2000

UCC Article 4A

Alvin C. Harrell, *Oklahoma City University School of Law*
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ALVIN C. HARRELL

Uniform Commercial Code (UCC) Article 4A is one of the great success stories in modern American law, creating an entirely new body of law where none previously existed, yet meshing easily with established principles of related commercial laws. It has now been enacted in every American state except New York and South Carolina, and incorporated into federal law.

Article 4A is pioneering legislation, not only because it filled a void in American law, but also as a potential model for electronic transfers of money in contexts beyond the direct scope of Article 4A. Thus, Article 4A may represent a model for payment systems of the future, for example, regarding such issues as authorization to transact business, loss allocation, and security procedures.

While looking to the future of electronic transactions, however, Article 4A is also largely consistent with other, existing commercial laws. Article 4A, therefore, represents a bridge between the past and the future, demonstrating the use of traditional American legal principles in the context of modern commercial transactions. The continuing treatment of Article 4A through case law, as discussed in this Article, thus represents an important development in the modern history of commercial law.

* Your Author wishes to express his appreciation to University of Oklahoma College of Law Professor Fred H. Miller for his assistance in the preparation of this Article. Your Author remains solely responsible for any errors. This Article is derived in part from Alvin C. Harrell, Wholesale Funds-Transfers—UCC Article 4A, in JOSEPH J. NORTON ET AL, CROSS-BORDER ELECTRONIC BANKING Ch. 8 (1995), and Alvin C. Harrell, Payment System Issues—UCC Article 4A, Regulations J, S and D, 50 CONSUMER FIN. L. Q. REP. 49 (1996). Reprinted with permission.

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I. INTRODUCTION AND SCOPE—UCC ARTICLE 4A

Prior to the promulgation of Uniform Commercial Code (UCC) Article 4A (Funds-Transfers) in 1989 there was no clear-cut framework of legal rules governing wholesale wire transfers in the United States. At this writing, Article 4A has been enacted in every American state except New York and South Carolina, an exceptional enactment record that reflects the near universal approval accorded this statute. In addition, the liberal choice of law rule at section 4A-507, the incorporation of Article 4A with slight modification into Federal Reserve Board Regulation J,¹ and the adoption of Article 4A into the rules of several funds-transfer systems,² means that Article 4A is often applicable to wire transfers, even in jurisdictions that have not yet enacted it. This is an unparalleled record of success, reflecting the importance of Article 4A in diminishing the legal impediments to funds-transfers.


2. See The New York Clearing House Interbank Payments Systems (CHIPS) and the National Association of Clearing House Associations (NACHA). See generally Funds-Transfers Under Article 4A: What your Deposit Agreement Should Provide, in 1 CLARKS’ BANK DEP. AND PYMTS. NO. 12, at 4 (June 1993); (Filing Your Wire Transfer Agreements With the Right Stuff—Part 2, id. Vol. 2 No. 4 at 3 (Oct. 1993)).
Article 4A is limited to "wholesale" funds-transfers and does not apply to consumer electronic funds-transfers, including debit and credit card transactions, where there is already extensive federal law coverage. Article 4A is also limited to funds-transfers effectuated through the banking system and does not apply to transfers via nonbank entities such as Western Union.

II. ARTICLE 4 DEFINITIONS AND SCOPE

A. Fundamental Concepts

The concept of a "payment order" is a central focus of Article 4A. "Payment order" is defined as an instruction by a "sender" (transmitted orally, electronically, or in writing) to a bank to pay money to a "beneficiary" within the limitations at section 4A-103(a)(1). "Sender" is the person giving such an instruction (the initial "sender" is called the "originator") and the "beneficiary" is the person to be paid. A payment order is initiated when an originator issues such an order to a bank. The receiving bank then "accepts" the order by "executing" it in favor of


4. See U.C.C. §§ 4A-103(a), 4A-104 cmt. 2. Article 4A also does not apply to transfers by draft or other "item" as defined in U.C.C. Article 4 § 4-104(a)(9). See Continental Airlines, Inc. v. Boatmen's Nat'l Bank of St. Louis, 13 F.3d 1254 (8th Cir. 1994). Thus, if Article 4A applies, Article 4 does not, and vice versa. See Brooks v. First Fed. Sav. and Loan Ass'n of Sylacauga, 726 So. 2d 640 ( Ala. 1998).


another receiving bank.\footnote{7} This process is repeated until the order is sent to, and accepted by, the beneficiary’s bank.

Acceptance of a payment order invokes the liability of the receiving bank to comply with the order.\footnote{8} Acceptance occurs when a receiving bank executes the payment order by sending payment in accordance with the order or, in the case of the beneficiary’s bank, by paying the beneficiary, by notifying the beneficiary that payment has been received, or by receipt of payment by the beneficiary’s bank.\footnote{9}

The significance of this is illustrated by cases like \textit{Sigmoil Resources, N.V. v. Pan Ocean Oil Corp. (Nigeria)},\footnote{10} where a creditor attached funds in its debtor’s bank account after an Article 4A funds-transfer of the funds out of that account had been accepted by the receiving bank. The court noted that “[a] funds-transfer is complete at the moment the receiving bank receives the credit message, not when the beneficiary acquires the funds.”\footnote{11} Once the funds-transfer was complete by reason of the receiving bank’s acceptance of the payment order, the sender and originator retained no ownership interest in the funds that would be subject to attachment.\footnote{12}

\begin{references}
7. \textit{See} U.C.C. §§ 4A-103, 4A-209, 4A-301 (a); \textit{infra} Part IV.

8. \textit{See} U.C.C. § 4A-302(a). Thus, once a payment order has been accepted by the beneficiary’s bank, ownership of the funds passes to the beneficiary’s bank, and the transfer cannot be revoked without the consent of the beneficiary. \textit{See} U.C.C. § 4A-404; United States v. BCCI Holdings (Luxembourg), S.A., 956 F. Supp. 5 (D.D.C.1997); United States v. BCCI Holdings (Luxembourg), S.A., 814 F. Supp. 106 (D.D.C. 1993). In contrast, if the payment order is not accepted, the funds are not transferred and no legal interest passes to the beneficiary. \textit{See} United States v. BCCI Holdings (Luxembourg), S.A., 977 F. Supp. 20 (D.D.C. 1997); United States v. BCCI Holdings (Luxembourg), S.A., 980 F. Supp. 2 (D.D.C. 1997).

9. \textit{See} U.C.C. §§ 4A-209(a), (b), 4A-301. \textit{See also} § 4A-103(a)(2), (3), (4), (5); \textit{infra} Part VII.C., D. Acceptance does not occur if the beneficiary does not have an account with the receiving bank, the account is closed, or the receiving bank is legally not permitted to receive credits for the beneficiary’s account. \textit{See} U.C.C. § 4A-209(c); United States v. BCCI Holdings (Luxembourg), S.A., 961 F. Supp. 282, 285 (D.D.C. 1997).


12. \textit{See id.} \textit{See also} U.C.C. §§ 4A-209 (acceptance), 4A-302, 4A-404; United States v. BCCI Holdings (Luxembourg), S.A., 980 F. Supp. 515, 520-21 (D.D.C. 1997) (same, discussing importance and methods of acceptance) (citing Patricia Brumfield Fry, \textit{Basic Concepts in Article 4A: Scope and Definitions}, 45 BUS. LAW. 1401, 1412 (1990)). These issues are also discussed in one of several companion BCCI cases, see, for example, \textit{United States v. BCCI Holdings (Luxembourg)}, S.A., 980 F. Supp. 507, 513 (D.D.C. 1997). \textit{See also}}
Use of proper terminology is crucial when describing an Article 4A transaction. The "originator" initiates the funds-transfer by giving a "payment order" to the "originator's bank," which "accepts" the payment order by "executing" it, thereby becoming a "sender." The "receiving bank" then likewise "accepts" the order by "executing" it in favor of another "receiving bank." Ultimately it is executed in favor of the "beneficiary's bank," which "accepts" the order by paying the beneficiary or by notifying the "beneficiary" that payment has been received. All "intermediary banks" (those between the originator's bank and the beneficiary's bank) are both a "receiving bank" and a "sender," as they "accept" the order and "execute" it. The essential basis for the obligation of each bank is the underlying contract (the payment order) and the bank's acceptance of that contract pursuant to the rules of Article 4A.

B. Scope—Payment Order Must Be Unconditional

By definition, an Article 4A payment order must be unconditional. Therefore, an important scope issue in determining whether Article 4A applies is whether the payment order in question is or is not conditional. This issue has spawned some important litigation.

In Grabowski v. Bank of Boston, an attorney-in-fact made unauthorized funds-transfers to himself out of certain bank accounts in

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13. If the beneficiary's bank receives payment from the sender and takes no action, acceptance occurs at the opening of the bank's next funds-transfer business day. See U.C.C. § 4A-209(1)(b)(3).


15. Unlike commercial instruments (notes and drafts) governed by U.C.C. Article 3, and items governed by Article 4, payment orders do not constitute independent obligations outside the underlying agreement. Therefore, the rights and liabilities of the parties to a payment order arise solely under the agreement of the parties in the context of the Article 4A statutory environment. See U.C.C. §§ 4A-209 (acceptance) and 4A-212 (nonacceptance); MILLER & HARRELL, supra note 1, ¶ 110.04(4); cf. U.C.C. §§ 3-104, 3-310, 3-412, 3-415, 4-104(a)(9), 4-215, 4-302.

