[This paper first appeared in 42 Uniform Commercial Code Law Journal, Number 4 (2010) and is made available for non-profit legal education purposes with permission.]

A Summary of the 2010 Amendments to Article 9 of the Uniform Commercial Code

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Exhibit - Summary of the Transition Rules for the 2010 Amendments to Article 9 of the Uniform Commercial Code

Introduction

The 2010 amendments to Article 9 of the Uniform Commercial Code were approved in 2010 by the Uniform Commercial Code's sponsoring organizations, the American Law Institute and the Uniform Law Commission.[2] The amendments are expected to be considered by state legislatures as early as 2011 with a view to all states enacting the amendments by their July 1, 2013, uniform effective date. This paper will explain the reasons for the amendments and the process by which the amendments were developed and approved by the sponsoring organizations before providing a summary of the statutory amendments and the amendments to the Official Comments that are independent of the statutory amendments.

I. REASONS FOR THE AMENDMENTS

The reader will recall that Article 9 of the Uniform Commercial Code, the article dealing with secured transactions, was substantially revised in 1998. Those revisions became effective in most states and the District of Columbia on July 1, 2001. By January 1, 2002, the revisions had become effective in all remaining states.

After such a major revision, one hesitates to consider making further amendments. There is a very strong view that a major revision should "percolate" for a significant gestation period before the sponsoring organizations should embark on further changes. There is an opposite view, though, espoused most notably by the late Donald J. Rapson, a member of the American Law Institute and an active participant in commercial law reform projects, that the Uniform Commercial Code should always be "perfect". If a problem with a particular provision develops in practice, according to this view, the sponsoring organization should react swiftly with an appropriate amendment.

However, rather than engaging in a debate over these two views of when to embark on an amendment process, the sponsoring organizations were forced to react with respect to Article 9. This was because of two events.

The first was that a number of states, starting in Texas,[3] began to pass non-uniform amendments to their enactments of Article 9 to address the sufficiency of the name of an individual debtor on a financing statement. The non-uniform amendments reflected a strong

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[2] NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, Amendments to Uniform Commercial Code Article 9, July 2010, *available at*http://www.law.upenn.edu/bll/archives/ulc/ucc9/2010am_draft.pdf

[3] TENN. CODE ANN. § 47-9-503(a) (West 2010); TEX. BUS. & COM. CODE ANN. § 9.503(a) (Vernon 2002); VA. CODE ANN. § 8.9A-503(a) (West 2010) (each statute creates a "safe harbor" for the name of an individual debtor on a financing statement filed in the state to be sufficient if the financing statement provides the debtor's name as shown on the debtor's driver's license or state identification card). *See also* NEB. REV. STAT. U.C.C. § 9-506(c) (2009) (creating a "safe harbor" for the name of an individual debtor on a financing statement filed in the state to be sufficient if a search of the records of the filing office under the debtor's last name would disclose the financing statement) (*repealed by* 2010 Neb. Laws, L.B. 751).

desire of parties to secured transactions for greater guidance as to what name should be provided for an individual debtor on a financing statement for the financing statement to be sufficient. It began to appear likely that non-uniform amendments would continue to spread absent a uniform solution to the issue.

The second event was the desire of the International Association of Commercial Administrators ("IACA") for some changes to the filing system for financing statements. IACA had a number of specific suggestions for amendments to the filing provisions of Part 5 of Article 9 based on the experiences of filing offices and was prepared to proceed with non-uniform amendments to address these issues.

These events came to the attention of the Permanent Editorial Board for the Uniform Commercial Code (the "PEB"). The PEB is composed of members appointed by the sponsoring organizations and advisors from the American Bar Association. The PEB's role is to monitor the functioning of the Uniform Commercial Code and to recommend statutory changes or amended or added commentary where desirable. It was clear to the PEB that, in view of these two events, the "marketplace was speaking" that selective uniform changes to the Article 9 may be needed in order for certain provisions of Article 9 to remain uniform.

Even though, without these two events occurring, it would have been unlikely that amendments to Article 9 would have been considered, nevertheless amendments to Article 9 in a decade following major changes to the statute were not without precedent. The 1962 version of Article 9 was followed by 1972 revisions that improved the operation of the statute and responded to issues that had arisen in practice. A similar period had now elapsed since the 1998 revisions to Article 9 became effective.

II. THE PROCESS

In 2008, in response to the concerns stated above, the PEB appointed a review committee from members of the PEB and the sponsoring organizations to examine the need for select statutory changes to Article 9. The review committee issued its report in June of 2008[4] identifying a number of specific issues to be considered for being addressed in the statute and recommended the appointment of a committee to consider and draft possible statutory changes. The review committee also suggested that some of the issues could be addressed by changes to the Official Comments to Article 9 if it were determined that the statutory language was sufficiently clear.

As a result of the review committee's report, the sponsoring organizations appointed a Joint Review Committee (the "JRC") to review the report and to draft any recommended changes to the statute or to the Official Comments.[5] The JRC was asked to limit its work to the issues identified in the report absent approval from the sponsoring organizations to expand the issues list. A few additional issues did emerge in the process, and the JRC received permission from the sponsoring organizations to consider them.

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[4] ARTICLE 9 REVIEW COMMITTEE, Statutory Modification Issues List, June 24, 2008, *available at* http://www.nccusl.org/Update/Docs/UCC9/UCC9_IssuesList_June08.pdf

[5] Professor Steven L. Harris of the Chicago-Kent School of Law served as the Reporter for the JRC.

In developing the amendments the JRC held five in person meetings and ten conference calls. In its work the JRC was assisted by a number of advisors, including those from the American Bar Association, and observers, including a representative of the American College of Commercial Finance Lawyers and a working group of lenders under the auspices of the American Bankers Association.[6]

A first draft of the amendments was considered by the Uniform Law Commission at its July 2009 annual meeting in Santa Fe, New Mexico. The American Law Institute's Council considered a revised draft of the amendments in December of 2009 and appointed a small task force of members of the Council to monitor and review further amendments. The task force approved a further revised version of the amendments before the annual meeting of the American Law Institute in Washington, D.C. in May of 2009, and at the annual meeting the Council and the membership of the American Law Institute approved the amendments. The Uniform Law Commission approved the draft at its annual meeting in July of 2010 in Chicago, Illinois.

In formulating the amendments the JRC followed several guidelines:

- The JRC would not recommend changes that would alter policy decisions made during the 1998 revisions to Article 9 unless the current provisions appeared to be creating significant problems in practice.

