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December 3, 2008

Frederick H. Miller, Chair  
Study Committee on Regulation of Financial Institutions and Payment Systems  
The University of Oklahoma College of Law  
300 Timberdell Road  
Norman, OK 73019

Dear Fred:

Thank you for sending the document entitled “Position Paper: Payment System Reform” and the supporting Memorandum from the Reporter of the Study Committee. We appreciate your taking time to solicit comments from various groups before making recommendations to the NCCUSL Scope and Program Committee concerning the advisability of establishing a payments law drafting project of the type being contemplated. For the reasons set forth below, the American Bankers Association is opposed to this effort.

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 \$13.6 trillion in assets and employ over 2 million men and women.

In order to properly evaluate the above documents and other materials, ABA sought input from our members in several ways. For example, the ABA Task Force on Payments Law reviewed the materials and held a conference meeting in November 2008 to discuss the items in more detail. Composed of bank payments lawyers, financial institution operations officers, and state bankers association professionals who lobby state legislatures on behalf of their members, the ABA Task Force was established some time ago when NCCUSL first created a Study Committee on the Law of Payment Systems. The Task Force met by telephone conference in July 2007 to review materials produced at that time, issues discussed at the Rethinking Payments Law Symposium hosted by the Federal Reserve Bank of New York in April 2007, and American Bar Association programs. A central question considered then was whether society would be better served by a unified payments law – one which recognizes differences in payment types and seeks to apply consistent standards when possible. The consensus of our group in July 2007 was that there was no compelling need for such an effort.

The ABA Task Force on Payments Law reaffirmed this position at its November 2008 meeting. Comments were to the effect that there are no practical problems to justify changes. Our group noted that a similar effort to create a New Payments Code in the 1980s failed for several reasons. Among other things, opponents

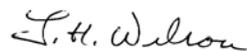
successfully argued that a new code would stifle innovation of new payment methods and be outdated before its enactment and that since payment methods work differently, the law should reflect those differences. Our group believes these same arguments remain valid today and that it would be a mistake to revisit the project.

ABA is not alone in its opposition. Several speakers at the Rethinking Payments Law Symposium recalled the unsuccessful attempt to draft a New Payments Code in the 1980s and indicated their unwillingness to support a similar effort. The ABA Task Force also considered the response of Robert Ballen and Thomas Fox dated November 3, 2008, and the comment letter of NACHA dated November 7, 2008. These documents were submitted in response to your request for comment. ABA strongly supports them.

In addition, the ABA Task Force reviewed your e-mail addressed to me dated November 17, 2008, and was not persuaded as to viability of the contemplated project. In order to inform ABA's broad membership of the Study Committee's possible agenda, the NCCUSL position paper 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. Similar treatment was accorded the Reporter's Memorandum in the November issue of the *News*. The charge of the NCCUSL Study Committee was discussed in various industry forums, such as the recent ABA State Bankers Association Counsel Meeting and the 2008 ABA State Issues Summit. Those attending this year's Summit included state bankers association (SBA) executives, SBA counsel, SBA government relations managers, and a substantial number of government relations professionals from large, multi-state banks. It is significant that we have not received a response from any person supporting the contemplated revision effort.

In short, ABA is very much opposed to an effort of the type contemplated to undertake a substantial revision or unification of payments law at either the state or federal level. Thank you for the opportunity to comment, and we would appreciate your consideration of our views. Please share this letter with other members of the Study Committee, the Scope and Program Committee, and NCCUSL leadership. Feel free to contact me if you would like to discuss this matter further.

Sincerely,



L.H. Wilson

cc: John A. Sebert, NCCUSL Executive Director