



STATE OF NEW JERSEY

NEW JERSEY LAW REVISION COMMISSION

FINAL REPORT

relating to

UNIFORM COMMERCIAL CODE, ARTICLE 4A

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UNIFORM COMMERCIAL CODE, ARTICLE 4A AMENDMENT

Introduction

UCC Section 4A-108 provides that Article 4A does not govern a fund transfer any part of which is governed by federal Electronic Funds Transfer Act (EFTA). Among the changes brought about by the Dodd-Frank Act, the Wall Street Reform and Consumer Protection Act, is an amendment to the EFTA so that that law will govern “remittance transfers” (the electronic transfer of funds requested by a consumer to a person located in a foreign country that is initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. Thus, when the amendment and its implementing rules go into effect in February of 2013, the result of UCC Section 4A-108 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. In effect, these transfers will be covered by neither law.

Under current law, funds transfers that are not “electronic fund transfers” as defined in the EFTA are excluded from EFTA and are governed by Article 4A. As a result, providers of international funds transfers that would qualify as remittance transfers but not electronic fund transfers as those terms are defined in the amended EFTA, and the receiving banks with respect to the payment orders issued under them, are currently able to rely on Article 4A’s rules governing the rights and responsibilities among parties to the transfer.

The federal government recognized that the effect of the new law and its regulations would create a problem, and suggested that states amend Article 4A before the February effective date of the regulations. As a result, on an expedited basis, the Uniform Law Commission and the Permanent Editorial Board of the Uniform Commercial Code approved an amendment to Code Section 4A-108 on June 23, 2012. The amendment has been enacted in New York and is pending the governor’s signature in California. The New Jersey Law Revision Commission concurs with their judgment and recommends amendment of 12A:4A-108 as follows (Deletions are indicated by strikeouts, additions by underlining):

12A:4A-108 Exclusion of consumer transactions governed by federal law.

a. Except as provided in subsection b., this ~~This~~ chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. Law 95-630, 92 Stat. 3728, 15 U.S.C. s.1693 et seq.) as amended from time to time.

b. This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a) as amended from time to time.

c. In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

OFFICIAL UNIFORM COMMERCIAL CODE COMMENT

1. The Electronic Fund Transfer Act (EFTA), implemented by Regulation E, 12 C.F.R. Part 1005, is a federal statute that covers aspects of electronic fund transfers involving consumers. EFTA also governs remittance transfers, defined in 15 U.S.C. Sec. 1693o-1, which involve transfers of funds through electronic means by consumers to recipients in another country through persons or financial institutions that provide such transfers in the normal course of their business. Not all “remittance transfers” as defined in EFTA, however, qualify as “electronic fund transfers” as defined under the EFTA, 15 U.S.C. Sec. 1693a(7). While Section 4A-108(a) broadly states that Article 4A does not apply to any funds transfer that is governed in any part by

EFTA, subsection (b) provides an exception. The purpose of Section 4A-108(b) is to allow this Article to apply to a funds transfer as defined in Section 4A-104(a) (see Section 4A-102) that also is a remittance transfer as defined in EFTA, so long as that remittance transfer is not an electronic fund transfer as defined in EFTA. If the resulting application of this Article to an EFTA-defined “remittance transfer” that is not an EFTA-defined “electronic fund transfer” creates an inconsistency between an applicable provision of this Article and an applicable provision of EFTA, as a matter of federal supremacy, the provision of EFTA governs to the extent of the inconsistency. Section 4A-108(c). Of course, applicable choice of law principles or enforceable choice of law provisions in an applicable agreement will also affect whether Article 4A will apply to all or part of any funds transfer, including a remittance transfer. See Section 4A-507. The following examples assume that choice of law principles or an enforceable choice of law provision will lead a court to examine the applicability of Article 4A to the funds transfer.