- Recommendations for statutory change would focus on issues as to which ambiguities had been discovered in existing statutory language, where there were substantial problems in practice under the current provisions, or as to which there had been significant non-uniform amendments that suggested the need to consider revisions.

- The JRC would recommend that an issue be handled by a revision to the Official Comments rather than to the statutory text whenever it believed that the statutory language was sufficiently clear and produced the desired result but that judicial decisions or experience in practice indicated that some clarification would be desirable.

The result of the process is a package of two sets of amendments. One set consists of amendments to the statutory text of Article 9. These amendments are accompanied by Official Comments that explain the statutory amendments. The other set consists of amendments to the Official Comments to statutory provisions that are not being amended.

III. A SUMMARY OF THE AMENDMENTS TO THE STATUTE

A. Changes to the Filing Rules and Related Changes

The amendments contain a number of changes related to the rules for filing financing statements in Part 5 of Article 9.

[6] L.H. Wilson, Associate General Counsel of the American Bankers Association, chaired the American Bankers Association's working group.

1. *Name to be Provided on a Financing Statement When the Debtor is an Individual*

Some courts have struggled with the question of what name a financing statement must provide for an individual debtor in order for the debtor's name on the financing statement to be sufficient.[7] The problem arises because an individual does not typically have a single name.[8] The individual's name on his or her birth certificate, driver's license, passport, tax return or bankruptcy petition may all be different.[9] Moreover, the debtor may be known in his or her community by a name that is not reflected on any official document.[10] It would appear that most cases decided under the 1998 revisions to Article 9 and finding the individual debtor's name provided on the financing statement to be insufficient have involved the secured party making a filing error rather than being uncertain as to the debtor's actual name.[11] Nevertheless, the cases have created a level of uncertainty that has led secured parties to search and file financing statements under multiple names.

To provide greater guidance, the amendments offer to each state one of two alternatives for the name of an individual debtor provided on a financing statement to be sufficient.[12] If Alternative A is in effect in the state in which the financing statement is filed, and if the debtor

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[7] *E.g.*, "Although [KAN. STAT. ANN.] § 84-9-503 specifically sets parameters for listing a debtor's name in a financing statement when the debtor is an entity, it does not provide any detail as to the name that must be provided for an individual debtor-it simply states that the 'name of the debtor should be used.'" Clark v. Deere & Co. (*In re* Kinderknecht), 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004); "[I]n the case of an individual debtor, no specific rule or guidance is given concerning what constitutes a sufficient debtor 'name'…revised Article 9 makes no attempt to resolve the many issues that can arise with respect to human names." Nazar v. Bucklin Nat'l Bank *(In re* Erwin*)*, 50 U.C.C. Rep. Serv. 2d 933, 2003 WL 21513158, at *7 (Bankr. D. Kan. June 27, 2003).

[8] *See* Morris v. Snap-on Credit, LLC *(In re* Jones*)*, 2006 WL 3590097, at *3 (Bankr. D. Kan. Dec. 7, 2006) (finding the secured party's financing statement filed under the debtor's nickname, Chris Jones, instead of the debtor's full legal name, Christopher Gary Jones, to be ineffective); Morris v. Snap On Credit, L.L.C. (*In re* Stewart*)*, 2006 WL 3193374, at *2 (Bankr. D. Kan. Nov. 1, 2006) (holding that the financing statement should have provided the debtor's full legal name, Richard Morgan Stewart, IV, as it appeared on his birth certificate and other public records, even though the debtor signed an application for credit as "Richard M. Stewart," a security agreement as "Rick Stewart," and authorized the financing statement to provide his name as "Richard Stewart"); Parks v. Berry *(In re* Berry*)*, 61 U.C.C. Rep. Serv. 2d 952006 WL 2795507, at *4(Bankr. D. Kan. Sept. 26, 2006) (holding that the debtor's legal name, Michael R. Berry, Jr., should have been the name provided on the financing statement, even though the debtor used other names including Mike Berry and Mike Berry, Jr.).

[9] *See* Genoa Nat'l Bank v. Sw. Implement, Inc. *(In re* Borden*)*, 353 B.R. 886, 887-88 (Bankr. D. Neb. 2006) (stating that the debtor's legal name was Michael Ray Borden, as it appeared on legal documents, such as his birth certificate, driver's license, and real estate conveyancing documents, even though the debtor signed some legal documents, such as tax forms, as "Mike Borden"); *In re* Erwin, 2003 WL 21513158, at *11-12 (giving effect to the secured party's financing statement providing the debtor's colloquial name, "Mike Erwin," rather than his legal name, "Michael J. Erwin," since "Mike Erwin" was the name used by the debtor on the documents in the secured party's file, including a W-9 tax form request).

[10] *See* Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549, 559 (5th Cir. 2007) (finding that a financing statement filed under the debtor's nickname was not seriously misleading because the debtor frequently held himself out to the community under his nickname and frequently used his nickname in business affairs).

[11] *See, e.g.*, Hopkins v. NMTC Inc. *(In re Fuell)*, 2007 WL 4404643, *3 (Bankr. D. Idaho Dec. 13, 2007) (finding the secured party's financing statement to be seriously misleading because the financing statement provided the debtor's name as "Andrew Fuel" instead of "Andrew Fuell"); Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 62 (Kan. 2006) (finding the secured party's financing statement to be seriously misleading when the financing statement provided "Roger House" as the debtor's name but the debtor's name was "Rodger House").

[12] Proposed ("Prop.") U.C.C. § 9-503(a), [Alternative A] & [Alternative B] (2010).

holds a driver's license that has not expired and that has been issued by the state, then the name of the debtor that must be provided on the financing statement is the name of the debtor as it appears on the driver's license.[13] This is the so-called "only if" rule, i.e., the debtor's name on the financing statement will be sufficient "only if" the name provided is the name on the driver's license.[14]

Of course, the name on the driver's license cannot be followed slavishly. The financing statement written form or electronic template will require that the financing statement set forth the surname and first personal name of the debtor.[15] The secured party will need to determine which name on the driver's license is the debtor's surname and which is the debtor's first personal name.[16] This would normally be an easy task. For example, if the name on the driver's license is Lester Henry Smith, it would appear obvious that the debtor's surname is Smith and that the debtor's first personal name is Lester. Henry would then be inserted in the financing statement block for "additional names."[17] In other cases, determining from the driver's license which name is the debtor's surname and which name is the debtor's first personal name may not be as easy and may require the secured party to perform additional investigation.

