draft uniform acts were discussed extensively. Fifty attorneys from thirty-six SBAs and the Virgin Islands Bankers Association attended this intensive two-day meeting focusing on state banking law subjects. The following issues were identified as problematic.

ABA and many of the SBAs continue to have concerns with Revised UCC Article 1 and the NCCUSL package of Amendments to UCC Articles 3 and 4. We have previously advised you of the widespread opposition in the banking industry to these changes. Our view and the views of the SBAs have not changed. ABA urges NCCUSL to withdraw these revisions. At a minimum, we recommend that the changes not be targeted for enactment in the states. We are not aware of any compelling need to adopt the revisions now.

Our information indicates that while seven states have enacted Revised UCC 1 in some form, none of them included the controversial UCC 1-301 choice of law provisions. Those provisions are a major part of Revised

UCC 1. Several bank counsel, SBA attorneys, bankers, and others have concluded that the revised choice of law section is unworkable. Some states have rejected Revised UCC 1 because of the controversial choice of law provisions. As you know, the Revision was introduced but not enacted in California in 2002. An opposition letter signed by at least thirty-one state bankers associations was provided to the California Legislature as part of the California Bankers Association's successful effort to deter enactment. These events demonstrate that it will be very difficult to achieve the goal of uniform enactment of major parts of Revised UCC 1 in the states.

Regarding the UCC 3 and 4 Amendments, enclosed please find a Statement of Opposition endorsed by forty-two SBAs. Rather than adopting the NCCUSL-approved Amendments, the SBAs recommend enactment of a limited set of amendments. These limited amendments are aimed at incorporating in the UCC "demand draft" provisions previously enacted in some form in several states (including California and Texas) and changes to Sec. 3-309 relating to lost notes. We have made progress in our efforts to secure adoption of the limited amendments. The bottom line -- at least fifteen states now have "demand draft" provisions, which represent the major portion of the limited amendments. In contrast, a recent report indicates that only one state -- Minnesota -- has enacted the NCCUSL-approved UCC 3 and 4 Amendments in some form. Even there, the NCCUSL version was modified to address some of the banking industry's concerns relating to remotely-created consumer items.

We have previously advised you of the opposition to these and other UCC changes expressed by SBAs and member institutions including large multi-state banks. Especially significant was the fact that the multi-state member banks, which because they operate in more than one state and have a strong interest in good uniform law, found no value to most of the above UCC changes and were adamantly opposed to others.

Banking is not the only industry to have concerns with recent revisions to the UCC. Manufacturing and industrial companies, computer companies, the U.S. Chamber of Commerce, the National Association of Manufacturers, and others are very much opposed to the 2003 Amendments to UCC Articles 2 and 2A.

The ABA takes no pleasure in having to assume a posture of opposition to these uniform law initiatives. ABA believes in the most ardent way in the value of appropriate uniform rules and expectations to guide the business of banking.

Thank you for the opportunity to comment on these important issues. We appreciate your consideration of our views and recommendations. ABA would welcome an opportunity to meet with NCCUSL representatives to discuss these issues.

Sincerely,

L.H. Wilson
Associate General Counsel

Enclosure