2. The following examples illustrate the relationship between EFTA and this Article pursuant to Section 4A-108.

Example 1. A commercial customer of Bank A sends a payment order to Bank A, instructing Bank A to transfer funds from its account at Bank A to the account of a consumer at Bank B. The funds transfer is executed by a payment order from Bank A to an intermediary bank and is executed by the intermediary bank by means of a clearinghouse credit entry to the consumer’s account at Bank B (the beneficiary’s bank). The transfer into the consumer’s account is an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7). Pursuant to Section 4A-108(a), Article 4A does not apply to any part of the funds transfer because EFTA governs part of the funds transfer. The funds transfer is not a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1 because the originator is not a consumer customer. Thus Section 4A-108(b) does not apply.

A court might, however, apply appropriate principles from Article 4A by analogy in analyzing any part of the funds transfer that is not subject to the provisions of EFTA or other law, such as the obligation of the intermediary bank to execute the payment order of the originator’s bank.

Example 2. A consumer originates a payment order that is a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1 by providing the remittance transfer provider (Bank A) with cash in the amount of the transfer plus any relevant fees. The funds transfer is routed through an intermediary bank for final credit to the designated recipient’s account at Bank B. Bank A’s payment order identifies the designated recipient by both name and account number in Bank B, but the name and number provided identify different persons. This remittance transfer is not an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) because it is not initiated by electronic means from a consumer’s account, but does qualify as a funds transfer as defined in Section 4A-104. Both Article 4A and EFTA apply to the funds transfer. Sections 4A-102, 4A-108(a), (b). Article 4A’s provision on mistakes in identifying the designated beneficiary, Section 4A-207, would apply as long as not inconsistent with the governing EFTA provisions. Section 4A-108(c).

Example 3. A consumer originates a payment order from the consumer’s account at Bank A to the designated recipient’s account at Bank B located outside the United States. Bank A uses the CHIPS system to execute that payment order. The funds transfer is a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1. This transfer is not an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) because of the exclusion

for such types of transfers in 15 U.S.C. Sec. 1693a(7)(B), but qualifies as a funds transfer as defined in Section 4A-104. Under Sections 4A-

102 and 4A-108(b), both Article 4A and EFTA apply to the funds transfer. The EFTA will prevail to the extent of any inconsistency between EFTA and Article 4A. Section 4A-108(c). For example, suppose the consumer subsequently exercised the right to cancel the remittance transfer under the right given under EFTA and obtain a refund. Bank A would be required to comply with the EFTA rule concerning cancellation even if Article 4A prevents Bank A from cancelling or reversing its payment order it sent to its receiving bank. Section 4A-211.

Example 4. A person fraudulently originates an unauthorized payment order from a consumer's account through use of an online banking interface. This transaction is an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) and would be governed by EFTA and not Article 4A. Section 4A-108(a). Whether the funds transfer also qualifies as a remittance transfer under 15 U.S.C. Sec. 1693o-1 does not matter to the application of Article 4A.

Example 5. A person fraudulently originates an unauthorized payment order from a consumer's account at Bank A through forging written documents that are provided in person to an employee of Bank A. This funds transfer is not an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) because the fund transfer from the consumer's account is not initiated by electronic means, but the funds transfer qualifies as a funds transfer as defined in Section 4A-104. Article 4A will apply to this funds transfer regardless of whether the funds transfer also qualifies as a remittance transfer under 15 U.S.C. Sec. 1693o-1. If the funds transfer is not a remittance transfer, the provisions of Section 4A-108 are not implicated because the funds transfer does not fall under EFTA, and the general scope provision of Article 4A governs. Section 4A-102. If the funds transfer is a remittance transfer, and thus governed by EFTA, Section 4A-108(b) provides that Article 4A also applies. The provisions of Article 4A will allocate the loss arising from the unauthorized payment order as long as those provisions are not inconsistent with the provisions of the EFTA applicable to remittance transfers. Section 4A-108(c).

3. Regulation J, 12 C.F.R. Part 210, of the Federal Reserve Board addresses the application of that regulation and EFTA to fund transfers made through Fedwire. Fedwire transfers are further described in Official Comments 1 and 2 to Section 4A-107. In addition, funds transfer system rules may be applicable pursuant to Section 4A-501.