Under Alternative A, if the debtor does not hold a driver's license issued by the state in which the financing statement is filed, then either of the following names for the debtor would be sufficient as the debtor's name on the financing statement: (1) the individual name of the debtor, as under current Article 9, or (2) the debtor's surname and first personal name.[18]

Under Alternative B, any of the following names for the debtor would be sufficient as the debtor's name on the financing statement: (1) the debtor's name as shown on the debtor's driver's license if the debtor holds an unexpired driver's license issued by the state, (2) the individual name of the debtor, as under current Article 9, or (3) the debtor's surname and first personal name.[19] Alternative B has been called the "safe harbor" approach, in contrast to the "only if" approach reflected in Alternative A.

Under either Alternative A or Alternative B, if the debtor holds two driver's licenses issued by the state, the most recently issued driver's license is the one to which reference should be made to determine the debtor's name to be provided on the financing statement.[20]

In some states, the same office of the state that issues a driver's license also issues an identification card for an individual who does not hold a driver's license, and the state or office does not permit an individual to hold both a driver's license and a non-driver's license identification card at the same time. A Legislative Note to amended section 9-503 suggests that,

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[13] Prop. U.C.C. § 9-503(a)[Alternative A](4) (2010).
[14] *Id.*
[15] *See* Prop. U.C.C. § 9-521 (2010), which includes an amended national form of financing statement.
[16] *Id.*
[17] *Id.*
[18] Prop. U.C.C. § 9-503(a)[Alternative A](5) (2010); U.C.C. § 9-503 (2009).
[19] Prop. U.C.C. § 9-503(a)[Alternative B](4) (2010).
[20] Prop. U.C.C. § 9-503(g) (2010).

regardless of which alternative is adopted, these states should refer to the non-driver's license identification card as an alternative of equal dignity with the driver's license.[21]

The rationale for choosing the driver's license name as the name of the debtor to be provided in order for the debtor's name on the financing statement to be sufficient is that in most cases an individual debtor holds a driver's license that is offered as a form of identification when the debtor seeks to obtain secured financing. For lenders that extend credit on a volume basis, procedures can easily be established for the lender to search the records of the filing office under the driver's license name and to file in the filing office a financing statement providing that name as the name of the debtor.

To be sure, a rule that contemplates use of the debtor's driver's license name is not without risk. The driver's license may expire, or the debtor may exchange the current driver's license for a new driver's license. Either event could constitute a change in the name that Article 9 requires to be provided for the debtor. This may be the case if the debtor's name on an expired driver's license is different from a name that would be sufficient for the name of the debtor to be provided on a financing statement in the absence of a driver's license name or if the name of the debtor on the new driver's license is different than the name of the debtor as it appeared on the old driver's license.

If a search under the new name required to be provided for the debtor, following the filing office's standard search logic, does not disclose the financing statement filed under the expired or original driver's license name, the financing statement would become seriously misleading.[22] In that case, the normal rules for a name change under section 9-507(c) would apply. The financing statement would remain effective for collateral in existence on the date of the name change and for collateral acquired by the debtor during the four-month period after the date of the name change.[23] For the financing statement to be effective for collateral acquired by the debtor after the end of the four-month period, the secured party would need to amend the financing statement within the four-month period to provide the debtor's new name.[24]

The observers from the lending community felt that, under either the "only if" rule of Alternative A or the "safe harbor" rule of Alternative B, the risk that debtor name changes may be more likely to occur than under current law was more than offset by the greater certainty of being able to look to the debtor's driver's license name.

It is important to emphasize that the driver's license name is relevant for a particular state only if Article 9's choice of law rules in the forum state point to the law of that particular state to determine perfection and the effect of perfection and non-perfection of a security interest that must or may be perfected by filing.[25] For example, if an individual debtor's principal residence is in Illinois, the debtor will be considered to be located in Illinois under section 9-307.[26] A

[21] Prop. U.C.C. § 9-503, *Legislative Note 3* (2010).
[22] U.C.C. §§ 9-506(b)-(c) (2009).
[23] Prop. U.C.C. § 9-507(c)(1) (2010).
[24] Prop. U.C.C. § 9-507(c)(2) (2010).
[25] *See* U.C.C. § 9-301 (2009).
[26] U.C.C. § 9-307(b)(1) (2009).

financing statement must be filed in Illinois to perfect by filing a security interest in collateral in which a security interest is perfected by filing in the state of the debtor's location.[27] If the debtor holds an Ohio driver's license rather than an Illinois driver's license, the Ohio driver's license will be irrelevant for purposes of perfecting a security interest that must be perfected by a filling in Illinois.

From the views expressed by observers from the American Bankers Association working group it is expected that a number of states will be encouraged by them to adopt Alternative A. But a Legislative Note suggests that a state considering adopting Alternative A should verify that its Uniform Commercial Code data base is compatible with the state's driver's license data base as to characters, field length and the like.[28] Alternative A would not be workable in a state if a significant number of names reflected on driver's licenses issued by the state could not be entered in the Uniform Commercial Code data base of the state, resulting in secured parties not being able to comply with the "only if" rule. If there is lack of compatibility, the lack of compatibility could still be rectified by a change in computer systems that established compatibility or a filing office regulation that explains how a driver's license name should be modified to be entered into the Uniform Commercial Code data basis of the filing office.

2. *Definition of "Registered Organization"*

The amendments modify the definition of "registered organization" to reflect that an organization is a registered organization if it is formed or organized under the law of a state by the filing of a public record with the state rather than, as under current Article 9, by the state merely being required to maintain a public record showing that the organization has been organized.[29] This change will more accurately reflect that a registered organization includes an organization whose "birth certificate" emanates from the act of making a public filing. The change also confirms that, like the typical corporation, limited partnership or limited liability company, a statutory trust formed under the law of a state by a filing in the secretary of state's office of the state is a registered organization.

Furthermore, the amendments expand the definition of "registered organization" to include a common law trust that is formed for a business or commercial purpose and is required by a state's business trust statute to file with the state an organic record, such as the trust agreement for a common law trust.[30] This change will mean that a Massachusetts business trust,[31] for example, will be considered to be a registered organization rather than, as would appear to be the case under current Article 9, an organization that is not a registered organization. This type of common law business trust, i.e., a common law business trust that, because of a public filing requirement, will be considered a registered organization under the amendments, is referred to in this paper as a "Massachusetts type business trust."

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[27] U.C.C. § 9-301 (2009).
[28] Prop. U.C.C. § 9-503, *Legislative Note 2* (2010).
[29] Prop. U.C.C. § 9-102(a)(71) (2010).
[30] *Id*.
[31] *See* Mass. Gen. Laws Ch. 182, § 2 (2010)

The change will not affect a common law trust that is formed for a purpose that is not a business or commercial purpose or a common law trust formed for a business or commercial purpose but that is not required to file a public record with the state. As under current Article 9, neither of these types of common law trust would be a registered organization. Only a common law trust that is a Massachusetts type business trust will be considered to be a registered organization under the amendments.