16. U.C.C. § 4A-103(a)(1)(c) defines "payment order" as an instruction to pay money that "does not state a condition to payment to the beneficiary other than time of payment." See also supra note 5 and accompanying text.

violation of the applicable power-of-attorney. The depositors, owners of the accounts in question, sued the bank to recover the funds.\textsuperscript{18} Among the issues confronted by the court were the following Article 4A questions: (1) was the suit barred by the preclusion at section 4A-505 requiring that notice of the customer’s objection be given to the bank within one year after the customer received notice of the funds-transfer?;\textsuperscript{19} (2) was an agreement requiring the depositors to indemnify the bank for losses due to unauthorized transfers valid under Article 4A?;\textsuperscript{20} (3) was a conditional order issued by the attorney-in-fact subject to Article 4A because the condition was not stated in the order?;\textsuperscript{21} (4) were the unauthorized payment orders excluded from Article 4A as mere debit transfers, where the instruction to pay is given by the recipient, because the attorney-in-fact transferred the funds to himself as beneficiary?;\textsuperscript{22} and (5) was the indemnity agreement (noted above) a “security procedure” enforceable under Article 4A?\textsuperscript{23}

The \textit{Grabowski I} court noted that the one year limitation period at section 4A-505 is not a statute of limitations barring suit after one year, as the bank alleged, but a statute of repose requiring the aggrieved customer to give the bank notice of the customer’s objection to the payment order within one year after the customer received notice of the payment.\textsuperscript{24} The court also held the indemnity agreement invalid, on grounds that it was not a security procedure under section 4A-202(b) and, therefore, was barred by section 4A-202(f) (enforceability of payment orders are not otherwise subject to variation by agreement).\textsuperscript{25}

A major issue in \textit{Grabowski I} was whether the conditional nature of the power-of-attorney made the payment orders executed pursuant thereto conditional, and therefore, outside the scope of Article 4A.\textsuperscript{26} The court

\textsuperscript{18} See \textit{Grabowski I}, 997 F. Supp. at 111.
\textsuperscript{19} See infra Part VIII.C.
\textsuperscript{20} See U.C.C. § 4A-202(b).
\textsuperscript{21} See id. § 4A-103(a)(1)(i).
\textsuperscript{22} See id. § 4A-103(a)(1)(ii), 4A-104 cmt.
\textsuperscript{23} See id. § 4A-202(b). There were seven additional issues numbered by the court six through twelve, dealing with enforcement of the terms of the power-of-attorney against the bank and claims for breach of contract and deceit. See \textit{Grabowski I}, 997 F. Supp. at 111.
\textsuperscript{24} Similar notice periods are found elsewhere in the UCC, see, for example, U.C.C. § 4-406(c), (d), (f).
\textsuperscript{25} The purpose is to preserve the loss allocation rules of Article 4A. See \textit{Grabowski I}, 997 F. Supp. at 119-20.
\textsuperscript{26} See U.C.C. § 4A-103(a)(1)(i).
noted that an Article 4A payment order must be unconditional, and that
the power-of-attorney in question included conditions requiring receipt of
certain invoices or bank instruments. Had such conditions been included in
the payment order to the bank, as required in the power-of-attorney, the
payment order would not be covered by Article 4A. However, in this case
the payment order erroneously omitted the required conditions, and
therefore, on its face qualified as an unconditional payment order under
Article 4A.

The Grabowski I court also held that the payment orders were not
excluded debit transfers, because the attorney-in-fact was ordering payment
as agent for the account owners and on his own behalf; and the bank was
not absolved of liability for the wrongful transfer by its security procedure
under section 4A-202(b), because this procedure did not permit the bank to
ignore the limitations in the power-of-attorney authorizing the funds-
transfers. Accordingly, the bank was deemed to have violated its
contractual obligations to the account owners by permitting unauthorized
payment orders to withdraw funds from the account.

Another case dealing with the issue of conditional payment orders is
Piedmont Resolution, L.L.C. v. Johnston, Rivlin & Foley. In Piedmont,
the bank customer was victimized to the tune of $3 million by a “bank
instruments scam” utilizing a funds-transfer through S.W.I.F.T. If this
transfer was governed by Article 4A, ownership of the funds would pass to
the beneficiary’s bank upon acceptance of the order and recourse would
largely be limited to the Article 4A loss allocation rules.

27. See id. See also Grabowski I, 997 F. Supp. at 121.
28. See id.
29. See id. at 122.
30. See id. at 123. In addition it appears there was no valid security procedure applicable
to this case. See id.
130 (D. Mass. 1998) (Grabowski II), focuses on the agency issues and is discussed infra at
Pt. III.
33. Id. at 43. S.W.I.F.T. is an organization that provides funds transmission services. See
U.C.C. § 4A-105 cmt. 3.
34. See Piedmont, 999 F. Supp. at 47; supra Part II.B.; infra Parts III-VII.
However, an Article 4A payment order must be unconditional,\textsuperscript{35} and although a funds-transfer by S.W.I.F.T. is normally unconditional (and thus covered by Article 4A), in this case it was not.\textsuperscript{36} In *Piedmont*, the court concluded for summary judgment purposes that the funds-transfer could be deemed conditional, and therefore outside the scope of Article 4A, despite the use of S.W.I.F.T. and expert testimony to the effect that there is no such thing as a conditional S.W.I.F.T. transfer.\textsuperscript{37}

III. LIABILITY FOR ERRORS AND UNAUTHORIZED ORDERS\textsuperscript{38}

\textit{A. Authority to Originate}

The authority of the originator and each sender to initiate or execute the payment order is governed by agency principles.\textsuperscript{39} Thus, the first question raised by an allegation of unauthorized payment under Article 4A is whether the payment order was originated by an agent with real or apparent authority.\textsuperscript{40} This authority can be determined under the law of agency and/or by an agreement addressing that authority.\textsuperscript{41} For example, in *Grabowski* I, the bank’s authority to execute payment orders originated by the account owners’ attorney-in-fact was governed by the power-of-attorney, which permitted only withdrawals accompanied by corresponding deposits.\textsuperscript{42} Therefore, the attorney-in-fact was not authorized to originate the payment orders in question. Article 4A imposes strict liability on a bank

\textsuperscript{35} See U.C.C. § 4A-103(a)(1)(i) and discussion *Grabowski* I, 997 F. Supp. 111, 121 (D. Mass. 1997) (“Such conditions are anathema to Article 4A, which facilitates the low price, high speed, and mechanical nature of funds-transfers.”).

\textsuperscript{36} This conclusion was based on questions of material fact sufficient to defeat a summary judgment motion and was not a definitive judgment on the issues in this case.

\textsuperscript{37} See *Piedmont*, 997 F. Supp. at 48 (the court also discussed breach of contract issues, ultimately denying the bank’s motion for summary judgment).

\textsuperscript{38} See generally MILLER & HARRELL, supra note 1, ¶ 10.04[8], [9].

\textsuperscript{39} See U.C.C. § 4A-202(a). See also Abyaneh v. Merchants Bank, North, 670 F. Supp. 1298 (M.D. Pa. 1987). Abyaneh, decided prior to Article 4A, involved an imposter who lacked authority to initiate the subject payment orders, illustrating the authorization problems that can arise in a funds-transfer scenario. See generally Bradford Trust Co. of Boston v. Texas Am. Bank-Houston, 790 F.2d 407 (5th Cir. 1986); MILLER & HARRELL, supra note 1, ¶ ¶ 10-32 to 10-35.

\textsuperscript{40} See U.C.C. § 4A-202(a); *Grabowski* II, 997 F. Supp. 130 (D. Mass. 1998).


\textsuperscript{42} See id. at 128.
to refund a payment order wrongfully issued in the name of a customer without an effective authorization.\(^\text{43}\)

In \textit{Grabowski II}, the court gave more detailed consideration to the bank’s argument that under Article 4A a payment order is authorized if it was originated by the person who purportedly sent it.\(^\text{44}\) On the facts of that case, the bank argued that the payment order was authorized because it was sent by the identified originator (the attorney-in-fact), not by someone else posing as that person.\(^\text{45}\) In this view, whether a payment order was authorized would turn on this type of Article 4A analysis rather than agency principles; however, as the court noted, this view is inconsistent with the text and Official Comments to Article 4A.\(^\text{46}\) The \textit{Grabowski II} court reaffirmed that agency and contract principles determine the authority of an agent to send an Article 4A payment order.\(^\text{47}\)

\textbf{B. Security Procedure}

Even if the order was not authorized under section 4A-202(a) or the law of agency, if the bank has in place a “commercially reasonable security procedure” that had been accepted by the customer, and the bank complied with that procedure in good faith and in accordance with any instructions, the order is treated as having been authorized by the customer.\(^\text{48}\) A bank

\begin{enumerate}
\item See U.C.C. § 4A-204; see, e.g., Schmidt v. Fleet Bank, No. 96 CIV. 5030, 1998 WL 47827 (S.D. N.Y. Feb. 4, 1998) (not reported in F. Supp.). This is similar to the rule regarding payment of items not properly payable under UCC Article 4 section 4-401.
\item See \textit{Grabowski II}, 997 F. Supp. at 130-31.
\item See \textit{id.}
\item See \textit{id.}
\item Ironically, the \textit{Grabowski II} court then noted unique facts relating to the separate criminal prosecution of both the principal and agent which might benefit the bank under an agency analysis.
\item U.C.C. § 4A-202(b). See also U.C.C. §§ 4A-201, 4A-202, 4A-203, 4A-204, 4A-504. See generally \textit{Gatoil (U.S.A.) Inc. v. Forest Hill State Bank}, 1 U.C.C. Rep. Serv. 2d 171 (D. Md. 1986), which was decided prior to Article 4A, relying on agency principles (and Article 4 by analogy) to determine that the bank used ordinary care in verifying the payment order. The court also concluded that there was no loss because the funds-transfer paid a debt of the customer. The result would likely be the same under Article 4A, though the precise analysis would differ. See \textit{Miller & Harrell}, supra note 1, at 10-30 to 10-32.
\end{enumerate}
handling a payment order is not liable for consequential damages due to
delay or other error, unless the bank agreed to assume this risk.\footnote{49}

Section 4A-201 defines “security procedure” as follows:

“Security procedure” means a procedure established by agreement
of a customer and a receiving bank for the purpose of (i) verifying
that a payment order or communication amending or canceling a
payment order is that of the customer, or (ii) detecting error in the
transmission or the content of the payment order or communication. A security procedure may require the use of algo-
rithms or other codes, identifying words or numbers, encryption,
callback procedures, or similar security devices. Comparison of a
signature on a payment order or communication with an authorized
specimen signature of the customer is not by itself a security
procedure.

