Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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UNIFORM SUPPLEMENTAL COMMERCIAL LAW FOR THE UNIFORM REGULATION OF VIRTUAL-CURRENCY BUSINESSES ACT

- A Summary -

The Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act (the "Supplemental Act") is a companion to the Uniform Regulation of Virtual-Currency Businesses Act ("URVCBA"). The URVCBA regulates businesses that exchange, transfer, or store virtual currency for consumers by requiring the business to either (1) obtain a license from the state; or (2) register with the state. The URVCBA also protects consumers who deal with virtual-currency businesses. The URVCBA does not, however, address commercial law rules.

Commercial law rules are important because they offer certainty and finality to all parties to a transaction. In the United States, the Uniform Commercial Code (UCC) provides the commercial law rules for businesses operating in all states. The UCC is divided into 11 Articles, each pertaining to a different sub-topic, such as sales, leases, and investment securities. This Supplemental Act requires a virtual-currency business and its customer to agree that Article 8 of the UCC applies to their business relationship. By incorporating Article 8 in this way, the duties of the virtual-currency business and the user are clear. For instance, the virtual-currency business must maintain control of enough virtual currency of each type to satisfy all claims by users of that particular virtual currency type. The virtual-currency business would also need to comply with the user's request to transfer virtual currency the business is holding on its behalf to another person when, for example, the user wants to purchase goods or services using virtual currency.

The Supplemental Act is also designed to solve several problems that exist under current secured transactions law. For example, the Supplemental Act treats virtual currency as a "financial asset," a user's virtual-currency account with a business is classified as "investment property", and the virtual currency business is classified as a "securities intermediary" under the UCC. This is important because it creates greater certainty if the account owner wishes to use the investment property as loan collateral, even though the property is in the control of the virtual currency business serving as an intermediary. Similarly, the rules prevent the virtual-currency business from using its customers' property as security for a business loan.

Another problem the Supplemental Act solves concerns the rights of transferees of virtual currency. If a secured party's security interest in a virtual-currency account is perfected as a general intangible, then any transfer of the virtual currency by the user out of the account will be subject to the secured party's security interest unless the secured party had authorized the transfer free of the security interest. This would undermine the certainty of virtual currency transactions, because there is no rule under Article 9 that otherwise cuts off a security interest in a virtual-currency account perfected as a general intangible when the virtual-currency is transferred to an innocent purchaser as there is under UCC Section 9-332(b) for a transfer of funds from a deposit account. A secured party of the transferee, thinking of extending credit against the virtual currency credited to the account, would be subject to a security interest in favor of a prior transferor's secured party.

The filing could theoretically be checked, but doing so against all prior transferors of the virtual-currency is highly impractical.

However, if the virtual-currency business expressly agrees with users to treat virtual currency over which the virtual-currency business has control for the users as financial assets credited to the users' securities accounts, then the adverse claim cut-off rule of Article 8 would apply. Under that rule, when a transferee acquires for value a "security entitlement" in the transferred virtual currency resulting from a credit of the virtual currency to the transferee's account at its licensee or registrant, the transferee will have acquired its interest in the virtual currency free of any "adverse claims" of which the transferee did not have notice.

These are just a few benefits of the Supplemental Act. The Supplemental Act is designed to replace the user protections in Section 502 of the URVCBA in a state that already has the URVCBA or to be effective when a state enacts the URVCBA.

For more information about the Supplemental Act, please contact Katie Robinson or Kaitlin Wolff in the ULC's Chicago office at (312) 450-6600.