3. *Name of Registered Organization*

Some concern in practice has been expressed that, in determining the name of a debtor that is a registered organization for the purpose of providing the debtor's name on a financing statement, there may be more than one name of a registered organization reflected on a state's public record. This circumstance could arise when the state maintains a searchable data base of the names of registered organizations but where the data base uses abbreviations or has limited field codes. In that case, for example, the name of a corporation reflected in its charter document in a public file with the state and the name reflected on the state's publicly available data base may differ. If the secured party is to file a financing statement providing the corporation's name as debtor or to search for the debtor's name in the state's filing office records, the secured party may be uncertain as to whether the name should be the name on the corporation's charter document or the name in the searchable data base.

The amendments clarify that, for a financing statement to be sufficient, the name of the registered organization debtor to be provided on the financing statement is the name reflected on the "public organic record" of the registered organization.[32] In most cases, a registered organization's "public organic record" is the publicly available record filed with the state to form or organize the registered organization. If the registered organization is formed by legislation, the legislation is the public organic record in which the registered organization's name is found. If the registered organization is a Massachusetts type business trust, the registered organization's name is that reflected on the required publicly available filing, usually the trust agreement.

Accordingly, in the example above of the corporation with a name on its publicly available charter document that is different than the name on the state's publicly searchable data base, the debtor's name to be provided on the financing statement should be the debtor's name as reflected on the charter document.

If the name of the debtor on a public organic record is amended, the name of the debtor to be provided on a financing statement is the name as so amended. If otherwise there is more than one public organic record stating the debtor's name, the debtor's name is that provided on the most recently filed public organic record as the debtor's name.[33]

4. *Name of Debtor When Collateral is Held in Trust*[34]

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[32] Prop. U.C.C. § 9-503(a)(1) (2010).

[33] *Id.*

[34] For a more detailed discussion, see Norman M. Powell, *Filings Against Trusts and Trustees Under the Proposed 2010 Revisions to Current Article 9 -Thirteen Variations*, 42 UCC L.J. Number 4 (Summer 2010).

The amendments distinguish a trust that is a registered organization, i.e., a statutory trust or a Massachusetts type business trust, from a common law trust that is not a registered organization.[35] To be sufficient under the amendments, when the collateral is held in a trust that is a registered organization, a financing statement must provide, as the name of the debtor, the name reflected as the trust's name on the public organic record of the trust.[36]

If collateral is held in a trust that is not a registered organization, the name to be provided on the financing statement, as under current Article 9, must be the name of the trust itself or, if the trust has no name, the name of the settlor.[37] This rule applies even if, as typically is the case with a common law trust, the trustee and not the trust meets the Article 9 definition of "debtor."[38] In the case of collateral held in a testamentary trust without a name, the name of the testator should be provided. The reference to the name of a testator is a change from current Article 9; the corresponding provision in current Article 9 does not refer to a testator, only a settlor.[39]

The amendments also require that, when the collateral is held in a trust that is not a registered organization, the financing statement must provide in a separate part of the financing statement a statement that the collateral is held in trust.[40] The reference to "collateral held in trust" replaces the reference under current Article 9 to the debtor being the trust or the trustee.[41] The reference to the debtor being a trust or trustee was thought to be confusing in practice especially because typically under a common law trust in most states the debtor would be the trustee.

If the name of the settlor or testator is provided as the debtor's name, the financing statement must provide in a separate part of the financing statement sufficient information to distinguish the trust from other trusts of the same settlor or testator.[42] That distinguishing information often could be, for example, merely the date of the trust agreement.[43]

The requirement that this information be inserted in a separate part of the financing statement was intended to reduce the risk that a secured party would provide the information in the debtor's name block of the financing statement. Under the search logic of the filing office in some states, additional information provided in the debtor's name block may cause the financing statement to be ineffective if a search of the debtor's name without the additional information would fail to disclose the financing statement.[44]

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[35] Prop. U.C.C. § 9-503(a)(1), (a)(3) (2010).
[36] Prop. U.C.C. § 9-503(a)(1) (2010).
[37] Prop. U.C.C. § 9-503(a)(3)(A) (2010).
[38] Prop. U.C.C. § 9-503, cmt. 2(b) (2010).
[39] U.C.C. § 9-503(a)(3)(A) (2009).
[40] Prop. U.C.C. § 9-503(a)(3)(B)(i) (2010).
[41] U.C.C. § 9-503(a)(3)(B) (2009).
[42] Prop. U.C.C. § 9-503(a)(3)(B)(ii) (2010).
[43] Prop. U.C.C. § 9-503, cmt. 2(b) (2010).
[44] *Cf.* Hastings State Bank v. Stalnaker, (*In re* EDM Corp.), 2010 WL 1929772, at *6 (B.A.P. 8th Cir. May 14, 2010)(holding that the secured party's financing statement was seriously misleading because the name of the debtor provided on the financing statement included additional "doing business as" information as part of the debtor's name and, using the standard search logic of the filing office, a search in the filing office records under the debtor's name without the additional information did not disclose the financing statement).

5. *Name of Debtor When Collateral is Administered by a Personal Representative*

Current Article 9 refers to the possibility that the debtor may be an estate.[45] The amendments more accurately refer to collateral that is being administered by a personal representative of a deceased debtor.[46] In such a case the name of the deceased debtor on the financing statement will be sufficient as a "safe harbor" if the name provided is the name of the debtor on the court order appointing the personal representative.[47] If the appointment order contains more than one name for the debtor, the first name of the debtor on the appointment order is sufficient.[48]

6. *Debtor's Change of Location*

Under current Article 9, if a debtor changes its location to a new jurisdiction, a secured party whose security interest was perfected by filing in the original jurisdiction has a period of up to four months to continue the perfection of its security interest by filing a financing statement in, or otherwise perfecting the security interest under the law of, the new jurisdiction.[49] The four month grace period applies, however, only to collateral in which the secured party's security interest was perfected at time of the change of location.[50] Of course, a security interest in property acquired by the debtor after the time of the change of location will not be perfected at the time of the change because the security interest in the after-acquired property will not attach until the property is acquired by the debtor and the debtor then has rights in the collateral.[51] There is no grace period under current Article 9 for perfection of any security interest that may attach to post-change of location after-acquired property of the debtor.[52]