Thus if a payment order is determined to be unauthorized under agency
and contract principles pursuant to section 4A-202(a), the analysis shifts to
section 4A-202(b) to determine whether the receiving bank properly
verified the authenticity of the payment order pursuant to a section 4A-201
security procedure. If so, the payment order will be deemed effective even
if it was not otherwise authorized.\footnote{50} This permits the originator and
receiving bank to arrange security procedures adapted to their needs and to
the needs of electronic commerce, even if that would not suffice to evidence
authority under agency and contract principles.\footnote{51}

Accordingly, the security procedure must be “established by
agreement” between the customer and bank.\footnote{52} A verification procedure

\footnote{49} See U.C.C. § 4A-305(d). See also Hadley v. Baxendale, 156 Eng. Rep. 145 (1854). As noted in Official Comment 2 to Section 4A-305, the leading modern case on consequential damages before Article 4A was Evra Corp. v. Swiss Bank Corp., 673 F.2d 951 (7th Cir. 1982). In that case, a valuable ship charter was lost because a bank failed to
properly execute a payment order. The lower court awarded damages of $2.1 million even though the amount of the payment order was only $27,000. The Seventh Circuit Court of
Appeals reversed, partly on the basis of Hadley v. Baxendale, and Article 4A confirms this
result. See MILLER & HARRELL, supra note 1, ¶ 10.04[1][c]; infra Part VII.C.

\footnote{50} See Hedged Inv. Partners, L.P. v. Norwest Bank Minn., N.A., 578 N.W.2d 765, 773
(Minn. Ct. App. 1998) (section 4A-202(a) and (b) “are freestanding alternative methods to
ascertaining whether a payment order is authentic”).

\footnote{51} See id.

\footnote{52} U.C.C. § 4A-201.
unilaterally instituted by the bank does not meet this test, even if implemented for the purpose of verifying payment orders.\textsuperscript{53}

\textit{C. Commercially Reasonable Procedure Required}

Under section 4A-202(b), the implementation of the security procedure is effective in protecting the receiving bank, whether or not the payment order is authorized, only if:

(i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and

(ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer.\textsuperscript{54}

The term "commercially reasonable" is not defined, but section 4A-202(c) provides that the circumstances of the customer (as known to the bank), alternative security procedures offered, and security procedures "in general use by customers and receiving banks similarly situated" are factors to be used in determining this "question of law."\textsuperscript{55} If the customer declines to use a commercially reasonable security procedure that is offered by the bank, and instead opts for a more convenient or less expensive procedure, the customer assumes the risk of a failure of the system.\textsuperscript{56}

\textsuperscript{53} See Skyline Int'l Dev. v. Citibank, F.S.B., 706 N.E.2d 942, 945 (Ill. App. Ct. 1998) (failure to follow bank's internal verification system did not violate a security procedure under section 4A-202(b)).

\textsuperscript{54} U.C.C. § 4A-202(b).

\textsuperscript{55} Id. § 4A-202(c).

\textsuperscript{56} See id. §§ 4A-202(c), 4A-203 cmt. 4.
IV. OBLIGATIONS OF A BANK ACCEPTING A PAYMENT ORDER

A. In General

Other Article 4A provisions govern erroneous orders, erroneous execution and duplicate orders, misdescribed beneficiaries, improperly executed orders, and other similar problems.\textsuperscript{57} Sections 4A-302 through 4A-305 contain important rules governing the obligations of a bank upon acceptance of a payment order. Generally, if a receiving bank (other than the beneficiary’s bank) accepts payment order, the bank is obligated to issue a payment order on the execution date, following the sender’s instruction as to “(i) any intermediary bank or funds-transfer system to be used in carrying out the funds-transfer, or (ii) the means by which payment orders are to be transmitted in the funds-transfer.”\textsuperscript{58} Under this subsection, the receiving bank is obligated to issue a payment order according to the instruction of the originator if an intermediary bank is involved in the funds-transfer. If the beneficiary’s bank does not accept the payment order in accordance with the sender’s instructions, the sender is excused from payment and is entitled to recover any payment made.\textsuperscript{59} In addition, if a bank erroneously executes a payment order for an amount greater than the payment order from the sender, the bank is entitled to recover the excess from the receiving bank on grounds of restitution.\textsuperscript{60}

B. Misdescription of Beneficiary

The large number of funds-transfers between bank accounts makes it inevitable that errors will be made, directing funds to the wrong beneficiary or account. Article 4A provides rules for allocating losses in such a


\textsuperscript{58} U.C.C. § 4A-302(a)(1).

\textsuperscript{59} See id. § 4A-402 (c), (d), (e). This is called the “money back guarantee.” See Miller & Harrell, supra note 1, ¶ 110.04[5].

scenario, and generally these rules preempt alternative state law theories of recovery.

A good illustration of the issues is Corfan Banco Asuncion Paraguay v. Ocean Bank. Corfan Banco originated a $72,972 transfer to an account of its customer (Silva) at Ocean Bank. The payment order named Silva as beneficiary, but erroneously listed a nonexistent account number. Ocean Bank noticed the error and contacted Silva to confirm his correct account number, then accepted the payment order and deposited the funds to this account. Ocean Bank did not, however, notify Corfan Banco or the intermediary bank of the erroneous account number in the payment order or Ocean Bank's correction of that number.

The next day Corfan Banco discovered the error in its previous payment order, and sent a second $72,972 payment order to Silva's correct account. This second transfer was intended as a correction of the prior order, but was not designated as such. This second order was automatically processed at Ocean Bank as a stand-alone payment order and the funds were again deposited in Silva's account, resulting in Silva receiving double payment (which he immediately withdrew).

Corfan Banco brought suit against Ocean Bank to recover the $72,979 overpayment, under section 4A-207 and an allegation of common law negligence. Section 4A-207 provides in part as follows:

§ 4A-207. Misdescription of Beneficiary.

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

62. See id. at 968.
63. See id.
64. See id.
65. See id.
66. See id.
67. See id.
68. See id.
(b) If a payment order received by the beneficiary’s bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary’s bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary’s bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary’s bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary’s bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

Corfan Banco argued that under section 4A-207(a) the nonexistent account number in the first payment order rendered that order invalid and it could not be accepted.69 Ocean Bank responded that the language should not be given such a “highly technical” reading, on grounds of “commercial and practical considerations and common sense,” arguing that the “or” in section 4A-207(a) be given conjunctive rather than disjunctive effect.70 The Florida District Court of Appeal rejected this “invitation to look behind the plain language of the statute” and required it to be “read as written.”71

69. See id. at 969.
70. Id.
71. Id.
The court noted that this creates an apparent anomaly, in that a payment order payable to an identified beneficiary can be accepted without a designated account number (section 4A-207(a) being inapplicable), or with an account number of a different person (section 4A-207(b)), but not with a nonexistent account number, under the plain meaning of section 4A-207(a). Accordingly, the trial court's summary judgment in favor of Ocean Bank on this issue was reversed. A dissenting opinion argued that the statutory language at section 4A-207(a) allows the beneficiary's bank to look to other information to confirm the identity of the beneficiary and account and avoid a misdescription invalidating the order under section 4A-207(a). This clearly seems the better result in the circumstances, and this case may suggest a need for reconsideration of this issue.

C. Preemption of Other State Law Claims

As illustrated by Corfan Banco, a recurring issue in the Article 4A litigation is whether the loss allocation rules and remedies of Article 4A litigation are exclusive, e.g., do they preempt otherwise applicable state law remedies based on contract law or the tort of negligence? While the Corfan Banco court specifically "did not reach the issue of whether the adoption of Article 4A of the UCC preempts negligence claims in all cases," the court cited with approval the Official Comment to section 4A-102, which strongly states that Article 4A preempts inconsistent state law. The Corfan Banco court noted that the alleged breach of the duty by Ocean Bank in handling the Silva payment order was "exactly the same duty established and now governed by [Article 4A]." Thus a negligence claim was inappropriate, as it would create rights, duties and liabilities inconsistent

73. See Corfan Banco, 715 So. 2d at 971.
74. See id. at 971 (J. Nesbitt, dissenting).
75. See id. at 967; discussion supra Part IV.B.
76. Corfan Banco, 715 So. 2d at 971.
77. See id. at 970-71. Similar issues can be confronted with regard to the UCC generally, pursuant to UCC section 1-103. But the temptation to refer to section 1-103 case law should be tempered by recognition that section 1-103 by its terms seems slightly more accommodative to other law (i.e., less preemptive) than Article 4A. This view is reinforced by the distinct nature and role of Article 4A. See § 4A-102 cmt.
78. See the facts of this case as described supra at Part IV.B.
79. Corfan Banco, 715 So. 2d at 971.
with Article 4A. The Florida appellate court agreed with Ocean Bank that Article 4A preempted the law of negligence in that case, and the trial court's grant of summary judgment was affirmed on this point.

