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THE 348 COMMITTEE—AN INTERIM REPORT

by ROBERT HAYDOCK, JR.*

The 348 Committee, a subcommittee of the Permanent Editorial Board for the Uniform Commercial Code, was organized in 1974 to consider whether any of Articles 3 (Commercial Paper), 4 (Bank Deposits and Collections) or 8 (Investment Securities) of the Uniform Commercial Code should be revised to take into account electronic data processing and other new developments in the transfer of funds and the transfer of securities.¹ The Committee initially devoted its major efforts to broadening the scope of Article 8 to cover the transfer of uncertified securities. These revisions, initially drafted by an American Bar Association committee,² were subsequently approved by the Permanent Editorial Board and its parent bodies, The American Law Institute and the National Conference of Commissioners on Uniform State Laws, and have already been adopted by three states.³

Turning to Articles 3 and 4, the Committee engaged Professor Hal Scott to prepare a report on the need for legislation supplementing or amending these Articles to cover new payment systems, including point of sale, automated clearing houses, credit cards, wire transfers, telephone transfers and check truncation. His report⁴ rec-

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1. Members of the 348 Committee are Boris Auerbach, James L. Brown, Robert Haydock, Jr. (Chairman), John H. Higgs, Paul E. Homrighausen, McChesney H. Jeffries, Mark Leymaster, Professor Norman Penney, Hamilton F. Potter, Jr., Carlyle C. Ring, Jr. and Blair C. Shick.

2. The American Bar Association Committee on Stock Certificates was chaired by Donald A. Scott. Its Reporter was then Professor Martin J. Aronstein, who also served as Reporter for the 348 Committee in connection with the Amendments to Article 8.

3. The states are Connecticut, Minnesota and West Virginia.

4. H. Scott, *New Payment Systems: A Report to the 3-4-8 Committee of the Permanent Editorial Board for the Uniform Commercial Code* (1978).

ommended the preparation of a comprehensive payment code covering both paper transactions and electronic fund transfers (EFT) and their hybrids. He argued that such a code would simplify the law and would assure consistent rules covering the common problems of the different payment systems, a consistency which would eliminate differences that today make drawing the line between similar systems more significant and troublesome than is necessary. Such a code would fill the gaps and eliminate the inadequacies of existing legislation. It would have built into it both the legal flexibility and consistency of treatment to allow for the development of competitive systems and, by balancing the rights and obligations of providers and users, would discourage selection of one system over another for the reason that the rules governing it were more favorable to the party making the choice. He proposed that such a code be organized on a functional basis and suggested that the subject matter be broken down into the following topics: (1) scope; (2) record keeping; (3) allocation of fraud risks; (4) allocation of mistake risks; (5) stop payment; (6) claims and defenses; (7) timeliness of items; (8) authorization; and (9) payment and settlement.

His report was considered at the ALI-ABA Invitational Conference on Electronic Fund Transfer Systems and the Uniform Commercial Code, which was held in Williamsburg, Virginia approximately a year ago and attended by approximately one hundred and fifty lawyers, bankers and others interested in EFT. It was evident that many participants shared a substantial doubt as to the feasibility and the need for such a code. Concern was expressed on whether such a code should cover all payment systems, including certain specialized systems such as Bankwire; whether such a code should include consumer protection provisions; whether such a code should deal only with EFT, on the theory that a functional reorganization of Articles 3 and 4 would create as many problems as it would solve; and, whether federal legislation on the subject, fragmented as it seems to be, might be an insuperable obstacle to a comprehensive approach.

At the same time, there was a strong interest in having the 348 Committee proceed with the project. It was suggested that for Bankwire and related special systems involving a few large banks, a statutory "safety net"—a law that would establish rules where none presently exist either in legislation or in contractual agreements—would serve a useful purpose and would not hamper the operation of such systems because, with very few exceptions, the rules would be subject to change by agreement.

On reorganizing Articles 3 and 4, Professor Scott indicated that he was confident that he could achieve his functional approach with

only a few changes of substance and a number of language changes designed to clearly state rules that can only be derived from existing Articles by "detective work." On the consumer protection issue, he pointed out that there were already substantial consumer protection provisions built into Articles 3 and 4.

Following Williamsburg, the 348 Committee recommended that it undertake the preparation of a Comprehensive Payment Code to replace, amend or supplement Articles 3 and 4 of the Uniform Commercial Code. This new Code would cover both paper and most, if not all, EFT systems; would include provisions protecting the rights of consumers; and would not be limited solely to banks and their consumers in its application. The recommendation was qualified, however, by calling for the preparation of such a Code in two steps. The first involves an outline containing a fairly detailed description of the various sections of the Code which, for the most part, will not be cast in statutory language, but will contain general statements as to proposed rules and their scope. The second step is the drafting of the statute itself. It is contemplated that this second step will not occur until the outline has been widely circulated for comment, and perhaps discussed at another conference similar to the one in Williamsburg.

The report was approved by the Permanent Editorial Board approximately one year ago. During the intervening period, Professor Scott has been at work on a draft of the outline, assisted by Professor Peter Murray, who has been charged with preparing a memorandum on what, if any, substantive changes might be made in Articles 3 and 4 insofar as they relate to paper transactions. In this connection, Murray and members of the 348 Committee have participated in meetings with banking and consumer groups in New York, Boston, Chicago and San Francisco. It is anticipated that the outline will be ready for circulation by the summer of 1980.