The amendments add a grace period for the after-acquired property.[53] They do so by providing that the financing statement filed in the original jurisdiction is effective with respect to collateral acquired within the four months after the debtor's location changes.[54] The secured party can continue perfection beyond the four-month period by filing a financing statement or otherwise perfecting under the law of the new jurisdiction.[55]

The amendments will provide greater protection for a secured party with a security interest in after-acquired property of its debtor if the debtor changes its location.[56] However, a

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[45] U.C.C. § 9-503(a)(2) (2009).
[46] Prop. U.C.C. § 9-503(a)(2) (2010).
[47] Prop. U.C.C. § 9-503(f) & cmt. 2(c) (2010).
[48] Prop. U.C.C. § 9-503, cmt. 2(c) (2010).
[49] U.C.C. § 9-316(a)(2) (2009).
[50] U.C.C. § 9-316, cmt. 2 (2009).
[51] U.C.C. §§ 9-203, 9-308 (2009).
[52] U.C.C. § 9-316, cmt. 2 (2009).
[53] Prop. U.C.C. § 9-316(h) & cmt. 7 (2010).
[54] Prop. U.C.C. § 9-316(h)(1) (2010). The four-month period is shortened if the financing statement filed in the jurisdiction of the old location lapses before the expiration of the four-month period.
[55] Prop. U.C.C. § 9-316(h)(2) (2010).
[56] A change in location of a registered organization may be more likely to occur today if a registered organization organized in one state "converts" to a registered organization organized in another state. The entity

post-relocation secured party considering extending credit to the debtor on the basis of a first priority security interest in the after-acquired property, and a buyer or a lessee of the after-acquired property who is not a buyer in ordinary course or lessee in ordinary course, will need to do sufficient diligence to know to search for financing statements in the debtor's original jurisdiction during the four month period following the debtor's change of location to the new jurisdiction and, if the search discloses a conflicting financing statement, to obtain an appropriate release.

7. *New Debtor*

The amendments provide similar protection for a security interest in after-acquired property if a new debtor becomes bound by the original debtor's security agreement and the new debtor is located in a different jurisdiction than the jurisdiction in which the original debtor was located.[57] For example, if Old Debtor located in State A merges into New Debtor located in State B, under current Article 9 there is a grace period of up to one year for the secured party of Old Debtor to file a financing statement against New Debtor in State B to continue the effectiveness of the financing statement that the secured party filed in State A against Old Debtor.[58] But the grace period applies only to a security interest that was perfected by filing in State A at the time of the merger.[59] There is no grace period for perfection of any security interest that may attach to post-merger after-acquired property.[60] Using an approach similar to that taken with respect to property acquired by a debtor after it relocates, the amendments provide for a grace period of up to four months in the case of such an interstate merger.[61]

As under current Article 9, a security interest in post-merger after-acquired property that is perfected solely by the financing statement filed by the secured party against Old Debtor in State A will be subordinate to a security interest of a competing secured party perfected by the filing of a financing statement against New Debtor in State B.[62] This result for an interstate merger is consistent with the treatment of after-acquired property of a new debtor in the case of an intrastate merger.[63]

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conversion statutes being adopted by a number of states refer to the converting entity as being the same entity as the resulting entity. *See* COLO. REV. STAT. § 7-90-202(4) (2006) ("The resulting entity is the same entity as the converting entity."); DEL. CODE. ANN. tit. 6, § 18-214(g) (2010) ("[T]he limited liability company shall be deemed to be the same entity as the converting other entity and the conversion shall constitute a continuation of the existence of the converting other entity in the form of a domestic limited liability company."); 805 ILL. COMP. STAT. ANN. § 180/37-15(a) (2010) ("A partnership or limited partnership that has been converted under this Article is for all purposes the same entity that existed before the conversion."); MICH. COMP. LAWS ANN. § 450.4707(5) (2002) ("If a conversion under this section takes effect, the limited liability company is considered the same entity that existed before the conversion."); VA. CODE ANN. § 13.1-1276(6)(b) (2010) ("The surviving entity is deemed to… be the same entity without interruption as the converting entity that existed prior to the conversion.").

[57] Prop. U.C.C. § 9-316(i) (2010).

[58] U.C.C. § 9-316(a)(3) (2009).

[59] U.C.C. § 9-316, cmt. 2 (2009).

[60] *Id.*

[61] Prop. U.C.C. § 9-316(i)(1) (2010). As with a debtor's change of location, the four-month period is cut short if the financing statement filed in the old jurisdiction lapses before the end of the four-month period.

[62] Prop. U.C.C. § 9-326(a) (2010).

[63] *See* U.C.C. § 9-508(b) (2009).

8. *Other Filing Related Changes*

The amendments provide for other changes to the filing rules in Part 5 of Article 9:

- Only an initial financing statement may indicate that the debtor is a transmitting utility, in which case the financing statement does not lapse.[64] Current Article 9 suggests that an initial financing statement may be amended to indicate that the debtor is a transmitting utility.[65] The statutory change will make the transmitting utility filing provision consistent with the public-finance and manufactured-home transactions filing provision[66] and will respond to IACA concerns about the operational difficulty for filing offices to capture such amendments and prevent the amended financing statements from being treated as having lapsed.

- A filing office will no longer be permitted to reject a financing statement that fails to provide the type of organization of the debtor, the jurisdiction of organization of the debtor, or the organizational identification number of the debtor or a statement that the debtor has none.[67] This information was not considered to be sufficiently useful in practice and often added cost and delay to the filing process.

- The term "correction statement" as used in current Article 9[68] has been changed to the more accurate "information statement".[69] Under the amendments, an information statement may, but need not, be filed by a secured party of record who believes that an amendment or other record relating to the financing statement of the secured party of record was filed by a person not entitled to do so.[70] Under current Article 9 a correction statement may be filed only by the debtor.[71]

- The uniform forms of initial financing statement and amendment have been updated to reflect the amendments.[72]

B. Changes Unrelated to Filing

The amendments contain some changes that are less connected to the filing rules in Part 5 of Article 9.