The rule, and result, may be different if the non-Article 4A claim is based on agency or contract law, partly because Article 4A specifically incorporates agency and contract law at section 4A-202(a). As noted in Hedged Investment Partners, "[t]he exclusivity of Article 4A does not prevent application of common law principles specifically provided for within the act or common law actions that do not conflict with the provisions and remedies of Article 4A." Thus, in another case, the common law "discharge for value" rule was applied as being consistent with Article 4A.

Of course, Article 4A is supplemented, and even to some extent potentially preempted, by Federal Reserve Board rules, regulations and operating letters, other federal law, and contract-based rules such as clearing house and funds-transfer system agreements. But the almost unique nature of Article 4A, in terms of setting explicit rules for the mechanistic transfer of billions of dollars in relatively anonymous transactions means that resort to extrinsic and amorphous sources of law must be minimized.

In Hedged Investment Partners, the trial court held that Article 4A preempts common law claims to the extent the parties do not have a special relationship, and rejected several contractual defenses on this basis. However, the Minnesota Court of Appeals took a different view, allowing contractual defenses not in conflict with Article 4A despite the lack of a

80. See id. at 971 n.5. See also Ateo Int'l, Ltd. v. Citibank, N.A., 160 Misc. 2d 950 (N.Y. Sup. Ct. 1994).
81. See discussion supra at Part III.A.
82. 578 N.W.2d 765 (Minn. Ct. App. 1998); see also supra note 50.
86. See Hedged Invest. Partners, 578 N.W.2d at 771.
special relationship. These defenses grew out of the agency contract between the plaintiff (as originator) and the defendant bank (as receiving bank), and therefore, in a sense were Article 4A defenses under section 4A-202(a); however, as noted by the Court of Appeals, these defenses involved issues relating to fiduciary obligations that went "well beyond" the Article 4A issues implicated by section 4A-202(a). Accordingly, the court viewed these as non-Article 4A issues, that are consistent with Article 4A and, therefore, not excluded by it. In effect, Article 4A does not bar all extraneous claims and defenses between the parties merely because they also made an Article 4A funds-transfer, but merely those claims and defenses that would contradict the Article 4A regime. It is a fine line, but a compelling one.

This principle was also recognized in Community Bank, FSB v. Stevens Financial Corp., where an originator inadvertently sent the payment order to a bank different from the one designated by the beneficiary, but at which the beneficiary had a valid account. The payment order was valid under Article 4A, and the receiving bank (the beneficiary’s bank) promptly made a set off against the funds it deposited into the beneficiary’s account. The beneficiary objected, on grounds it had instructed the originator to send the funds to a different bank, but under Article 4A the funds-transfer was valid and had been completed, and could not be cancelled.

The originator then sought to invoke equitable principles of unjust enrichment to compel the beneficiary’s bank to return the funds. The court rejected this argument by noting that principles of law and equity extrinsic to Article 4A are applicable only when they are not inconsistent with Article 4A. The setoff of funds received upon acceptance of a payment order is clearly authorized by section 4A-502, and disgorgement of those funds on grounds of unjust enrichment would directly contravene that Article 4A provision. As a result, the mistaken payment order, though inadvertent, was valid under Article 4 and could not be canceled.

87. See id.
88. See id.
89. 966 F. Supp. 775 (N.D. Ind. 1997).
90. See id. at 777.
91. See id.
92. See id. at 783-86; U.C.C. § 4A-211.
94. See id. at 788 (citing Centre-Point Merchant Bank Ltd. v. American Express Bank, Ltd., 913 F. Supp. 202, 206 (S.D. N.Y. 1996)).
95. See infra Part VIII.B.
V. TRANSMITTING THE PAYMENT ORDER

The means of transmitting the payment order depends upon the sender's instruction, and a stated payment date if the sender's instruction obligates the receiving bank to transmit its payment order "at a time and by a means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible."96 This and other provisions of Article 4A Parts 2 and 3 should be closely reviewed to assure that financial institution staff are familiar with the statutory obligations of a receiving bank with regard to the execution of payment orders.

VI. FEES AND SETTLEMENT

Fees and provisional settlement are important issues to be addressed in the bank-customer agreement. Section 4A-302(d) provides that charges and expenses cannot be deducted nor instructions given for such deduction unless the receiving bank is so "instructed by the sender."97 The basic rule under Article 4A is that the beneficiary's bank cannot make provisional payment, so the bank (if it accepts an order) takes any credit risk if settlement is not made. Section 4A-405(d) does permit provisional payment to a beneficiary by its bank if statutory criteria are met including: (1) a requirement that the beneficiary, the beneficiary's bank, and the originator's bank agree to be bound by a rule allowing such provisional credit; (2) the rule provides that notice of the provisional nature of the payment be given both to the beneficiary and the originator before the funds-transfer is initiated; and (3) the beneficiary's bank did not receive payment of the order it accepted.98

Finally, it should be noted that the Department of Treasury has finalized enhanced recordkeeping requirements relating to fund transfers by banks and additional information requests of non-deposit account holders.99

97. Id. § 4A-302(b).
98. See id. § 4A-405(d). See also infra text at notes 128, 134-35; but consult NACHA and CHIPS rules for variations. See supra note 85.
99. See supra note 1 and infra Part XIII.
VII. PAYMENT

A. Payment in General

Article 4A Part 4 governs payment of the order. The "payment date" is the day on which the amount of the order becomes payable to the beneficiary by the beneficiary’s bank.\textsuperscript{100} This date is determined by the instructions of the sender, but cannot be earlier than the day of receipt by the beneficiary’s bank.\textsuperscript{101} In the absence of instructions, the payment date is the day the order is received by the beneficiary’s bank.\textsuperscript{102}

Each sender has an obligation to pay the receiving bank if the order is accepted by the receiving bank.\textsuperscript{103} If the receiving bank is the beneficiary’s bank, acceptance of the order obligates the sender to pay on the payment date.\textsuperscript{104} In other cases acceptance by the receiving bank obligates the sender to pay on the execution date of the sender’s order.\textsuperscript{105}

If the payment order is not accepted or completed, the receiving bank is obligated to refund the payment, with interest, to the extent the sender is not obligated to pay.\textsuperscript{106} However, if the receiving bank is unable to refund such payment (due to insolvency or other suspension of payments or due to applicable law) and the sender designated that bank, the risk of loss is on the sender.\textsuperscript{107}

All of the rules noted above are subject to the provisions of section 4A-303 (on erroneous execution and the right to reimbursement for any excess paid), as well as sections 4A-205 (erroneous payment orders) and 4A-207 (misdescription of beneficiary).\textsuperscript{108} The right to be excused from payment and to receive a refund as noted above cannot be waived by agreement.\textsuperscript{109}

\textsuperscript{100} See U.C.C. § 4A-401.

\textsuperscript{101} See id.

\textsuperscript{102} See id.

\textsuperscript{103} See id. § 4A-402.

\textsuperscript{104} See id. § 4A-402(b). See also supra text at notes 7-13.

\textsuperscript{105} See U.C.C. § 4A-402(c). In such case the sender’s obligation is excused if the transfer is not completed by the beneficiary’s bank accepting the order. See id.

\textsuperscript{106} See U.C.C. § 4A-402(d). As noted supra at note 59, this is called the “money back guarantee.” See MILLER & HARRELL, supra note 1, ¶¶ 10.04[5], [10].

\textsuperscript{107} See U.C.C. § 4A-402(e).

\textsuperscript{108} See id. § 4A-402(a). See also supra notes 61-74.

\textsuperscript{109} See U.C.C. § 4A-402(f).
B. Payment and Discharge Between Banks

Article 4A provides rules to govern the finality of payments between banks, similar in some ways to the rules governing final payment of items under UCC Article 4.\footnote{110} The sender's obligation to pay the receiving bank may be discharged by:\footnote{111}

1. making final settlement through a Federal Reserve Bank;\footnote{112}
2. crediting an account of the receiving bank with the sender (payment occurs when that credit is withdrawn or at midnight of the day that the receiving bank learns that the credit is drawable);\footnote{113} or
3. the receiving bank debiting any account of the sender with the receiving bank (to the extent the debit is covered by a drawable credit balance).\footnote{114}

If the sender and receiving bank are members of a funds-transfer system that provides for netting mutual obligations, payment will occur when final settlement is received pursuant to the rules of that system.\footnote{115} Netting is also allowed, by means of setoff, between banks transmitting offsetting payment orders among themselves pursuant to a netting or settlement agreement.\footnote{116} Issues regarding finality of payment not otherwise

\footnote{110. See id. §§ 4A-405, 4A-406. See also Miller & Harrell, supra note 1, ¶ 110.04[10]; infra Part VII.E. Generally, cancellation of a payment order is effective only if agreed to by the receiving bank, verified pursuant to a security procedure, or received prior to acceptance of the order. See U.C.C. § 4A-211(a), (b); infra Part VII.E. Cf. U.C.C. §§ 4-213 to 4-215; Miller & Harrell, supra note 1, ¶¶ 8.02, 8.03. Section 4A-211(b) rejects the result in pre-Article 4A cases like Mellon Bank, N.A. v. Securities Settlement Co., 710 F. Supp. 991 (D. N.J. 1989). See also infra notes 128 and 134.}
\footnote{111. Cf. U.C.C. § 4-215(a). See also infra Part VII.E.}
\footnote{112. See U.C.C. § 4A-403(a)(1).}
\footnote{113. See id. § 4A-403(a)(2).}
\footnote{114. See id. § 4A-403(a)(3); cf. id. §§ 4-213 to 4-215.}
\footnote{115. See id. § 4A-403(b).}
\footnote{116. See id. § 4A-403(c).}
covered by these rules will be decided according to otherwise applicable law.

