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UCC Article 4A Amendments (2012) Summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act is an amendment to the Federal Electronic Funds Transfer Act (EFTA) that will have an important impact on the scope of Article 4A of the Uniform Commercial Code. Presently Article 4A does not apply to a funds transfer any part of which is governed by EFTA. The implementing regulations for the federal act were published in the Federal Register in November 2011, with a delayed effective date of the rules to February 2013, expressly to permit changes to UCC 4A so it might continue to govern aspects of some remittance transfers. Absent a change to Article 4A, there could be legal uncertainty for a class of remittance transfers currently governed by Article 4A. The Permanent Editorial Board for the Uniform Commercial Code has recommended an amendment to §4A-108 and its comments. Both the ALI and the ULC have approved the amendment.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the EFTA governed only consumer wire transfers. UCC §4A-108 was drafted with that in mind. When the amendment to EFTA goes into effect in 2013, EFTA will govern "remittance transfers", whether or not those remittance transfers are also "electronic fund transfers" as defined in EFTA. Thus, when the amendment and its implementing regulation go into effect, the result of UCC §4A-108 in its present form will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer (not a consumer remittance transfer). Thus a number of important issues in those remittance transfers will be governed neither by Article 4A or the EFTA.

The proposed amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA.

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