- Current section 9-406 renders unenforceable an anti-assignment term of a payment intangible or promissory note that secures an obligation. By way of contrast, current section 9-408 permits a sale of a payment intangible or promissory note notwithstanding an anti-assignment term but does not require the account debtor or maker to attorn to or

[64] Prop. U.CC. § 9-515(f) (2010).
[65] U.C.C. § 9-515(f) (2009).
[66] *See* U.C.C. § 9-515(b)(referring to "an initial financing statement").
[67] Prop. U.C.C. § 9-516(b)(5) (2010).
[68] U.C.C § 9-518 (2009).
[69] Prop. U.C.C. § 9-518 (2010).
[70] Prop. U.C.C. § 9-518(c) (2010).
[71] U.C.C. § 9-518(a) (2009).
[72] *See* Prop. U.C.C §§ 9-521(a)-(b) (2010).

otherwise recognize the buyer. The amendments clarify that effectiveness of an anti-assignment term of a payment intangible or promissory note in the case of a sale or other disposition of collateral under section 9-610 or an acceptance of collateral under section 9-620 is governed by section 9-406 and not by section 9-408.[73]

- The amendments modify the definition of the term "authenticate" to conform to the definitions of "sign" in Article 1 and Article 7.[74]

- The amendments modify the definition of 'certificate of title" to take into account state certificate of title systems that permit or require electronic records as an alternative to the issuance of certificates of title.[75]

- The amendments modify the requirements for control of electronic chattel paper to conform them with those in Article 7 for electronic documents of title and in the Uniform Electronic Transactions Act for transferable records. The result is that the new requirements set forth the current requirements as a "safe harbor" but permit other control systems as well.[76]

- The amendments clarify that a registered organization organized under federal law, such as a national bank, that, by authorization under federal law, designates its main or home office as its location is located in the state of that office for purposes of Article 9.[77] The provision is a confirmation of a clarification currently stated in the Official Comments.[78]

- The amendments expand the list of collateral for which a licensee or buyer takes free of a security interest if the licensee or buyer gives value without knowledge of the security interests and before it is perfected.[79]

- The amendments confirm that a secured party's authorization to record an assignment of a mortgage securing a promissory note assigned to the secured party in order for the secured party to conduct a non-judicial foreclosure sale of the mortgaged real property applies when there is a default by the mortgagor.[80] The language in current Article 9 could arguably have been read to refer to a default by the assignor of the promissory note rather than by the mortgagor.

C. Transition Rules

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[73] Prop. U.C.C. §§ 9-406(e), 9-408(b) (2010).
[74] Prop. U.C.C. § 9-102(a)(7) (2010); *see* U.C.C. § 1-201(37) (2009); U.C.C. § 7-102(11) (2009).
[75] Prop. U.C.C. § 9-102(a)(10) (2010).
[76] Prop. U.C.C. § 9-105(a)-(b) (2010); *see* U.C.C. § 7-106 (2009) and Unif. Elec. Transactions Act § 16 (1999)
[77] Prop. U.C.C. § 9-307(f)(2) (2010)
[78] U.C.C. § 9-307, cmt. 5 (2009).
[79] Prop. U.C.C. § 9-317(d) (2010).
[80] Prop. U.C.C. § 9-607(b)(2)(A) (2010).

The amendments contain their own set of transition rules in Part 8 of Article 9.[81] The transition rules for the amendments are modeled upon the transition rules used in connection with the 1998 revisions to Article 9 set forth in Part 7 of Article 9.

However, the transition rules for the amendments are somewhat shortened from those in Part 7 of Article 9 since the amendments, unlike the 1998 revisions, do not contemplate an expansion of the scope of Article 9 or a change in collateral category definitions. Moreover, although the transition rules for the amendments do contemplate the possibility that the law governing perfection may change under the amendments because the location of a debtor may change under the amendments, the category of cases in which the law governing perfection will change is much narrower than under the 1998 revisions and will likely be applicable only to a Massachusetts type business trust.

The transition rules for the amendments are summarized on the Exhibit to this paper.

IV. A SUMMARY OF THE AMENDMENTS TO THE OFFICIAL COMMENTS THAT ARE INDEPENDENT OF THE AMENDMENTS TO THE STATUTE

In addition to changes to the Official Comments explaining the statutory amendments, the JRC is offering a set of amendments to the Official Comments that further explain statutory provisions that are not being amended.

At the time of this writing, the Reporter and the Chair are still completing some revisions to the Official Comments. The amendments to the Official Comments should, though, be completed in the fall of 2010. When completed, they will be posted on the web sites of the sponsoring organizations for a 60-day comment period. If any objection is raised that cannot be settled by alternative language, the objection will be referred to the PEB for resolution. If the matter is viewed by the PEB as one that it cannot resolve or is otherwise viewed by the PEB as of significant importance, the PEB may refer the matter to the sponsoring organizations.

Even though work remains at this time to complete the changes to the Official Comments, some changes may be briefly summarized in substance at this point in the process. It is expected that the Official Comments will explain the following:

A. Scope

The subjective intent of the parties is irrelevant to establish the characterization of a transaction as being within the scope of Article 9. For example, the subjective intent of the parties to a transaction that it is a "true lease" is not relevant to the determination of whether the transaction is a true lease governed by Article 2A or a secured transaction governed by Article 9.

B. Definitions

In the definition of "account" in section 9-102(a)(2) a "right to payment arising out of a credit or charge card" refers to the right of the card issuer to receive payment from the card

[81] *See* Prop. U.C.C. §§ 9-801-808 (2010).

holder as account debtor and does not refer to the obligation of the merchant bank to pay the merchant for the settlement transaction for which the card was used.

A certificate of title may qualify as a "certificate of title" in section 9-102(a)(10) even if the certificate of title statute does not expressly state any connection between an indication of a security interest on the certificate of title and the concept of perfection under Article 9.

The "registered form" requirement in section 8-102(a)(15) for an obligation, share, participation or other interest to qualify as a "security" means that books must be maintained by or on behalf of the issuer for the purpose of registering transfers. The requirement is not met if the books are maintained for a purpose other than registering transfers or if books could be maintained by or on behalf of the issuer for the purpose of registering transfers but are not. The Comment rejects the holding of *Highland Capital Management LP v. Schneider*.[82]

A sale of rights to payment under a lease is a sale of chattel paper. The Comment rejects the alternative holding of *Commercial Money Center* that a sale of rights to payment under a lease is a sale of payment intangibles.[83]

While tangible chattel paper may be converted into electronic chattel paper, the reverse may be true as well: electronic chattel paper may be converted into tangible paper.

C. Filing

The name of the debtor to be provided on a financing statement in order for the financing statement to be sufficient is the debtor's "correct name", even if the debtor is known in some contexts by a nickname or trade name.

An authorization to file an amendment under section 9-509(d) need not be in an authenticated record even though the parties may wish to obtain and retain an authenticated record authorizing the filing.