C. Obligation of Beneficiary's Bank to Pay Beneficiary

The beneficiary's bank may accept the payment order by paying or notifying the beneficiary.117 If the beneficiary's bank accepts a payment order, it is obligated to pay that amount to the beneficiary.118 This payment will be due on the payment date,119 unless the order is accepted after the close of the funds-transfer business day, in which case payment is due on the following funds-transfer business day.120

If the beneficiary's bank refuses to pay after demand by the beneficiary and notice of specific circumstances that may give rise to consequential damages and their magnitude in the event of nonpayment, the beneficiary may recover consequential damages unless the bank had a reasonable cause to doubt the beneficiary's right to payment.121

There are four rules governing the obligation of the beneficiary's bank to give notice to the beneficiary of the payment order.122

1. If the payment order instructs payment to an account, the beneficiary's bank is obligated to notify the beneficiary of receipt of the order before midnight of the funds-transfer business day following the payment date.123

2. If the payment order does not instruct payment to an account, notice to the beneficiary is required only if the order so provides.

117. See U.C.C. § 4A-209(b)(1). See also id. § 4A-209(b)(2) (acceptance by passage of time); discussion infra this part and at Part VII.D.; MILLER & HARRELL, supra note 1, ¶ 110.04[6].
118. See U.C.C. § 4A-404(a).
119. See id. See also supra Part VII.A.
120. See U.C.C. § 4A-404(a).
121. See id. See also supra note 49.
122. See U.C.C. § 4A-404(b).
123. Cf. id. §§ 4-104(a)(10), 4-301, 4-302 (midnight deadline under UCC Article 4).
3. Notice may be given by first class mail or any other reasonable means.\textsuperscript{124}

4. If the beneficiary’s bank fails to provide the required notice, it must pay interest to the beneficiary from the date notice should have been given to the date the beneficiary learned of the payment order’s receipt.\textsuperscript{125}

The beneficiary’s right to payment and the statutory rules governing damages cannot be modified by agreement or funds-transfer rule.\textsuperscript{126} The beneficiary’s right to receive notice (as described above) may be modified by agreement or funds-transfer rule if the beneficiary is given prior notice.\textsuperscript{127}

\textit{D. Payment to the Beneficiary}

Article 4A provides rules governing the time, method, and finality of payment by the beneficiary’s bank to the beneficiary.\textsuperscript{128} If the beneficiary’s bank credits the beneficiary’s account, payment occurs “when and to the

\textsuperscript{124} Cf. \textit{id. §§ 3-503(b)} (means of giving notice under UCC Article 3), 1-201(27) (notice under UCC Article 1).

\textsuperscript{125} \textit{See id. § 4A-404(b)}. Reasonable attorney’s fees can also be recovered if demand for interest is made and refused before legal action is taken. No other damages can be recovered. \textit{See id.}

\textsuperscript{126} \textit{See id. § 4A-404(c)}. This is subject to statutory qualifications at section 4A-405, discussed \textit{infra} at Part D.

\textsuperscript{127} \textit{See id.}

extent": (1) the beneficiary is notified of the right to withdraw the funds; (2) the bank lawfully applies the funds to the beneficiary’s debt; or (3) the funds are otherwise made available to the beneficiary.\textsuperscript{129}

If payment is made by means other than credit to the beneficiary’s account, “the time when payment of the bank’s obligation under Section 4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.”\textsuperscript{130}

Except as provided at subsections 4A-405(d) and (e), these rules cannot be modified by agreement, and any contractual condition to payment or agreement to allow the bank to recover payment is unenforceable. As noted supra, there is an exception at subsection 4A-405(d), providing that conditions or provisional payment rules in a funds-transfer system agreement are enforceable under certain circumstances.\textsuperscript{131} There is a similar rule nullifying certain payments where the funds-transfer system fails to complete settlements pursuant to its rules.\textsuperscript{132}

E. Payment and Discharge

The time and extent of payment as between the originator and the beneficiary may be important as regards discharge of the originator’s underlying obligation to the beneficiary. Generally, between the originator and beneficiary payment occurs: (1) when the payment order is accepted by the beneficiary’s bank; and (2) in an amount equal to the order accepted by the beneficiary’s bank.\textsuperscript{133} These rules are subject to other Article 4A provisions governing cancellation or amendment of a payment order,\textsuperscript{134}

\textsuperscript{129} U.C.C. § 4A-405(a). \textit{See also} First Security Bank v. Pan American Bank, 215 F.3d 1147 (10th Cir. 2000).

\textsuperscript{130} U.C.C. § 4A-405(b).

\textsuperscript{131} \textit{See supra} text at notes 85 and 98.

\textsuperscript{132} \textit{See} U.C.C. § 4A-405(e).

\textsuperscript{133} \textit{See id.} § 4A-406(a).

\textsuperscript{134} \textit{See id.} § 4A-211(e). Regarding cancellation or amendment of a payment order, see section 4A-211(a), (b); MILLER & HARRELL, \textit{supra} note 1, ¶ 10.04[1][b]; \textit{supra} notes 26-28, and 36-37. Generally, a payment order that has been accepted cannot be cancelled without agreement of the parties. \textit{See} U.C.C. § 4A-211(b). This confirms pre-Article 4A cases like Delbrueck & Co. v. Manufacturers Hanover Trust Co., 609 F.2d 1047 (2d Cir. 1979) (funds-transfers were irrevocable once made) and rejects the reasoning in Mellon Bank, N.A. v. Securities Settlement Co., 710 F. Supp. 991 (D. N.J. 1989). These and other such cases are discussed in MILLER & HARRELL, \textit{supra} note 1, ¶ 10.04[1][b]. \textit{See also} Aleo Int’l Ltd. v. Citibank, N.A., 160 Misc. 2d 950, 612 N.Y.S.2d 540 (N.Y. Sup. Ct. 1994) (no liability in negligence or under section 4A-211 for refusal to cancel a completed payment order). \textit{Cf.} Sheerbonnet, Ltd. v. American Express Bank, Ltd., 905 F. Supp. 127 (S.D. N.Y. 1995)
provisional settlement pursuant to a funds-transfer system agreement, and failure of a funds-transfer system to complete settlement pursuant to its rules.

If the payment is made to satisfy an obligation, the obligation is discharged as if the payment were made in money unless: (1) this method of payment is prohibited by contract; (2) within a reasonable time after receiving notice of the order, the beneficiary notified the originator of his or her refusal to accept payment by such means; (3) the funds were not withdrawn or applied to the credit of the beneficiary; and (4) the beneficiary would suffer a loss that could reasonably have been avoided by payment in accordance with the contract. In the absence of discharge the originator is subrogated to the claim of the beneficiary against the beneficiary’s bank. The rights of the originator and beneficiary under this section can be modified only by an agreement between those parties.

VIII. MISCELLANEOUS ARTICLE 4A ISSUES

A. Variation by Agreement or Funds-Transfer Rule

Section 4A-501 provides that unless otherwise provided the rules of Article 4A may be varied by agreement of the parties. Even those rules that cannot be modified by agreement may be subject to variation by funds-transfer system rule. Other provisions specifically are subject to variation by agreement or funds-transfer system rule. “Funds-transfer system rule” is defined as a rule of an association of banks: (1) governing payment orders transmitted through the association’s funds-transfer system; or (2) governing the rights and obligations between banks to a funds-transfer via

(Article 4A did not bar tort and equity claims). See also supra notes 46-47, 128, and Part IV.C.

135. See U.C.C. § 4A-405(d). See supra Part VII.D.
136. See U.C.C. § 4A-405(e). See supra Part VII.D.
137. See U.C.C. § 4A-406(b). Compare the rules governing the impact on the underlying obligation and discharge of payment by negotiable instrument, in U.C.C. Article 3 at § 3-310 and Article 3 Part 6.
138. See id. § 4A-406(b).
139. See id. § 4A-406(d).
140. See id. § 4A-501 (a). This is a common thread that runs throughout the UCC. See, e.g., id. §§ 1-102(3), 4-103(a).
141. Cf. id. § 4A-405(c), (d). See discussion supra text at notes 85-98.
142. See, e.g., U.C.C. § 4A-404(e), supra text at notes 81-84.
a Federal Reserve Bank. Unless otherwise provided, a funds-transfer system rule will be effective even if it conflicts with Article 4A, and even if it indirectly affects a nonconsenting party. A funds-transfer system rule may also be binding on parties other than participating banks who use the system.

B. Effect of Creditor Process or Injunction

"Creditor process" is defined in Article 4A to include "levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account." Moreover, section 4A-502 governs the rights and priorities of the respective parties if creditor process is served on a receiving bank while that bank is processing a payment order.

