

PREFACE

Imagine yourself at the closing of a major acquisition. Zeus Corporation is acquiring Poseidon Products. After a month of lengthy negotiations, the final details of the acquisition—including the payment to the Poseidon Products stockholders of \$200 million at the closing—have been agreed upon and documented to the satisfaction of the parties. The closing is about to occur in a large conference room at the offices of the law firm acting as counsel to Zeus Corporation. Around the edge of the table in the conference room are stacks of the documents that are to be exchanged at the closing.

The CEO of Zeus Corporation and the CEO of Poseidon Products shake hands, smile, and nod to the executives and attorneys assembled at the closing. The treasurer of Zeus Corporation places a telephone call. A few minutes later, the treasurer of Poseidon Products places a telephone call. Then he hangs up the phone, smiles, and announces: “The payment of \$200 million has been made to the stockholders.” The documents on the table are distributed, and the acquisition is completed.

But wait! Where was the armored car filled with \$200 million in \$100 bills to pay the stockholders of Poseidon Products? The answer, of course, is that the \$200 million was wired to their bank accounts based on the telephone instructions of the treasurer of Zeus Corporation and confirmed on the telephone call by the treasurer of Poseidon Products.

In nearly every commercial transaction, there is a payment. Consequently, most commercial agreements have a payments provision. In most large-dollar transactions, payment is accomplished through the use of a funds transfer. These transactions are subject to Article 4A of the Uniform Commercial Code, which has been adopted by all 50 states and generally governs the rights and obligations of all parties to a funds transfer.

Prior to 1990, when Article 4A was completed, there was no comprehensive set of rules that governed funds transfers. Instead, different electronic funds-transfer systems were governed by different private-contract rules and subject to different judicial interpretations. As a result of gaps and inconsistencies in the law, funds transfers were slow and costly. Article 4A brought certainty to funds transfers and provided rules that foster speed, security, and low cost. The drafters accomplished this in part by creating a statute that favors finality of payment. But this choice comes with consequences, especially in today's world in which even sophisticated businesses are being tricked into making funds transfers to fraudsters. It is a statutory regime under which banks are discouraged from acting once a funds transfer is complete, even when there are strong indicia of fraud and the funds have not yet been withdrawn. Whether the drafters would have embraced the same policy stance today as they did in 1990, we will never know. What we do know is that banks that offer funds-transfer services today often find themselves in situations where “doing the right thing” means taking on a certain amount of risk because of the policy underpinning Article 4A. That policy position also means that judges may look for creative ways of interpreting Article 4A to reach what they view as just outcomes in hard cases.

This primer is an introduction to Article 4A. By walking the reader through each step of a large-dollar, wholesale funds transfer, the primer sets forth in a concise and complete manner the rights and obligations of each party in the transfer. The primer also explores what happens when things go wrong in a funds transfer and how Article 4A assigns rights and responsibilities. Students will find the primer a helpful tool in understanding the legal mechanics involved in a funds transfer. Practitioners seeking a basic understanding of the law governing funds transfers will also find this primer useful.

The primer is based on the 1990 Official Text of the Uniform Commercial Code, as subsequently amended from time to time. The authors or their current or former employers may

have participated in one or more cases cited in this work, such as by assisting in the preparation of amicus briefs or providing expert testimony. Mr. Baxter provided expert testimony in *Blue Flame Medical LLC v. Chain Bridge Bank, N.A.*, 563 F.Supp.3d 493 (E.D. Va. 2021), which at the time this edition is being submitted for publication, is pending appeal. Accordingly, Mr. Baxter recused himself from the analysis of the case in this fourth edition.

Thomas C. Baxter, Jr., Stephanie A. Heller,
Greg Cavanagh, Laura J. Forman, and Jess Cheng