If the debtor "converts" from one type of entity to another (e.g., a limited partnership is converted into a limited liability company), then non-UCC law determines whether the converting entity is the same or a different entity than the resulting entity. If other law is unclear on this issue and the resulting organization is located in the same state as the pre-conversion debtor but has a name different from the name of the pre-conversion debtor under which a financing statement was filed, it would be prudent for the secured party protect itself against either outcome as if the resulting entity were both the same as, and a different entity than, the pre-conversion debtor. To do this the secured party should add the resulting organization as an additional debtor on the financing statement. The secured party may also, as a matter of prudence, file a new financing statement against the resulting organization.

D. Perfection by Control

[82] 8 N.Y. 3d 406, 414-15 (2007).
[83] 350 B.R. 465, 481 (B.A.P. 9th Cir. 2006).

If a depositary bank acts as agent for a syndicate of lenders to a borrower who has granted a security interest to the agent for the benefit of lenders in a deposit account maintained by the borrower with the depositary bank, the agent's security interest is perfected automatically by control under section 9-104(a)(1). It is not necessary for the depositary bank to enter into a control agreement with itself in its separate capacity as agent under section 9-104(a)(2) in order for the security interest to be perfected by control.

The failure of section 9-104(a) to contain a provision analogous to section 8-106(d)(3) does not suggest that a person with control of a deposit account may not also act as agent for a third party in order to perfect the secured party's security interest by control through the agent.[84]

If chattel paper consists of both tangible and electronic records, a secured party's security interest is perfected by control when it possesses the tangible records and has control of the electronic records.

E. Priority

If the filing of a financing statement that was not authorized by the debtor at the time of filing is later ratified by the debtor in a security agreement describing the collateral indicated on the financing statement or otherwise, priority of the perfection of the security interest by filing dates from the time of the filing, not from the time of ratification.

If two security interests in the same original collateral are entitled to a priority in proceeds under section 9-322(c)(2), the security interest that was senior in the original collateral is senior in the proceeds.

F. Enforcement

Under section 9-610(c) a secured party may not, with certain exceptions, purchase collateral at its own private disposition. A purchase by the secured party at its own private disposition under circumstances not permitted by section 9-610(c) is a "strict foreclosure" under sections 9-620, 9-621 and 9-622. These provisions may be not be waived by the debtor except as provided in section 9-624(b).

A public or private disposition may be conducted over the Internet. If the disposition over the Internet is a public disposition, a notification complies with section 9-613(1)(E)'s requirement that the notification state the time and place of the public disposition if it states the time when the disposition is scheduled to begin and the electronic location of the disposition, such as the Uniform Resource Locator (URL).

Federal or other state law may impose disposition notification requirements on the secured party in addition to those set forth in section 9-611.

G. Choice of Law

[84] *See* U.C.C § 1-103 (2009).

A fixture filing against a transmitting utility must be made in the central filing office of the state in which the fixtures are located. If fixtures are located in more than one state, a fixture filing may need to be made in the central filing office of each state in which fixtures are located.

H. Other Comments

An "in lieu" initial financing statement filed under section 9-706 is effective, even though it contains minor errors or omissions, if the financing statement is not seriously misleading under section 9-506.

EXHIBIT

Summary of the Transition Rules for the 2010 Amendments to Article 9 of the Uniform Commercial Code

The transition rules for the 2010 amendments to Article 9 of the Uniform Commercial Code are contained in a new Part 8 to Article 9. The section references below are to the sections of the new Part 8, UCC §§ 9-801 et seq. The following is a summary of the transition rules.

1. Amendments Effective Date

The amendments establish a uniform effective date of July 1, 2013 (the "Amendments Effective Date"). *§9-801*. Unless otherwise provided in Part 8, the amendments will apply, as of the Amendments Effective Date, to all transactions within their scope, even if a transaction was entered into prior to the Amendments Effective Date. *§9-802(a)*. This paper refers to Article 9 as in effect immediately before the Amendments Effective Date as "Pre-amended Article 9" and to Article 9 as amended by the 2010 amendments on and after the Amendments Effective Date as "Amended Article 9".

2. Pre-Amendments Effective-Date Causes of Action

The amendments do not affect causes of action in litigation that is pending on the Amendments Effective Date. *§9-802(b).*

3. Pre-Amendments Effective-Date Security Interests Perfected under Pre-amended Article 9

A security interest that is perfected under Pre-amended Article 9 before the Amendments Effective Date may or may not meet the requirements for perfection under Amended Article 9.

Requirements Met under Amended Article 9. A security interest perfected under Pre-amended Article 9, and for which the requirements for attachment and perfection are met under Amended Article 9 on the Amendments Effective Date, remains perfected under Amended Article 9. *§9-803(a).*

Requirements not Met under Amended Article 9: Generally. If the security interest was perfected under Pre-amended Article 9, but the requirements for perfection are not met under Amended Article 9 on the Amendments Effective Date, the security interest, with one exception described below for a security interest perfected by filing under Pre-amended Article 9, remains perfected for a period of one year following the Amendments Effective Date. The perfection of the security interest will lapse if the requirements for perfection under Amended Article 9 are not satisfied by the end of that one-year period. *§9-803(b).*

Requirements not Met under Amended Article 9: Perfection by Filing under Pre-amended Article 9. If a security interest is perfected by filing under Pre-amended Article 9 before the Amendments Effective Date, but the requirements for perfection are not met

under Amended Article 9 on the Amendments Effective Date, the one-year post-Amendments Effective Date grace period for maintaining perfection under Amended Article 9 does not apply. *§9-803(b) ("Except as otherwise provided in Section 9-805").* The maintenance of perfection, on and after the Amendments Effective Date, of a security interest perfected by filing under Pre-amended Article 9 is addressed separately in §§9-805 and 9-806 as discussed in point 5 below.

4. Pre-Amendments Effective-Date Unperfected Security Interests

A security interest that was unperfected under Pre-amended Article 9, and for which the requirements for perfection are not met under Amended Article 9 on the Amendments Effective Date, is not perfected under Amended Article 9 until Amended Article 9's perfection requirements are satisfied. *§9-804(2).*

5. Perfection by Pre-Amendments Effective-Date Filing

A filed financing statement that was effective to perfect a security interest in collateral under Pre-amended Article 9 may or may not be effective to perfect a security interest in that collateral under Amended Article 9.