If the receiving bank accepts the payment order the account balance is deemed to be reduced (and hence unavailable to satisfy the creditor process) to the extent the bank did not otherwise receive payment for the order, unless the creditor process was served "at a time and in a manner affording the bank a reasonable time to act" on the creditor process before accepting the payment order.

If the creditor process is served on the beneficiary's bank, the bank may credit the beneficiary's account and set off the funds against any obligation of the beneficiary to the bank, or the funds may be applied to satisfy the creditor process. Alternatively, the bank may credit the account and allow the beneficiary to withdraw the funds, unless the creditor process is served "at a time and in a manner" as will allow the bank to prevent the withdrawal. If the bank has had a reasonable opportunity to act on the

143. See U.C.C. § 4A-501(b).
144. See id. § 4A-404(c).
145. See id. § 4A-501(b). The effect on nonconsenting parties is unusual though not unique. See, e.g., id. §§ 4-103(b), 1-102 cmt. 2, 1-103.
146. See id. §§ 4A-501(b), 4A-404(c), 4A-405(d), 4A-507(c).
147. Id. § 4A-502(a).
148. See id. § 4A-502(b).
149. See id. This is to prevent the bank from being liable twice, for the payment order and pursuant to the creditor process.
150. Id. § 4A-502(b). This is similar to the timeliness requirements in UCC Article 4 for stop payment orders and notices of post-dated checks. See id. §§ 4-303, 4-401(c), 4-403(a).
151. See id. § 4A-502(c)(1).
152. Id. § 4A-502(c)(2). This is also similar to the Article 4 rule. See supra note 110.
creditor process, the bank may not reject the payment order except for reasons unrelated to the creditor process.\textsuperscript{153}

Creditor process regarding payment to a beneficiary can only be served on the beneficiary’s bank; no other bank is obligated to respond to such process.\textsuperscript{154}

An injunction issued for proper cause and in accordance with applicable law may prohibit: (1) issuance of a payment order; (2) execution of a payment order by an originator’s bank; or (3) release of funds to the beneficiary by the beneficiary’s bank.\textsuperscript{155} A court may not otherwise restrain the issuance, payment, receipt, or other processing of a payment order.\textsuperscript{156}

\textit{C. The Bank-Customer Relation}

The primary source of laws governing the relationship between a banking institution and its deposit customers is UCC Article 4.\textsuperscript{157} Once the beneficiary’s bank has accepted a payment order and paid the beneficiary by crediting the customer’s account, many of the issues relating to that account will be governed by Article 4. Similarly, issues relating to the account of the originator at the originator’s bank may be governed by Article 4.\textsuperscript{158}

Under section 4A-504, if any receiving bank\textsuperscript{159} has received multiple payment orders, and/or other items payable from the sender’s account, the bank may charge the sender’s account with the orders and/or items in any sequence the bank desires.\textsuperscript{160} This is subject to variation by agreement of

\textsuperscript{153} See U.C.C. § 4A-502(c)(3).
\textsuperscript{154} See id. § 4A-502(d).
\textsuperscript{156} See U.C.C. § 4A-503.
\textsuperscript{157} See generally id. §§ 4-401 to 4-407 (Article 4 Part 4); MILLER & HARRELL, supra note 1, at Ch. 9; A. HARRELL, THE BASIC LAW OF BANK ACCOUNTS §§ 1.10-1.11 (1994). Another significant applicable law is the federal Expedited Funds Availability Act, 12 U.S.C. §§ 4001-4010 (1987), and Federal Reserve Board Regulation CC, 12 C.F.R. pt. 229. See MILLER & HARRELL, supra note 1, ¶ 8.04.
\textsuperscript{158} Some of these have already been mentioned. See, e.g., § 4A-502 and discussion supra at Part VII.B.
\textsuperscript{159} See definitions at U.C.C. § 4A-103; supra Part II.
\textsuperscript{160} See U.C.C. § 4A-504(a). This is consistent with UCC Article 4. See id. § 4-303(b); MILLER & HARRELL, supra note 1, at 9-44.
the parties.\textsuperscript{161} In tracing credits into and withdrawals out of an account, Article 4A contemplates that the funds first credited are the ones first withdrawn or otherwise applied.\textsuperscript{162}

If a receiving bank has received payment from a customer as sender of a payment order accepted by the bank, and the customer received notice from the bank of payment that identifies the order, the customer cannot seek to recover the payment unless notice of the customer's objection is given to the bank within one year after the customer received notice of the order from the bank.\textsuperscript{163} This is in the nature of a statute of repose, to place a time limit on the customer's ability to object to an executed payment order.\textsuperscript{164}

\textbf{D. Rate of Interest}

If a receiving bank is required to pay interest with respect to a payment order,\textsuperscript{165} the amount payable may be determined by agreement between the parties, by funds-transfer system rule (if applicable), or by multiplying the applicable daily Federal Funds rate by the number of days for which interest is payable.\textsuperscript{166} If a receiving bank is required to refund the amount of an accepted payment order, due to no fault of its own, the interest payable is reduced by a percentage equal to the reserve requirement for deposits at the bank.\textsuperscript{167}

\textbf{E. Choice of Law}

The liberal choice of law rule in Article 4A is one reason that the nationwide implementation of Article 4A was not delayed by the few states that initially did not adopt it. The choice of law rule at section 4A-507(b) allows the parties to a payment order to select any jurisdiction as the source of the applicable law, regardless of whether that choice bears a reasonable relation to the transaction.\textsuperscript{168}

\textsuperscript{161} See U.C.C. §§ 4A-504 cmt. 1, 4A-501.
\textsuperscript{162} See id. § 4A-504(b). This also follows the rule in Article 4. See old section 4-208(b) and revised section 4-210(b).
\textsuperscript{163} See id. § 4A-505.
\textsuperscript{164} See id. § 4A-505 cmt.
\textsuperscript{165} See id. §§ 4A-204(a), 4A-209(b)(3), 4A-210(b), 4A-305(a), 4A-402(d), 4A-404(b), 4A-506 cmt. 1.
\textsuperscript{166} See id. § 4A-506(b). "Federal funds rate" is defined at section 4A-506(b).
\textsuperscript{167} See id. § 4A-506(b).
\textsuperscript{168} See id. § 4A-507. Cf. id. § 1-105.
This allows parties, in a jurisdiction that has not enacted Article 4A, to contract for application of the law of a state that has enacted Article 4A, and to enforce that choice in any state where constitutional limitations on jurisdiction can be met. Since all major funds-transfer systems have incorporated Article 4A into their system agreements, and the Federal Reserve Board likewise has incorporated rules based on Article 4A into Regulation J, Article 4A (or something like it) is applicable to most payment orders in the United States regardless of an individual state’s law. The reason for this approach is the need for a single choice of law rule to govern transactions crossing jurisdictional lines. Since many payment orders cross interstate or even international borders, and may involve a number of jurisdictions, it is essential that there be a clear consensus as to the governing law. Section 4A-507(b) is designed to facilitate and codify that consensus.

More importantly, section 4A-507(c) permits a funds-transfer system to select the law applicable to a payment order processed through the system, and provides that such a selection will be binding on participating banks and the originator, other sender, or a receiving bank with notice. If more than one funds-transfer system is utilized and there is a conflict between the choices made by the two systems, the issue will be governed by the law of that choice that bears the most significant relationship to that issue.

Absent an effective choice, Article 4A provides a hierarchy of statutory choice of law rules, generally referencing the law of the jurisdiction where the respective bank is located.

169. 12 C.F.R. § 210. See also infra Part XI.
172. See id. § 4A-507(c). However if there is a conflict between the choice of law made by the funds-transfer system and the choice of the parties pursuant to section 4A-507(b), the choice under section 4A-507(b) will prevail. See id. § 4A-507(d).
173. See id. § 4A-507(e).
174. See id. § 4A-507(a).
Article 4 provides no statute of limitations,\(^\text{175}\) potentially raising the question of the appropriate limitations period where applicable law recognizes more than one period depending on the nature of the cause of action. In *Nigerian National Petroleum Corp. v. Citibank, N.A.*,\(^\text{176}\) a bank customer (Vadra) fraudulently induced various parties to improperly wire transfer millions of dollars to the customer’s accounts at Citibank, from which the customer transferred the funds to other accounts elsewhere controlled by him.\(^\text{177}\) Claiming that the incoming transfers to Citibank were “riddled with inconsistencies and other badges of fraud,”\(^\text{178}\) the defrauded parties sought to recover from Citibank on various theories.\(^\text{179}\) Citibank defended on grounds the claims were barred by the New York three year statute of limitations for statutory claims.\(^\text{180}\)

The plaintiff argued that its claims against Citibank were grounded in the common law or had common law antecedents and were thus timely under the longer New York statute of limitations at C.P.L.R. section 213(1).\(^\text{181}\) In rejecting this argument, the court noted that Article 4A was specifically intended to “correct the perceived inadequacy of attempting to define rights and obligations in funds-transfers by general principles of [common law] or by analogy to rights and obligations in negotiable instruments law or the law of check collections.”\(^\text{182}\) The court further quoted the Official Comment to Article 4A section 4A-102, noting that of Article 4A reflects “a deliberate decision . . . to write on a clean slate and

\(^{175}\) Compare the preclusion at section 4A-505 for failure to give notice of objection within one year, discussed *supra* at Part II.B.

