



**STATE OF MAINE  
131<sup>ST</sup> LEGISLATURE  
LD 91, UNIFORM COMMERCIAL CODE SUBCOMMITTEE (JUDICIARY COMMITTEE)**

**TO:** Senator Anne M. Carney, Chair  
Representative Matt Moonen, Chair  
Joint Standing Committee on Judiciary

**FROM:** Representative Stephen W. Moriarty *SWM*  
Senator Eric L. Brakey *ELB*

**DATE:** January 10, 2024

**SUBJECT:** LD 91, An Act to Adopt the National 2022 Amendments to the Uniform Commercial Code

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We are writing to provide the full Judiciary Committee with our recommendations, as the subcommittee appointed to work on this issue, for LD 91 (An Act to Adopt the National 2022 Amendments to the Uniform Commercial Code). We met twice during the interim and invited stakeholders, including representatives from the national Uniform Law Commission and the Maine Commissioners of the Uniform Law Commission, to attend.

We both recommend that Maine adopts the 2022 amendments to the Uniform Commercial Code. We heard no opposition to this recommendation. We do, however, differ on the certain specifics of the amendment.

1. Representative Moriarty recommends adopting the entire amendment. He also recommends adding a section to the law that would state: "Nothing in this act may be construed to support, endorse, create, or implement a central bank digital currency."
2. Senator Brakey recommends adopting the amendment but without the references to "electronic money."

So far, 11 states have adopted the 2022 amendments to the UCC. Six states have adopted the amendment completely, and five states (including New Hampshire) adopted the amendment without references to electronic money. Washington state (one of the six that adopted the complete amendment) adopted a disclaimer very similar to the one being recommended by Representative Moriarty.

Both versions have been drafted and are currently being reviewed by the national and Maine ULC and interested parties; they will be available to you shortly. These amendments are lengthy

because they must include the UCC comments. Those comments ultimately get included, without change, into the statutes as notes. The two amendments are substantially similar. The summary of Senator Brakey's amendment cites the specific sections that differ between the two versions; there is also an eight-page description of where the references to electronic and tangible money have been removed.

Thank you for the opportunity to work on the issue over the interim and we look forward to working with the Committee to enact the update to the UCC.

✶ Without electronic money provision  
(from Ben Orzette)

July 16, 2023

**Term Sheet  
Modifications to UCC 2022 Amendments**

1. Delete in Article 1 the new sentence in the 1-201(b)(24) definition of “money.” Add an exclusion from the definition for any medium of exchange in an electronic form.
2. Delete in Article 9 (i) the definitions of “electronic money” and “tangible money” in 9-102 (ii) 9-105A on control of electronic money, and (iii) new language in 9-332 providing a take-free rule for electronic money.
3. Bitcoin will continue to be included in the definition of “controllable electronic record” (CER) as it is under the official text of the 2022 Amendments; it will not be included in the definition of money because it is in an electronic form. A CBDC originally created by a government and not a “pre-existing” crypto currency such as bitcoin would be excluded from the 12-102 definition of a CER.
4. The exclusion of electronic money from the definition of CER would be eliminated as the term “electronic money” will be deleted as no longer necessary.
5. Delete new 9-312(b)(4) on control of electronic money as an exclusive means of perfection for electronic money. Retain the current law 9-312(b)(3) providing that perfection for money is only by possession (reference to “tangible” money will be deleted as no longer necessary).
6. Delete in 9-102(a)(54A) (defining “money” for Article 9) clause (ii) referring to money in an electronic form but retain clause (i) excluding a deposit account from Article 9 money.
7. Eliminate all other references to “electronic money” and references to “tangible money.”
8. This approach:
  - a. Excludes from the definition of “money” any medium of exchange in an electronic form. As a result, CBDC of any type and issued by any government would not be covered by the rules applicable to money.
  - b. Because (e.g.) bitcoin would be a CER, all of the CER rules would apply to bitcoin, including perfection of security interests by filing or control and protection of qualifying purchasers of CERs against competing property interests.

\* \* \*

**Revised UCC Text  
Track changes from Official Text of 2022 Amendments**

**Section 1-201**

\* \* \*

(24) “Money” means a medium of exchange that is currently authorized or adopted by a domestic or foreign government and is not in an electronic form. The term includes a monetary unit of account established by an intergovernmental organization, or pursuant to an agreement between two or more countries.

\* \* \*

**Section 9-102. Definitions and Index of Definitions.**

(a) [Article 9 definitions.] In this article:

\* \* \*

\* \* \*

(54A) “Money” has the meaning in Section 1-201(b)(24), but does not include a deposit account.

\* \* \*

\* \* \*

**Section 9-107B. No Requirement to Acknowledge or Confirm; No Duties.**

(a) [No requirement to acknowledge.] A person that has control under Section 9-104 or 9-105 is not required to acknowledge that it has control on behalf of another person.

