



October 31, 2023

By Email

Senator Brad Hoylman-Sigal
New York State Senate
Legislative Office Building, Room 310
Albany, NY 12247

Re: New York Should Update Its Uniform Commercial Code to Address Emerging Technologies, Including Digital Assets

Dear Senator Hoylman-Sigal:

On behalf of the New York City Bar Association (City Bar), we are writing to thank you for introducing Senate Bill 7244, and to reiterate our support for enactment of the New York version of the Amendments to the Official Text of the Uniform Commercial Code (2022).¹ We are grateful for the introduction of S7244 prior to the end of session and we believe it sends an important message to market participants that modernization of the New York UCC is needed. As City Bar staff and Task Force representatives have discussed with your office, we further recommend and are eager to receive forthcoming amendments to S7244 to make important conforming changes to other articles of the New York UCC, including, but not limited to, Article 7 and Article 9. We stand ready to assist in whatever way would be helpful in this regard.

New York commercial and financial law has unique respect for freedom of contract and strong protections for the negotiability of commercial instruments, and this has long made New York the preferred U.S. jurisdiction for paper-based commercial and financial transactions. Unfortunately, the same is not yet true for transactions involving digital assets. To become the preferred U.S. jurisdiction for transactions involving digital assets and to preserve New York's preeminence as a leading commercial jurisdiction to govern and adjudicate commercial contracts, New York must enact the NY Emerging Technologies UCC Amendments. Doing so will modernize

¹ A copy of the City Bar's Report in Support of Enacting New York Version of Emerging Technology Amendments to the Uniform Commercial Code (February 16, 2023) is available at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/emerging-technology-amendments-to-uniform-commercial-code>. (All websites last accessed on Oct. 30, 2023). S7244, its expected conforming changes and the emerging technologies amendments to the New York UCC are collectively referred to as the NY Emerging Technologies UCC Amendments.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

the New York UCC and adapt it to recent and potential future developments in technology and related new methods of doing business.

In July 2022, the Uniform Law Commission (ULC) and the American Law Institute (ALI) promulgated the Emerging Technologies amendments (Model UCC Amendments) to the Uniform Commercial Code (UCC)² after a three-year open process involving approximately 350 observers, including a number of observers from New York. The NY Emerging Technologies UCC Amendments are a tailored version of the Model UCC Amendments designed specifically for the New York UCC, which differs in some important respects from the current uniform text of the UCC. They are otherwise consistent with the Model UCC Amendments in the interest of uniformity with the laws of other states.

While there are many benefits to New York's enactment of the NY Emerging Technologies UCC Amendments, we would like to highlight two of the most important benefits to New York, and why enactment during the upcoming legislative session is necessary.

First, enactment of the NY Emerging Technologies UCC Amendments will promote and encourage technological and commercial advances that decrease transactional costs and enhance the efficiency, certainty and security of commercial and financial transactions governed by the New York UCC. The importance of these improvements to the New York UCC cannot be overstated. Technological and commercial advances that decrease transactional costs and enhance the efficiency, certainty and security of commercial and financial transactions are major factors that are considered when market participants are deciding whether to choose New York as the governing law and the jurisdiction to resolve disputes and whether businesses will decide to locate their businesses in New York.

Second, enactment of the NY Emerging Technologies UCC Amendments will help ensure New York's leadership in commercial and financial progress and growth and will disincentivize migration of digital commerce to other jurisdictions which more clearly promote and encourage technological and commercial advances. The New York UCC has not been updated since 2014 and there have been many important advancements in technology since that time. New York is now in a position where it must act expeditiously to enact the NY Emerging Technologies UCC Amendments. Eleven states³ have already enacted the Model UCC Amendments and another 15 states,⁴ and the District of Columbia have introduced bills covering the Model UCC Amendments.⁵ We expect more states to introduce bills and adopt the Model UCC Amendments, and every time

² A copy of the 2022 Amendments is available at <https://www.uniformlaws.org/viewdocument/archive-committee-55?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments>.

³ Alabama; California; Colorado; Delaware; Hawaii; Indiana; Nevada; New Hampshire; New Mexico; North Dakota; and Washington.

⁴ Arizona; Arkansas; Kentucky; Louisiana; Maine; Massachusetts; Missouri; Montana; Nebraska; Oklahoma; Rhode Island; South Dakota (a bill was passed in South Dakota but vetoed by the South Dakota Governor); Tennessee; Texas; and West Virginia.

⁵ To track the status of enactments and introductions, please see <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac#LegBillTrackingAnchor> and <https://www.uniformlaws.org/committees/community-home?communitykey=1457c422-ddb7-40b0-8c76-39a1991651ac>.

another state adopts the Model UCC Amendments, the more likely New York risks that market participants will prefer one of those states for transactions involving digital assets or even the law of other countries, such as England, which are rapidly reforming their commercial laws to accommodate emerging technologies and electronic transactions.

Modernizing New York laws and making sure New York receives the considerable benefits of electronic commerce and emerging technologies are important priorities of the City Bar. To that end, in June 2022, the City Bar established a Task Force on Digital Technologies (Task Force)⁶ to provide a center of excellence and thought leadership in digital technologies, including innovative technologies that create new or enhanced products and services, digital assets, and more efficient, convenient, and effective ways of doing business. The Task Force and City Bar staff stand ready to continue to assist with the enactment of the NY Digital Technologies UCC Amendments.

For further assistance from the City Bar, please contact Elizabeth Kocienda, Director of Advocacy at 212-382-4788 or ekocienda@nycbar.org, or Maria Cilenti, Senior Policy Counsel at 212-382-6655 or mcilenti@nycbar.org.

Very truly yours,

Susan J. Kohlmann, President
New York City Bar Association

Lorraine McGowen, Co-Chair
Edward So, Co-Chair
Jerome Walker, Co-Chair
Task Force on Digital Technologies

Mark F. Glaser
New York Uniform Law Commissioner
Chair, NY Delegation to the Uniform Law Commission

Curtis C. Mechling, Chair
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Cc: Maia Berlow
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⁶ More information on the Task Force is available at <https://www.nycbar.org/member-and-career-services/committees/digital-technologies-task-force-on->