\(^{176}\) No. 98 CIV. 4960, 1999 WL 558141 (S.D.N.Y. July 30, 1999).

\(^{177}\) *See id.* at *1-2.

\(^{178}\) *Id.* at *1.

\(^{179}\) *See id.* at *3.

\(^{180}\) *See id.* at *6 (citing N.Y. C.P.L.R. § 214(2)). The court had already rejected the plaintiff’s claims that Citibank be estopped from asserting that the plaintiff’s negligence and recklessness claims were time-barred under New York’s C.P.L.R. § 214(4). *See Nigerian Nat’l*, 1999 WL 558141, at *4.

\(^{181}\) *See id.* at *5.

to treat a funds-transfer as a unique method of payment to be governed by unique rules."

The court further noted that finality of payment was an important policy goal of Article 4A, suggesting that the three-year limitations period for statutory claims is more appropriate than the longer period for common law claims. Though the plaintiff had not specifically identified the Article 4A basis of its UCC claim, neither had it identified any common law basis for that claim; the court concluded that it was an Article 4A claim and that all claims under Article 4A are subject to the three year limitation period.

IX. SUMMARY AND CONCLUSIONS — UCC ARTICLE 4A

Article 4A provides an efficient, comprehensive set of rules to govern funds-transfers that can total billions of dollars over short periods of time. Prior to Article 4A, there was no orderly body of law governing such transactions, and participants in this modern and efficient system of funds-transfers were subject to considerable legal risk and uncertainty.

Article 4A preserves the principle of party autonomy, allowing the parties to a funds-transfer to create a legal environment suitable to their needs. It also provides clear-cut choice of law rules suitable to multi-jurisdictional funds-transfers. It creates a uniform legal foundation for funds-transfers, and provides specific rules governing common issues that are unique to such transactions.

Article 4A also demonstrates the viability of and continuing need for the American uniform law processes, and the importance of state law in preserving and modernizing rational commercial laws for the 21st century.

184. See id. (citing *Banque Worms*, 568 N.Y.S.2d at 547).
186. A new Model Funds-Transfer Services Agreement, designed to assist parties comply with Article 4A, has recently been made available through the American Bar Association Section of Business Law. Copies may be ordered from the Service Center, American Bar Association, 750 North Lake Shore Drive, Chicago, Illinois 60611 (Phone (312) 988-5522). The cost for ABA members is $39.95 plus $4.95 for handling. The product code is 5070276. See also Paul S. Turner, *Funds-transfer Fun and Games*, 4 BUS. LAW TODAY NO. 3, Jan./Feb. 1995, at 41.
X. REGULATION J SUBPART A: COLLECTION OF CHECKS THROUGH FEDERAL RESERVE BANKS

Regulation J was promulgated by the Board of Governors of the Federal Reserve System to govern the collection of checks and other items through Federal Reserve Banks. 187 Subpart A provides uniform standards to be followed by Federal Reserve Banks when handling such items, and is also binding on all parties interested in such items. 188 In addition, Subpart B governs funds-transfers through Fedwire. 189

Subpart A applies to any “item” handled by a Federal Reserve Bank. “Item” means any negotiable or nonnegotiable instrument for the payment of money, including checks and other drafts as well as other bonds and investment securities that are handled through the bank collection system. 190

By sending an item to a Federal Reserve Bank, either directly or through an intermediary bank, the sender authorizes the Federal Reserve Bank (or intermediary bank) to handle the item pursuant to Subpart A, and warrants its authority to give this authorization. The sender also warrants that the sender is (or is acting on behalf of the person who is) entitled to enforce the instrument and that it has not been subject to any loss or expense sustained (including litigation expense) as a result of handling the item. These warranties are consistent with the 1990 revisions to the uniform text of UCC Article 4. 191

A Federal Reserve Bank handling such an item acts as the agent or subagent of the owner of the item. The Federal Reserve Bank has a duty of ordinary care and good faith and certain other duties as provided in Regulation CC. However, Regulation J supersedes the UCC, other state law, and Regulation CC to the extent of any inconsistency. 192

188. See 12 C.F.R. pt. 210, subpart A.
189. See id. subpart B. See infra Part XI. For a general discussion of Fedwire, and a comparison to an alternative automated clearing house (ACH) system, see Steven Marjanovic, Risks Seen in Using Clearing House for Big Payments, AM. BANKER, Mar. 20, 1996, at 1.
190. See 12 C.F.R. § 210.2(g). This bears similarities to but is not identical to the UCC Article 4 definition at section 4-104(a)(9).
192. See 12 C.F.R. § 210.3(f). Again, this is similar to UCC Article 4. See, e.g., U.C.C. § 4-202; MILLER & HARRELL, supra note 1, ¶ 18.03. On the relationship between UCC Article 4 and Regulation CC, see MILLER & HARRELL, supra note 1, ¶ 8.04.
The bank on which an item is drawn ("the paying bank") becomes accountable for the amount of a cash item received directly or indirectly from a Federal Reserve Bank, at the close of the paying bank's banking day on which it receives the item, if it retains the item beyond the close of that banking day without paying the item. However, such payment may be subsequently rescinded if the item is dishonored and returned within the midnight deadline or other deadline provided by Regulation CC, in Article 4 of the applicable UCC, or applicable Federal Reserve Bank operating circulars. These deadlines may be shortened, but not extended, by clearinghouse rules. As noted, Regulation J supersedes Article 4, any other state law, or Regulation CC, to the extent of any inconsistency. The paying bank also may return the item in accordance with Regulation J section 210.9(a)-(b) and applicable operating circulars.

A paying bank that receives a check not handled by a Federal Reserve Bank, and decides not to pay such check, may return the check to its Federal Reserve Bank pursuant to Regulation CC Subpart C, the UCC, and applicable operating circulars. In such case, the warranties and other provisions of Regulation J are applicable.

In the event a Federal Reserve Bank handles an item and does not receive payment for that item, the Federal Reserve Bank may recover by chargeback or otherwise collect the amount of such item from any bank from which the item was received, whether or not the item can be returned to such bank. The Federal Reserve Bank has a security interest in such bank's assets, to secure its claims, and this security interest relates back to the time the claim arose for priority purposes. The time limits imposed under Regulation J may be extended due to disasters or certain other circumstances beyond the control of the bank.

A paying bank that receives presentment from a Federal Reserve Bank and owes settlement to the Federal Reserve Bank may not set off other claims against that obligation to make settlement. However, such set off is allowed as against private-sector banks.

193. 12 C.F.R. pt. 229, subpart C.
194. See generally MILLER & HARRELL, supra note 1, ¶¶ 8.02, 8.04.
195. See id.
XI. REGULATION J SUBPART B: FEDWIRE

A. Scope of Subpart B

Regulation J Subpart B applies to funds-transfers through Fedwire. It has the effect of federal law and is not a funds-transfer system rule as defined in UCC Article 4A, although it incorporates the provisions of Article 4A in Appendix B of the Subpart. In the event of a conflict between Subpart B and Article 4A, Subpart B will govern.

Subpart B applies to all parties to a funds-transfer through Fedwire, including the Federal Reserve Banks sending or receiving the payment order, senders and receiving banks that send an order to or receive payment from a Federal Reserve Bank, beneficiaries of such payment orders, and any other party to a funds-transfer that is carried out through Fedwire. Subpart B applies to such a funds-transfer even if a portion of the transfer is governed by the Electronic Fund Transfers Act (EFTA), although the portion governed by the EFTA is not governed by Subpart B. Similarly, if any portion of the funds-transfer is governed by Regulation CC, for example with regard to the availability of funds, then Subpart B does not apply to that extent.

The potential preemption of Article 4A by Regulation J, in the case of conflict, suggests some possibility that a litigant unhappy with Article 4A might assert such a conflict in order to overcome Article 4A's effects. That is apparently what happened in National Council of the Churches of Christ in the USA v. First Union National Bank of Virginia, where an allegedly wrongful wire transfer was sent by Fedwire and thus was subject to Regulation J. The plaintiff alleged that its state law negligence claims were not preempted by Article 4A, because Article 4A was itself preempted by Regulation J, which in turn did not apply to (and therefore did not, preempt liability for) the defendants alleged negligence occurring before the Fedwire transfer. The court rejected this argument, noting that Regulation J (like Article 4A) contains standards of care that preempt inconsistent state law.

197. See id.
198. See id. § 210.25(b)(3).
claims. All of the plaintiff's claims arose out of or were related to the Fedwire transfer, and therefore were preempted by Regulation J.

B. Impact of Subpart B

Each Federal Reserve Bank issues operating circulars to govern the details of Fedwire transfers, including such things as cut-off hours, funds-transfer business days, security procedures, format and media requirements for payment orders, identification of payment orders, and charges for funds-transfer services. Banks must monitor such circulars for compliance with these rules.

The terminology used in Subpart B generally comports with that of UCC Article 4A, with some exceptions. For example, "payment order" has the same meaning as in Article 4A, except that it does not include automated clearing house transfers or communications designated in an operating circular as not being a payment order.

A Federal Reserve Bank may rely on the beneficiary or intermediary bank or beneficiary bank identifying number in the payment order, even if incorrect, and is not required to verify this number or detect any error, so long as it does not know of such error. Therefore, banks must exercise care to assure that any such numbers assigned are correct.