\* \* \*

**Section 9-203. Attachment and Enforceability of Security Interest; Proceeds;**

**Supporting Obligations; Formal Requisites.**

\* \* \*

(b) [Enforceability.] Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

\* \* \*

(3) one of the following conditions is met:

(A) the debtor has ~~authenticated~~ signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

\* \* \*

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; ~~or~~

(D) the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper, electronic documents,~~ investment property, or letter-of-credit rights, ~~or electronic documents,~~ and the secured party has control under Section 7-106, 9-104, ~~9-105,~~ 9-106, ~~or 9-107,~~ or 9-107A pursuant to the debtor's security agreement; or

(E) the collateral is chattel paper and the secured party has possession and control under Section 9-314A pursuant to the debtor's security agreement.

\* \* \*

**Section 9-207. Rights and Duties of Secured Party Having Possession or Control**

**of Collateral.**

\* \* \*

(c) **[Duties and rights when secured party in possession or control.]** Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, ~~or 9-107~~, or 9-107A:

\* \* \*

**Section 9-208. Additional Duties of Secured Party Having Control of Collateral.**

\* \* \*

(6) a secured party having control under Section 7-106 of an authoritative electronic copy of an electronic document shall transfer control of the electronic copy to the debtor or a person designated by the debtor; and

(7) a secured party having control under Section 12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

\* \* \*

**Section 9-301. Law Governing Perfection and Priority of Security Interests.**

\* \* \*

(3) Except as otherwise provided in paragraph (4), while negotiable tangible documents, goods, instruments, or money, ~~or tangible chattel paper~~ is located in a jurisdiction, the local law of that jurisdiction governs:

\* \* \*

**Section 9-312. Perfection of Security Interests in Chattel Paper, Controllable**

**Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Deposit Accounts, Negotiable Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.**

\* \* \*

(b) [Control or possession of certain collateral.] Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

\* \* \*

(2) except as otherwise provided in Section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 9-313

\* \* \*

**Section 9-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.**

(a) [Perfection by possession or delivery.] Except as otherwise provided in subsection (b), a secured party may perfect a security interest in ~~tangible negotiable documents~~, goods, instruments, negotiable tangible documents, or money, ~~or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest

\* \* \*

**Section 9-314. Perfection by Control.**

(a) [Perfection by control.] A security interest in ~~investment property, deposit accounts,~~

~~letter-of-credit rights, electronic chattel paper, or electronic documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, investment property, or letter-of-credit rights may be perfected by control of the collateral under Section 7-106, 9-104, ~~9-105,~~ 9-106, ~~or 9-107,~~ or 9-107A.

(b) [Specified collateral: time of perfection by control; continuation of perfection.] A security interest in ~~deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents,~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, or letter-of-credit rights is perfected by control under Section 7-106, 9-104, ~~9-105,~~ ~~or 9-107,~~ or 9-107A when not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

\* \* \*

**Section 9-317. Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.**

\* \* \*

(d) [Licensees and buyers of certain collateral.] ~~A~~ Subject to subsections (f) through (i), a licensee of a general intangible or a buyer, other than a secured party, of collateral other than ~~tangible chattel paper, tangible documents,~~ goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

**\* \* \* Section 9-332. Transfer of Money; Transfer of Funds from Deposit Account.**

(a) [Transferee of money.] A transferee of money takes the money free of a security



interest ~~unless the transferee acts~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

\* \* \*

\* \* \*

**Section 9-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.**

\* \* \*

(b) [Rights and duties of secured party in possession or control.] A secured party in possession of collateral or control of collateral under Section 7-106, 9-104, 9-105, 9-106, or 9-107, or 9-107A has the rights and duties provided in Section 9-207.

\* \* \*

**Section 12-102. Definitions.**

(a) [Article 12 definitions.]

In this article:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under Section 12-105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, investment property, a transferable record, or an electronic record that is a medium of exchange currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

\* \* \*

(b) [Definitions in Article 9.] The definitions in Article 9 of “account debtor”, “controllable account”, “controllable payment intangible”, “chattel paper”, “deposit account”, and “investment property” apply to this article.

\* \* \*

**Section A-102. Definitions.**

\* \* \*

(b) [Definitions in other articles.] The following definitions in other articles of [the Uniform Commercial Code] apply to this article.

“Controllable account”. Section 9-102.

“Controllable electronic record”. Section 12-102.

“Controllable payment intangible”. Section 9-102.

“Financing statement”. Section 9-102.

\* \* \*

**Section A-305. Priority.**

\* \* \*

(c) [Determination of certain priorities on adjustment date.] On the adjustment date, to the extent the priorities determined by Article 9 as amended by this [act] modify the priorities established before [the effective date of this [act]], the priorities of claims to Article 12 property established before [the effective date of this [act]] cease to apply.