Introduction

At its January 2014 mid-year meeting the Scope and Program Committee of the Uniform Law Commission (ULC) recommended and the Executive Committee of the ULC approved the appointment of a study committee to:

Study the need for and the feasibility of state legislation on alternative and mobile payments systems.

I was appointed chair of the committee and Sarah Jane Hughes, University Scholar & Fellow in Communications Law at Indiana University, Maurer School of Law in Bloomington, who is a nationally recognized expert in this area of the law and the author discussing it in the Hawkland UCC series, as well as a leader in the relevant part of the Business Law Section of the American Bar Association dealing with this area, was selected as Reporter.

A number of observers have been requested to participate or have requested participation, and have been appointed. Several American Bar Association Advisors also have been selected.

Initial Work

A considerable volume of material has been distributed to members of the committee, the observers and advisors, and additional material is distributed as it comes to our attention.

The charge to the committee is a bit ambiguous as disclosed in the following description of the committee:

Study Committee on Alternative and Mobile Payment Systems

New payments providers such as Bitcoin and mobile or alternative payments companies are currently being licensed and regulated differently in various jurisdictions. The ULC has addressed this issue previously with the drafting of the Uniform Money Services Act (2000, amended in 2004), which dealt with the licensing and regulation of non-bank financial service providers like Western Union and PayPal. At that time, few new electronics payments providers were in business, but a decade later consumers are now using new methods and services to move their money, which raises concerns for regulators about how to protect funds when they are held by non-bank entities. In the absence of an overarching federal payments regulatory framework, state laws may need
to be harmonized to the extent possible. This Study Committee will consider the need for and feasibility of enacting state legislation on alternative and mobile payment systems.

The reporter has been asked to provide a proposal as to scope for consideration and possible modification. That proposal will be distributed to the committee members, observers, and advisors for comment, with the expectation the committee will hold a conference call no later than early in the fall to tentatively settle on an appropriate scope for the study and then begin to formulate details as to relevant issues within that scope. Among the obvious issues at this stage are:

1. Are Bitcoins and other similar currencies going to survive? The IRS has denominated them as “property” and given their fluctuation in value, extensive and expensive tax issues may make this “currency” unfeasible. How does the IRS’ guidance affect adoption of alternative currencies by users? Other feasibility issues? See attached.

2. Is there similarity among whatever is decided is within “alternative payments” to the risks the Uniform Money Services Act focused on and, if so, should that act be amended, or should a new act be promulgated?

3. How will any state law fit within the growing but diverse federal law, which is still developing, and should any state law supplement or displace some or most laws enacted by states on the matter to date?

4. Since development in this area is ongoing, how can a 53-jurisdiction state law be flexible enough so as not to be outdated upon arrival, or to not stifle future desirable development?

5. Following events such as the collapse of the world’s leading Bitcoin exchange earlier this year, should consumer or other user protections be considered as part of the Study Committee’s work in addition to licensing and prudential regulation?

6. Is some or all of any final law (whether a matter of scope or one or more issues) better suited for federal enactment rather than state legislation, given the potential for the applicability of securities regulation and other existing, or future, federal laws, such as Regulation E on funds transfers, as well as the different and probably expanding regulatory structures for different kinds of players? On the other hand, if the “currency” may be property, how should it relate, for example, to UCC Articles 2 (at least by analogy) and 9 on sales and secured transactions? Can it come within UCC Article 4A?

7. How to deal with MazaCoin (the official currency of the 7 bands that make up the Lakota Nation), since states have no jurisdiction. Moreover, this is viewed as a matter of sovereignty, and can there be regulation under state law and none under tribal law, or must there be a cooperative federal effort?
Conclusion

In conclusion, if the Reporter is able to develop a proposal before the Scope and Program Committee meets, it will be appended. If the study committee is able to have a conference call before the end of June, that will be accomplished as well and a report appended. If not, the proposal will be distributed for comment by committee members, observers, and advisors. Over the summer the Reporter will refine the proposal on scope and begin to focus on the detail of possible issues within that scope and possible ways to address them.
Xapo's Bitcoin Card Adds Debit Interchange to Digital Currency

by Bailey Reutzel
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Xapo says its Bitcoin debit card will start rolling out by the end of June, and it will be accepted anywhere by using the rails of a card network, interchange fees included.

"The Xapo debit card will be accepted by any business in the world that accepts debit or credit cards from our bank's card network partner," says Wences Casares, payments industry veteran and founder of Xapo. He would not identify the company's bank partner or its card network.

Bitcoin has been hard to use for consumers outside the tech-savvy early adopter category, and a debit product could increase adoption, Casares says. Many digital payment systems have issued plastic cards as a way to appeal to more consumers.