By maintaining or using an account with a Federal Reserve Bank, a bank authorizes the Federal Reserve Bank to obtain payment for payment orders sent by the bank, by charging the bank's account. The bank does not have a right to overdraft this account, and the bank must maintain a balance of collected funds in such account sufficient to cover all obligations to the Federal Reserve Bank, of whatever nature. If such an overdraft is nonetheless created, the Federal Reserve Bank will have a security interest in all of the bank's assets, to be enforced by set-off, realization on any available collateral, or other means allowed by law. In such case, the bank will also be liable for overdraft charges.

By sending a payment order to a Federal Reserve Bank, a bank agrees that a reasonable time to notify the Federal Reserve Bank of the relevant facts of an unauthorized or erroneously executed payment order is thirty

200. See id.


202. See supra notes 62-74 regarding equivalent rule under UCC Article 4A.
calendar days after the bank has received notice that the payment order was accepted or executed or that the bank’s account was charged for the payment order. If the bank fails to meet this deadline it will be responsible under Article 4A sections 4A-204(a) and 4A-304, which are incorporated by reference at section 210.28 of Subpart B.\textsuperscript{203}

A bank also authorizes the Federal Reserve Bank to credit the bank’s account for any payment orders received from the Federal Reserve Bank.\textsuperscript{204} Moreover, if the bank is not on-line to the Federal Reserve Bank for Fedwire transfers, it warrants to the Federal Reserve Bank that it does not act as an intermediary bank or a beneficiary’s bank for other banks as regards Fedwire transfers, unless it notifies the Federal Reserve Bank in writing that it acts in such capacity.

The bank may not send a payment order to a Federal Reserve Bank unless authorized by the Federal Reserve Bank.\textsuperscript{205} The Federal Reserve Bank may reject or impose preconditions on such orders.\textsuperscript{206}

If the Federal Reserve Bank accepts a payment order sent by the bank, the Federal Reserve Bank is authorized and directed to execute the order through another Federal Reserve Bank.\textsuperscript{207} A bank may not send a payment order to the Federal Reserve Bank that requires the Federal Reserve Bank to send the order to an intermediary bank other than another Federal Reserve Bank, unless that intermediary bank is designated in the payment order. A bank may not send to a Federal Reserve Bank a payment order instructing use of a funds-transfer system other than Fedwire, unless the Federal Reserve Bank agrees in writing in advance.\textsuperscript{208} A bank may not send to a Federal Reserve Bank a payment order instructing execution on a funds-transfer business day after the day of receipt by the Federal Reserve Bank, unless the Federal Reserve Bank agrees in writing.\textsuperscript{209}

A Federal Reserve Bank will not be liable for damages to any party except as provided under UCC Article 4A, and (notwithstanding the above) will not be liable to any sender, receiving bank, beneficiary, or other

\textsuperscript{203} See supra Parts III and IV. See also 12 C.F.R. § 210.28.
\textsuperscript{204} See 12 C.F.R. § 210.28(5).
\textsuperscript{205} See id. § 210.30.
\textsuperscript{206} See id.
\textsuperscript{207} See id.
\textsuperscript{208} See id.
\textsuperscript{209} See id.
Federal Reserve Bank for consequential damages under Article 4A section 4A-305(d). 210

XII. FEDERAL CHOICE OF LAW PROVISIONS

As noted, Subpart B incorporates the provisions of Article 4A of the UCC. The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located. 211 The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located. 212 The issue of when payment is made pursuant to a funds-transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located. 213

If the parties have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds-transfer bears a reasonable relation to that jurisdiction. 214

A funds-transfer system rule may select the law of a particular jurisdiction to govern: (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or (ii) the rights and obligations of some or all parties to a funds-transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds-transfer, and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds-transfer is bound by the choice of law if, when the funds-transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds-transfer, and of the choice of law by the system. The law of a jurisdiction selected pursuant to this

210. See supra Part III. See also 12 C.F.R. § 210.32.
211. See U.C.C. § 4A-507(a)(1).
212. See id. § 4A-507(a)(2); see also supra Part VIII.E.
214. See id. § 4A-507(b); see also supra Part VIII.E.
subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.215

XIII. WIRE TRANSFER MONITORING RULES

On December 21, 1994, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury and the Board of Governors of the Federal Reserve System approved certain record keeping requirements for wire transfers.216 After several postponements, the rules became effective May 28, 1996. They cover wire transfers of $3000 or more. The rules were issued pursuant to the Annunzio-Wylie Anti-Money Laundering Act of 1992. They do not apply to the check processing system. Also excluded are funds transfers governed by the EFTA or made through an automated clearing house, teller machine, or point-of-sale system.

Beginning May 28, 1996, banks must maintain for five years the following information on the sender of each payment order accepted by the bank. If the originator is an established customer of the bank, the bank must record and retain:

1. The originator's name and address;
2. The amount of the payment order;
3. The date;

215. See U.C.C. § 4A-507(c); see also supra Part VIII.E.


In addition, on December 20, 1995, the Board issued proposed amendments to Subpart A of Regulation S, eliminating unnecessary provisions and updating the schedule of fees and rates that banks may charge for reproduction of records. See 60 Fed. Reg. 65,599 (Dec. 20, 1995). These changes became effective July 12, 1996.
4. Payment instructions received with the payment order, including identification of the beneficiary’s bank, and the beneficiary’s name and address or account number;

5. Other payment instructions, such as the purpose of the funds-transfer and any directions to the beneficiary’s bank regarding notification of the beneficiary of receipt of the payment order;\footnote{Payment instructions from the originator must be retained, whether oral or written.} and

6. Any form relating to the funds-transfer, completed or signed by the originator.

If the originator is not an established customer of the bank, the bank must retain all of the above information and in addition must retain evidence of the following:

1. Verification of the originator’s identity;

2. Type of identification, and number (e.g., driver’s license and number, or alien passport number and country of issue); and

3. A method of assurance that identification was not falsified (e.g., use of photo identification).

If the payment order is not received in person, the bank may be excused from verifying the originator’s identity, but should retain copies and a record of the order and method of payment (e.g., a check).

Effective May 28, 1996, when the bank acts as a beneficiary’s bank in accepting a payment order on behalf of the beneficiary, it must retain for a period of five years the following, for each payment order accepted:

1. A copy of each payment order accepted (e.g., the original or a copy of the transmittal order or an electronic record);

2. Any form completed or signed by the person receiving the proceeds of the order;

3. Any payment instructions received;

4. The beneficiary’s name and address or account number; and
5. Any other information required by the originator’s bank and forwarded to the beneficiary’s bank.

If the proceeds of the payment order are delivered in person to a beneficiary other than an established customer or representative of such a customer, the bank must verify the identity of the recipient and retain the same information as required by an originator’s bank. If proceeds are delivered other than in person, the bank must retain a copy of the check or other instrument used to effect payment, and the name and address of the person to whom it was sent.

All information noted above must be retained for five years and must be readily retrievable.

XIV. THE TREASURY “TRAVEL RULE”

When the Board of Governors of the Federal Reserve System and FinCEN of the Treasury Department issued the initial January 3, 1995, rule creating Subparts A and B of Regulation S,\(^1\) and requiring financial institutions to collect and retain specified information concerning wire transfers, the Treasury Department also issued a rule (called the “travel rule”) requiring that certain of the information collected be included in funds transmittal orders.\(^2\)

This rule generated concerns that the requirements and definitions in the rule conflicted with provisions of UCC Article 4A in the context of international funds-transfers. In response, FinCEN and the Board of Governors amended the travel rule to conform the definitions in question to those in Article 4A.\(^3\) In addition, a substantive change to 31 C.F.R. section 103.33(g)(3) allows institutions to defer inclusion of all required information pending their conversion to the new Fedwire message format, inasmuch as the preconversion format may not accommodate all of the required information.\(^4\) The effective date of the travel rule was also postponed until May 28, 1996.\(^5\)

\(^{1}\) See 60 Fed. Reg 231 (Jan. 3, 1995); see supra Part XIII and note 216.


\(^{4}\) See id.

\(^{5}\) See id.
Generally, the travel rule requires that funds-transfer orders executed by the transmittor's financial institution in the amount of $3000 or more must include:

1. The name of the transmittor and, if payment is ordered from an account, the account number;
2. The address of the transmittor (subject to the exception noted above for orders prior to conversion to the expanded Fedwire format);
3. The amount of the transmittal order;
4. The execution date;
5. The identity of the recipient's financial institution; and
6. Certain other information as received, e.g., the name and/or account number of the recipient or other identifier, and the name, address or numerical identifier of the transmittor's financial institution.  \(^{223}\)

There are similar requirements for intermediary financial institutions.  \(^{224}\)

**XV. CONCLUSION**

UCC Article 4A provides an optimal legal framework for funds transfers by electronic means. Its success and importance far exceed the limited scope of its direct application. It has been adopted, by rule, agreement, regulation or analogy for many transactions not directly within its scope and, together with other uniform laws and revisions directed in whole or in part toward electronic transactions, \(^{225}\) provides a comprehensive system of law to govern the new forms of transactions that will be increasingly important in the twenty-first century. Together these laws also demonstrate once again the superiority of the uniform law process as a means to address and develop new issues and new areas of law.

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\(^{223}\) See 31 C.F.R. § 103.33(g)(1); 60 Fed. Reg. 238 (Jan. 3, 1995).
\(^{224}\) See id. § 103.33(g)(2).
\(^{225}\) See, for example, the Uniform Electronic Transactions Act (UETA), Uniform Computer Information Transaction Act (UCITA), and 1998 revisions to the uniform text of UCC Article 9.