

MEMORANDUM

TO: Committee on the Uniform Commercial Code and Emerging Technologies

FROM: Steven L. Harris, Reporter

RE: Control of virtual currency

DATE: May 25, 2020

For the Committee's consideration, I have set forth below a proposed definition of "virtual currency," drafted by Rob Isham and Steve Weise, and a suggested *control* provision for purposes of perfection of a security interest in virtual currency and the achievement of superpriority under UCC Article 9. You may also wish to consider whether this provision would be appropriate for intangible money.

S. L. H.

SECTION 1-201. GENERAL DEFINITIONS.

[NEW]

"Virtual currency" means a digital representation of value that is used as a medium of exchange, unit of account, or store of value that can be readily exchanged for money. Virtual currency does not include (i) money and (ii) a digital representation whose value is determined by reference to the value of other [property] [, other than money].

[EXISTING (UCC § 1-201(b)(24))]

"Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

SECTION 9-105B. CONTROL OF VIRTUAL CURRENCY. [NEW]

(a) In this section, "record constituting the virtual currency" means the virtual currency together with any record that is attached to or logically associated with the virtual currency.

(b) A purchaser has control of virtual currency if:

(1) the record constituting the virtual currency:

(A) is readily identifiable as the authoritative record of the virtual currency [for the purpose of this Article]; and

(B) readily enables the purchaser to be identified as the transferee of the virtual currency (subsection (d)); and

(2) the purchaser has the power to prevent another person from changing the record constituting the virtual currency; and

(3) the debtor cannot give the power specified in paragraph (2) to a person other than the purchaser unless the purchaser consents.

(c) A record constituting virtual currency which [provides] [indicates] that it is the authoritative record of the virtual currency [for the purpose of this Article] is readily identifiable as the authoritative record of the virtual currency within the meaning of subparagraph (b)(1)(A).

(d) A purchaser may be identified in any way, including by name, identifying number, office, or account number.

Notes

1. Subsections (a) through (c) are essentially the draft provisions that would govern control of an electronic negotiable instrument. Subsection (d) derives from UCC § 3-110(c).

2. Additional methods of identification could be added to subsection (d).

3. The statute or comments could provide specific rules that clarify how to determine who the transferee is when, *e.g.*, the transferee is identified only by a public address or there is more than one method of identification, each of which points to a different person, *e.g.*, a public address and a name.