Since transactions will go over a card network's rails, merchants won't benefit from Bitcoin's near-free transfers. They'll have to pay the same interchange fees they pay for other debit card transactions.

The money saved by accepting digital currency is one of the more common reasons merchants use currencies Bitcoin, Litecoin and Dogecoin.

When a customer swipes Xapo Debit, Xapo will convert the user's bitcoin funds to a local currency in real time to pay the merchant, says Casares.

"While some Bitcoin enthusiasts may want to see the cryptocurrency go mainstream, many others feel that routing Bitcoin transactions through a credit card network defeats the purpose of using Bitcoin," says Nathalie Reinelt, retail banking analyst at the Aite Group.

But this could be the least of Xapo's challenges in launching a Bitcoin debit card.

To offer a debit card, Xapo will need to go through a meticulous screening process from its bank partner to make sure it abides by its requirements those of its card network, says Madeline Aufseeser, senior analyst in retail banking at the Aite Group.

The major card networks would highly scrutinize any potential connections with Bitcoin so that they do not jeopardize the network's brand reputation, since many people still associate digital currency with nefarious activities and the regulatory environment is still unclear in many countries, Aufseeser says.

This year, MasterCard added Bitcoin to its list of topics for its lobbyists to discuss with lawmakers "It's pretty straightforward. We were gathering information in connection with recent congressional hearings to better understand the policy issues around virtual and anonymous currencies," said Seth Eisen, a MasterCard spokesman, in response to an inquiry in April.

But in 2012, Charlie Shrem, who has been indicted for allegedly trying to launder money through his now-defunct Bitcoin transfer business BitInstant, developed his own Bitcoin MasterCard. However, MasterCard denied it knew anything about the product, which was never formally released.

MasterCard declined to comment. Visa did not respond to inquiries concerning this topic.

Xapo could also use independent debit network rails, such as Pulse, MAC or Star, which allows a retailer to accept a debit transaction even if they are not affiliated with the customer's bank.

But to work with a debit network of any kind, Xapo would need an issuer for its card, and only banks can issue cards, says Aufseeser.

"Could they operate a debit card [tied to a consumer's] bitcoin currency...in theory yes but in practice I don't know how that would work," Aufseeser says. "Most non-financial institutions don't realize the extent of due diligence and requirements of becoming a licensed issuer."

Bitcoin has come a long way, building momentum as a payment method with merchants and merchant service providers. Dish Network Corp., a satellite-TV company that has 14 million subscribers, recently announced it would accept Bitcoin in the third quarter. In March, Square Inc. began its merchants who sell on Square Market to accept Bitcoin, and Stripe is conducting a Bitcoin pilot for its merchants.

"The challenges are related to the technological infrastructure [and] banking [and] strategic partnerships necessary to execute this type of payment product," says Casares. "There have been few institutions that have the experience to execute a product that is essentially a blend of traditional banking and the digital currency. At Xapo we are fortunate to have a seasoned team that has decades of experience developing financial services products."

Xapo, which is incorporated under laws in Hong Kong, has been allowing consumers to pre-order the card since it was announced in April. Casares would not say how many people have pre-ordered the card, which costs $15.
Other companies have marketed Bitcoin payment cards, but these have been either prepaid or gift card products. Bitcoin Ventures Inc.'s CoinTap prepaid card service allows consumers to obtain bitcoins by purchasing a stored-value card in retail stores. The product launched in Canada in January.

"This is where customers must plan ahead, manually convert bitcoin before purchases themselves, and use the card to spend their local currency," Casares says. "With Xapo, a customer only deals in bitcoin and the debit card is the seamless extension of their Xapo Wallet."

Gift card initiatives include Pock.io, which allows consumers in the U.K. to purchase gift cards from large merchants like Apple with Bitcoin, and Gyft, which allows users to purchase mobile gift cards from more than 50,000 retail locations with Bitcoin. Gyft offers bigger rewards to users who choose to fund their purchase with Bitcoin or PayPal.

Casares has been involved in earlier ventures in the payments industry for many years.

Casares founded Bling Nation in 2007. The company created payment stickers that could be adhered to a user's phone to enable contactless payments. The product was well-received by community banks and local merchants before Bling Nation added a mandatory loyalty program, which its clients objected to. Bling Nation shut down its service in 2011.

Casares next founded Lemon Inc., the company behind Lemon Wallet, a digital storage system with light mobile payment capabilities. In December, Lemon was acquired by identity theft protection provider Lifelock Inc., which rebranded its product as the LifeLock Wallet. In May, LifeLock pulled the app over PCI compliance concerns, though LifeLock's CEO promises the app's return and emphasizes that there was no data breach or other compromise.