Pre-Amendments Effective-Date Filing Effective under Amended Article 9. If a financing statement filed in a jurisdiction and office before the Amendments Effective Date, whether or not effective under Pre-amended Article 9, would, if filed in that jurisdiction and office on the Amendments Effective Date, be effective to perfect a security interest under Amended Article 9, the filing is given effect under Amended Article 9. *§9-805(a).* The filing may be continued, on or after the Amendments Effective Date, by the filing of a continuation statement in that jurisdiction and office only if the continuation statement, together with other filing office records relating to the financing statement, satisfy the requirements of Part 5 of Amended Article 9 for an initial financing statement. *§§9-805(c) and (e).* The continuation statement, to be effective, must be filed within the six-month period prior to the lapse of the financing statement. *§9-515(d).*

Pre-Amendments Effective-Date Filing Not Effective under Amended Article 9. If a financing statement filed in a jurisdiction and office before the Amendments Effective Date that was effective to perfect a security interest under Pre-amended Article 9 would, if filed on the Amendments Effective Date, be ineffective to perfect that security interest under Amended Article 9, the filing is nevertheless given effect under Amended Article 9 until the earlier to occur of the financing statement's normal lapse (without regard to any continuation statement filed on or after the Amendments Effective Date) and June 30, 2018. *§9-805(b).* If a financing statement designating the debtor as a transmitting utility filed in a jurisdiction and office before the Amendments Effective Date that was effective to perfect a security interest under Pre-amended Article 9 would, if filed on the Amendments Effective Date, be ineffective to perfect that security interest under Amended Article 9, the filing is given effect until June 30, 2018. *§ 9-805(d).* To avoid lapse and in order to continue the original financing statement, an initial financing statement (an "in lieu" initial financing statement), referring to the original financing

statement to be continued, must be filed under §9-806 in the jurisdiction and office required by Amended Article 9.

Continuation: Other Requirements. A continuation statement filed on or after the Amendments Effective Date, together with any other records already on file in the filing office pertaining to the related financing statement, as well as an "in lieu" initial financing statement filed as a continuation under §9-806, must generally satisfy the other requirements for an initial financing statement under Part 5 of Article 9. For example, If a financing statement filed in a jurisdiction and office before the Amendments Effective Date that was effective to perfect a security interest under Pre-amended Article 9 would, if filed on the Amendments Effective Date, be ineffective to perfect that security interest under Amended Article 9 because amended section 9-503 requires that the financing statement provide a different name for the debtor, the debtor's name on the financing statement should be amended so that the name is sufficient under amended section 9-503 before the financing statement is continued in the same jurisdiction and office. A debtor name change financing statement amendment is more likely to be required under the transitions rules for the 2010 amendments than the filing of an lieu initial financing statement. This is because the 2010 amendments, unlike the 1998 revisions, contain only minimal changes in the choice-of-law rules that would require the filing of an in lieu initial financing statement.

6. Initial Financing Statement as a Continuation: the "In Lieu" Initial Financing Statement

If a financing statement filed before the Amendments Effective Date remains effective on the Amendments Effective Date although filed in a jurisdiction and office that would not have been the jurisdiction or office required for perfection of the security interest by filing under Amended Article 9, that financing statement, to avoid lapse, must be continued as an "in lieu" initial financing statement in the jurisdiction or office required by Amended Article 9.

Requirements. An "in lieu" initial financing statement must satisfy the filing requirements of Part 5 of Amended Article 9. In addition, in order to put subsequent searchers on notice that the "in lieu" initial financing statement was intended to continue the original financing statement filed in a different jurisdiction and office, the "in lieu" initial financing statement must identify the original filing by filing office, dates of filing and filing numbers (both for original filing and the most recent continuation statement, if any, of the original filing) and must indicate that the original filing remains effective. *§9-806(c).* Upon the Amendments Effective Date, the secured party is authorized by the debtor to file any "in lieu" initial financing statement necessary to continue by filing the perfection of the secured party's security interest created under Pre-amended Article 9. *§9-808(2).*

Timing of Filing. The "in lieu" initial financing statement may be filed at any time before lapse of the original filing, even before the normal six-month period prior to lapse. *Cf. Official Comment 1 to §9-706.* The secured party may make an "in lieu" initial financing statement filing even before the Amendments Effective Date assuming that the debtor has authorized the filing. *Cf. Official Comment 1 to §9-706.*

Period of Effectiveness. An "in lieu" initial financing statement filed on or after the Amendments Effective Date is scheduled to lapse upon the expiration of the period for the effectiveness of the financing statement set forth in §9-515 of Amended Article 9. *§9-806(b)(2).* An "in lieu" initial financing statement filed before the Amendments Effective Date is scheduled to lapse upon the expiration of the period for the effectiveness of the financing statement set forth in §9-515 of Pre-amended Article 9. *§9-806(b)(1).*

7. Amendments to Pre-Amendments Effective-Date Financing Statements

Generally. An amendment (other than a continuation as discussed above) made on or after the Amendments Effective Date to a financing statement filed before the Amendments Effective Date must be filed in the jurisdiction and office required by Amended Article 9 for perfection of the security interest by filing. *§9-807(b)(first sentence).* If the financing statement was filed in the jurisdiction and office required under Amended Article 9, then the financing statement may be amended by the filing of an amendment in that office. *§9-807(c)(1).* If, however, the financing statement was not filed in the jurisdiction and office required by Amended Article 9, the financing statement must be amended by means of the filing of an "in lieu" initial financing statement filed in the jurisdiction and office required by Amended Article 9. The amendment may be made by filing the "in lieu" initial financing statement with the modified information, or the "in lieu" initial financing statement may be filed first and then amended to reflect the modified information. *§§9-807(c)(2) and (3).*

Alternative Technique for Termination. As an alternative, it may be possible to file a termination statement in the office in which the related financing statement filed before the Amendments Effective Date was filed. *§9-807(e).* However, if the financing statement was not filed in the jurisdiction and office required by Amended Article 9, the termination statement may be filed only if the financing statement was not already continued by an "in lieu" initial financing statement filed in the jurisdiction and office required by Amended Article 9. *§9-807(e)("unless…").* Moreover, the termination statement must be one that is effective under the law of the jurisdiction in which the financing statement filed before the Amendments Effective Date was filed. *§9-807(b)(second sentence).*

8. Priority

Amended Article 9 determines priorities that were not established under Pre-amended Article 9 before the Amendments Effective Date. Accordingly, an attached security interest that was not perfected under Pre-amended Article 9 may not, merely by Amended Article 9 becoming effective and causing that security interest to become perfected, obtain priority over a competing perfected security interest to which it was junior under Pre-amended Article 9. *§9-809(a).* Moreover, the priority of a security interest that attached on or after the Amendments Effective Date and which was perfected by the filing of a financing statement filed before the Amendments Effective Date dates from the Amendments Effective Date, not from the date of the earlier filing, if the earlier filing would have been ineffective to perfect the security interest under Pre-amended Article 9. *§9-809(b).*